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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 925, 930, 931, 932, and 933

[No. 2001–24]

RIN 3069–AB06

Capital Requirements for Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is modifying the capital and related regulations that were adopted on December 20, 2000. Many of the changes were identified in response to an advance notice of proposed rulemaking (ANPR) relating to unforeseen issues that were not addressed by the final capital rule. In addition to making certain conforming amendments, the Finance Board is clarifying that the Federal Home Loan Banks (Banks) may pay dividends on Class A stock from retained earnings; providing Banks with discretion to prohibit members from transferring Bank stock; defining the phrase ''charges against the capital of the Bank;'' clarifying the off-balance sheet conversion factors for commitments to make advances and commitments to acquire loans; changing the provision governing the membership termination date for members seeking to voluntarily withdraw from the Bank System; and adding a requirement that a Bank make certain disclosures to its members before its capital plan can be implemented. The Finance Board is also: providing Banks with authority to suspend the redemption of Class A or Class B stock if continued redemption would seriously affect the Bank's capital position or raise other safety or soundness concerns and adopting a provision requiring Banks to establish a deadline in their capital plans by which a member must opt-out of the stock conversion process.

DATES: The final rule is effective November 26, 2001.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director, (202) 408–2821; Scott L. Smith, Acting Director, (202) 408–2991; Ellen Hancock, Senior Financial Analyst, (202) 408–2906; or Christina Muradian, Senior Financial Analyst, (202) 408–2584, Office of Policy, Research and Analysis; or Arnold Intrater, Acting General Counsel, (202) 408–2536; Neil R. Crowley, Deputy General Counsel, (202) 408–2990; Thomas F. Hearn, Senior Attorney-Advisor, (202) 408–2976; or Thomas E. Joseph, Senior Attorney-Advisor, (202) 408–2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 133 Stat. 1338 (November 12, 1999) (GLB Act), amended the Federal Home Loan Bank Act (Bank Act) to change, among other things, the capital structure of the Banks from a ''subscription'' structure to one that includes both risk-based and minimum leverage requirements. The GLB Act also required the Finance Board to prescribe uniform capital standards for the Banks and required each Bank to adopt and implement a capital plan consistent with provisions of the GLB Act and Finance Board regulations.

On March 2, 2001, the Finance Board approved an ANPR to help identify issues or uncertainties that had not been contemplated by, or fully addressed in, the final capital rule or that had arisen only after the Banks had begun to develop their capital plans. *See* 66 FR 14093 (Mar. 9, 2001). On August 8, 2001, the Finance Board published for notice and comment a notice of proposed rulemaking (proposed rule) addressing a small number of modifications to the capital and related regulations. *See* 66 FR 41462 (Aug. 8, 2001). Many of the changes proposed were identified in response to the ANPR. In addition to proposing certain conforming amendments, the Finance Board proposed to: clarify that the Banks may pay dividends on Class A stock from retained earnings; provide Banks with discretion to prohibit members from transferring Bank stock; define the phrase ''charges against the capital of the Bank;'' clarify the off-balance sheet conversion factor for commitments to make advances and commitments to acquire loans; change the provision governing the membership termination date for members seeking to withdraw voluntarily from the Bank System; and add a requirement that a Bank make certain disclosures to its members before its capital plan can be implemented. The proposed rule also addressed other issues arising under the capital rule that, based on the ANPR comments, appeared to require additional explanation, even though no amendment to the regulation with respect to these issues was proposed.

After considering the comments on the proposed rule, the Finance Board is adopting many of the changes as proposed, and is substantially modifying a number of others. The Finance Board is also adopting a few changes after commenters prompted the Finance Board to reconsider issues that, when proposing the rule amendments, the Finance Board had indicated such issues would not require rule changes. The final rule being adopted herein will become effective 30 days from its date of publication in the **Federal Register**, in accordance with the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Banks, however, may immediately rely on the changes adopted herein in developing their capital plans. Further, because some Banks have already submitted their respective capital plans to the Finance Board for approval or others may not have sufficient time to alter a capital plan already approved by the their boards of directors before October 29, 2001 (when final plans are to be submitted to the Finance Board), the Finance Board emphasizes that Banks' boards of directors may amend their capital plan submissions at any time up until the time the Finance Board considers the capital plan for approval.

II. Comments on and Changes to the Proposed Regulations

The Finance Board received seven comment letters related to the proposed rule. One comment, from a Bank, was sent on behalf of all twelve Banks. Four Banks submitted separate comments. Comment letters were also submitted by

two trade associations. On August 20, 2001, Finance Board staff met with representatives of three Banks, along with a law firm representing the Banks, to discuss disclosure requirements in the proposed rule. A summary of this meeting was designated as a comment. After considering these comments the Finance Board has made a number of changes to the proposed regulations. In other cases, the Finance Board believes that no change to the proposed rule is warranted or that the Finance Board could address the comment by clarifying the meaning of regulatory text or a statutory provision. The Finance Board discusses below those comments that referenced provisions in the proposed rule amendments or that raised issues that the Finance Board has not previously fully or clearly addressed.

Voluntary withdrawal from membership. In the proposed rule, the Finance Board proposed amending § 925.26(b) to address a membership termination issue raised by a scenario described in comments to the ANPR. *See* 66 FR at 41463, 41473. Under that scenario, a member was required to hold Class B shares to support outstanding borrowing from a Bank and to hold Class A shares as a condition of membership. As adopted in December 2000, § 925.26(b) set the effective date of a member's termination as of the date on which the last of the applicable stock redemption periods ended for the member's stock, whether the stock in question was held as membership stock, as activity-based stock, or as excess stock. Thus, this provision prevented the Bank from redeeming Class A stock at the end of the six-month redemption period because that stock would have been required to be held as a condition of continued membership in the Bank until the membership terminated at the end of the five-year redemption period applicable to the member's outstanding Class B stock.

Because the rule appeared effectively to extend the redemption notice period for Class A stock in the situation described above by linking the membership termination to activity-based stock purchase requirements, thereby burdening members unnecessarily, the Finance Board proposed to change it. Under the proposed change, the membership of an institution that had submitted a notice of withdrawal would have terminated as of the date on which the last of the applicable stock redemption periods ended for the stock held as a condition of membership, as that requirement was set out in the Bank's capital plan, unless the institution decided not to withdraw and cancelled its notice of withdrawal prior to that date. This proposed change would have, in situations like those described above, enabled the Bank to redeem the Class A shares that were held as a condition of membership at the end of six months, unless a Bank also required a member to hold Class B stock as a condition of membership. In most cases, however, the Finance Board believed that the rule change would have helped assure that the redemption date for the Class A stock held as a condition of membership would have corresponded to the date on which the member's withdrawal became effective.

No commenter objected to the proposed change. One commenter, however, raised a question about how the effective date of a member's voluntary withdrawal would be affected by the member's purchase, after it had submitted its notice of withdrawal, of additional stock to satisfy an increase in its membership stock requirement. Under 925.26(b) as proposed, if a Bank's capital plan required a member to hold Class B stock as a condition of membership, voluntary termination of membership would ordinarily occur five years from the date the member submitted its notice to withdraw. However, if two years into the five-year redemption period, the membership requirement increased and the member purchased additional Class B stock to satisfy the increase, the language in § 925.26(b), as proposed, could be read to suggest that the effective date of the member's voluntary withdrawal would become five years after the purchase of the additional stock, or in effect, seven years after the member first submitted its notice of voluntary withdrawal. Such an outcome was not intended by the Finance Board. Therefore, the Finance Board, in adopting this provision, has altered the proposed language to make clear that the effective date of termination for a member that voluntarily withdraws from membership is the date on which the last of the applicable stock redemption periods ends for membership stock that the member held on the date it submitted its withdrawal notice.

An example illustrates how a member's voluntary termination would operate under the amendment to section 925.26(b). At the time it submits its notice of voluntary withdrawal, a member holds 100 shares of Class B stock to satisfy its membership stock requirement. Two years into its five-year redemption period, the member purchases 20 shares of Class B stock to satisfy an increase in its membership stock requirement. The effective date of the member's voluntary withdrawal would be unchanged by the purchase of additional stock, and on that date, the membership stock held as of the date the member filed the notice to withdraw would become subject to redemption while, as explained below, the additional 20 shares purchased to satisfy the increase in the membership stock requirement would become excess.

Stock purchased by withdrawing member. In response to the proposed rule, a commenter raised two concerns regarding stock purchased by a withdrawing member. First, the commenter raised the scenario of a member that, after filing its withdrawal notice, purchased additional stock, either to satisfy its membership stock purchase requirement, or to support additional business activity. Assuming such stock were Class B stock, unless the redemption period for such stock were deemed to have begun on the date of the member's withdrawal notice, the commenter argued, the redemption period for such stock could extend well after the termination of the institution's membership.

The Finance Board believes that, with respect to stock purchased by a withdrawing member to support additional business activity, such a scenario does not require a regulatory change. It is true that in this scenario, if the stock purchased to support additional activity is Class B stock, the redemption period would extend beyond the effective date of the member's voluntary withdrawal. However, once the activity related to the stock was liquidated, the stock would become excess and subject to repurchase at the Bank's discretion.

For example, assume that two years into its five-year redemption period, a withdrawing member takes down a four-year advance, supporting it by purchasing additional Class B stock on which it immediately files a notice of redemption. When the membership expires in year five, there would still be one year left on the member's advance. When the advance is paid off one year later, the stock supporting that activity would become excess, subject to repurchase at the Bank's discretion, even though one year still remains to run on that stock's five-year redemption period.

Similarly, with respect to Class B stock that a withdrawing member purchases to satisfy an increase in its membership stock requirement, such stock would not be subject to redemption until some time after the effective date of the member's voluntary termination. However, as explained more fully below, this stock would be

considered excess stock as of the effective date of the member's voluntary termination. As excess, such stock could be repurchased at the Bank's discretion under the terms of the capital plan.

The example used previously also illustrates how a member's voluntary termination would operate under the amendment to § 925.26(b). At the time it submits its notice of voluntary withdrawal, a member holds 100 shares of Class B stock to satisfy its membership stock requirement. Two years into its five year redemption period, the member purchases 20 shares of Class B stock to satisfy an increase in its membership stock requirement. The effective date of the member's voluntary withdrawal would be unchanged by the purchase of additional stock, and would remain five years from the date it submitted its notice to withdraw from the Bank.[1] Further, assuming the member filed a redemption notice for the additional 20 shares at the time they were purchased, such shares could be redeemed three years after the member's voluntary termination was effective. Such shares could be repurchased by the Bank under the terms of its capital plan, however, at any time after the effective date of voluntary termination because after such date, such shares would be considered excess.

With regard to this latter point, some question may arise as to whether membership stock held after membership has been voluntarily terminated may be considered excess because of a provision in section 6(e)(2) of the Bank Act which provides:

> Excess Stock: Shares of stock held by a member shall not be deemed to be ''excess stock'' for purposes [of a Bank's discretion to repurchase excess stock under section 6(e)(1)] by virtue of a member's submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

The Finance Board, however, believes that section 6(e)(2) of the Bank Act does not preclude membership stock becoming excess upon the termination of membership pursuant to a member's voluntary withdrawal. Instead, the Finance Board interprets section 6(e)(2) as preventing a Bank from deeming excess the membership stock of a member that voluntarily withdraws from membership merely because the member has filed a notice of withdrawal. Nothing precludes a Bank, however, from considering stock as excess when membership actually terminates pursuant to a voluntary withdrawal because, under the statute, the stock is no longer required as a condition of membership. The Finance Board believes this interpretation is also consistent with the statutory provision governing voluntary termination of membership which sets forth that the applicable stock redemption notice period begins when the member files its notice to withdraw and that stock may be redeemed at the end of that period. *See* 12 U.S.C. 1426(d)(1).

Furthermore, the Finance Board believes that use of the phrase ''termination * * * in any other manner'' means that the second restriction in Section 6(e)(2) of the Bank Act applies to termination of membership by a process other than the filing of a voluntary notice of withdrawal, in other words as applying to members that are involuntarily terminated, or terminated through merger or consolidation with a nonmember or member of another Bank. Thus, section 6(e)(2) of the Bank Act prevents a Bank from deeming stock as excess because a member is involuntarily terminated or its membership terminates because of a merger or consolidation. This interpretation is consistent with the clear legislative intent, expressed in section 6(d)(2)(B)(i) of the Bank Act, 12 U.S.C. 1426(d)(2)(B)(i), that a Bank pay a member whose membership was terminated involuntarily ''* * * in cash the par value of [its] stock, *upon the expiration of the applicable notice period* * * * (emphasis added).'' *Id. See also*, 12 U.S.C. 1426(d)(2)(C) (automatically commencing redemption period for stock upon involuntary termination of membership). The wording concerning excess stock in section 6(e)(2) of the Bank Act in conjunction with the termination provisions of section 6(d) of the Bank Act, therefore, effectively establishes different points at which stock may be deemed excess during the membership termination process for institutions that withdraw from membership voluntarily and for institutions whose membership is terminated through other means.

It should also be noted that, unlike with voluntary terminations, when a membership is terminated involuntarily or because of a merger or consolidation, termination is effective immediately. Thus a Bank would never face the scenario where increases in the Bank's membership stock requirement would result in an involuntarily terminated member purchasing additional stock while it awaited redemption of its stock.

The commenter also expressed a second concern about dividends received as Bank stock (stock dividends) during the period after a member had filed a withdrawal notice. The commenter believed that unless the redemption period for such stock dividends were deemed to have begun on the date of the notice of withdrawal, a member would never be able to redeem all its stock because it would continue to receive stock dividends, and stock dividends on the stock dividends, *ad infinitum.*

The Finance Board does not believe that the above scenario requires an amendment to the capital rule because a Bank could address this issue in its capital plan. For example, a capital plan could provide that withdrawing members would receive cash dividends instead of stock dividends or that such dividends be paid in Class A stock, which would allow redemption after six months. More importantly, to the extent that shares received as stock dividends exceed the amount a member is required to hold under a capital plan's minimum investment provisions, the stock would be excess, subject to repurchase under the terms of a Bank's capital plan.

Merger and excess stock calculation. One commenter expressed concern about statements in the proposed rule regarding whether stock held by a member of one Bank may be considered to be excess stock, which would be eligible for repurchase by the Bank, whenever that institution merges into a member of another Bank or into a non-member. *See* 66 FR at 41471. The Finance Board indicated that, under the Bank Act such a merger could not, in and of itself, cause the disappearing member's stock to be deemed excess stock. The Finance Board also stated, however, that as a practical matter, some or all of the stock owned by that member could become excess stock as a result of the Bank's next calculation of each member's minimum stock purchase requirement, depending on the terms of a Bank's membership requirements.[2] *Id.* The commenter indicated that at a Bank where Class B stock was used to satisfy the membership stock requirement, the membership stock of a disappearing member should remain at the same level

[1] Of course, a Bank could provide in its capital plan a provision which automatically commences the redemption period upon purchase, for stock purchased after a member submits a notice of voluntary withdrawal. *See* 66 FR at 41463.

[2] For example, an institution that had its charter cancelled because of a merger or consolidation would no longer exist as a separate entity, and upon normal recalculation of the membership requirement, a Bank would have no basis to apply the membership requirement. The membership requirement, therefore, would become zero upoon recalculation not because membership was terminated, but because the former member no longer existed. This reasoning would not be applicable to an institution that continued to exist as a separate entity after termination of its membership.

during the stock's five-year redemption period, and should not be subject to being deemed excess stock.

The Finance Board does not believe that the comment requires any regulatory change. Even if the Bank stock of a withdrawing member were deemed excess stock, it would remain part of the Bank's capital for the duration of the redemption period, unless the Bank exercised its discretion to repurchase it. Thus, whether such stock ceases to be part of the Bank's capital before the end of the redemption period is a decision that is at the complete discretion of the Bank.

Rolling redemption. In the proposed rule, the Finance Board responded to a concern raised by a Bank that § 931.7(a) could permit a member to file a redemption notice against all of its stock, even while such stock was needed to support membership or activity requirements, allowing what the commenter described as a ''rolling redemption.'' The Finance Board concluded that members would not have had a great deal of incentive to engage in rolling redemptions, especially if the Bank intended to aggressively manage its excess stock position. Further, the Finance Board pointed out that § 931.7(a) permitted a Bank to impose a fee, to be specified in its capital plan, on a member that canceled a pending notice of redemption, and that fee could have also reduced the incentive to engage in rolling redemptions. Thus, the Finance Board did not propose any changes to its rules in response to the concern about rolling redemptions. *See* 66 FR at 41471.

The Finance Board received one comment on this issue. The commenter disagreed with the Finance Board's conclusion that the redemption notice cancellation fee would deter a member from maintaining standing notices to redeem all their stock and provided examples of how the fee could be evaded. The commenter recommended amending the capital rule to permit the Banks to require a member to cancel a redemption notice associated with stock when the member seeks to use such stock to support a business activity that extends beyond, or matures after, the original redemption period.

The Finance Board has reconsidered its previous reasoning and finds merit in the arguments put forth by the commenter. To address the commenter's concerns, the Finance Board is adopting an amendment to § 931.7(a) of its rules to provide that a member's redemption request will be automatically cancelled if the Bank is unable to redeem the member's stock within five business days after the completion of the statutory redemption period. For example, under this change, if Class B stock specified for redemption were being used to support an activity at the completion of the five-year redemption period, the redemption notice would be cancelled if the activity were not liquidated within five business days and a new notice would have to be filed, starting anew the waiting period, if the member still wished to redeem the stock. This cancellation would still be subject to applicable fees specified in the Bank's capital plan. The five-day business period which a Bank must wait before canceling the redemption notice is intended to allow a member the option of liquidating the activity which is supported by the stock, if such early liquidation of the transaction is allowed under agreements with the Bank.

The automatic cancellation of a redemption request, of course, would also be applied to stock if the stock were required to be held as a condition of membership at the time the applicable redemption period ended. The Finance Board notes, however, that this provision only applies if the stock cannot be redeemed because it must be held by the member to fulfill one of its minimum investment requirements. Thus, the provision would not apply where the Bank could not redeem stock because the Bank would be below its regulatory capital requirements after the redemption or for a reason set forth in § 931.8 of the Finance Board rules, as that rule is being amended today, 12 CFR 931.8.

Discretionary redemption of stock. In response to the ANPR, a few commenters noted that Finance Board rules appeared to require a Bank to redeem a member's excess stock at the end of the statutory redemption period, unless certain statutory or regulatory restrictions applied. These commenters stated their belief that this approach was contrary to the Bank Act. *See* 66 FR at 41470–71. The Finance Board disagreed with this assessment and noted the discretion maintained by the Banks to repurchase stock and reiterated its position that it was not apparent from the GLB Act that a Bank could deny a redemption request if certain statutory or regulatory limitations on redemption did not apply. *Id.*

One commenter urged the Finance Board again to reconsider its position on this issue, citing concerns that the redemption rules, as written, may affect tax treatment of stock dividends and accounting treatment of Bank stock. In response to this comment, the Finance Board has carefully reconsidered its position on discretionary redemption. The Finance Board, however, continues to believe its earlier statements on this issue are correct. *Id.* at 41470. Further, the Finance Board's view is based in part on the fact that Congress in considering the GLB Act specifically rejected a class of non-redeemable stock. *See* H.R. Conf. Rep. No. 106–434 (discussing section 608 of the GLB Act). Interpreting the statute to allow the Banks sole discretion to redeem excess stock would effectively give the Banks the right to create a class of non-redeemable stock.

The Finance Board also believes that the Bank Act provides a large degree of discretion to a Bank to affect the amount of stock that it must redeem. In this respect, a Bank may adjust minimum investment provisions in its capital plan to require members to hold additional stock, effectively rendering such stock ineligible for redemption. This is especially true in light the amendments to § 931.7(a) being adopted herein, and discussed above. Further, the Finance Board has interpreted its rules to allow a Bank to provide minimum investment ranges in its capital plan so a Bank may adjust its minimum investment requirement within such range quickly. In cases where a Bank must amend its capital plan to change the minimum investment requirements, the Bank would need to seek Finance Board approval of the amendment, but the Finance Board intends to consider such requests expeditiously.

Authority for Banks to suspend redemption of stock. In considering the issue of a Bank's discretion to redeem stock, the Finance Board carefully reviewed its current regulations and weighed whether its current regulations were sufficiently flexible to allow a Bank to address an unforeseen or quickly arising situation in which the cash out-flow associated with redemptions would affect the Bank's ability to continue operating in a safe and sound manner or would weaken its capital position. In this respect, Finance Board regulations clearly prohibit the redemption of stock in situations where a Bank would be below its regulatory capital requirements after such redemption or where a Bank has experienced losses or projects future losses that would impair capital. *See* 12 CFR 931.7(c) and 931.8. The Finance Board also retains the right for reasons of safety and soundness to require the Banks to hold capital above the minimum total capital or risk-based capital requirements. *See* 12 CFR 932.2(b) and 932.3(b). By exercising such right, the Finance Board would effectively reduce the amount of stock that the Bank could redeem.

However, it is less clear whether the rules give a Bank clear authority to suspend redemption if it believes that its capital requirement may be rising in the future or if it believes that the capital requirements do not fully reflect the risk on the Bank's balance sheet. For example, the risk of certain newly-developed financial instruments may not become apparent until certain market conditions evolve, and a Bank may feel that such newly-apparent risks are not fully captured in the Finance Board credit or market-risk rules, or will result in a steady rise in a Bank's regulatory capital requirements over a period of time. While the Finance Board has authority to address such situations by raising capital requirements or changing its rules, it may be more prudent for the Banks to act immediately to stop redemptions in particularly volatile situations and let the Finance Board adjust its regulatory requirements in a more deliberate fashion.

The Bank Act also clearly provides certain statutory prohibitions on the redemption or repurchase of Bank stock so that the redemption or repurchase of such stock does not endanger a Bank's capital position. *See* 12 U.S.C. 1426(f). The Finance Board interprets this goal as applying both to immediate situations in which redemption or repurchase would bring a Bank below regulatory capital requirements and to situations in which a Bank has a reasonable belief that current redemption or repurchase of stock would cause the Bank to fail to maintain adequate capital in the near-term. It is less clear, however, that the Finance Board regulations address this latter situation.

In addition, the Bank Act imposes various obligations on the Banks and on the Finance Board. Among the duties imposed on the Finance Board are the requirements that it ensures that the Banks operate in a financially safe and sound manner, that the Banks remain adequately capitalized, and that the Banks carry out their housing finance mission. *See* 12 U.S.C. 1422a(a)(3). The Finance Board recognizes that cash out-flow associated with redemption of stock could affect the Banks' ability to carry out other obligations or otherwise operate in a safe and sound manner. The Finance Board believes that, given its statutory duties and obligations, it maintains full authority to restrict the redemption or repurchase of stock on safety and soundness grounds. Again, however, the Finance Board is concerned that its rules do not clearly give a Bank flexibility to exercise their judgment in situations that are fast evolving and moving in directions that cannot be readily ascertained.

To assure that its regulations address these situations, the Finance Board is, pursuant to authority in 12 U.S.C. 1422a, 1422b and 1426(a), adopting § 931.8(b). This regulation provides a Bank's board of directors, or a subcommittee of the board, with authority and discretion to suspend the redemption of stock if the continued redemption of stock would cause (at some future date) the Bank to fail to meet its regulatory capital requirements, would prevent the Bank from maintaining adequate capital against a risk or potential risk not fully captured in the Finance Board's regulations, or would otherwise prevent the Bank from operating in a safe and sound manner. Moreover, as safety and soundness regulator, the Finance Board believes that it would need to be informed of any condition that caused a Bank to invoke the authority granted by this provision. Thus, the provision requires a Bank to inform the Finance Board in writing within two business days that it has invoked the authority granted it under § 931.8(b). In addition, the Bank must provide the Finance Board with its reasons for suspending stock redemptions, including a description of the conditions that led to the suspension, and describe the Bank's strategies and time frame for addressing those conditions. The regulation also makes clear that in granting the Banks this discretion, the Finance Board retains authority to require the Banks to re-institute redemptions subject to whatever terms and conditions the Finance Board may set. The rule also prohibits a Bank from exercising its discretion to repurchase excess stock without the Finance Board's written permission during such time as a suspension of redemption under § 931.8(b) is in effect.

The Finance Board believes that the rule is needed for contingency purposes. In addition, the Finance Board emphasizes that the condition related to the failure to meet a minimum capital requirement in § 931.8(b) differs from the limitation set forth in § 931.7(c) in that it is forward looking and is intended to address a situation in which the Bank projects that continued redemptions over the near term will leave the Bank without sufficient capital to meet its regulatory requirements in the future. Thus, if current redemptions would cause a Bank to fall below regulatory capital requirements, the limitations in § 931.7(c) would apply and the Bank would not need to comply with the conditions of § 931.8(b).

Opt-out provision. In their joint comment letter, the twelve Banks urged the Finance Board to address the question of members who would be in the process of withdrawing on the effective date of the capital plan. The issue arose in part because of the proposed requirement in the disclosure rule that a Bank provide the required disclosure at least 20 days before the effective date of its capital plan. The Banks pointed out that they had wanted to put in their capital plans a firm opt-out date by which a member must submit its notice to withdraw if the member did not want to have its existing capital stock converted into Class A or Class B stock. If a capital plan contained such an opt-out date, the Banks stated, disclosure should be made before that date.

Some Banks, in their individual comment letters, also pointed out that Finance Board staff's position concerning draft capital plans was that the Banks could not use an opt-out provision to restrict the members' rights to withdraw from the System upon six-months prior notice. Thus, Finance Board staff believed a member could withdraw from the System and, in effect, opt out of the conversion process up until the effective date of the capital plan. Further, the staff believed that if the withdrawal notice were submitted before the effective date of a capital plan, the member's right to withdraw on six-months notice would have been reserved and should have been applied to any Class A or Class B stock received by the member upon conversion. One Bank's comment letter expressed concern about the operational problems related to conversion procedures and capital stock programming requirements if members were allowed to opt out of conversion up to the effective date. The Banks in their joint comment letter also questioned whether there would be statutory authority to allow Banks to redeem Class B stock on less than five years notice, as the Finance Board staff suggested.

The Banks reviewed various options for addressing the opt-out issue, but they believed some of these approaches raised legal or operational issues. They pointed out, however, that the Finance Board previously determined that it had authority to waive the six-month notice period for withdrawal and urged the Finance Board to use this authority to address the unique circumstances associated with the transition to the new capital structure. Specifically, the Banks wished to be able to adopt a flexible opt-out deadline and allow all members who withdrew from a Bank before this deadline to terminate membership and

have their old stock redeemed on or before the effective date of a Bank's capital plan. The Banks also suggested that the Finance Board adopt a rule requiring members that did not file a notice of withdrawal before the opt-out date to have their existing stock converted into Class A or Class B stock as required under a capital plan and to be subject to the new, applicable notice periods associated with those classes of stock. One Bank also urged the Finance Board explicitly to allow the Banks to convert to cash the stock of institutions whose membership would be terminated as of the effective date, but nevertheless had outstanding advances, and to hold that cash as collateral against the outstanding advances.[3] The Bank also urged the Finance Board to deem receipt by a Bank of a notice to withdraw as receipt by the Finance Board of that notice.

The Finance Board has carefully considered the Banks' comments and finds many of the Banks arguments persuasive. As a starting point, the Finance Board recognizes that the Bank Act does not explicitly address how a Bank is to handle a member that, as of the effective date of a capital plan, has submitted a notice to withdraw from the Bank but for which the statutory six-month notice period has not yet been completed. *See* 12 U.S.C. 1426(e)(1994). Nor has the Finance Board previously addressed how this withdrawal issue should be addressed by the Banks in light of the statutory silence on this issue. The Finance Board does believe, however, that the preliminary position voiced by its staff that the statute allows a member to withdraw from the System on six-months notice up until the effective date of the capital plan raises questions from both an operational and a legal perspective, and, therefore, declines to adopt that position.

The GLB Act holds that a Bank shall apply the stock purchase and retention requirements that were in effect immediately prior to its enactment until the capital plan of that Bank is implemented. Under the regulatory structure adopted by the Finance Board, a Bank's capital plan is considered implemented on its effective date when the stock purchase and retention requirements (*i.e.,* the minimum investment requirements) for members adopted in the capital plan and the capital requirements (and transition provisions) adopted by the Finance Board under the authority set forth in the GLB Act would be applied. *See* 12 CFR 931.9. *See also* 66 FR 8262, 8279–80 (Jan. 30, 2001)(discussing 12 CFR 931.9). Thus, while the six month notice period for withdrawal from membership are applied up until the effective date of a Bank's capital plan, the withdrawal provisions set forth in the GLB Act amendments to the Bank Act should be applied after the capital plan's effective date. *See* 12 U.S.C. 1426(d).

The Finance Board believes that this view is also the most consistent with other provisions of the GLB Act. The GLB Act provides that the Finance Board may permit Banks to issue only those classes of stock authorized thereunder, and sets forth specific redemption periods for both Class A and Class B stock. *See* 12 U.S.C. 1426(a)(4). Deeming the six-month notice period for withdrawal to apply to Class B stock issued on the effective date of the capital plan would raise questions whether the Finance Board were allowing an unauthorized class of ''old'' stock to be issued, or alternatively, allowing a redemption period that differs from the statutory requirement. Thus, the approach that requires the pre-GLB Act withdrawal provision to apply up to the effective date but that applies the withdrawal provision set forth in the GLB Act to membership termination and the accompanying redemption of stock after such date appears to be the most consistent with the Bank Act, as amended.

The Finance Board also has, on at least one occasion, waived the statutory six-month notice period for withdrawal. *See* Fin. Bd. Res. No. 97–89 (Dec. 30, 1997). In that case, the Finance Board noted that it acted pursuant to an opinion of the Office of General Counsel that the Finance Board had authority as a matter of law, to waive the statutory six-month notice period provided that the waiver did not: (1) endanger the financial stability of the Bank from which the member was withdrawing; (2) endanger the safety and soundness of the Bank System as a whole, or (3) frustrate the purposes of the statutory provision. *Id.* In this regard, the Finance Board recognizes that some Banks may wish to allow members to opt out of the conversion process on less than six-months notice, either to speed up the transition process or to allow members to make their decision closer to the effective date. Thus, as a general matter, the Finance Board recognizes that applying its waiver authority to allow the Banks some flexibility in managing the unique issues related to the transition from the old subscription-based capital to the new risk-based capital system may strengthen the transition process and advance the overall statutory goals of the Bank Act as amended by the GLB Act.

To codify its view of the withdrawal provisions discussed above and in response to the concerns raised in comments on the proposed rule, the Finance Board has decided to adopt § 933.2(e) as part of this final rulemaking to require each Bank to establish in its capital plan an opt-out date by which a member that does not wish to convert to the new Class A or Class B stock must file its notice to withdraw with the Finance Board. This opt-out date can be no more than six months prior to the effective date of the capital plan, assuring that a Bank does not extend the withdrawal notice period beyond the six months currently required under the Bank Act.

The rule, however, in reliance on the Finance Board's waiver authority discussed above, will allow a Bank to set its opt-out date less than six months prior to the effective date of the capital plan. The Finance Board, by approving a capital plan that has an opt-out date that is less than six months before the effective date of the capital plan, will be simultaneously waiving the six-month notice period for withdrawal contained in § 6(e) of the Bank Act prior to its amendment by the GLB Act. When considering a capital plan with such an opt-out date, the Finance Board, therefore, will have to be satisfied that the opt-date will not endanger the safety and soundness of the Bank in question or the Bank System more generally nor be contrary to the withdrawal provision in the statute. Among the factors the Finance Board will consider in this regard are whether the opt-out date provides the Bank with sufficient time to adjust to unexpected withdrawals prior to the effective date and whether the Bank expects or is reasonably certain that member withdrawal will not negatively affect its conversion plans. The Finance Board also wishes to emphasize that it expects the opt-out date to be a specific date keyed to the effective date (e.g., four months before the effective date) and will not consider a range of dates.

Section 933.2(e), as adopted, also requires each Bank's capital plan to provide that a member that does not file its notice to withdraw from the Bank on or before the opt-out date will be subject to the withdrawal requirements set forth in the Bank's capital plan. For a member of a Bank that requires an institution to hold Class B stock as a condition of membership, this would mean that the member would become subject to the five-year redemption period associated with Class B stock upon the conversion of its existing stock to Class B stock,

[3] The Finance Board will consider addressing this situation on a case-by-case basis should it arise.

even though the member may have filed its notice to withdraw prior to the effective date of the capital plan. In this regard, the Finance Board will consider using its waiver authority to allow members that missed an opt-out date filing to terminate their membership on the effective date of the capital plan, upon a request of the Bank. In considering such a waiver, the Finance Board will review the effects of letting the member leave the System on its Bank's capital position, as well as review other safety and soundness implications of the request.

Section 933.2(e), as adopted, also makes clear that a Bank shall consider the period of time after the member files its notice to withdraw but before the effective date of the capital plan in calculating the applicable stock redemption periods for the Class A or Class B stock that are converted from existing stock on the effective date of the capital plan. The voluntary withdrawal provisions in the Bank Act both before and after its amendment by the GLB Act required the withdrawal notice period to commence upon the member's filing of its notice to withdraw. *Cf.* 12 U.S.C. 1426(e)(1994) and 12 U.S.C. 1426(d)(1). The Finance Board, therefore, believes that it is consistent with the GLB Act provisions to allow the date that the member's notice of withdrawal was first filed with the Finance Board to carry over when existing stock is converted into Class A or Class B stock. This approach also results in the applicable stock redemption periods remaining five years from the date the notice was filed for Class B stock and six months from the date the notice was filed for Class A stock, as required by the GLB Act. Section 933.2(e), as adopted, does not alter current procedures which require that a notice to withdraw be filed with the Finance Board to become effective. This long standing practice is required by the Bank Act and has not generally resulted in delays in member filings. Of course, on the effective date of a Bank's capital plan, voluntary withdrawal from that Bank would be governed by § 925.26 of the Finance Board's rules, 12 CFR 925.26, which requires that members provide their notices of withdrawal to the Bank.

This final provision being adopted by the Finance Board also does not alter the current practices for calculating the effective date of termination of membership. Under these procedures, a member whose notice of withdrawal is received by the Finance Board on February 1 would be given a membership termination date of August 1 (i.e., the count is six months not 180 days). Thus, by the same token, a Bank that wished to have an effective date of August 1, 2003, could set its opt-out date no earlier than February 1, 2003.

In adopting § 933.2(e), the Finance Board is requiring all Banks to set an opt-out date in their capital plans. The Finance Board fully expects this change may require some Banks to amend the plans that they initially submitted and has no objection to a Bank's altering its capital plan after the submission date.

The Finance Board also agrees with the Banks' comments that the disclosure requirement should be tied to the opt-out date to assure that members have information that would aid in their decisions whether to convert existing stock to the new Class A and/or Class B stock. Therefore, the Finance Board is adopting in the final disclosure rule (more fully discussed below) a requirement that all information required to be provided to members by § 933.5 be transmitted, sent, or given to members between forty-five and sixty days before the opt-out date established in a Bank's capital plan. The Finance Board believes that this deadline will provide members sufficient time to review the information provided by the Bank and to make follow-up inquiries if necessary while still being sufficiently close to the opt-out date.

Furthermore, to assure that members fully understand the ramifications of the opt-out provision, § 933.5(c)(4)(iv) of the final disclosure rule requires a Bank to provide the opt-out date in the disclosure materials. Because a Bank will know the intended effective date of its capital plan by the time the disclosure document is provided, the Finance Board expects that Bank to provide the calendar date for the opt-out deadline. Along with disclosing this opt-out date, the Bank also must explain the consequences to members of not filing the withdrawal notice on or before the opt-out date.

Disclosure to members. In proposing § 933.5, the Finance Board intended to provide a baseline for a Bank's disclosure about its financial condition, its capital plan, and the capital conversion process. The Finance Board decided to propose this rule after the Banks requested further clarification of Finance Board staff guidance that had outlined the types of communications with members that staff believed would help the Banks demonstrate the feasibility of implementation of their capital plans, as is required by § 933.2(g) of the Finance Board's rules, 12 CFR 933.2(g). The Finance Board noted that because use of disclosure documents could play an important role in member outreach and that the quality of a Bank's disclosure on a number of issues would play an important role in the Finance Board's review of the Banks' capital plans, there was merit in responding to the requests for additional guidance by adopting a rule in this area. *See* 66 FR at 41467–68.

Proposed § 933.5 would have required a Bank to provide a member with certain specified information at least 20 days before the effective date of the capital plan. In developing this proposed requirement, the Finance Board looked to disclosure standards established by the Securities and Exchange Commission (SEC), and specifically, the rule would have required the Banks to provide disclosure meeting the requirements of Item 11(a) through (d) and Item 12(a) and (e) of Schedule 14A of the SEC's proxy rules (17 CFR 240.14a–101, Items 11 and 12). The Finance Board noted that Items 11 and 12 are ''usually thought of as mutually exclusive provisions,'' but given the unique nature of the Banks and the conversion process, the Finance Board believed that appropriate disclosures from both Items should be provided to members. *Id.* The proposed rule would also have required the Banks to provide certain specific financial information to the members that was in scope, form, and content consistent with SEC's regulations S–X and S–K (17 CFR parts 210 and 229), as well as to provide pro forma balance sheet and income statements. The proposal would have allowed the Banks to incorporate by reference any of the financial information that had been incorporated in any Bank or Bank System report or that had been filed along with the capital plan with the Finance Board. Under proposed § 933.5, the Banks would also have had to provide members with a brief statement as to the anticipated accounting treatment and the federal income tax consequences of the transaction and with other information.

The Finance Board received four comment letters on various aspects of the disclosure requirements. One of the letters was on behalf of all twelve Banks. Three Banks also commented separately on specific aspects of the proposed disclosure rule. To the extent that the commenters addressed the same issues, the comment letters were generally consistent in their requests for changing the proposed rule.

In their joint comment letter, the twelve Banks stated that it was important for the Finance Board to clarify the premise under, which it was adopting the disclosure regulation. They noted that the Finance Board had explained that the proposed disclosure

regulations were intended to help the Banks satisfy the disclosure criteria suggested by Finance Board staff in the Capital Plan Feasibility Guidance that had been provided by letter to the Bank presidents in May 2001. The Banks, however, viewed the staff guidance as applicable only to the outreach process which should be completed before the Banks filed their capital plans on October 29, 2001, while the disclosure required under the proposed rule would not occur until after approval of the capital plan.

The Finance Board agrees that clarification on this point is necessary. The criteria contained in the staff's guidance concerning the Banks' communications with their members indicated that a Bank was expected to disclose information about specific requirements in its capital plan. Because the Finance Board expects that the review process of a capital plan is likely to result in changes to the capital plan as originally submitted, information about specific provisions cannot be disclosed with certainty until after the Finance Board actually approves the plan.[4] This fact creates a timing problem under the staff guidance in that a Bank cannot submit complete information about its outreach effort until after a capital plan is approved, but at the same time, the guidance suggested that a capital plan could not be approved until after such information was submitted. Section 933.5(a), as adopted, addresses this timing problem by stating that a capital plan cannot become effective until the disclosure required under the rule is provided to the members. In this respect, the disclosure rule is intended to replace the staff guidance concerning a Bank's communication with its membership.

The Finance Board notes, however, that a Bank may wish to provide a narrative as supplemental information supporting the approval of the capital plan which describes member reaction to the version of the capital plan that it submits for approval and describes any issues that members saw as key to their acceptance of the capital plan. The Finance Board also emphasizes that § 933.5 as adopted only sets forth the minimum disclosure requirements, and does not prevent the Banks from undertaking additional outreach or disclosing additional information at any time.

The Banks in their joint comment letter also raised concerns about the approach to disclosure proposed in § 933.5 and about some of the specific information that the Finance Board was proposing be disclosed under the rule. Most importantly, the Banks emphasized that the wholesale incorporation of the SEC's rules was problematic for several reasons. First, the Banks stated that the specific proxy disclosure items from the SEC rules cited by the Finance Board were in some cases mutually exclusive and in other cases overlapping. This fact, the Banks believed, made it difficult to determine what information had to be disclosed and could lead to different Banks applying different standards. Moreover, the Banks believed that the SEC regulations were not designed to address either the unique capital structure of the Banks or the unique circumstances surrounding the re-capitalization which created additional difficulties in discerning what disclosure would be required. The Banks also questioned whether SEC precedent would be applied to its disclosure and cited the expense and difficulties for the Banks, which have not been subject to the SEC requirements, to develop the expertise in this area necessary to prepare their disclosure documents.

The Banks also objected to the provisions in proposed § 933.5(b)(1)(ii) which would have required the Banks to provide members with quarterly pro forma balance sheet and income statements. The Banks believed that this information would be so highly speculative and be based on such a detailed set of assumptions so as to be of little use to members. The Banks also voiced concern about the liability associated with requiring disclosure of such highly speculative financial information. As an alternative to the disclosure of the pro forma financial information, the Banks suggested that they be required to provide members with a pro forma capitalization table that would reflect the new capital structure of a Bank and with a narrative discussion of known material trends that could affect the liquidity, capital resources or continuing operations of the Bank. Two Banks also submitted separate comment letters emphasizing these points with one of the Banks suggesting that the narrative discussion may also include a statement of management's plans and objectives for future operations.

In developing the proposed disclosure rule, the Finance Board had turned to the SEC proxy rules (and related precedent) because it believed these rules provide a valuable model and a degree of certainty for the Banks as to the disclosure requirements. The Finance Board continues to believe that the SEC rules provide the best model for disclosure requirements but also understands the Banks' concerns that their unique capital structure makes the wholesale adoption of these rules confusing. The Finance Board has also reconsidered the proposed requirement that the Banks provide specific pro forma financial information to their members in light of the Banks' comments. As a result, the Finance Board has restructured the final disclosure rule to address the Banks' concerns and to more closely relate the SEC disclosure requirements to the capital plans of the Banks and is adopting § 933.5 as discussed below.

First, the Finance Board has deleted the specific references in its rules to the SEC proxy requirements. Instead, the Finance Board now describes in § 933.5(b) of the final rule the specific information that a Bank must disclose about the Class A and/or Class B stock that the Bank intends to issue on the effective date of its plan. (Thus, to the extent that a Bank's capital plan does not call for the issuance of Class A stock, the Bank's disclosure document would not be required to address Class A stock.) Specifically, § 933.5(b), as adopted, requires a Bank to briefly outline with regard to the Class A and/or Class B stock that it intends to issue: dividend rights, the terms of the conversion, the terms and conditions of a member's rights to have the Class A and/or Class B stock redeemed or repurchased, voting rights and preferences associated with the stock, liquidation rights, and a member's liability to further calls or to assessments by the Banks. The final disclosure provision also requires the Banks to describe any differences with regard to these rights between existing Bank stock and the new Class A and Class B stock. The Banks will also be required to discuss briefly the reasons for the conversion, the general effect of the conversion on a member's rights, and outline any other material features concerning the conversion.

Further, to assure that each Bank adequately discloses how provisions in its capital plan may affect a member's rights, the Finance Board has adopted § 933.5(c)(4) to require a Bank to disclose certain additional information related to its capital plan to the extent that the information was not provided to fulfill the requirements of § 933.5(b). Specifically, § 933.5(c)(4) requires each Bank to describe the minimum stock investment requirements set forth in the capital plan, to review the procedures for the Bank to amend the capital plan, to describe any restrictions (not

[4] These changes may result from comments made by the Finance Board staff or from a Bank's reconsideration of its capital plan.

disclosed elsewhere) on a member's right to redeem or to have its stock repurchased or to make use of its stock to fulfill its minimum stock investment requirement, and to describe a member's rights to have its stock redeemed or repurchased upon the member's voluntary or involuntary termination of membership.

As already discussed above, § 933.5(c)(4), as adopted, also requires a Bank to disclose the last date by which a member's written notice to withdraw from membership must be received by the Finance Board for the member not to have its existing stock converted to Class A and/or Class B stock and to explain the ramifications of not filing a notice to withdraw on or before that date. As also discussed more fully above, the date by which a Bank must make the disclosure required by § 933.5 is tied to the opt-out date set in a Bank's capital plan, and under § 933.5(a), as adopted, a Bank must transmit the required disclosure to members between forty-five and sixty days before the opt-out date.

The Finance Board has also modified § 933.5 with regard to the proposed disclosure of pro forma financial information, and, as requested by the Banks, § 933.5, as adopted, no longer requires the Banks to provide members with quarterly pro forma balance sheets and income statements. Instead, § 933.5(c)(1)(ii) requires each Bank to provide a pro forma capitalization table that reflects the expected new capital structure of the Bank, an estimate of the Bank's risk-based capital requirement under § 932.3 of the Finance Board rules, and an estimate of the Bank's total capital-to-asset ratio (where total capital would be regulatory total capital as defined in part 930 of the Finance Board's rules, 12 CFR part 930). This information should be based on actual financial data as of the date of the latest balance sheet required to be provided by § 933.5(c)(1)(i) of the disclosure regulation. Thus, the rule requires a Bank to show an estimate of what its capitalization, risk-based capital requirement, and total capital-to-asset ratio would have been, if the conversion process had occurred as of the applicable year-end date. The Banks are also required to disclose any material assumptions, and the basis for these assumptions, underlying the pro forma capitalization table, the estimated risk-based capital requirement, and the total capital-to-asset ratio.

Furthermore, § 933.5(c)(2) has been added to the final rule to require the Banks to provide members with a narrative discussing anticipated developments that could materially affect the liquidity, capital, earnings or continuing operations of a Bank, including those developments that could affect dividends, product volumes, investment volumes, new business lines, and risk profile. Because this narrative is viewed as a replacement for the proposed disclosure of the pro forma financial information, the Finance Board expects that the narrative will be forward looking. At the same time, however, the Finance Board used the term ''anticipated developments'' to indicate that it expects the Banks to discuss in its narrative those developments that, in the Bank's opinion, may be likely to unfold, given important trends, the Bank's business strategies, and the general economic conditions existing at the time the disclosure is made. The Finance Board also expects that the narrative will provide members with sufficient information to understand the underlying reasons for a Bank's views.

The Banks also requested that the Finance Board make some additional changes to the proposed rule to clarify some of the disclosure requirements. With regard to the requirement in proposed § 933.5(b)(1)(i) that the audited balance sheets and statements of income and cash flows be consistent in scope, form, and content with Regulation S–X and S–K, the Banks commented in their joint letter that this standard may be viewed as different from the current standard required of the Banks. In this respect, they pointed out that § 989.4 of the Finance Board rules, 12 CFR 989.4, stated that quarterly or annual statements issued by an individual Bank should be consistent in both form and content with the financial statements presented in the combined Bank System annual or quarterly financial reports. Two Banks reiterated this point in their individual letters. The Finance Board did not intend that the financial disclosure required under § 933.5 be different in form or content from what is currently required for an individual Bank's or the Bank System's financial reports. Thus, § 933.5(c)(1)(i), as adopted, requires that the audited balance sheets and statements of income and cash flow meet the requirements of § 989.4 of the Finance Board rules in form and content. As did the proposed rule, the final disclosure regulation still requires the Banks to provide members with audited balance sheets as of the end of the two most recent fiscal years, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being presented, and unaudited interim financial statements as of and for appropriate interim dates.

The disclosure rule, as adopted, also allows the Banks to incorporate by reference any of the financial information required to be disclosed under § 933.5(c)(1), if that information was contained in an annual or quarterly Bank report, so long as that report conformed with the requirements of § 989.4 of the Finance Board rules, or an annual or quarterly Bank System report. *See* § 933.5(c)(1)(iii). To incorporate this information by reference, the final rule, as proposed, requires a Bank only to identify the incorporated information in the disclosure to members, and no other steps need be taken by a Bank. The final rule, as adopted, however, did not carry over from the proposed rule the right to incorporate by reference information that would have been filed with the Finance Board along with the Bank's capital plan. This provision had been proposed mainly to facilitate the incorporation by reference of the pro forma financial information that the proposed rule would have required Banks to provide to members. Because the pro forma financial information no longer must be disclosed to members and because filing information with the Finance Board would not necessarily mean the information is readily available to Bank members, the Finance Board has deleted this provision from the final rule.

The Banks in their joint comment letter also expressed concern with the wording of proposed § 933.5(b)(4), which would have required the Banks to provide members with a brief statement as to the anticipated accounting treatment and the federal income tax consequences of the conversion transaction. The Banks felt that the use of the phrase ''federal income tax consequences'' raised the issue of whether the Finance Board intended the Banks to provide tax advice to their members. The Banks suggested that the rule be rewritten to require the Banks to provide a statement of the federal income tax considerations that may be relevant to members as a result of the transaction. The Finance Board notes that it is common practice in disclosure documents to provide information on the potential tax implications of a transaction and such disclosure does not generally raise concerns that the disclosing party is acting as a tax advisor. The Finance Board, however, also did not intend to imply that the Banks were to act, or would in any way be acting, as tax advisors to the members with regard to the conversion transaction. Thus, in adopting the final disclosure rule, the wording of this

requirement, now set forth at § 933.5(c)(6), has been changed to state that a Bank shall provide its members with a statement as to the anticipated accounting treatment for the conversion transaction and the federal income tax implications of the transaction that members should consider in consultation with their own accounting and tax advisors.

A number of disclosure requirements have also been adopted as proposed, although the requirements appear in a different section of the final rule. Thus, a Bank is required to provide members, if applicable, with a description of any amendments that it anticipates making to its by-laws or other governance documents as a result of the implementation of its capital plan. *See* § 933.5(c)(3).The Bank must also state in its disclosure document a name, address and telephone number for members to direct a written or oral request to obtain, free of charge, a copy of the capital plan and any other instrument or document that defines the member's rights. See § 933.5(c)(5). The final disclosure rule also makes clear (in § 933.5(d)) that nothing in § 933.5 shall create or shall be deemed to create any rights in any third party. As the Finance Board explained when proposing this provision, the disclosure rule is meant to add consistency, clarity, and precision to the disclosure process, and it is not the Finance Board's intention to impose liability under the federal securities laws on the Banks, or to create any private right of action in any third party. See 66 FR at 41468.

The Finance Board also notes that it is not prescribing a form to be used by Banks in providing the disclosure, which provides a great deal of flexibility to the Banks in this respect. However, the Finance Board expects that no matter what form is chosen, the disclosure documents will provide the required information to members in clear narratives and will not merely incorporate language taken directly from a capital plan or the Finance Board rules. The disclosure should also be referenced to the specific rights or obligations set forth in the Bank's capital plan. For example, a Bank that requires that only Class A stock be held as a condition of membership would be expected to discuss its withdrawal provisions in terms of the six month applicable notice period related to that class of stock while Banks that require Class B stock be held as a condition of membership would discuss withdrawal as requiring a five-year notice period.

III. Other Provisions Adopted in the Final Rule

The Finance Board did not receive any comments or received only favorable comments on a number of the rule changes that it proposed in August 2001. As discussed below, these provisions are being adopted in substance, as proposed.

Charges against capital. In comments to the ANPR, seven Banks stated that the phrase ''charges against the capital of the Bank'' as used in § 931.8 of the Finance Board rules was ambiguous. The main concern was that the phrase could be read to require the Banks to seek written permission of the Finance Board to redeem or repurchase stock anytime a Bank expected to incur, or actually had incurred, even a small loss. *See* 66 FR at 41465–66. As the Finance Board pointed out, the phrase itself was used in the Bank Act. *See* 12 U.S.C. 1426(f). After applying rules of statutory construction and considering the goals of and other relevant provisions in the Bank Act, the Finance Board concluded that the phrase was not meant to trigger the requirements of § 931.8 whenever a Bank projected or experienced loss. *See* 66 FR at 41465–66. The Finance Board therefore proposed to define in § 930.1 the phrase ''charges against the capital of the Bank'' as meaning an other than temporary decline in the Bank's total equity that causes the value of total equity to fall below the Bank's aggregate capital stock amount. This definition would effectively trigger the requirements of § 931.8 (which given other changes adopted as part of this final rulemaking are now found at § 931.8(a)) only when a Bank experiences a charge against its capital stock.

The Finance Board received one comment on this matter in response to the proposed rule, and that comment supported adoption of the definition as proposed. Therefore, for the reasons set forth in the **SUPPLEMENTARY INFORMATION** section of the preamble of the proposing release for this rule, the Finance Board is adopting in § 930.1 the definition of ''charges against the capital of the Bank,'' as proposed.

Dividends on Class A stock. In the proposed rule, the Finance Board proposed to amend § 931.4 to state expressly that a Bank may pay dividends on both Class A and Class B stock from either of the sources specified in 12 U.S.C. 1436(a), *i.e.,* retained earnings and current net earnings. *See* 66 FR at 41464, 41473. This change was proposed to address concern that because section 6(h) of the Bank Act, 12 U.S.C. 1426(h), granted Class B stockholders an ownership interest in their Bank's retained earnings, the Bank's authority to pay dividends on Class A stock from retained earnings could be called into question.

In the proposed rule, the Finance Board concluded that, given the intent of Congress to allow an individual Bank, subject to Finance Board regulation, to determine the dividend rights for any class of stock that it issues, it appeared unlikely that the Congress also intended to preclude a Bank from paying any dividends on the Class A stock. The Finance Board further indicated that if the Congress had intended that result, it was more likely that the Congress would have done so expressly, rather than indirectly by enacting a new provision that was somewhat at odds with a long-standing provision of the Bank Act regarding the available sources of dividends for Bank stock. Moreover, the Finance Board continued, construing these provisions of the Bank Act in a manner that would effectively have precluded the payment of dividends on the Class A stock could have made it difficult, if not impossible, for a Bank to sell Class A stock to its members. That would have been an absurd result, in light of the clear intent of the Congress to create a new capital structure for the Banks and ultimately, the Finance Board determined that it should construe these provisions to allow the payment of dividends on Class A stock from retained earnings, as those amounts may be calculated under GAAP. *See* 66 FR at 41464.

The Finance Board received no comments objecting to the proposed change to § 931.4, and adopts it as proposed for the reasons set forth in the preamble of the proposing release.

Transfer of capital stock. In the proposed rule, the Finance Board proposed amending § 931.6 to allow a Bank the option of generally prohibiting its members from transferring Bank stock. If a Bank chose to allow transfers, the transfers clearly would have been subject to the Bank's approval. *See* 66 FR at 41465, 41473. A conforming change regarding transfer of stock was also proposed to §§ 933.2(e)(3) and (4). *Id.* at 41465, 41474.

This proposal arose out of a comment received in response to the ANPR. Upon consideration of this comment, the Finance Board stated that it would have been consistent with the discretion afforded a Bank in the GLB Act ''to establish standards, criteria, and requirements for the * * * transfer * * * of stock issued by that bank,'' *id.* at 12 U.S.C. 1426(c)(5)(B), to allow a Bank, as part of its capital plan, either

to prohibit any transfers of its stock among its members or to permit these transfers subject to the conditions currently set forth in § 931.6.

Under the proposed change, each Bank would have been required to state in its capital plan whether a member may transfer capital stock of the Bank, and, if such transfers were allowed, to specify the procedures that a member must follow to effect the transfer, and to specify that any transfer may only have been undertaken in the limited circumstances set forth in § 931.6. The proposed amendment also expressly provided that a Bank, in its capital plan, may have required a member to obtain the Bank's approval to effect the transfer of stock.

The Finance Board received no comment opposing the amendment to § 931.6, and is adopting it as proposed. The Finance Board also adopted in substance the conforming changes proposed to §§ 933.2(e)(3) and (4), although, because of other amendments adopted in this final rule, these amended paragraphs have been redesignated and adopted as §§ 933.2(f)(3) and (f)(4).

Off-balance sheet credit conversion factors. In the proposed rule, the Finance Board proposed amending Table 2 of § 932.4(f) so that the 100 percent credit conversion factor for off-balance sheet items would have applied only to commitments to make advances with certain drawdowns and commitments to acquire loans subject to certain drawdown. Further, the Finance Board proposed to define certain drawdown in § 930.1 to mean a legally binding agreement that committed the Bank to make an advance or to acquire a loan, at or by a specified date in the future. *See* 66 FR at 41466–67.

These changes were proposed in response to concerns that the 100 percent credit conversion factor for commitments to make advances and to acquire loans as adopted in Table 2 in December 2000 were broader than the requirements of other federal bank regulators. For instance, Table 2 as adopted appeared to require a 100 percent conversion factor for ''master commitments'' to acquire loans under Acquired Member Asset (AMA) programs even though such commitments were not an accurate indicator of future acquisition. It was pointed out that other federal bank regulators would have applied a 100 percent conversion factor only to commitments subject to certain drawdown, (i.e., commitments that an institution is legally obligated to honor at a specified future date no matter what change may have occurred in the counterparty's financial situation.) Because it was generally the intent of the Finance Board to conform to the extent possible its credit risk charges to the Basle Accord as currently incorporated by the federal bank regulatory agencies, the Finance Board proposed to revise the credit conversion factors of Table 2 so that the 100 percent credit conversion factor applies only to commitments subject to certain drawdown and to provide a definition of certain drawdown to assure this result.

The Finance Board received one comment from a Bank supporting the proposed changes to §§ 930.1 and 932.4(f) and, therefore, adopts them as proposed.

Conforming changes. No comments were received on the conforming changes as described in the **SUPPLEMENTARY INFORMATION** section of the proposed rule. *See* 66 FR at 41468. These conforming changes are being adopted by the Finance Board as proposed.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic effect on a substantial number of small entities.

V. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

Lists of Subjects

12 CFR Part 925

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Parts 930, 931, 932, and 933

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board amends title 12, chapter IX of the Code of Federal Regulations as follows:

PART 925—MEMBERS OF THE BANKS

1. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Amend § 925.26 by revising paragraph (b) to read as follows:

§ 925.26 Voluntary withdrawal from membership.

* * * * *

(b) *Effective date of withdrawal.* The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends for the stock that the member is required to hold, as of the date that the notice of withdrawal is submitted, under the terms of a Bank's capital plan as a condition of membership, unless the institution has cancelled its notice of withdrawal prior to the effective date of the termination of its membership.

* * * * *

3. Amend § 925.27 by revising paragraph (c) to read as follows:

§ 925.27 Involuntary termination of membership.

* * * * *

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be entitled to receive any dividends declared on its stock until the stock is redeemed or repurchased by the Bank.

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

4. The authority citation for part 930 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

5. In § 930.1 add, in correct alphabetical order the definitions for *Certain drawdown* and *Charges against the capital of the Bank*, to read as follows:

§ 930.1 Definitions.

* * * * *

Certain drawdown means a legally binding agreement that commits the Bank to make an advance or acquire a loan, at or by a specified future date.

Charges against the capital of the Bank means an other than temporary decline in the Bank's total equity that causes the value of total equity to fall below the Bank's aggregate capital stock amount.

* * * * *

PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK

6. The authority citation for part 931 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

7. Amend § 931.4 by revising the first sentence of paragraph (a) to read as follows:

§ 931.4 Dividends.

(a) * * * A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. * * *

* * * * *

8. Amend § 931.6 by revising the first sentence of the section and adding a new sentence at the end of the section to read as follows:

§ 931.6 Transfer of capital stock.

A Bank in its capital plan may allow a member to transfer any excess capital stock of the Bank to another member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. * * * The Bank may, in its capital plan, require a member to receive the approval of the Bank before a transfer of the Bank's stock, as allowed under this section, is completed.

9. Amend § 931.7 by adding, before the last sentence of paragraph (a), two new sentences to read as follows:

§ 931.7 Redemption and repurchase of capital stock.

(a) * * * A request by a member (whose membership has not been terminated) to redeem specific shares of stock shall automatically be cancelled if the Bank is prevented from redeeming the member's stock by paragraph (c) of this section within five business days from the end of the expiration of the applicable redemption notice period because the member would fail to maintain its minimum investment in the stock of the Bank after such redemption. The automatic cancellation of a member's redemption request shall have the same effect as if the member had cancelled its notice to redeem stock prior to the end of the redemption notice period, and a Bank may impose a fee (to be specified in its capital plan) for automatic cancellation of a redemption request. * * *

* * * * *

10. Amend § 931.8 by revising the heading of the section, redesignating the current text as paragraph (a), adding a new heading to paragraph (a), and adding new paragraph (b) to read as follows:

§ 931.8 Other restrictions on the repurchase or redemption of Bank stock.

(a) *Capital impairment.* * * *

(b) *Bank discretion to suspend redemption.* A Bank, upon the approval of its board of directors, or of a subcommittee thereof, may suspend redemption of stock if the Bank reasonably believes that continued redemption of stock would cause the Bank to fail to meet its minimum capital requirements as set forth in §§ 932.2 or 932.3 of this chapter, would prevent the Bank from maintaining adequate capital against a potential risk that may not be adequately reflected in its minimum capital requirements, or would otherwise prevent the Bank from operating in a safe and sound manner. A Bank shall notify the Finance Board in writing within two business days of the date of the decision to suspend the redemption of stock, informing the Finance Board of the reasons for the suspension and of the Bank's strategies and time frames for addressing the conditions that led to the suspension. The Finance Board may require the Bank to re-institute the redemption of member stock. A Bank shall not repurchase any stock without the written permission of the Finance Board during any period in which the Bank has suspended redemption of stock under this paragraph.

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

11. The authority citation for part 932 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

12. Amend § 932.4 by revising paragraph (d) heading, revising the first sentence in paragraph (e)(2)(ii)(E) and revising Table 2, which follows paragraph (f)(1), to read as follows:

§ 932.4 Credit risk capital requirement.

* * * * *

(d) *Credit risk capital charge for derivative contracts.* * * *

(e) * * *

(2) * * *

(ii) * * *

(E) The credit risk percentage requirement for mortgage assets that are acquired member assets described in § 955.2 of this chapter shall be assigned from Table 1.2 of this part based on the rating of those assets after taking into account any credit enhancement required by § 955.3 of this chapter.

* * *

* * * * *

(f) * * *

(1) * * *

TABLE 2.—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

Instrument	Credit conversion factor (In percent)
Asset sales with recourse where the credit risk remains with the Bank	100
Commitments to make advances subject to certain drawdown.	
Commitments to acquire loans subject to certain drawdown.	
Standby letters of credit	50
Other commitments with original maturity of over one year.	
Other commitments with original maturity of one year or less	20

* * * * *

PART 933—BANK CAPITAL STRUCTURE PLANS

13. The authority citation for part 933 continues to read:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

14. Amend § 933.2 by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g), and (h), respectively, adding new paragraph (e), redesignating newly designated paragraphs (f)(4), (f)(5) and (f)(6) as paragraphs (f)(5), (f)(6) and (f)(7), respectively, revising newly designated paragraph (f)(3), and adding new paragraph (f)(4) to read as follows:

§ 933.2 Contents of plan.

* * * * *

(e) *Members wishing not to convert existing stock.* The capital plan shall establish an opt-out date on or before which a member that does not wish to convert its existing stock into Class A and/or Class B stock must file a written notice to withdraw from membership with the Finance Board. This opt-out date shall not be more than six months before the effective date of the capital plan. (For purposes of applying this provision, the membership of an institution that files its notice to withdraw with the Finance Board on or before the opt-out date established in a capital plan shall terminate six months from the date that the notice of withdrawal was filed with the Finance

Board or on the effective date of the Bank's capital plan, whichever date is earlier.) The capital plan shall further provide that any member that is in the process of withdrawing on the effective date of the capital plan but did not file its written notice to withdraw from membership with the Finance Board on or before this opt-out date, shall have its existing stock converted into Class A and/or Class B stock as required by the capital plan, and that the effective date of withdrawal for such member shall be established in accordance with §§ 925.26(b) and (c) of this chapter, provided, however, that the applicable stock redemption periods calculated under § 925.26(c) of this chapter shall commence on date the member first submitted its written notice to withdraw to the Finance Board.

(f) * * *

(3) Shall specify whether the stock of the Bank may be transferred among members, and, if such transfer is allowed, shall specify the procedures that a member should follow to effect such transfer, and that the transfer shall be undertaken only in accordance with § 931.6 of this chapter;

(4) Shall specify that the stock of the Bank may be traded only between the Bank and its members;

* * * * *

15. Add new § 933.5 to read as follows:

§ 933.5 Disclosure to members concerning capital plan and capital stock conversion.

(a) No capital plan shall become effective until disclosure required by paragraphs (b) and (c) of this section has been provided to members. All disclosure required under this section shall be transmitted, sent or given to members not less than 45 days and not more than 60 days prior to the opt-out date established in the Bank's capital plan in accordance with § 933.2(e).

(b) The following information shall be provided to members about the Class A and/or Class B stock that a Bank intends to issue on the effective date of its capital plan:

(1) With regard to each class or subclass of authorized stock, a description of:

(i) Dividend rights;

(ii) The terms of conversion;

(iii) Redemption and repurchase rights;

(iv) Voting rights and preferences,

(v) Liquidation rights; and

(vi) Any liability to further calls or to assessments by the Banks;

(2) A description of any material differences between the securities to be converted into Class A and/or Class B stock and the Class A and/or Class B stock with regard to the rights addressed in paragraph (b)(1) of this section.

(3) A statement of the reasons for the conversion to Class A and/or Class B stock and of the general effect thereof upon the rights of existing members; and

(4) A description of any other material features concerning the Bank's initial issuance of Class A and/or Class B stock.

(c) In addition to the disclosure about Class A and/or Class B stock, the following information shall be provided to members:

(1) The Bank shall disclose financial information as follows:

(i) Audited balance sheets as of the end of the two most recent fiscal years, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being presented, and unaudited interim balance sheets and statements of income and cash flows as of and for appropriate interim dates that in form and content meet the requirements of § 989.4 of this chapter;

(ii) A pro forma capitalization table that reflects the Bank's projected new capital structure relative to its actual capitalization as of the date of the latest balance sheet required to be provided to members by paragraph (c)(1)(i) of this section. The Bank shall also provide a description of any material assumptions underlying the pro forma capitalization table and the basis for these assumptions, and shall provide estimates of its risk-based capital requirement, calculated in accordance with § 932.3 of this chapter, and of its total capital-to-asset ratio (both of which shall be based on the same financial data used for the capitalization table), along with a discussion of material assumptions underlying these estimates and the basis for these assumptions; and

(iii) Any of the financial information required to be disclosed by paragraph (c)(1) of this section may be incorporated by reference, provided the information being incorporated is contained in an annual or quarterly Bank report prepared in accordance with § 989.4 of this chapter or an annual or quarterly Bank System report, and the disclosure identifies the information being incorporated by reference;

(2) A narrative discussion of anticipated developments that could materially affect the liquidity, capital, earnings or continuing operations of the Bank, including those affecting dividends, product volumes, investment volumes, new business lines and risk profile.

(3) A description of any amendments anticipated to be made to the Bank's by-laws, policies or other governance documents as a result of the implementation of the capital plan;

(4) To the extent that such information has not been provided under paragraph (b) of this section, the Bank shall disclose information related to the capital plan as follows:

(i) A description of the minimum stock investment requirements set forth in the capital plan;

(ii) A statement outlining the requirements for amending the capital plan;

(iii) A description of any restrictions or limitations under a Bank's capital plan on a member's rights to buy, or redeem its class A or class B stock, to have such stock repurchased, or otherwise to make use of such stock to fulfill the member's minimum stock investment requirement;

(iv) A statement setting forth the opt-out date, on or before which a member's written notice to withdraw must be filed with the Finance Board (as established in accordance with § 933.2(e) of this part) for the member not to have its existing Bank stock converted to Class A or Class B stock on the effective date of the Bank's capital plan and describing the effect on a member's effective date of withdrawal of failing to file its notice to withdraw on or before the opt-out date; and

(v) A description of a member's rights under the capital plan to have its stock redeemed or repurchased upon voluntary or involuntary termination of its membership;

(5) The Bank should state the name, address and telephone number where members may direct written or oral requests for a copy of the capital plan and any other instrument or document that defines the rights of the member/stockholders. This information shall be provided to the members without charge; and

(6) The Bank shall provide a statement as to the anticipated accounting treatment for the transaction and the federal income tax implications of the transaction that members should consider in consultation with their own accounting and tax advisors.

(d) Nothing in this section shall create or be deemed to create any rights in any third party.

Dated: October 19, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–26963 Filed 10–25–01; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–116–AD; Amendment 39–12480; AD 2001–12–08 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects and clarifies information in an existing airworthiness directive (AD) that applies to certain Boeing Model 767 series airplanes. That AD currently requires removing the two existing escape ropes in the flight compartment; installing new escape ropes, bags, and placards; and replacing the nylon straps with new straps; as applicable. This document clarifies and corrects the affected airplane line numbers. This correction is necessary to ensure that operators do not misinterpret which airplanes are subject to the requirements of this AD.

DATES: Effective July 20, 2001.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of July 20, 2001 (66 FR 32531, June 15, 2001).

FOR FURTHER INFORMATION CONTACT: John Picolla, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1509; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On June 6, 2001, the Federal Aviation Administration (FAA) issued AD 2001–12–08, amendment 39–12263 (66 FR 32531, June 15, 2001), which applies to certain Boeing Model 767 series airplanes. That AD requires removing the two existing escape ropes in the flight compartment; installing new escape ropes, bags, and placards; and replacing the nylon straps with new straps; as applicable. That action was necessary to ensure that flight crew members safely reach the ground from a flight compartment window in the event of an emergency evacuation. That action is intended to address the identified unsafe condition.

Need for the Correction

Information obtained recently by the FAA indicates that the applicability of AD 2001–12–08 and the applicability of paragraph (a)(2) of that AD need to be clarified and corrected.

As published, the applicability of the AD references Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999, as the appropriate source of service information for determining the affected Model 767 series airplanes. The service bulletin references Service Bulletin Index Document D624T001, Part 3, for airplane variable number, line number, and serial number data. Because some operators may not readily have access to this secondary source of service information, the FAA has determined that the applicability of the AD should specify the affected airplane line numbers (i.e., line numbers 1 through 334, excluding line numbers 265, 281, 284, 286, 288, 293, and 298), which were identified in the Summary of Boeing Alert Service Bulletin 767–25A0265.

Paragraph (a)(2) of AD 2001–12–08 affects airplanes having ''serial numbers 1 through 107 inclusive.'' However, the reference to ''serial numbers'' is incorrect. The FAA's intent was to list ''line numbers 1 through 107 inclusive,'' as indicated in the referenced Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999.

The FAA has determined that a correction to AD 2001–12–08 is necessary. The correction will clarify and correct the affected airplane line numbers.

Correction of Publication

This document corrects and clarifies the errors of AD 2001–12–08 and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains July 20, 2001.

Since this action only clarifies and corrects a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subject in 14 CFR Part 39

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

Adoption of the Correction

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 39–12263 (66 FR 32531, June 15, 2001), and by adding a new airworthiness directive (AD), amendment 39–12480, to read as follows:

2001–12–08 R1 Boeing: Amendment 39–12480. Docket 2000–NM–116–AD. Revises AD 2001–12–08, Amendment 39–12263.

Applicability: Model 767 series airplanes, line numbers 1 through 334, certificated in any category; excluding those airplanes having line numbers 265, 281, 284, 286, 288, 293, and 298.

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 ensure that flight crew members safely reach the ground from a flight compartment window in the event of an emergency evacuation, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999.

(1) For all airplanes: Remove the two existing escape ropes and install new escape ropes, bags, and placards, as applicable, in the flight compartment.

(2) For airplanes having line numbers 1 through 107 inclusive; on which Boeing Service Bulletin 767–25–0149, dated March 7, 1991, has been accomplished; or on which neither Boeing Service Bulletin 767–25–0149, dated March 7, 1991, nor 767–25A0242, dated October 31, 1996, has been accomplished: Replace the nylon straps with new straps.

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, Seattle Aircraft Certification Office (ACO), FAA.

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

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

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 actions shall be done in accordance with Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999. This incorporation by reference was approved previously by the Director of the Federal Register as of July 20, 2001 (66 FR 32531, June 15, 2001). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) The effective date of this amendment remains July 20, 2001.

Issued in Renton, Washington, on October 18, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26861 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–15–AD; Amendment 39–12485; AD 2001–22–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model B–17E, F, and G Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model B–17E, F, and G airplanes, that requires inspections to detect cracking and corrosion of the wing spar chords, bolts and bolt holes of the spar chords, and wing terminals; and correction of any discrepancy found during these inspections. This amendment is prompted by reports of cracking and corrosion of the wing spar. The actions specified by this AD are intended to prevent reduced structural integrity of the wing of the airplane due to the problems associated with corrosion and cracking of the wing spar.

EFFECTIVE DATE: November 30, 2001.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model B–17E, F, and G airplanes was published in the **Federal Register** on March 16, 1995 (60 FR 14233). That action proposed to require inspections to detect cracking and corrosion of the wing spar chords, bolts and bolt holes of the spar chords, and wing terminals; and correction of any discrepancy found during these inspections.

Of the approximately 12,600 Boeing Model B–17E, B–17F, and B–17G bombers produced during World War II, only about a dozen remain in operation. Since the last B–17 was completed in April 1945, each is now at least 56 years old. Those remaining are flown primarily in various forms of airshow displays.

Comments

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

Requests To Withdraw Proposed Rule

Many commenters contend that the proposed AD is unjustified and that it should be withdrawn accordingly. The commenters present various reasons for this request.

Several commenters assert that cracking in the spar chord is not a safety issue because no wing or structural failures, incidents, or accidents have resulted from the cracking addressed by the proposed AD. One commenter states that the documented support for the necessity of the proposed AD (as described in the proposal) is flawed and without technical or event-based merit. Another states that no proper basis or need for the issuance of an AD has been established.

Several commenters also refer to B–17s flying with known cracks without incident, some of which are subject to an unspecified type of inspection. One commenter notes that cracks were present in some B–17s during World War II, and limits on the degree of cracking that was acceptable were described in the Structural Repair Manual. The same commenter notes that battle damage was corrected with strap or angle reinforcements. Another commenter reports finding corroded or cracked spars on several airplanes under major restoration, and on one that ran off a runway into a ravine, consequently requiring major repairs. The commenter indicates that, despite the extreme conditions that this latter airplane encountered, and the implied severity of the spar cracks, no components failed. One commenter reports inspecting the cracks on a particular B–17 and noticing surface corrosion in the cracked area of one B–17. The commenter concludes that since corrosion takes a period of time (sometimes years) to form, the cracks must have been there for several years. Another commenter reports that a hairline crack was observed in the left wing of an airplane in 1979, and that there has been no change or increase in the size of the crack during years of subsequent flying. (The commenter did not specify which structural member contained the crack.) The commenter indicates that a B–17 engineer indicates that there is no safety problem with hairline cracks.

The FAA acknowledges that no accidents are known to have occurred as a result of the conditions addressed by the proposed AD. Nevertheless, the FAA, as well as the operators, are aware of cracks in the wing spar chords of certain B–17 airplanes. To date five of the B–17s either flying or capable of being restored to flight status are known to have cracks in their wing spar chords. The FAA has determined that there is no design feature to prevent the crack propagation from becoming transverse and severing the spar chord. The integrity of this structure is, therefore, essential for continued safe flight and landing.

Several commenters point to the service history of the B–17 as evidence that the proposed actions are not necessary. A few commenters state that, in proposing this rule, the FAA failed to take into account the ruggedness of the B–17, and they reference occurrences during World War II in which some B–17s returned with all four spars broken

as a result of combat damage. One commenter states that the reason for the airplanes being able to return safely in spite of the degree of damage is that 90 percent of the wing strength is in the skin and ribs of the airplane.

Several commenters justify their requests to withdraw the proposal based on the fact that the current usage of the airplane is far less demanding—in terms of weights, altitudes, and environments—than the conditions encountered during wartime operations. Several commenters note that none of the subject airplanes fly at gross weight, with most of them, according to one commenter, flying at 10,000 to 15,000 pounds under gross. One commenter states that the airplanes subject to the proposed AD are flown only 50 to 250 hours per year. Additionally, the commenters assert that the current pilots of these airplanes are more schooled and proficient than those flying them 50 years ago.

Several commenters also cite the excellent maintenance record on the B–17s as a reason that the proposal should be withdrawn. They point out that the subject airplanes are under ''constant surveillance,'' and are well maintained. The commenters also suggest that the remaining B–17s are better maintained now than when they were new, with many of them having been completely restored and many of them being hangared during the airshow off-season.

The FAA concurs with the commenters' assertions that the subject airplanes are operating in environments much more favorable than those encountered during World War II. In addition, the FAA recognizes that, for the most part, these airplanes are meticulously maintained. However, the FAA does not concur with the request to withdraw the proposal based on the conditions in which B–17s operate today, because such conditions are only partially relevant. Of much greater significance are the conditions to which any particular airplane has been exposed over its life-span. While most B–17s may be hangared and well-maintained now, most, if not all, of the affected airplanes have been exposed to years of grueling operations such as fire-fighting, aerial application, etc. Furthermore, even if the airplanes had been hangared continuously since World War II, moisture could accumulate from condensation. In fact, most of the subject airplanes have spent much of their life-span in open storage with no particular protection from the elements.

One commenter indicates that applicable military technical orders (the basis to which these aircraft are maintained) allow flights with known cracks in the spar chord if the cracks meet specified criteria. The commenter reports that this allowance has been validated by combat operations, current usage of the airplanes, and the type certificate.

Contrary to the commenters' assertions, continued flight with known structural defects, such as those addressed by the proposed AD, is considered a violation of section 91.7 of the Federal Aviation Regulations (14 CFR 91.7), which requires the pilot in command to discontinue a flight when an unairworthy structural condition occurs. The FAA finds that a military technical order written almost 60 years ago during wartime conditions (when emphasis was placed on short-term airworthiness risks as opposed to long-term risks such as fatigue and corrosion) is not an appropriate basis for allowing continued flight with cracks of this nature. The FAA also is not aware of any specific FAA approval, either directly or by reference, of a military technical order that allowed continued flight operations for B–17s with unrepaired cracked spar chords. In any event, this AD would supersede such an approval.

One commenter justifies its objection to the proposed rule on the fact that B–17s are not operated for hire. (The Limited Category type certification basis prohibits using B–17 airplanes for carriage of passengers or cargo for compensation or hire.) The FAA infers that the commenter is implying that a lesser safety standard is therefore acceptable. The FAA does not concur with the commenter's justification. The corrective action specified in this AD is needed to ensure the safety of not only the crew members and any other persons on board, but also of the many spectators that are in proximity to the affected airplanes as they participate in airshows.

Several commenters report that removal of the wings requires significant disassembly and express concern that such removal could reduce the structural integrity of the spar chord-to-terminal fitting joints. Two commenters state that it has not been determined that these cracks reduce the structural integrity of the wing assembly. One commenter states that replacement of used aircraft hardware with new hardware will affect the aircraft's ''preset'' and ''harmonics,'' and may establish a stress concentration, which would reduce the integrity of the aircraft.

The FAA does not concur. The wings have already been removed and repaired on at least three B–17 airplanes. The FAA has received no comments indicating the removal and subsequent reinstallation of the wings reduced the structural integrity of those airplanes. Nevertheless, wing removal is not required in all instances, as discussed below. No change to the final rule in this regard is necessary.

Clarification of Discussion Section of Proposed Rule

Certain commenters request clarification and correction of language that appears in the Discussion section of the preamble to the notice of proposed rulemaking (NPRM). One commenter presents an analysis of the Discussion section, which includes a number of questions and suggestions for editorial changes. The commenters specifically request that the FAA correct certain language related to the description of the wing spar chord to wing terminal fitting joint. One commenter asks for clarification regarding the description of the wing spar chord to wing terminal fitting through bolts being ''seized'' in the joint. Additionally, the commenters request correction of the discussion of spar loading that appeared in the NPRM. Additionally, the commenters pose various questions, such as:

—When was the cracking problem discovered by the FAA?
—On how many airplanes was the cracking discovered?
—How many cracked spars have been found?
—How was the cause of the bolt corrosion and spar chord cracking attributed to moisture entrapment? Was the moisture accumulation observed or ''is this a guess?''

The FAA finds that clarification of these issues is necessary. The commenters note correctly that spar chords mate with the cylindrical, tapering inner wing attach fitting inserts. Each of the eight joints is held together by eight close-tolerance bolts. The FAA was informed of the cracking of the wing spar chord and corrosion of these bolts on April 26, 1994. One B–17 had been inspected at that time, and approximately one-third of the 64 bolts in the eight joints were replaced due to corrosion. At least two bolts had lost almost half of the cross-sectional area. Some of the eight spar chords were cracked, and one chord end was broken into pieces. Since receiving that report, the FAA has learned that cracks have been discovered in the wing spar chord-to-wing terminal fittings of five of the 12 airplanes either flying or capable of being restored to flight status.

The FAA notes that cracks have propagated to observed lengths greater

than seven inches. As the cracks propagate outboard into the region of increasing longitudinal tensile and compressive stresses, there is no design feature to prevent the crack propagation from becoming transverse and severing the spar chord. Because this area is subject to high axial loads and this structure is necessary for the continued safe flight of the airplane, cracking in this area is critical.

Evidence that the bolt corrosion and spar chord cracking were due to moisture entrapment came from several sources. The first operator to report this condition found corrosion of the joint bolts and the spar chords. By design, the spar chord tubes are open at the outboard end, and the presence of the wing terminal fittings inside the spar chords traps water at the inboard ends. Cracks known to date run longitudinally along the spars, which indicates that circumferential loads are cracking the spars. Pressure from corrosion products between the spar chord-to-terminal joints would create such circumferential loads.

Commenters correctly note that the bolts in these fittings are not seized. Rather, moisture trapped in the inner wing spars has caused some of the bolts to corrode, which makes removal difficult.

Since the Discussion section of the preamble of an NPRM is not restated in a final rule, no change to this final rule is necessary in this regard.

Questions Concerning Applicability of Proposed Rule

One commenter asserts that all B–17 aircraft with large, visible cracks were built by Douglas, and all had history of damage or severe use. The commenter states that Vega- and Boeing-built B–17s do not have a problem with cracking.

The FAA infers from these remarks that the commenter requests that Vega- and Boeing-built airplanes be excluded from the applicability of this AD. The FAA does not concur. The FAA notes that, of the approximately 12,600 Model B–17E, B–17F, and B–17G airplanes produced, nearly 3,000 were manufactured under license by Douglas, and approximately 2,750 were manufactured under license by Vega, a subsidiary of Lockheed.

The dozen or so airplanes still in operation—only about one of every 1,000 produced—comprise a statistically insignificant sample; therefore, no conclusions can be drawn statistically from the origin of the particular airplanes in which cracks have been discovered. Additionally, the commenter fails to present any evidence, such as differences in design or production methods, that would suggest airplanes manufactured by Boeing or Vega are less likely to experience the unsafe condition addressed by this AD. Further, the FAA is not aware of any such differences. No change to the applicability of this final rule is necessary.

Another commenter requests that the applicability of the proposed AD exclude certain airplanes that have already undergone wing removal, removal of terminals, replacement of close tolerance bolts, and repair of spar tubes.

The FAA does not concur that a general exclusion should be made for those airplanes since the previous actions accomplished on those airplanes may not provide the necessary level of safety. Operators have not submitted formal documentation to the FAA describing such previous actions, and so cannot establish that any actions accomplished previously on these airplanes definitively meet the criteria of this AD. In addition, it appears likely that there may be repairs accomplished previously, such as stop-drilling of cracks found in the spar chords, that do not adequately address the unsafe condition.

However, paragraph (d) of this final rule provides operators with the opportunity to present the FAA with data to justify approval of an inspection or repair accomplished previously as an alternative method of compliance. This provision enables the FAA to review such inspections and repairs and determine whether further action is necessary. Also, NOTE 2 of this AD states specifically that operators of airplanes on which the terminal fitting-to-spar chord joint was separated prior to the effective date of this AD, and on which inspection(s) of and/or repair(s) to the wing terminals-to-spar chords were accomplished prior to the effective date of this AD, should submit requests for approval of alternative methods of compliance to the FAA.

Question Concerning Cause of Cracking

Several commenters question whether the cracks have been caused by corrosion. The commenters state there is no documented proof that corrosion between the steel wing terminal fitting and the aluminum spar chord is the cause of the cracking. Several commenters state that the cracks are due to operational abuses (*e.g.,* heavy landings, operating above gross weights). Another commenter states that the cracks known to be present on B–17s have not been attributed to any single cause. That commenter states that environmental stresses (i.e., temperature changes between the aluminum spar and the steel trunnion) contributed to the cracking. One commenter states that moisture accumulation and consequent corrosion cannot be the cause of the cracking addressed by this AD because most B–17 owners store their airplanes indoors where moisture cannot accumulate on the spars. Other commenters suggest that observed cracking is due to a reported manufacturing procedure in which the terminal fittings, as well as the spar chord-to-terminal fitting bolts, were driven into place with hammers.

The FAA clarifies that cracking that has been discovered is not consistent with the damage that would result from overstresses such as those suggested by the commenters. However, on the other hand, the cracking is consistent with the pressure that would result from products of corrosion in the joints. The FAA finds that the longitudinal nature of the cracks discovered so far is indicative of expansion due to corrosion products in the spar chord to terminal fitting joints. It should be noted that the wing terminal fittings are steel, while the spar chords are constructed of aluminum. Because steel and aluminum are dissimilar metals, aluminum will tend to galvanically corrode if in direct contact with steel, as it is in the B–17 design. The faying surfaces of these joints have not been the subject of routine maintenance inspections because of the age of the subject airplanes.

Requests Concerning Separation of Wing Spar Chord-to-Wing Terminal Joint

Several commenters indicate that separation of the wing spar chord-to-wing terminal joint is unnecessary, and that the proposed requirement to remove all 64 bolts in the eight wing spar chord-to-wing terminal joints is likewise unnecessary. These commenters offer various proposals with regard to alternative inspection and repair procedures and compliance times, which are discussed in the following paragraphs.

Several commenters request that the FAA change the requirements to remove the most inboard bolt in each wing spar chord joint and to remove all 64 bolts, as specified in proposed paragraphs (a)(2) and (b)(2)(i), respectively, so that the three most inboard fasteners in each joint would not have to be removed. One commenter states that the most inboard bolt in each of the eight wing spar chord-to-wing terminal joints should not be removed due to interference with other wing structure and the fact that the bolt is only ⅝ inch

from the end of the spar. Some commenters state that the three most inboard bolts should not be removed for the reason mentioned previously (for the most inboard bolt), and because removal of the next two most inboard bolts would necessitate disassembly of a wing rib to access those bolts.

The FAA finds that some commenters were apparently misled by the preamble of the proposed AD as to whether the inspections specified in paragraph (b) of the AD could be accomplished without actually separating the wing spar-to-wing terminal joint.

The FAA acknowledges that significant disassembly would be required to remove the three most inboard bolts on the front and rear spars. The FAA clarifies that the intent of paragraph (b)(2) of the proposed rule (designated as paragraph (b)(2)(i) of this final rule) is that the use of equivalent inspections that do not involve separating the terminal fitting from the spar chord to detect cracking and corrosion may be acceptable. The FAA has determined that an acceptable level of safety can be achieved without removing the three most inboard bolts of a joint provided: (1) The dye penetrant inspection of the spar-chord tube-end reveals no cracks; (2) the other five bolts are removed and an eddy current inspection verifies that the holes are free of cracks; and (3) a borescope inspection using 10-power magnification reveals that the first, second, and third most inboard bolts are free of corrosion. These inspections must be performed on a repetitive basis at 36-month intervals. Paragraph (b) of this final rule has been reformatted, and this new alternative procedure is specified in paragraph (b)(2)(ii) of this AD.

Further, the FAA has made editorial changes to paragraphs (b)(2)(ii), (b)(2)(ii)(B), and (b)(2)(ii)(C) of the final rule to more clearly specify which bolts are being referred to in those paragraphs.

In addition, the FAA has determined that the requirement to perform the high frequency eddy current inspection in accordance with paragraph (a)(2) of the proposed AD (which included removing the most inboard bolt during the initial inspection) can be omitted from this AD without unduly affecting aviation safety, since this inspection is adequately addressed by paragraph (b) of this AD. Therefore, paragraph (a) of this AD has been re-structured and re-numbered accordingly.

One commenter that has accomplished extensive repairs on a Model B–17 airplane in the area that is the subject of this AD states that separating the terminal fitting from the spar chord is the only method that will adequately address the unsafe condition (corrosion and cracking of the wing spar, which could result in reduced structural integrity of the wing of the airplane). The FAA infers that this commenter is requesting that the FAA revise paragraph (b)(2) of the proposed AD to eliminate reference to alternative inspection procedures that may not include separating the terminal fitting from the spar chord.

The FAA partially concurs with the commenter's request. The FAA concurs that inspections that involve separating the terminal fitting from the spar chord are required for all airplanes with cracks that are unacceptable for repair. The FAA points out that it also has not approved any alternative inspection procedures for airplanes that have no cracks or repairable cracks. The FAA also points out that this AD does not grant blanket approval for alternative inspection procedures. All inspections in accordance with this AD are required to be accomplished in accordance with a method approved by the FAA.

However, the FAA does not concur that inspections must include separation of the terminal fitting from the spar chord. The FAA finds that it may be possible, depending on the degree of cracking detected, for alternative inspection procedures to provide an acceptable level of safety, even if such procedures do not involve separating the terminal fitting from the spar chord. Paragraph (b)(2)(i) of this AD specifies that alternative inspection procedures must meet certain minimum requirements, which are specified in paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C) of this AD. However, the FAA does not have the resources to develop these procedures for operators. No change to the final rule is necessary in this regard.

Requests Concerning Proposed Compliance Time

One commenter requests that the proposed 18-month compliance time specified in paragraph (b) of the AD be changed to allow the inspections and any needed repairs to be performed during the winter months away from the airshow season.

The FAA does not concur that the compliance time should be revised. An 18-month compliance time, as proposed, does allow compliance during the winter months; therefore, no change to paragraph (b) is necessary in that regard.

However, in light of the concern raised by the commenter, the FAA has determined that the compliance time for the initial inspections specified in paragraph (a) of this AD can be changed to 180 days without a significant adverse effect on aviation safety. Paragraph (a) of this AD has been revised accordingly.

Discussion of Repairs

One commenter suggests that each spar chord should be treated with corrosion inhibitor after bolt removal, replacement, or remedial action. The FAA infers that the commenter is requesting that a requirement for application of corrosion inhibitor be added to applicable paragraphs in the final rule.

The FAA concurs with the commenter's suggestion that each spar chord should be treated with corrosion inhibitor. Therefore, paragraph (a)(2) of the final rule (formerly paragraph (a)(3) in the NPRM) has been revised to include a requirement for application of a corrosion inhibitor as suggested. The FAA has determined that such a requirement will increase the long-term corrosion resistance characteristics of the affected structure without imposing a significant burden on the operators of the affected airplanes.

One commenter requests that the FAA require that repairs be performed in accordance with published repair manuals for the B–17. For those repairs not covered by a published repair manual, the commenter believes that repairs should be accomplished with the aid of FAA Designated Engineering Representatives (DER) or other recognized experts.

The FAA does not concur. All repairs required by this AD must be approved by the Manager of the Seattle Aircraft Certification Office, FAA, regardless of whether those repairs are addressed in a published B–17 repair manual. Although a World War II-era repair manual may be of some assistance in that regard, it must be recognized that the value of such a manual is very limited. The primary concern was short-term airworthiness; that is, that an airplane was to be repaired sufficiently to safely complete further combat missions. Long-term considerations, such as fatigue and corrosion, were secondary.

The FAA also recognizes that there have been considerable advances in repair and corrosion-prevention practices over the last half-century. As suggested by the commenter, the FAA encourages review of any needed repair by an appropriately qualified DER since that would undoubtedly hasten FAA approval of the repair. (Because the repair would be related to compliance with an airworthiness directive, a DER would be authorized only to

recommend its approval.) However, no change to this final rule is necessary in this regard.

One commenter requests that the final rule be revised to require replacement of bolts only ''as needed,'' rather than requiring replacement of any corroded bolt. The commenter states that it has accomplished a repair that involved removal of the wings and the terminal attach fittings. In the course of the repair, approximately one-third of the wing terminal-to-spar bolts were found to be corroded to the point where replacement was required. However, the commenter points out that there was no corrosion of the shear plane of any bolt. Based on the commenter's statements, the FAA infers that the commenter is requesting that the final rule be revised to require replacement of bolts only if corrosion is found at the shear plane area.

The FAA does not concur with the commenter's request. The FAA finds that it would be inappropriate to allow a bolt found to be corroded to remain installed on an airplane. The FAA has determined that bolts in wing spar chord-to-wing terminal joints are critical to the safety of flight; therefore, those bolts must be free of discrepancies, including corrosion. In addition to the criticality of the bolts to flight safety, the bolts must be removed to be inspected fully, and the FAA has determined that it is more cost effective for operators to replace corroded bolts with new bolts, rather than to perform frequent repetitive inspections of corroded, or corrosion-reworked, bolts. No change to the final rule is necessary in this regard.

In lieu of repairing any cracks found, one commenter requests that the FAA allow operators to attach 4130 steel straps to the outside of the wing using existing rivet holes. The FAA does not concur that this would be an acceptable alternative because steel straps fastened to the outside of the wings would not provide adequate load paths for the spar-chord loads. No change to the final rule is necessary in this regard.

Economic Considerations

Some commenters question the cost impact information presented in the preamble of the NPRM. These commenters take offense to assumptions made in that section that ''no operator has yet accomplished any of the proposed requirements'' and that ''no operator would accomplish those actions if this AD were not adopted.'' One commenter states that all owners/operators have already voluntarily undertaken inspections and repairs as a community. The commenter adds that results of those inspections revealed that virtually all cracks have been discovered using detailed visual inspection and non-destructive test (NDT) inspection methods that did not involve de-mating of the spar/wing terminal. Other commenters also submit information concerning previously accomplished inspections and corrective actions.

The FAA finds that clarification of language presented in the cost impact information of this AD is necessary. The FAA and other federal agencies are required to propose or adopt a regulation only upon reasoned determination that the benefits of the intended regulation justify its costs. The two assumptions mentioned above merely represent a degree of conservatism taken by the FAA in determining that this AD will, in fact, be cost effective. They are in no way intended to be judgmental of what a particular operator would or would not do in the absence of this AD.

Nevertheless, the FAA has not been provided with specific data indicating that any of the previously accomplished repairs and inspections provide the level of safety intended by this AD to adequately address the identified unsafe condition. It also must be recognized that, in the absence of an AD, operators of B–17s would not be required to perform the needed inspections and repairs. If there is no binding requirement to do so, the statutory responsibility of the FAA to ensure the safety of the occupants of those airplanes and persons on the ground watching the airplanes during airshows would not be fulfilled.

Another commenter states that the statement in the proposal that indicates the proposed AD ''would not have a significant economic impact on a substantial number of small entities'' is inconsistent with the estimated cost of $90,000 per airplane.

The FAA notes that the phrase referenced by the commenter refers to a statutory requirement imposed by the Regulatory Flexibility Act. That act is intended to protect small businesses and organizations from federal rulemaking by requiring agencies to develop and analyze information concerning the effect of rules on small entities. When the effects of a rule are likely to be ''significant'' on a ''substantial number of small entities,'' the agency is expected to take steps that will reduce the burden. Regarding regulatory flexibility findings in conjunction with the requirements of ADs, very few ADs will ever reach the level of having a ''significant economic impact, positive or negative, on a substantial number of small entities,'' since either most aircraft operators do not meet the agency's criteria for small entities, or because the cost of an individual AD usually does not exceed the agency limit for significant impact (which is $100 million per year). A statement concerning the impact, or lack of it (as in the case of this AD), is required to be included in the certification statement of each AD.

Some commenters state that they cannot afford to separate the wing spar chord-to-terminal joints to perform the inspection. The commenters state that the AD, as proposed, would create severe economic hardship, result in grounding of airplanes, and force the sale of non-flying airplanes at a financial loss. One commenter acknowledges that the cost estimates fall within federal guidelines for a rule that is ''not a significant impact;'' however, the commenter contends that, for the most part, these airplanes are owned by non-profit organizations that do not have $90,000 in discretionary funds. Another commenter states that, under the circumstances, issuance of a precautionary manufacturer's service bulletin or an FAA Advisory Circular would be more than adequate.

The FAA recognizes the economic impact of the proposed rule. However, the FAA notes that an unsafe condition exists in regard to the integrity of the affected joints, which are essential for safe flight. The FAA also points out that, as explained previously, paragraph (b)(2) of the AD provides operators the option of performing an alternative inspection without separating the joints. The FAA expects that costs for accomplishment of the alternative inspection will likely be lower than $90,000 per airplane.

Some commenters believe that the cost of compliance will be much greater than the estimated $90,000 per airplane. One commenter states that a consensus of affected owners/operators is that the wing spar/terminal de-mate would require 2,250 to 2,500 work hours. The commenter notes that this requirement entails removal and reinstallation of four engines, and complete de-rigging of the control, electrical wiring, engine control, and fuel systems. Therefore, the commenter estimates that costs would be from $125,000 to $150,000 per airplane and a four-to six-month cessation in aircraft financial support activities.

However, one commenter that has actually performed the alternative inspections outlined in paragraph (b) of the proposed AD states that the cost impact was much lower than the estimated amount.

The FAA finds that no change to the cost impact information, below, is necessary. The FAA based the cost impact information presented in this AD on the best data available to date for airplanes on which the wing spar chord-to-wing terminal fitting separation has been accomplished. Although the costs may vary somewhat, the actual cost for a particular airplane is not expected to differ greatly from the estimated cost of $90,000 per airplane.

Issues Related to Inspection Methods and Procedures

One commenter proposes an alternative to the inspection requirements of paragraph (a) of the proposed AD. The commenter suggests that within 90 days, and annually thereafter, a dye penetrant check be accomplished on the inboard butt of each of the eight spar tubes. The commenter adds that within 12 months, and tri-annually thereafter, the interior of all eight spar tubes should be treated with a moisture and corrosion inhibitor.

The commenter also proposes that within 12 months, and thereafter at 10-year or 1,000-flight-hour intervals, a detailed inspection designed to detect cracking in the wing spar tubes or terminal bolt holes should be accomplished. This inspection would include removal and inspection of the terminal attach bolts at the fifth and seventh most inboard locations. The commenter also suggests that operators should inspect annually and report on the status, migration (or lack thereof), and condition of any cracks determined to be within acceptable tolerance criteria.

The FAA does not concur with this request. Since corrosion is believed to be the cause of the cracking, the FAA finds that the proposed inspection program at the intervals suggested by the commenter would not ensure such timely detection of cracking. In addition, an inspection interval based on flight hours is inappropriate because damage resulting from corrosion is related to calendar time, not flight time.

Two commenters indicate that no bolts should be removed during the inspections required by this proposed AD unless there is obvious damage to the bolt.

One of these commenters states that no bolts should be removed ''without due cause,'' because the bolts have been in the holes of the joint for more than 50 years, and molecular transfer will have taken place between the mating surfaces. The commenter asserts that replacement of the bolts is likely to cause reduced structural integrity of the wing terminal-to-spar joints.

Another commenter states that replacement of hardware or parts from an airplane with new parts or hardware changes the harmonics of the airplane's vibration frequency and establishes a stress point at the location of the replacement. This commenter states that the engineers and master mechanics consulted did not recommend replacement of hardware unless major damage is detected during a visual inspection, because the stress created by removal could cause significant damage.

The FAA infers that these commenters are requesting that paragraph (b) of the proposed rule be revised to eliminate the requirement to remove the bolts that join the wing terminals to the spar chords.

The FAA does not concur with the request to eliminate the requirement to remove the bolts. The FAA has determined that performing inspections of the bolts and bolt holes without removing the bolts does not ensure that corrosion or cracking would be detected. The FAA finds that, to ensure the continued safety of the fleet of airplanes, it is necessary to require at least a one-time removal of five of the bolts in each joint to inspect the shear planes of the bolts for corrosion and to inspect the bolt holes for cracks. However, as discussed previously, the FAA has revised this final rule to allow for the three inboard fasteners in each joint to remain in place, provided that certain conditions are met.

One commenter inquires as to what eddy current inspection methods are approved. The FAA is unaware of any military or industry standards for eddy current inspections. As stated in paragraph (b)(1) of this AD, eddy current inspections must be approved by the Manager of the Seattle Aircraft Certification Office, FAA. The manufacturer, The Boeing Company, has agreed to allow its specifications to be used for the eddy current inspections. The FAA has added a new NOTE 9 to this final rule to indicate that this information is available to operators as needed.

One commenter requests that the FAA develop criteria containing acceptance/rejection standards of cracks characterized (by the commenter) as insignificant, monitorable, and unacceptable. The commenter believes that ''blanket condemnation of any cracking is unwarranted.''

The FAA does not concur that continued flight with any cracking is acceptable. As specified in paragraph (c) of this final rule, any cracking discovered as a result of the required inspections must be repaired prior to further flight. Such repairs may or may not require separating the wing spar chord-to-wing terminal joint, depending upon the severity of the cracking. However, if cracking is found and repaired without separating the wing spar chord-to-wing terminal joint, repetitive inspections would be required. The FAA expects that the operator would propose its inspection program as part of the documentation needed to secure approval of the proposed repair, in accordance with paragraph (c) of this AD. Continued crack growth following repair requires separation of the wing spar chord-to-wing terminal joint in order to positively address continued cracking problems. No change to the final rule is required in this regard.

Two commenters question the reference to ''acceptance/rejection criteria contained in sensitivity level Group IV, MIL–I–25135'' which is contained in paragraph (a)(1) of the proposed rule. One commenter notes that the referenced military specification does not contain acceptance/rejection criteria pertaining to cracks, nor was the specification intended to do so.

The FAA finds that clarification is necessary. The commenter correctly notes that the military specification cited in the proposed rule does not contain acceptance/rejection criteria on cracking. The FAA clarifies that the intent of paragraph (a)(1) is that the dye penetrant inspection be performed in accordance with MIL–STD–6866, using a fluorescent Type 1 penetrant, Method C, Sensitivity Level 3, inspection. Any cracking that is detected must be repaired in accordance with a method approved by the Manager of the Seattle Aircraft Certification Office, FAA, prior to further flight. To eliminate any confusion in this regard, the wording of paragraph (a)(1) of this final rule has been revised accordingly.

In addition, the FAA recognizes that a variety of dye penetrant inspection procedures may be acceptable. Therefore, the FAA has added **Note** 4 to the final rule to clarify that operators wanting to use an alternative procedure may request approval from the Seattle Aircraft Certification Office per the provision of paragraph (d) of this AD.

Clarification of Visual Inspections

The FAA has revised the final rule to clarify that the type of visual inspection required by paragraphs (a)(2), (b)(1), and (b)(2)(i)(C) is a ''detailed visual inspection.'' Further, the definition of this inspection has been included in a new **Note** 8 of the final rule.

Addition of Other New Notes

The FAA has also revised the final rule to include new **Notes** 1 and 11:

As a result of communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of ADs on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. Therefore, a new **Note** 1 has been added to this final rule to clarify this long-standing requirement.

In addition, a new **Note** 11 has been added to the final rule to strongly encourage owners and operators of the affected airplanes to coordinate their requests for approvals of alternative methods of compliance or adjustment of the compliance times pertaining to this AD. Coordination of a single request (in lieu of a separate request from each owner/operator) will allow the FAA to more quickly review and respond.

Conclusion

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

Cost Impact

There are approximately 12 airplanes of the affected design in the worldwide fleet. The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,500 work hours per airplane to accomplish the required actions, 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 $900,000, or $90,000 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 13132, 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, 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:

2001–22–06 Boeing: Amendment 39–12485. Docket 95–NM–15–AD.

Applicability: All Model B–17E, F, and G 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 (d) 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.

Note 2: For airplanes on which the terminal fitting-to-spar chord joints were separated prior to the effective date of this AD, and inspections of and/or repairs to the wing terminals-to-spar chords were accomplished prior to the effective date of this AD: Applications for approval of an alternative method of compliance to the requirements of paragraphs (a) and (b) of this AD must be submitted to the FAA in accordance with the provisions of paragraph (d) of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Within 180 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a dye penetrant inspection to detect cracking of each inboard end of the eight aluminum wing spar chords, in accordance with MIL–STD–6866, using a fluorescent Type 1 penetrant, Method C, Sensitivity Level 3, inspection. If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 3: The part number (P/N) for the upper wing spar chords is 3–14231–0, and the P/N for the lower wing spar chords is 3–14231–1.

Note 4: Operators desiring to use an alternative dye penetrant procedure may request approval from the Seattle ACO in accordance with paragraph (d) of this AD.

Note 5: The following are the P/N's for the terminal fitting-to-spar chord joint assemblies:

Assemblies	Assembly part number
Left Upper Front Spar Joint Assembly	75–4781–0
Right Upper Front Spar Joint Assembly	75–4781–1
Left Lower Front Spar Joint Assembly	65–4782–512
Right Lower Front Spar Joint Assembly	65–4782–513
Left Upper Rear Spar Joint Assembly	75–4783–0
Right Upper Rear Spar Joint Assembly	75–4783–1
Left Lower Rear Spar Joint Assembly	75–4784–0
Right Lower Rear Spar Joint Assembly	75–4784–1

Note 6: The following are the P/N's for the bolts for the spar chords:

Bolts for:	Bolt part number
Upper and Lower Front Spar Chords	NAS56A36
Upper Rear Spar Chord	NAS56A34
Lower Rear Spar Chord	NAS56A40–5

(2) Perform a detailed visual inspection to detect corrosion of the bolts, as installed, and replace any corroded bolt with a new bolt having a P/N in the NAS 6606 series in accordance with Army Technical Order Number 01–20EF–2. Prior to further flight, for all bolt replacements, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) of this AD in accordance with Army Technical Order Number 01–20EF–2.

Note 7: The following are the P/N's for the replacement bolts for the spar chords:

Replacement bolts for:	Replacement bolt part number
Upper and Lower Front Spar	NAS 6606–51
Upper Rear Spar	NAS 6606–47
Lower Rear Spar	NAS 6606–56

Note 8: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive 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.''

(i) Install a washer having P/N MS 20002C6 under the head of the bolt, a self-locking nut having P/N NAS 1804–6, and a washer having P/N MS 200026 under the nut, for each replacement bolt.

(ii) Torque any replacement bolt to 95–105 inch-pounds.

(iii) Oversize replacement bolts by 1/16 inch, as necessary.

(iv) Apply corrosion inhibiting compound (using BMS 3–23, Type II or equivalent compound) to the spar chord after bolt removal, replacement, or other remedial action.

(b) Within 18 months after the effective date of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD.

(1) Perform detailed visual and high frequency eddy current inspections, that include separating all eight wing terminal-to-spar chord joints, to detect cracking and corrosion of the wing terminals and spar chords, in accordance with a method approved by the Manager, Seattle ACO; or

(2) Accomplish either paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Perform an equivalent inspection(s) to that required by paragraph (b)(1) of this AD in accordance with a method approved by the Manager, Seattle ACO. To be considered acceptable, the equivalent inspection(s) must include, at a minimum, the criteria specified in paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C) of this AD.

(A) The inspection must include removal of all 64 bolts that join the eight wing terminals to the eight spar chords; and

(B) The inspection must adequately detect cracking of the spar chord, and corrosion between the terminal fitting and the spar chord; and

(C) The inspection must include a detailed visual inspection to detect corrosion of the attachment bolts; and a high frequency eddy current, and borescope inspection at 10-power magnification, of the bolt holes common to the spar chord-to-wing terminal interface.

(ii) Perform a dye penetrant inspection to detect cracking of the spar chord tube end; remove the most outboard five bolts in the joint and perform an eddy current inspection to detect cracking of the holes; and perform a 10-power magnification borescope inspection to detect corrosion of the most inboard three bolts. If the criteria specified in paragraphs (b)(2)(ii)(A), (b)(2)(ii)(B), and (b)(2)(ii)(C) of this AD are met, removal of the three most inboard bolts of each terminal-to-spar chord joint is not required. Repeat the requirements of this paragraph thereafter at intervals not to exceed 36 months.

(A) Results of the dye penetrant inspection of the spar chord tube end indicate that there is no cracking; and

(B) Results of the eddy current inspection indicate that the holes of the five most outboard bolts in the joint are free of cracks; and

(C) Results of the 10-power magnification borescope inspection indicate that the most inboard three bolts are free of corrosion.

Note 9: The Boeing Company will make its specifications for eddy current inspections available to operators as needed.

(c) If any cracking and/or corrosion is detected during any of the inspections required by paragraphs (a) and (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO.

Alternative Methods of Compliance

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

Note 10: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Note 11: The FAA strongly encourages owners and operators of the affected airplanes to coordinate their requests for approvals of alternative methods of compliance or adjustment of the compliance times pertaining to this AD. Coordination of a single request (in lieu of a separate request from each owner/operator) will allow the FAA to more quickly review and respond.

Special Flight Permits

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

Effective Date

(f) This amendment becomes effective on November 30, 2001.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26951 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–16–AD; Amendment 39–12486; AD 2001–22–07]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc. LTP 101 Series Turboprop and LTS101 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming) LTP 101 series turboprop and LTS101 series turboshaft engines. This amendment requires a new life limitation and removal of rigid tube fuel manifold assemblies and replacement with serviceable assemblies. This amendment is prompted by reports of cracking and fuel leakage of rigid tube fuel manifolds. The actions specified by this AD are intended to prevent engine fuel leakage due to low-cycle fatigue (LCF) cracking of the rigid tube fuel manifold, which could result in an in-flight fire.

DATES: Effective date November 30, 2001.

ADDRESSES: The information in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to certain Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming) LTP 101 series turboprop and LTS101 series turboshaft engines was published in the **Federal Register** on March 12, 2001 (66 FR 14346). That action proposed to require a new life limitation and removal of rigid tube fuel manifold assemblies and replacement with serviceable assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 1,600 engines of the affected design in the worldwide fleet. The FAA estimates that 670 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,100,400.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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 a new airworthiness directive to read as follows:

2001–22–07 Honeywell International, Inc.: Amendment 39–12486. Docket 99–NE–16–AD.

Applicability: This airworthiness directive (AD) is applicable to Honeywell International, Inc. (formerly AlliedSignal Inc. and Textron Lycoming) LTP 101 series turboprop and LTS101 series turboshaft engines with the following part numbers (P/N's) rigid tube fuel manifolds installed:

TABLE 1.—P/N'S OF AFFECTED RIGID TUBE FUEL MANIFOLDS

4–301–042–02	4–301–042–06	4–301–236–03	4–301–286–02
4–301–042–04	4–301–236–01	4–301–236–04	4–301–376–01
4–301–042–05	4–301–236–02	4–301–286–01	

These engines are installed on, but not limited to Aerospatiale AS350, Eurocopter MBB–BK117 and HH–65A, Bell 222, Page Thrush, Air Tractor AT–302, Piaggio P.166–DL3, Riley International R421, and Pacific Aero 08–600 aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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: Compliance with this AD is required as specified below, unless already done.

To prevent engine fuel leakage due to low-cycle fatigue (LCF) cracking of the rigid tube fuel manifold, which could result in an in-flight fire, do the following:

(a) Replace fuel manifolds that have accumulated the following gas generator rotor (Ng) cycles-since-new (CSN) on the effective date of this AD or Ng cycles-in-service (CIS) on the effective date of this AD since all tubes were replaced:

TABLE 2.—FUEL TUBE REPLACEMENT SCHEDULE

Ng CSN, or Ng CIS since total tube replacement	Replacement schedule
(1) 2,750 or less	Before accumulating 3,000 total Ng cycles.
(2) More than 2,750	Within 250 CIS after the effective date of this AD.
(3) Unknown	(i) Within 2,000 CIS after the effective date of this AD; or (ii) At the next engine removal; or (iii) At the removal of the fuel manifold for cause, whichever is first.

New Life Limitation

(b) Do not install fuel manifolds with P/N's that are listed in Table 1 of this AD after the effective date of this AD if they meet ANY of the following conditions:

(1) The manifold has accumulated 3,000 or more total Ng cycles; or

(2) The manifold has had partial tube replacements; or

(3) The manifold has an unknown number of Ng cycles.

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, Los Angeles Aircraft Certification Office (LAACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective on November 30, 2001.

Issued in Burlington, Massachusetts, on October 19, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–26967 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

NASA Grant and Cooperative Agreement Handbook—Miscellaneous Changes

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA Grant and Cooperative Agreement Handbook to make administrative and editorial changes; clarify internal documentation requirements; delete the requirement for quarterly forecasts of recipient cash requirements; and clarify the submission requirements for NASA Form 1206, ''Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs''.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Eugene Johnson, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), (202) 358–4703, e-mail: ejohnson@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The current provision at § 1260.26, Financial Management, advised recipients that NASA would phase-in the adoption of an automated SF 272 system not requiring forecast estimates with a projected date of October 1, 2001, for implementation. This automated system change will be effective October 1, 2001, and the submission requirements for forecast estimates is revised to reflect this implementation. Clarification of submission requirements for NASA Form 1206 ''Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs'' as well as editorial changes to Part 1260, Exhibit E—Special Conditions for Cooperative Agreements between NASA and Commercial Space Centers are made. Internal documentation required by the grant officer prior to award is amended to include any data deliverables that may be required when potentially hazardous operations, such as those related to flight and/or mission critical ground

systems have been proposed. Lastly, § 1260.10 is amended to clarify that signature by the Authorizing Institutional Representative on the proposal Cover Page may confirm that all necessary certifications and assurances are met.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the changes made by this rule are only clarifications of existing requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 14 CFR part 1260 is amended as follows:

1. The authority citation for 14 CFR 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular A–110.

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

2. Amend § 1260.10 by revising paragraphs (c)(1) and (4) to read as follows:

§ 1260.10 Proposals.

* * * * *

(c) * * *

(1) Grant officers are required to ensure that all necessary certifications, disclosures, and assurances have been obtained prior to awarding a grant or cooperative agreement. In order to reduce paper work required by the submitting institutions, and as directed by NASA; signature by the Authorizing Institutional Representative on the proposal Cover Page may confirm that all necessary certifications and assurances are met.

* * * * *

(4) Each application for funding must contain assurances on NASA Form 1206, or specifically identify and make reference to an assurance that the recipient's programs and activities comply with civil rights and nondiscrimination statutes specified in 14 CFR parts 1250 through 1253. The assurances provided on NASA Form 1206 shall suffice for all proposals of an applicant, if they remain current and accurate. An applicant may incorporate these assurances by reference in subsequent applications to NASA.

§ 1260.11 [Amended]

3. In § 1260.11, amend the last sentence in paragraph (b) by adding ''and any data deliverables that may be required when potentially hazardous operations, such as those related to flight and/or mission critical ground systems have been proposed (e.g. Payload Safety Data Review Package)'' directly after the word ''documentation,''.

§ 1260.22 [Amended]

4. In the introductory text to § 1260.22, amend the last sentence by adding ''(e.g. Payload Safety Data Review)'' directly after the word ''requirements''.

5. Section 1260.26 is amended by revising the date of the provision and paragraph (a) to read as follows:

§ 1260.26 Financial management.

Financial Management

October 2001

(a) Effective October 1, 2001, advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Center which issued the grant in accordance with procedures provided to the recipient. The Recipient shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and to the Administrative Grant Officer (if NASA has delegated administration) within 15 working days following the end of each Federal Fiscal quarter. The final SF 272 is due within 90 days after the expiration date of the grant. The final SF 272 shall be submitted to the Financial Management Office, with copies sent to the NASA Grant Officer.

* * * * *

6. In the Appendix to Subpart A of Part 1260, add Exhibit E to read as follows:

Exhibit E—Special Conditions for Cooperative Agreement Between NASA and the Commercial Space Centers

The following Space Development and Commercial Research (SDCR) Special Conditions are required to be included in full text for all SDCR Grants and Cooperative Agreements in addition to the General Conditions in the NASA Grant and Cooperative Agreement Handbook. Any changes or additions to these Special Conditions must be approved by the Office of Procurement, NASA Headquarters, Procurement Operations Division, Code HS, prior to the award of the agreement.

Commercial Space Centers Program Grants/Cooperative Agreements

Intellectual Property

Patent Rights

October 2001

(a) Definitions.

(1) ''Administrator'' means the Administrator or Deputy Administrator of NASA.

(2) ''Invention'' means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(3) ''Made'' when used in relation to any invention means the conception or first actual reduction to practice such invention.

(4) ''Nonprofit organization'' means a domestic university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) ''Practical application'' means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) ''Recipient'' means:

(i) The signatory Recipient party or parties; or

(ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

(7) ''Small Business Firm'' means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13CFR 121.901 through 121.911 will be used.)

(8) ''Subject Invention'' means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(b) Allocation of Principal Rights.

(1) Patent Rights: Retention by Grantee—CSC Program.

This Patent Rights Special Condition applies only to Commercial Space Centers Program Grants/Cooperative Agreements and takes precedence over any other patent provisions for NASA grants and cooperative agreements.

This grant is subject to the Patent Rights (Small Business Firms and Nonprofit Organizations) clause at 37 CFR 401.14 (''the clause'') with the following modifications:

(i) Where the term ''contract'' or ''contractor'' is used in the clause, those terms shall be read as ''grant'' and ''grantee,'' respectively.

(ii) Where the term ''Federal Agency,'' ''agency'' or ''funding Federal Agency'' is used in the clause, the term shall be read as ''NASA.''

(iii) The following sentence is added to paragraph (d)(2) of the clause:

Notwithstanding the above, the Grantee shall not be required to convey title to an invention in a foreign country if the contractor has filed for patent applications in a substantial number of industrialized countries.

(iv) The NASA regulation applicable to paragraph (e) of the clause is at 37 CFR part 404 ''Licensing of Government OwnedInventions.''

(v) The following subparagraphs are added to paragraph (e) of the clause:

(4) NASA agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise copies of any document which NASA obtained under this clause which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the Grantee (or its assignees, licensees, or employees) on a subject invention to which the Grantee has elected to retain title.

(5) NASA agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise any invention disclosure submitted under paragraph (c), above, for a reasonable time in order for the Grantee to file a patent application on any subject invention in which it has elected or retains the right to elect retention of title. For purposes of this paragraph, a reasonable time shall be the time during which an initial patent application may be filed under paragraph (c) of this clause; provided, however, that NASA may make disclosure at its discretion if it finds that the same information has been previously published by the inventor, Grantee, or otherwise.

(6) Nothing in subparagraphs (4) and (5) of this paragraph (e) shall preclude NASA's publishing or distributing as part of its regular technical information dissemination programs materials describing a subject invention to the extent such materials were provided as part of a technical report or other submissions of the Grantee which were submitted without restrictions independently of the requirements of this clause. Furthermore, nothing in subparagraphs (4) and (5) of this paragraph (e) shall preclude NASA from releasing the subparagraphs to other contractors of NASA on a confidential or restricted distribution basis if such documents are relevant to the work being performed by those contractors.

(vi) The following subparagraph is added to paragraph (f) of the clause:

(5) the Grantee shall include a list of all subject inventions required to be disclosed during the preceding year in the technical progress report, renewal proposal, or annual status report, and a complete list (or a negative statement) for the entire award period shall be included in the final report.

(vii) Pursuant to paragraph (g)(2) of the clause, the following subparagraphs (3) and (4) are added to paragraph (g), and shall be used in all subcontracts, regardless of tier, for the performance of research, experimental, developmental, design or engineering work in the United States, its possessions, or Puerto Rico, by other than a nonprofit organization or small business firm.

(3) Notwithstanding subparagraph (1), above, the Grantee will consult and obtain the approval of NASA for the Patent Rights clause to be used in any subcontract to be performed outside of the United States, its possessions, or Puerto Rico.

(4) Notwithstanding subparagraph (1), above, and in recognition of the Grantee's obligation to obtain and maintain private support for the CSC established under this Cooperative Agreement, the Grantee is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(a) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Grantee may deem necessary to obtaining and maintaining of such private support; and

(b) Request, in the event of inability to reach agreement pursuant to (a), above, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the Grantee be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the Grants Officer (see also paragraph (9)).

(i) Exceptional circumstances: A request that NASA make an ''exceptional circumstances'' determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Grantee pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(ii) Waiver petition: The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR 1245.1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, Sec. 305). If a waiver is not requested or granted, the Grantee may request a license from NASA (see Licensing of NASA inventions, 14 CFR 1245.3). A subcontractor requesting a waiver must follow the procedures set forth in the NASA FAR Supplement clause at 18–52.227–71 (48 CFR 1852.227–71), ''Requests for Waiver of Rights to Inventions.'' The terms ''Contractor'' and ''contracting officer'' shall be read as ''Grantee'' and ''Grants Officer,'' as appropriate. Should the Grantee desire that an additional reservation regarding Grantee's rights, in accordance with paragraph (4)(b) of this Special Condition, be considered with the waiver request, both the potential subcontractor and the Grants Officer should be informed.

(viii) Paragraph (l) Communications, is completed to read as follows:

(l) Communications.

A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the Grant provisions. If any reports contain information describing a subject invention for which the Grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, for six months from the date of receipt, in order for patent applications to be filed, provided that the Grantee identifies the information and the subject invention to which is relates at the time of submittal. If required by the Grants Officer, the Grantee shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any subject invention in any country in which the Grantee has applied for patents.

(ix) With respect to paragraph (l) of the clause, Grantee is hereby given permission to assign rights to subject inventions in the United States, provided the assignee agrees that any products embodying an assigned subject invention or produced through use of a subject invention will be manufactured substantially in the United States. However, an individual clause by the requirement for such an agreement may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to assign rights on similar terms to potential assignees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(2) Patent Rights: NASA Inventions.

NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use all reasonable efforts to grant the Recipient or designated Consortium Member (if applicable) an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) Patent Rights: NASA Contractor Inventions.

In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative

agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use all reasonable efforts to grant the Recipient or designated Consortium Member (if applicable) an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) Patent Rights: Joint NASA and Recipient Inventions.

NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this section.

(ii) For small business firms and nonprofit organizations, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) Minimum rights reserved by the Government. Any license or assignment granted Recipient pursuant to paragraphs (b)(2), (b)(3), or (b)(4) of this section will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this section, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) Preference for United States manufacture. The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered ''by or for the United States'' and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

(8) Property Rights in Inventions—CSC Program.

(i) This cooperative agreement or any subcontracts issued thereunder with other than a nonprofit organization or small business firm as defined in 35 U.S.C. 201, are subject to Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term ''invention'' includes any invention, discovery, improvement, or innovation. Any invention made in the performance of work under this cooperative agreement or any subcontract issued thereunder shall be presumed to have been made under the conditions of and subject to Section 305(a) of the Act and becomes the exclusive property of the United States subject, however, to the retention by the recipient or subcontractor of a royalty-free license to practice the invention pursuant to, and of the scope defined in, 14 CFR 1245.108. This license may be revoked under the conditions set forth in the Patent Licensing Regulations (37 CFR part 404). The recipient or applicable subcontractor may petition for waiver of title to the invention in accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

(ii) The recipient or applicable subcontractor shall furnish to NASA a written report containing full and complete technical information concerning any invention made in the performance of any work under this cooperative agreement or any applicable subcontract promptly upon the making of such invention; and if waiver of title has been granted, shall state whether or not the recipient or subcontractor intends to file or has filed patent applications thereon. Upon written request by NASA, the recipient or applicable subcontractor shall furnish additional information available to it, and shall secure the execution of such documents as may be necessary to enable the Administrator, NASA, to file and prosecute patent applications on any such invention for which NASA has retained title. Upon completion of the work under this cooperative agreement, the recipient or applicable subcontractor, shall furnish to NASA a report as to whether or not the recipient or subcontractor has filed, or intends to file, patent applications on such inventions.

(iii) All reports required by this clause, and its application, should be directed to the Patent Counsel or Intellectual Property Counsel of the NASA installation that has been assigned the responsibility of administering (technical monitoring and performance evaluation) the CSC grant/cooperative agreement of which this contract or subcontract is a part.

(End of Provision)

Rights in Data—CSC Program

October 2001

This Rights in Data Special Condition applies only to the Commercial Space Centers (CSC) Grants and Cooperative Agreements and takes precedence over any other Rights in Data provisions for NASA grants and cooperative agreements.

(a) Definitions. As used in this provision:

''CSC Data'' means data first produced by a Grantee in the performance of this cooperative agreement, which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Grantee or are not already available to the Government.

''CSC Rights'' means the respective rights of the Grantees and the Government in the CSC data as set forth in paragraph (d) of this provision.

''Computer Software'' means computer programs, computer databases, and documentation thereof.

''Data'' means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to grant administration, such as financial, administrative, cost or pricing or management information.

''Form, Fit, and Function Data'' means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements, except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

''Limited-Rights Data'' means data (other than computer software) developed at private expense that embody trade secrets or are

commercial or financial and confidential or privileged.

''Restricted Computer Software'' means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published, copyrighted computer software, including modifications of such computer software.

''Technical Data'' means that data which are of a scientific or technical nature.

''Unlimited Rights'' means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, perform publicly, display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this grant as data to be delivered without restriction;

(ii) All other data delivered under this grant unless provided otherwise for CSC data in accordance with paragraph (d) below or for limited-rights data or restricted computer software in accordance with paragraph (f) below.

(2) The Government shall have a royalty-free license to use, and to authorize support service contractors acting on its behalf to use, delivered CSC data to the extent permitted, and consistent with the disclosure prohibitions, set forth in paragraph (d) below.

(3) The Grantee shall have the rights to—

(i) Protect CSC rights in any CSC data delivered under this grant in the manner and to the extent provided in paragraph (d) below:

(ii) Withhold from delivery those data which are limited-rights data or restricted computer software to the extent provided in paragraph (f) below;

(iii) Substantiate use of, add, or correct CSC rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) below.

(4) Data first produced by NASA: As to Data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to ( ) years [insert a period up to 5 years] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval, until the aforementioned restricted period expires.

(5) Oral and visual information. If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA such information must be reduced to tangible recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to NASA within 10 (ten) days after such oral or visual disclosure, or NASA shall have no duty to limit or restract, and shall not incur any liability for, any disclosure and use of such information.

(6) Disclaimer of Liability. Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (d)(2) of this section; nor

(ii) Information contained in any Data for which disclosures and use are restricted under paragraphs (b)(2) or (3) of this section, if such information is or becomes generally known without breach of the above, is known to or generated by NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(7) Marking of Data. Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the Data was generated under this cooperative agreement.

(c) Copyright.

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Grantee may establish claim to copyright subsisting in any data first produced in the performance of this grant. If claim to copyright is made, the Grantee shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including grant number) to the data when such data are delivered or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Grantee grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data. For computer software, the Grantee grants to the Government, and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Grantee shall not, without prior written permission of the Grants Officer, incorporate in data delivered under this grant any data that are not first produced in the performance of this grant and that contain the copyright notice of 17 U.S.C. 401 and 402, unless the Grantee identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c) and to include such notices on all reproductions of the data.

(d) Rights in CSC Data.

(1) The rights of the Government and the Grantee in CSC data shall be as set forth below.

(2) NASA shall have the right, at any time up to the two years after completion or termination of this agreement to obtain delivery of CSC data, either by express requirement in this grant or specific request by the Grants Officer. If such requirement or request for delivery is made, the Grantee is authorized to affix the following ''CSC Rights Notice'' to any CSC data delivered under this agreement and the Government will thereafter treat the data, subject to the provisions of paragraph (e) below, in accordance with such Notice.

CSC Rights Notice

October 2001

These CSC data are furnished with CSC rights under Grant/Cooperative Agreement No.__. The Government agrees to use these data only for government purposes for five years effective November 1, 1996. These data shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without the express written permission of the Grantee, except that, subject to the limitations of this Notice, such data may be disclosed for use by support service contractors. After the aforesaid period the Government shall have unlimited rights in these data.

(End of Notice)

(3)(i) The Grantee shall assure that the CSC Rights Notice is placed on the data as soon as practicable after the data is generated and reduced to some tangible, recorded form as defined by the term ''data'' in paragraph (a), but in any event no later than the earlier of either the date of delivery of the data to NASA or the release of the data by the Grantee or its CSC organization, including any subcontractors thereof where applicable to others outside of the Grantee's, its CSC, or subcontractor's organization.

(ii) The Grantee is authorized to insert up to 7 (seven) years (from the date certain) in the Notice. Longer periods may be authorized by NASA, case-by-case, for specifically identified data items, upon approval of the Grants Officer. Such longer periods will normally require that NASA have the right to make the data available to other responsible parties, on reasonable terms and conditions, in the event the Grantee, its licensees, or assigns have not taken, or are not expected to take in a reasonable time, effective steps to achieve commercial utilization of any item, component, or process to which the data pertains. The ''date certain'' to be inserted in the Notice shall be no later than the date the Notice is affixed to the data.

(iii) The Grantee is authorized to make the CSC Rights Notice October 2001 applicable to

previously produced data (that qualifies as CSC data), provided that such data has not been released to others or furnished to NASA with any previously prescribed Notice. Further, the Grantee is authorized to substitute the July 1990 Notice for any previously prescribed Notice for any data that has been released to others or delivered to NASA provided that: (A) The Grantee identifies the data; (B) the protection afforded such data under the previously described Notice is still in force; and (C) the recipient (other than NASA) agrees to the substitution, or in the case of NASA, the Grants Officer is requested to make the substitution for specifically identified data. In this latter, event, the effective data inserted in the Notice shall be the Grantee's best estimate of the date the data was released to others or furnished to NASA.

(4) The Government shall have unlimited rights at the end of the period set forth in the ''CSC Rights Notice,'' as to any CSC data delivered in accordance with subparagraph (2), above, provided, however, that if the Grantee or any of its licensees or assigns have plans and intentions to pursue commercial utilization of any items, components or processes (including computer software) which any delivered CSC data discloses, the aforesaid period will be expended for such data up to an additional 5 (five) years upon request made at any time prior to the end of the period provided in the ''CSC Rights Notice.''

(e) Omitted or Incorrect Markings.

(1) Data delivered to the Government without any notice authorized by paragraph (d) above, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Grantee may request, within 6 (six) months (or a longer time approved by the Grants Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Grantee's expense, and the Grants Officer may agree to do so if the Grantee—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Grants Officer may also (i) permit correction, at the Grantee's expense, of incorrect notices if the Grantee identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(f) Protection of Limited Rights Data and Restricted Computer Software. When data other than that listed in paragraph (b)(1) are specified to be delivered under this grant and such data qualify as either limited-rights data or restricted computer software, the Grantee, if the Grantee desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this grant. As a condition to this withholding, the Grantee shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(g) Subcontracting. The Grantee has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Grantee's obligations to the Government under this grant. If a subcontractor refuses to accept terms affording the Government such rights, the Grantee shall promptly bring such refusal to the attention of the Grants Officer and not proceed with subcontract award without further authorization.

(h) Relationship to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(i) Transfer of Rights.

(1) Notwithstanding any other provisions of this clause, the Grantee agrees that it will neither assign any rights nor grant any exclusive rights in the United States to CSC data or copyrighted data first produced in the performance of this Agreement unless the assignee or licensee agrees that any products or processes depicted by the CSC data or expressed by the copyrighted data will be manufactured or practiced substantially in the United States. However, in individual cases the requirement for such an agreement may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to assign grants or rights on similar terms to potential assignees or licensees that would be likely to manufacture or practice substantially in the United States or that under the circumstances domestic manufacture or practice is not commercially feasible.

(2) The Grantee agrees that it will not grant to any person or entity any exclusive right to use or sell in the United States any product or process that embodies CSC data or is expressed by copyrighted data first produced in the performance of this Agreement unless the person or entity agrees that such products or processes will be manufactured or practiced substantially in the United States. However, in individual cases the requirement for such may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture or practice substantially in the United States or that under the circumstances, domestic manufacture or practice is not commercially feasible.

§ 1260.134 [Amended]

7. Amend § 1260.134 in paragraph (a) by removing ''§ 1260.33(b)'' and adding ''§ 1260.133(b)'' in its place.

§ 1260.152 [Amended]

8. Amend § 1260.152 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

[FR Doc. 01–26623 Filed 10–25–01; 8:45 am]

BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 204

[Release No. 34–44965]

RIN 3235–AI34

Debt Collection—Amendments to Collection Rules and Adoption of Wage Garnishment Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (Commission) is amending its debt collection rules. The amendments update procedures and make technical amendments to the Commission's rules for debt collection by administrative offset, federal salary offset, and tax refund offset, and add new rules for administrative wage garnishment. The changes are required by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Office of Chief Counsel, Division of Enforcement at (202) 942–4635, or at 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: We are amending the Commission's debt collection rules to conform them to the Debt Collection Improvement Act of 1996 (DCIA) and related rules adopted by federal agencies with responsibilities for government-wide debt collection. Currently, the Commission has rules for collecting its unpaid debts through three offset methods: administrative, salary and tax offset.[1] The Commission also has rules concerning contracts for collection services to recover delinquent debts. The Commission adopted all of its debt collection rules in 1993 in accordance with then existing provisions of the Debt Collection Act, the Federal Claims Collection Standards (FCCS), and other authorities governing the collection of federal debts. On September 17, 1996, the Commission entered into an agreement with the Financial Management Service (FMS), a bureau of the Department of the

[1] 17 CFR part 204.

Treasury (Treasury), by which FMS performs collection services pursuant to the DCIA on the Commission's behalf. In November 2000, the Treasury and the Department of Justice (Justice) adopted a new version of the FCCS, governing the collection of federal debts generally.[2] As a result of the promulgation of a series of rules issued since the passage of the DCIA, the Commission's existing rules for debt collection by offset need to be conformed and updated. In particular, the DCIA and revised government-wide regulations contemplate that Treasury will conduct centralized offset against amounts owed by the government to debtors. Under this centralized Treasury Offset Program (TOP), federal agencies are to refer delinquent debts to Treasury, which compares them to amounts to be paid out by the government. Treasury can then cause those amounts to be withheld in satisfaction of the debts. To participate in TOP, federal agencies are required to conform their debt collection rules to government-wide regulations regarding administrative, salary and tax refund offset.

The most significant change to the Commission's debt collection rules is the addition of administrative wage garnishment for non-federal employee wages.[3] Previously, administrative wage garnishment was available only against federal employees, through federal salary offset. To garnish the wages of non-federal employees, federal agencies had to obtain a court order. As a result of the DCIA and Treasury's implementing rules,[4] the Commission, or a federal agency collecting debts on behalf of the Commission, has the authority to issue a wage garnishment order. Such an order could direct an employer to withhold an employee's wages and pay the amount withheld to the Commission, or the appropriate agency, to satisfy the delinquent debt. The DCIA authorizes federal agencies to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent nontax debts owed to the United States.

Other changes to the Commission's debt collection rules are primarily technical in nature. The changes conform the Commission's rules to make them consistent with changes to federal debt collection law and regulations promulgated by Treasury, Justice, and the Office of Personnel Management (OPM).

I. Discussion of Amendments

A. Administrative Offset

The Commission adopting amendments to Subpart A of its debt collection rules, which set forth procedures for collection by administrative offset.[5] Administrative offset is the general procedure by which debts are collected through the withholding of funds payable to the debtor by the government.[6] The Commission is amending its regulations to make clear that debts can be processed through TOP.[7] As amended, Subpart A is consistent with the statutory procedures for administrative offset[8] and the FCCS.[9]

B. Federal Salary Offset

The Commission is amending Subpart B of its debt collection rules, which sets forth procedures for collection by federal salary offset.[10] Federal salary offset is the collection of a debt owed by a federal employee by withholding up to 15% of the employee's disposable pay.[11] The procedures for salary offset are governed by 5 U.S.C. 5514, and by OPM regulations.[12] OPM amended its rules to make clear that salary offset should be conducted through TOP,[13] and the Commission is amending its regulations to reflect this preference. OPM also requires agencies to specify in their regulations that the notice and hearing provisions that are otherwise applicable to not apply when offset is effected within four pay periods to correct clerical errors or to collect amounts of $50 or less,[14] and requires that agency rules specify the maximum percentage (15% of disposable pay) that can be withheld.[15] As amended, the Commission's rules add conforming language. As amended, Subpart B is consistent with government-wide salary offset authorities.

C. Tax Refund Offset

The Commission is amending Subpart C of its rules for collection by tax refund offset,[16] which is the collection of a debt through the withholding of federal tax refunds owed to the debtor.[17] This form of offset previously was addressed by Internal Revenue Service regulations, but is now governed by Treasury regulations,[18] with which agency regulations must be consistent.[19] As amended, the Commission's rules make clear that debts will be referred to Treasury, and hence may be processed through TOP. As amended, Subpart C is consistent with the DCIA and Treasury's regulations.

D. Garnishment of Non-Federal Wages

The Commission is adopting new administrative wage garnishment regulations,[20] authorized by the DCIA.[21] Prior law required federal agencies to obtain a court order for garnishment of non-federal wages, but the DCIA permits agencies to collect debts by ordering a non-federal employer to deduct amounts up to 15% of an employee's disposable pay (or a greater amount to which the employee consents). Treasury regulations require agencies to adopt regulations for the conduct of administrative wage garnishment hearings,[22] The Commission's rules essentially track Treasury's regulations. A debtor will be provided 30 days notice of the Commission's intent to collect by garnishment, and will be provided an opportunity to inspect and copy records relating to the debt, an opportunity to enter into a written repayment agreement, and an opportunity for a hearing on the existence or amount of the debt. If the debtor does not request a hearing, a wage garnishment order will be sent to the debtor's employer within 30 days after the end of the 15-day period allowed for the debtor's response. If the debtor requests a hearing within 15 days of mailing of the Commission's initial notice, a hearing will be provided, and a decision will be rendered within 60 days after the hearing. If the Commission determines after the hearing to proceed with garnishment, a garnishment order will be sent to the debtor's employer within 30 days of its decision. The Commission's regulations are consistent with the DCIA and Treasury regulations.[23]

[2] 65 FR 70390 (Nov. 22, 2000) (adopting 31 CFR parts 900 through 904).

[3] Garnishment refers to the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a debt. 31 CFR 285.11(c).

[4] The DCIA authorized Treasury to issue rules governing administrative wage garnishment. 31 U.S.C. 3720D. Treasury's implementing rules went into effect on June 5, 1998. 63 FR 25136 (May 6, 1998) (adopting 31 CFR 285.11).

[5] 17 CFR 204.1 through 204.11.

[6] 31 U.S.C. 3701(a)(1), 3716.

[7] 17 CFR 204.3 and 204.9.

[8] 31 U.S.C. 3716.

[9] 31 CFR 901.3.

[10] 17 CFR 204.30 through 204.44.

[11] 5 U.S.C. 5514(a).

[12] 5 CFR part 550, subpart K, 63 FR 72098 (Dec. 31, 1998).

[13] 5 CFR 550.1108, 1109.

[14] 5 CFR 550.1104(c).

[15] 5 CFR 550.1104(d).

[16] 17 CFR 204.50 through 204.56.

[17] 31 U.S.C. 3720A.

[18] 31 CFR 285.2.

[19] 31 CFR 285.2(c).

[20] 17 CFR 204.60 through 204.65.

[21] 31 U.S.C. 3720D.

[22] 31 CFR 285.11(f)(1).

[23] Under Treasury's garnishment rules, an employer receiving a garnishment order must return a certification, in a form determined by Treasury,

E. Miscellaneous

The Commission is adopting technical amendments to its regulations concerning use of collection services and reporting of debts to consumer reporting agencies. These changes are principally to update statutory and regulatory references, and to conform to the DCIA and the FCCS.

II. Section-by-Section Analysis

A. Administrative Offset

The following summarizes the contents of 17 CFR 204, Subpart A, as amended.

1. Section 204.1 Applicability and Scope

This section states the authority for the administrative offset regulations. It is amended solely to update statutory references and to substitute the Department of the Treasury for the General Accounting Office as an agency responsible for the implementation of the FCCS.

2. Section 204.2 Definitions

This section provides definitions of ''administrative offset'' and ''person.'' It is amended solely to track the definition of ''administrative offset'' in the Debt Collection Act.

3. Section 204.3 General

This section sets forth the conditions for administrative offset. The considerations to be weighed in deciding whether to use administrative offset originally tracked requirements in the pre-DCIA version of the FCCS, which required agencies to determine the appropriateness of offset on a case-by-case basis. Because the TOP system contemplates automatic use of this form of offset, these conditions are removed. The regulation is also amended to permit referral of debts to Treasury for administrative offset through TOP.

4. Section 204.4 Demand for Payment—Notice

The FCCS requires agencies to adopt regulations regarding notice to the debtor. The pre-DCIA version of the FCCS required three progressively stronger letters to the debtor prior to administrative offset, a requirement that has been dropped in the current FCCS as too restrictive. This requirement is deleted from the Commission's regulations as well, and the content of notice letters is conformed to the current FCCS.

5. Section 204.5 Debtor's Failure to Respond

This provision alerts debtors that offset will be effected if no timely response is made. No substantive changes have been made.

6. Section 204.6 Agency Review

This section is amended to make clear that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

7. Section 204.7 Hearing

This section describes the circumstances under which an oral hearing may be required. No substantive change has been made.

8. Section 204.8 Written Agreement for Repayment

This section states that a debtor will be provided an opportunity to enter into a written repayment agreement. No substantive change has been made.

9. Section 204.9 Administrative Offset Procedures

This section provides the basic procedures for effecting administrative offset after the debtor's due process rights have been exhausted. The rule continues to permit the Commission to engage in non-centralized offset with other federal agencies. Section 204.9(b), regarding travel advances, reflects a separate provision of law under which the Commission may offset such advances against other amounts due an employee. The rule is amended to permit the Commission to request that FMS collect the debt through TOP.

10. Section 204.10 Civil and Foreign Service Retirement Fund

Prior to the DCIA, federal retirement payments were subject to separate offset rules. Such payments are now subject to the general rules for administrative offset, and thus there is no longer a need to address these payments separately. The entire section has been deleted.

11. Section 204.11 Jeopardy Procedure

In some cases, there may be insufficient time to effect offset through TOP before a payment has been made to the debtor. In such cases, the FCCS permits a creditor agency to seek offset directly from the agency that is about to make the payment, and to omit the notice and opportunity for review otherwise required prior to offset. After offset is effected, the agency must provide notice and an opportunity for review, and must refund amounts found not to be owing to the government. Under the revised FCCS, this jeopardy provision applies only when an agency is conducting non-centralized offset under 31 CFR 901.3(c). The section is amended to indicate that it applies only to non-centralized offset.

B. Salary Offset

The following summarizes the contents of 17 CFR 204, Subpart B, as amended.

1. Section 204.30 Purpose and Scope

This purpose section describes federal salary offset generally, and indicates that it applies both to the Commission's own employees and to employees of other agencies.

2. Section 204.31 Excluded Debts or Claims

This section exempts certain types of debts from salary offset. The DCIA amended the Social Security Act to permit the Commissioner of Social Security to collect delinquent claims by salary offset; OPM has conformed its regulations by deleting the exemption for debts arising under the Social Security Act. The effect of the changes it that the Social Security Administration can now offset debts owed by Commission employees, either through TOP or by submitting a request directly to the Commission. The rule is amended to delete reference to the prior Social Security exemption.

3. Section 204.32 Definitions

This section contains definitions applicable to this subpart. No substantive changes have been made.

4. Section 204.33 Pre-Offset Notice

This section describes the rights of the debtor that must be included in the pre-offset notice. The DCIA amended the salary offset statute to permit agencies to omit notice when correcting a minor error within four pay periods of the error, or when collecting amounts of $50 or less. OPM also amended its regulations to make clear that the amount of a salary offset may be expressed in the pre-offset notice to the debtor as a percentage of pay, not to exceed 15%, and to remove the requirement that agencies include in their notices information about the commencement date and duration of deductions. The amendments to the

that addresses matters such as information about the debtor's employment status and disposable pay available for withholding. 5 CFR 285.11(h). In addition, employers are forbidden to discharge, refuse to employ, or take disciplinary action against a debtor due to the issuance of a withholding order. 5 CFR 285.11(m).

Commission's rules adopt the language of the OPM amendments.

5. Section 204.34 Employee Response

This section provides guidance on employee responses to pre-offset notices. Employees must be given 15 days to request a hearing, and a timely request stays offset until after the hearing. The employee must be given an opportunity to enter into a written repayment agreement. No amendments to this section have been made.

6. Section 204.35 Petition for Pre-Offset Hearing

this section provides that an employee's request for pre-offset review must state with reasonable specificity the basis for the employee's belief that the Commission's determination on the debt is in error, and must identify facts, evidence and witnesses. This section is amended solely to clarify that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

7. Section 204.36 Granting of a Pre-offset Hearing

This section provides that the Commission will arrange for an independent hearing official (who may be an Administrative Law Judge) to conduct pre-offset hearings. No substantive amendments have been made.

8. Section 204.37 Extensions of time

This section provides the hearing official with discretion to control the time limits set in the Commission's salary offset regulations, except for the 30-day initial notice and 60-day final decision periods that are established by law. No amendments have been made.

9. Section 204.38 Pre-offset Hearing

This section permits the hearing official to determine the form and content of hearings, consistent with the FCCS. No substantive amendments have been made.

10. Section 204.39 Written Decision

This section provides that the hearing official must issue a written opinion within 60 days of he filing of a petition for a pre-offset hearing. No amendments have been made.

11. Section 204.40 Deductions

This section provides guidance on when deductions may begin, the source of deductions, and the duration of deductions. It also provides that any interest, penalties or administrative costs of collection will be imposed according to provisions of the FCCS. No substantive amendments have been made.

12. Section 204.41 Non-waiver of Rights.

The section provides that involuntary collection by offset does not constitute a waiver of an employee's rights under the offset law or any other applicable law. No amendment has been made.

13. Section 204.42 Refunds

This section provides that the Commission will promptly refund amounts if a debt is waived or found not to be owing, but that such refunds will not bear interest unless required by law. No amendments have been made.

14. Section 204.43 Coordinating Offset with Another Federal Agency

This section provides guidance on requesting offset by another federal employer. The DCIA contemplates that agencies will normally process requests for salary offset through TOP, and OPM has amended its regulations to require that preference be given to centralized offset through TOP. However, there may be circumstances in which direct coordination with another agency may be preferable, and this method of conducting offset has been retained. This section is amended to make clear that centralized offset under the OPM regulations is to be attempted whenever possible; no other substantive changes have been made.

15. Section 204.44 Interest, Penalties, and Administrative Costs

This section provides that interest, penalties and administrative costs of collection are to be assessed in accordance with the FCCS. No substantive amendments have been made.

C. Tax Refund Offset.

The following summarizes the contents of CFR part 204, Subpart C, as amended.

1. Section 204.50 Purpose

This purpose section is amended to reflect the requirement that tax refunds be sought through Treasury and not directly through the IRS. References to pre-DCIA provisions are deleted.

2. Section 204.51 Past-due Legally Enforceable Debt

This section stated the preconditions for referral to IRS under prior law. Because tax refund offset will be processed through the TOP system, these provisions are no longer needed. The section is deleted in its entirety.

3. Section 204.52 Notification of Intent to Collect

This section describes the content of the Commission's notice to the debtor. This section is amended to make clear that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

4. Section 204.53 Reasonable Attempt to Notify

This section reflects prior IRS regulations that required agencies to rely solely upon addresses obtained from the IRS when sending pre-offset notices. Treasury has determined that agencies may in fact have better addresses in their debt files, and thus has not make this a requirement in its regulations. This section is deleted in its entirety.

5. Section 204.54 Commission Action as a Result of Consideration of Evidence Submitted in Response to the Notice of Intent

Before a tax refund offset can be effected, agencies are required to consider evidence submitted by the debtor, and to determine that the debt is in fact past due and legally enforceable. Prior IRS regulations required that debtors be provided with the opportunity to dispute a debt before the debt was referred to IRS for tax refund offset. Agencies are now to refer all delinquent debt to Treasury for processing through TOP. This regulation is amended to reflect the changes in processing of requests for tax refund offset.

6. Section 204.55 Change in Notification to Internet Revenue Service

In some cases, the amount referred for tax refund offset may be subject to change (for example, as a result of payments by the debtor or clerical errors by an agency). This section governs the Commission's requests for changes in the amount referred for tax refund offset. Treasury's regulations permit upward adjustments, so long as the debtor is provided additional notice and opportunity to be heard as to the amount of the increase. The Section has been amended to remove references to

the IRS and to conform to Treasury regulations.

7. Section 204.56 Administrative Charges

The DCIA requires Treasury to specify in government-wide regulations that agencies are to pay a fee to reimburse Treasury for conducting tax refund offset. Treasury's tax refund offset fee provision allows agencies, to the extent permitted by law, to add this fee to the amount of the debt. This section is amended to conform to Treasury's regulation.

D. Administrative Wage Garnishment.

The following summarizes the contents of 17 CFR part 204, Subpart D.

1. Section 204.60 Purpose.

This purpose section states that the Commission may use administrative wage garnishment to collect debts. The provisions tracks the language of the corresponding purpose section in Treasury's regulations.

2. Section 204.61 Scope.

This scope section makes clear that administrative wage garnishment may be conducted in conjunction with other methods of collection, including other forms of offset. The section excludes collection from the salaries of federal employees governed by the federal salary offset statute.

3. Section 204.62 Definitions

Key definitions of ''disposable pay,'' ''employer,'' ''garnishment,'' and ''withholding order'' are taken verbatim from the Treasury regulations. A definition of ''debt or delinquent nontax debt'' has been added.

4. Section 204.63 Notice

This section requires notice to the debtor at least 30 days prior to the initiation of garnishment, and specifies the contents of the notice and the rights to be provided the debtor. This section provides that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

5. Section 204.64 Hearing

This section describes the form and content of the hearing that may be sought by a debtor to contest administrative wage garnishment. A hearing must be sought within 15 days of the Commission's notice to the debtor. A hearing may be presided over by the Commission or by a hearing official such as an administrative law judge. It is anticipated that should any hearings be sought, they would routinely be assigned to an administrative law judge. A decision must be rendered within 60 days after the request for a hearing. These provisions are derived from the corresponding hearing provisions in Treasury's regulations.

6. Section 204.65 Wage Garnishment Order

This section describes the procedures for issuing a wage garnishment order. If the debtor does not respond within 15 days of the Commission's initial notice, the Commission may send a garnishment order to the debtor's employer. The order must be sent within 30 days after the end of the 15-day period allowed for the debtor's response. Alternatively, if the debtor requests a hearing, the garnishment order must be sent to the debtor's employer within 30 days of the final decision to proceed with garnishment. These provisions, as well as the provisions regarding the form of the withholding order, the guidance on the amounts to be withheld, exclusions, financial hardship, ending garnishment, and refunds are derived from the corresponding provisions in Treasury's regulations.

E. Miscellaneous: Credit Bureau Reporting, Collection Services

The following summarizes the contents of 17 CFR part 204, Subpart E, as amended.

1. Section 204.75 Collection Services

This section states generally that the Commission may enter into collection contracts, provided that authority to resolve disputes about debts or to end collection rests with the Commission, and that any contractor will be subject to the Privacy Act of 1974 and other debt collection statutes. No substantive amendments have been made.

2. Section 204.76 Use of Credit Bureau or Consumer Reporting Agencies

This section provides that the Commission may refer debts to consumer reporting agencies. No substantive amendments have been made.

3. Section 204.77 Referrals to Collection Agencies.

This section provides that the Commission may employ collection agencies. The section is revised to clear that contractors must provide any data requested by the Commission in connection with a referral to Justice. The section has also been revised to delete a provision stating that the Commission would not use collection agencies to collect a debt from current or retired employees when salary or annuity offset was available. Annuity offset is no longer a distinct form of offset, and requests for salary offset are to be processed through Treasury, which is authorized to employ collection agencies to act on the Commission's behalf.

III. Related Matters

A. Administrative Procedure Act

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice. [24]

B. Regulatory Flexibility Act

A regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) [25] is required only when an agency must publish a general notice of proposed rulemaking. As already noted, the APA's notice and comment procedures are not required for these amendments. Thus, the RFA does not require a regulatory flexibility analysis. [26]

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to collections of information during the conduct of administrative actions by an agency against specific individuals or entities. Commissions debt collection actions are taken only against specifically identified individuals or entities. Thus, Office of Management and Budget review is not required.

D. Cost-Benefit Analysis

The Commission's amendments to its debt collection rules merely conform those rules in accordance with the requirements of the DCIA and related federal regulations including rules adopted by the Department of the Treasury and the Department of Justice. Upon adoption of the DCIA, Congress determined that the adopted changes would maximize collection of delinquent debts while minimizing the costs of debt collections. [27]

Any costs that might be incurred are attributable to changes in the statutory provisions. Because the Commission

[24] 5 U.S.C. 553(b)(3)(A).

[25] 5 U.S.C. 603.

[26] 5 U.S.C. 601–12.

[27] Debt Collection Improvements, Pub. L. No. 104–134, § 31001(b), 110 Stat. 1321 (1996).

already has in place rules for administrative offset of debts owed, the principal costs of the rule will be in connection with administrative wage garnishment rules and will mainly be imposed on employers.[28] An employer served with a withholding order will be required to complete and return a certification form to the agency.[29]

The Commission reviewed civil and administrative judgments in enforcement actions in which a monetary sanction was ordered in calendar year 2000, to approximate the number of employers that might receive garnishment orders in a given year.[30] In 2000, the Commission obtained orders for 707 monetary sanctions, including disgorgement, penalties assessed under the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, and/or insider trading penalties. Currently, 146 individuals owing monetary sanctions have yet to pay either all or some portion of the amounts imposed upon them. Thus, if each unpaid sanction pertained to an employee of a different employer, no more than 146 employers could potentially receive garnishment orders.

In its analysis of the DCIA's administrative wage garnishment program for the entire federal government, the Department of the Treasury determined that even if an employer were served withholding orders on several employees over the course of a year, the cost imposed on the employer to comply with the orders would not have a significant impact on that entity.[31] In adopting government-wide regulations, Treasury also stated that although a substantial number of employees from small entities will be subject to the garnishment regulations,[32] its rules ''will not have a significant economic impact on these entities.''[33] Based on the Department of Treasury's analysis, we do not anticipate that the Commission's regulations will result in significant costs to employers. The benefit provided by administrative wage garnishment will be enhanced recovery of delinquent debts owned to the government.

List of Subjects in 17 CFR Part 204

Claims, Debt collection, Government employees, Wages.

Text of Amendments

For the reasons stated in the preamble, part 204 of title 17 of the Code of Federal Regulations is amended as follows:

PART 204—RULES RELATING TO DEBT COLLECTION

Subpart A—Administrative Offset

1. The authority citation for Subpart A is revised to read as follows:

Authority: 31 U.S.C. 3716, 31 CFR 901.3.

2. Section 204.1 is amended by revising paragraph (b) to read as follows:

§ 204.1 Applicability and scope.

* * * * *

(b) The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the Securities and Exchange Commission (Commission). These regulations are consistent with the Debt Collection Act and the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the Department of the Treasury (31 CFR 901.3).

§ 204.2 [Amended]

3. Section 204.2 is amended by revising paragraph (a) to read as follows:

(a) *Administrative offset* as defined in 31 U.S.C. 3701(a)(1) means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

* * * * *

4. Section 204.3 is amended by:

a. Removing paragraph (a);

b. Redesignating paragraphs (b) through (f) as paragraphs (a) through (e); and

c. Revising newly redesignated paragraphs (b), (c), and (e) to read as follows:

§ 204.3 General.

* * * * *

(b) The Chairperson (or designee) may notify the Department of the Treasury of delinquent debts for purposes of administrative offset, and may request another agency which holds funds payable to a Commission debtor to offset that debt against the funds held; the Commission will provide certification that:

(1) The debt is past due and legally enforceable; and

(2) The person has been afforded the necessary due process rights.

(c) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt. This limitation does not apply to debts reduced to judgment.

* * * * *

(e) The procedures for administrative offset in this subpart do not apply to the offset of Federal salaries under 5 U.S.C. 5514 or Federal tax refunds under 31 U.S.C. 3720A and 31 CFR 285.2.

5. Section 204.4 is amended by:

a. Removing paragraphs (a) and (b);

b. Redesignating paragraphs (c) and (d) as paragraphs (a) and (b); and

c. Revising newly redesignated paragraph (a) to read as follows:

§ 204.4 Demand for payment—notice.

(a) Before offset is made, a written notice will be sent to the debtor. This notice will include:

(1) The type and amount of the debt;

(2) The date when payment is due (not less than thirty days from the date of mailing or hand delivery of the notice);

(3) The agency's intention to collect the debt by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(4) The right of the debtor to inspect and copy the Commission's records related to the claim;

(5) The right of the debtor to request a review of the determination of indebtedness and, in the circumstances described in § 204.7, to request an oral hearing from the Commission's designee; and

(6) The right of the debtor to enter into a written agreement with the agency to repay the debt in some other way.

* * * * *

6. The introductory text of § 204.5 is revised to read as follows:

§ 204.5 Debtor's failure to respond.

If the debtor fails to respond to the notice described in § 204.4(a) by the proposed effective date specified in the notice, the Commission may take further

[28] Administrative offset applies when collecting debt owned both by entities and individuals. Administrative wage garnishment applies only when collecting debts from individuals.

[29] 31 CFR 285.11(h).

[30] We choose calendar year 2000 as the appropriate base year because these amendments require a minimum of 180 days non-payment before the case can be transferred to the TOP program. Therefore, monetary sanctions imposed in December 2000 would only have become eligible for the program in June 2001.

[31] 63 FR 25136, 25139 (May 6, 1998).

[32] *Id.*

[33] *Id.*

action under this section or under the Federal Claims Collection Standards (31 CFR 901.3). The commission may collect by administrative offset if the debtor:

* * * * *

7. Section 204.6 is amended by revising paragraphs (a) and (d) to read as follows:

§ 204.6 Agency reviews.

(a) To the extent that a debt owed has not been established by judicial or administrative order, a debtor may request a hearing concerning the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. A request to review a disputed debt must be submitted to the Commission official who provided notification within 30 calendar days of the receipt of the written notice described in § 204.4(c).

* * * * *

(d) During the review period, interest, penalties, and administrative costs will continue to accrue.

8. Section 204.7 is amended by revising the word ''creditability'' to read ''credibility'' in paragraph (a)(1)(iii).

9. Section 204.8 is amended by revising the first and last sentences of the section to read as follows:

§ 204.8 Written agreement for repayment.

If the debtor requests a repayment agreement in place of offset, the Commission has discretion to determine whether to accept a repayment agreement in place of offset. * * * Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by the Debt Collection Act, 31 U.S.C. 3711–3720E, and the Federal Claims Collection Standards, 31 CFR 900.1–904.4.

10. Section 204.9 is amended by revising paragraphs (c) and (d) to read as follows:

§ 204.9 Administrative offset procedures.

* * * * *

(c) *Requests for offset to the Department of the Treasury or other Federal agencies.* The Chairperson (or his or her designee) may notify the Department of the Treasury of delinquent debts for purposes of administrative offset, and may request that a debt owed to the Commission be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the Commission, as creditor, will certify in writing to the Federal agency holding funds of the debtor that:

(1) The debtor owes the past due and legally enforceable debt; and

(2) The debtor has been afforded the necessary due process rights.

(d) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Commission be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Commission shall initiate the requested offset only upon:

(1) Receipt of written certification from the crecitor agency that:

(i) The debtor owes the past due and legally enforceable debt; and

(ii) The debtor has been afforded the necessary due process rights.

(2) A determination by the Commission that collection by offset against funds payable by the Commission would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

11. Section 204.10 is removed and reserved.

§ 204.10 [Removed]

12. Section 204.11 is amended by revising the reference ''§ 204.4(c)'' in the first sentence to read ''§ 204.4(a)'', and by adding a sentence to the end of the section to read as follows:

§ 204.11 Jeopardy procedure.

* * * This section applies only to administrative offset pursuant to 31 CFR 901.3(c), and does not apply when debts are referred to the Department of the Treasury for mandatory centralized administrative offset under 31 CFR 901.3(b)(1).

Subpart B—Salary Offset

13. The authority citation for Subpart B is revised to read as follows:

Authority: 5 U.S.C. 5514, 5 CFR 550.1104.

14. Section 204.31(a) is amended by removing the words ''the Social Security Act (42 U.S.C. 301)''.

§ 204.32 [Amended]

15. Section 204.32 is amended by revising the phrase ''General Accounting Office at 4 CFR part 101'' in the definition of FCCS to read ''Department of the Treasury at 31 CFR parts 900–904''.

16. Section 204.33 is amended by revising the introductory text and paragraph (c) and, in the second sentence of paragraph (f), by revising the reference ''4 CFR 102.2(e)'' to read ''31 CFR 901.3(b)''. The revisions read as follows:

§ 204.33 Pre-offset notice.

A program official must provide an employee with written notice at least 30 calendar days prior to offseting his/her salary. A program official need not notify an employee of: any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, it the amount to be recovered was accumulated over four pay periods or less; a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment. When required, the written notice must include the following:

* * * * *

(c) The frequency and amount of the intended deductions (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

* * * * *

17. Section 204.35, paragraph (a) is amended by adding two sentences to the end to read as follows:

§ 204.35 Petition for pre-offset hearing.

(a) * * * To the extent that a debt has not been established by judicial or administrative order, a debtor may request a pre-offset hearing concerning the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, a debtor may request a pre-offset hearing concerning the payment or other discharge of the debt.

§ 204.36 [Amended]

18. Section 204.36, paragraph (b), second sentence, is amended by revising

the reference ''4 CFR 102.3(c)'' to read ''31 CFR 901.3(e)''.

§ 204.38 [Amended]

19. Section 204.38, paragraph (a), first sentence, is amended by revising the reference ''4 CFR 102.3(c)'' to read ''31 CFR 901.3(e)''.

§ 204.40 [Amended]

20. Section 204.40 is amended by:

a. Revising the reference ''4 CFR part 101'' in the introductory text of paragraph (b) to read ''the FCCS'';

b. Revising the reference ''4 CFR 102.13'' in paragraph (b)(2) to read ''the FCCS''; and

c. Revising the reference ''4 CFR 102.13'' in paragraph (e) to read ''31 CFR 901.9''.

21. Section 204.43 is amended by revising the reference ''4 CFR part 101'' in paragraph (a)(6) to read ''the FCCS'', and by revising the introductory text of paragraph (a) to read as follows:

§ 204.43 Coordinating offset with another federal agency.

(a) *Responsibility of the Commission as the Creditor Agency.* When possible, salary offset through the centralized administrative offset procedures in 5 CFR 550.1108 shall be attempted before applying the procedures in this section. If centralized administrative offset is not possible, the Commission shall request recovery from the current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, 5 CFR 550.1109 the Commission must:

* * * * *

§ 204.44 [Amended]

22. Section 204.44 is amended by revising the reference ''4 CFR 102.13'' to read ''31 CFR 901.9''.

Subpart C—Tax Refund Offset

23. The authority citation for Subpart C is revised to read as follows:

Authority: 31 U.S.C. 3720A, 31 CFR 285.2(c).

24. Section 204.50 is revised to read as follows:

§ 204.50 Purpose.

This subpart establishes procedures for the Commission's referral of past-due legally enforceable debts to the Department of the Treasury's Financial Management Service (FMS) for offset against the income tax refunds of the debtor.

25. Section 204.51 is removed and reserved.

§ 204.51 [Reserved]

26. Section 204.52 is amended by:

a. Revising paragraph (a);

b. Removing ''IRS'' in the introductory text of paragraph (b);

c. Revising the phrase ''the IRS to reduce'' to read ''a reduction of'' in paragraph (b)(2); and

d. Adding paragraph (c) to read as follows:

§ 204.52 Notification of intent to collect.

(a) *Notification before tax refund offset.* Reduction of an income tax refund will be made only after the Commission makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by tax refund offset.

* * * * *

(C) To the extent that a debt owed has not been established by judicial or administrative order, a debtor may dispute the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, Commission review will be limited to issues concerning the payment or other discharge of the debt.

27. Section 24.53 is removed and reserved.

§ 204.53 [Removed and reserved]

28. Section 204.54 is amended by:

a. Revising the phrase ''any notice to the IRS'' ''tax refund offset'' in the introductory text of paragraph (a);

b. Removing paragraph (b); and

c. Redesignating paragraph (c) as paragraph (b) and revising newly redesignated paragraph (b) to read as follows:

§ 204.54 Commission action as a result of consideration of evidence submitted in response to the notice of intent.

* * * * *

(b) *Commission action on the debt.* (1) The Commission will notify the debtor of its intent to offset against the debtor's Federal income tax refund if it sustains its decision that the debt is past-due and legally enforceable. The Commission will also notify the debtor whether the amount of debt remains the same or is modified; and

(2) The Commission will not request offset against the debtor's Federal income tax refund if it reverses its decision that the debt is past due and legally enforceable.

29. Section 204.55 is revised to read as follows:

§ 204.55 Change in notification to Financial Management Service.

After the Commission sends FMS notification of an individual's liability for a debt, the Commission will promptly notify FMS of any change in the notification, if the Commission:

(a) Determines that an error has been made with respect to the information contained in the notification;

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to FMS for offset; or

(c) If the debt amount is otherwise incorrect, except that the amount of a debt referred to FMS will not be increased unless the Commission has complied with the due process requirements of this subpart and the Federal Claims Collection Standards as to the amount of the increase.

30. Section 204.56 is revised to read as follows:

§ 204.56 Administrative charges.

To the extent permitted by law, all administrative charges incurred in connection with the referral of the debts for tax refund offset will be assessed on the debt and thus increase the amount of the offset.

§§ 204.57–204.59 [Reserved]

31. Subpart D is redesignated as Subpart E, and new Subpart D is added to read as follows:

Subpart D—Administrative Wage Garnishment

Sec.
204.60 Purpose.
204.61 Scope.
204.62 Definitions.
204.63 Notice.
204.64 Hearing.
204.65 Wage Garnishment Order.

Authority: 31 U.S.C. 3720D, 31 CFR 285.11(f).

§ 204.60 Purpose.

This subpart provides procedures for the Commission to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy a delinquent nontax debt owed to the United States.

§ 204.61 Scope.

(a) The receipt of payments pursuant to this subpart does not preclude the Commission from pursuing other debt collection remedies, including the offset of Federal payments to satisfy a delinquent nontax debt owed to the United States. The Commission may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(b) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the

wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

§ 204.62 Definitions.

The following definitions apply to this subpart:

Debt or *delinquent nontax debt* means any money, funds or property that has been determined to be owed to the Commission by an individual that has not been paid by the date specified in the demand or order for payment, or applicable agreement. For purposes of this subpart, the terms ''debt'' and ''claim'' are synonymous.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this subpart, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this subpart, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

§ 204.63 Notice.

(a) At least 30 days before the initiation of garnishment proceedings, the Commission will mail, by first class mail to the debtor's last known address, a written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The Commission's intention to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(3) An explanation of the debtor's rights, including those set forth in paragraph (b) of this section, and the time frame within which the debtor may exercise these rights.

(b) The debtor will be afforded the opportunity:

(1) To inspect and copy records related to the debt;

(2) To enter into a written repayment agreement with the Commission, under terms agreeable to the Commission; and

(3) To the extent that a debt owed has not been established by judicial or administrative order, to request a hearing concerning the existence or amount of the debt or the terms of the debt's repayment schedule. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(2) of this section.

(c) The notice required by this section may be included with the Commission's demand letter required by subpart A of this part.

(d) The Commission will keep a copy of the certificate of service indicating the date of mailing of the notice.

§ 204.64 Hearing.

(a) *Request for hearing.* The Commission will order a hearing, which at the Commission's option may be oral or written, if the debtor submits a written request for a hearing concerning, for debts not previously established by judicial or administrative order, the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under § 204.63(b)(2)), or for debts established by judicial or administrative order, the payment or other discharge of the debt.

(b) *Type of hearing or review.* (1) For purposes of this subpart, whenever the Commission is required to afford a debtor a hearing, the Commission will provide the debtor with a reasonable opportunity for an oral hearing when the Commission determined that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If the Commission determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the Commission. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(3) In those cases when an oral hearing is not required by this section, the Commission will nevertheless accord the debtor a ''paper hearing,'' that is, the Commission will decide the issues in dispute based upon a review of the written record.

(c) *Effect of timely request.* Subject to paragraph (l) of this section, if the debtor's written request is received by the Commission on or before the 15th business day following the mailing of the notice of the Commission's intent to seek garnishment, the Commission will not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with paragraphs (i) and (j) of this section has been rendered.

(d) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice of the Commission's intent to seek garnishment, the Commission shall provide a hearing to the debtor. However, the Commission will not delay issuance of a withholding order unless the Commission determines that the delay in filing the request was caused by factors over which the debtor had no control, or the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order.

(e) *Hearing official.* All hearings shall be presided over by the Commission, or if the Commission so orders, by a hearing official. When the Commission designates that the hearing official shall be an administrative law judge, the Chief Administrative Law Judge shall select, pursuant to 17 CFR 200.30–10, the administrative law judge to preside.

(f) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a written hearing.

(g) *Burden of proof.* (1) The Commission will have the burden of going forward to prove the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the

debtor, or that collection of the debt may not be pursued due to operation of law.

(h) *Record.* The hearing official will maintain a record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(i) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the Commission. If the Commission is unable to provide the debtor with a hearing and a decision is not rendered within sixty (60) days after the receipt of the request for such hearing:

(1) A withholding order will not be issued until the hearing is held and a decision rendered; or

(2) If a withholding order had previously been issued to the debtor's employer, the withholding order will be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(j) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(k) *Finality of agency action.* Unless the Commission on its own initiative orders review of a decision by a hearing official pursuant to 17 CFR 201.431(c), a decision by a hearing official shall become the final decision of the Commission for the purpose of judicial review under the Administrative Procedure Act.

(l) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a scheduled hearing will be deemed as not having timely filed a request for a hearing.

§ 204.65 Wage garnishment order.

(a) Unless the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order, the Commission will send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (*i.e.,* within 15 business days after the mailing of the notice of the Commission's intent to seek garnishment) or, if a timely request for a hearing is made by the debtor, within 30 days after a decision to issue a withholding order becomes final.

(b) The withholding order sent to the employer will be in the form prescribed by the Secretary of the Treasury, on the Commission's letterhead, and signed by the Chairperson or his or her delegatee. The order will contain the information necessary for the employer to comply with the withholding order. This information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) The Commission will keep a copy of the certificate of service indicating the date of mailing of the order.

(d) *Certification by employer.* Along with the withholding order, the Commission will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the Commission within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(e) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (e)(2) of this section.

(2) Subject to the provisions of paragraphs (e)(3) and (e)(4) of this section, the amount of garnishment shall be the lesser of:

(i) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(ii) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at U.S.C. 1673(a)(2) is the amount by which the debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage *See* 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority, the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (e)(2) of this section and shall have priority over other withholding orders which are served later in time. However, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (e)(2) of this section; or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to the Commission, the Commission may issue multiple withholding orders. The total amount garnished from the debtor's pay for such orders will not exceed the amount set forth in paragraph (e)(2) of this section.

(4) An amount greater than that set forth in paragraphs (e)(2) and (e)(3) of this section may be withheld upon the written consent of the debtor.

(5) The employer shall promptly pay to the Commission all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by the employee of the employee's earnings shall be void to the extent it interferes with or prohibits execution of the withholding order under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Commission to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(f) *Exclusions from garnishment.* The Commission will not garnish the wages of a debtor it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

(g) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the Commission of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(3) If a financial hardship is found, the Commission will downwardly adjust, by an amount and for a period of time agreeable to the Commission, the amount garnished to reflect the debtor's financial condition. The Commission will notify the employer of any adjustments to the amounts to be withheld.

(h) *Ending garnishment.* (2) Once the Commission has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the Federal Claims Collection Standards (31 CFR 901.9), the Commission will send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, the Commission will review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(i) *Actions prohibited by the employer.* The Debt Collection Act prohibits an employer from discharging, refusing to employ, or taking disciplinary action against the debtor due to the issuance of a withholding order under this section (31 U.S.C. 3720D(e)).

(j) *Refunds.* (1) If a hearing official determines that a debt is not legally due and owing to the United States, the Commission shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(k) *Right of action.* The Commission may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with this section. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations. For purposes of this section, ''termination of the collection action'' occurs when the agency has terminated collection action in accordance with the Federal Claims Collection Standards (31 CFR 903.1–903.5) or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the Commission has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

Subpart E—Miscellaneous: Credit Bureau Reporting, Collection Services

32. The authority citation for newly redesignated Subpart E continues to read as follows:

Authority: 31 U.S.C. 3701, 3711, 3718.

§ 204.76 [Amended]

33. Section 204.76, paragraph (a), fourth sentence, is amended by revising the reference ''31 U.S.C. 3711(f)'' to read ''31 U.S.C. 3711(e)''.

34. Section 204.77 is amended by removing paragraph (c) and by revising paragraphs (a) and (b)(5) to read as follows:

§ 204.77 Referrals to collection agencies.

(a) The Commission has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(a) and the Federal Claims Collection Standards (31 CFR 901.5).

(b) * * *

(5) The contractor must agree to provide any data in its files requested by the Commission upon returning the account to the Commission for subsequent referral to the Department of Justice for litigation.

By the Commission.

Dated: October 22, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26960 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 3814]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act—Diversity Visas

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: This rule makes final (with minor modification) the Department of State's interim regulations published in the **Federal Register** on July 31, 2001 (66 FR 39435).The July 31st rule amended the Department's regulations regarding registration for the Diversity Visa (DV) Program. The regulations were amended to clarify the Department's interpretation of the statute with respect to the DV Program and to further enhance the Department's ability to combat fraudulent practices in the DV Program. The rule also amended the regulations as they pertain to the use of the ''Dictionary of Occupational Titles'' formerly used to determine the required work experience since the document is no longer current. Consular officers must now make determinations regarding work experience based upon the U.S. Department of Labor's O*Net OnLine. [Further information may be found on the Consular Affairs website at *http://travel.state.gov.*] This rule makes final the Department's interim regulations with slight modification to the photograph requirements.

DATES: Effective date: This rule takes effect on October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Office of Legislation and Regulations, Visa Office, by phone (202) 663–1206, or by e-mail at *chavezpr@state.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Background for This Final Rule?

In an effort to eliminate fraudulent applications in the Diversity Visa (DV) Program, the Department published an interim rule [66 FR 39435], with a request for comments, which amended the regulations at 22 CFR 42.33 regarding registration for the DV Program. The interim rule amended the Department's regulations by requiring that the applicant sign the DV entry in his or her native alphabet as this more naturally fulfills the requirement for a usual and customary signature on the DV entry. The interim regulations also required that, beginning with the DV 2003 registration, the entry must include photographs of the applicant, the applicant's spouse, and all of his or her unmarried children under age 21 years (including natural children as well as legally-adopted children and stepchildren). Photographs for all dependents must be submitted regardless of their nationality. Photographs are required even though the spouse or child no longer resides with the applicant and regardless of whether or not the dependent will accompany or follow to join the applicant in the United States. The name and date of birth of the family member must be printed on the back of his or her photograph. The Department is publishing this final rule to make final the interim regulations.

What Comments Were Received in Response to the Interim Rule?

The Department's interim rule solicited comments regarding the regulatory changes. During the comment

period, the Department received only two comments. Both commenters felt that the Department should clarify further the photograph requirement for dependent children. The Department's interim regulation requires that the entry must include photographs of ALL children who are unmarried and under age of 21 years. The word ''all'' implies any child of the alien, regardless of nationality, and regardless of whether the child resides with the applicant and whether or not the child intends to immigrate to the United States.

In past years, the Diversity Visa Program has been plagued by a high incidence of fraudulent derivatives applying with the principal DV applicant. This causes delays in DV issuances at many posts as much time is spent by consular staff investigating alleged family relationships. For this reason, it was determined that for DV–2003, photos of all unmarried children under age 21 would be required on the DV entry. With this rule, the Department hopes to avoid a complicated range of exceptions to the photo requirement, and the regulations regarding photographs for dependents shall remain as published in the interim rule.

One of the commenters also expressed concern about the size of the photograph, indicating that it may be difficult in some countries to obtain a photograph of the required size. While the Department does not have any reason to believe that applicants will have difficulty obtaining photographs of the required size, for DV 2003, photographs ranging in size from 37 mm x 37 mm to 50 mm x 50 mm will be accepted on the DV entries. Any DV 2003 entry submitted with photos that do not conform to the sizes in this range will be disqualified at the Kentucky Consular Center. The commenter also feels that some of the specifications are redundant. The Department believes that the specifications for acceptable photographs are sufficiently detailed, and although perhaps redundant, are specific as to what meets the Department's needs, and are probably, as the commenter points out, the most common requirements for producing a photograph for any type of official documents. The Department has, therefore, determined that the photograph specifications indicated in the interim rule shall remain as published.

How Will This Final Rule Affect the Regulations in the Interim Rule?

The Department has reviewed the comments submitted during the comment period and has made some modification to the interim rule regarding the photograph size requirements.

List of Subjects in 22 CFR Part 42

Aliens, Documentation, Immigrants, Passports and visas.

In light of the foregoing the Department is amending the interim regulations at 22 CFR 42.33 as follows:

PART 42—[AMENDED]

1. The authority citation for Part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Amend § 42.33 by revising paragraph (b)(3) introductory text and paragraph (b)(3)(i) to read as follows:

§ 42.33 Diversity immigrants.

* * * * *

(b) * * *

(3) *Photographs.* The alien shall also affix to the entry a photograph of himself or herself and photographs of his or her spouse and all unmarried children under the age of 21 years. The photographs shall meet the following specifications:

(i) The photograph shall range in size from 37 mm x 37 mm to 50mm x 50mm.

* * * * *

Dated: October 9, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, U.S. Department of State.

[FR Doc. 01–27013 Filed 10–25–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 231

RIN 0790–AG74

Procedures Governing Banks, Credit Unions and Other Financial Institutions on DoD Installations; Correction

AGENCY: Department of Defense.

ACTION: Final rule; correction.

SUMMARY: On September 7, 2001 (66 FR 46707), the Department of Defense published a final rule on Procedures Governing Banks, Credit Unions and Other Financial Institutions on DoD Installations. This rule makes administrative corrections to the rule.

DATES: This rule is effective June 1, 2001.

FOR FURTHER INFORMATION CONTACT: T. Summers, 703–602–0299.

Accordingly, 32 CFR part 231 is corrected as follows:

In rule FR Doc 01–22173 published on September 7, 2001 (66 FR 46709), make the following corrections:

1. Page 46715, §§ 231.5(g)(5) (i) through (ix), add a period at the end of each paragraph.

2. Page 46720, § 231.8, correct the heading ''Overseas credit unions'' to read ''Procedures—overseas credit unions''

3. On page 46722, first column, § 231.8(f) is corrected to read § 231.9—Definitions.

4. Newly corrected § 231.9 (1) through (16)(i) and (ii) are redesignated as § 231.9 (a) through (p)(1) and (2) and § 231.9 (17) through (29) are redesignated as § 231.9 (q) through (cc)

Dated: October 16, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–26527 Filed 10–25–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–01–119]

RIN 2115–AE46

Special Local Regulations; Charleston Christmas Boat Parade and Fireworks Display, Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Charleston Christmas Boat Parade and Fireworks Display in Charleston Harbor, Charleston SC. These regulations restrict the movement of non-participating vessels in the regulated areas established around the parade route and fireworks barge in Charleston Harbor. These regulations are needed to provide for the safety of life on navigable waters during the event and to reduce the impact on commercial traffic in Charleston Harbor.

DATES: This rule is effective from 5 p.m. to 8 p.m. on December 1, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of [CGD07–01–119] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St, Charleston SC 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS William C. Walsh, Coast Guard Group Charleston at 843 724 7600 x203.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public. There will be numerous spectator and participant vessels in close proximity to each other. Moreover, publishing an NPRM is unnecessary since this regulation will only be in effect for 3 hours.

Background and Purpose

Each year a Christmas boat parade is held in Charleston Harbor, South Carolina. We previously issued a permanent special local regulation for this event, at 33 CFR 100.721. Under that regulation the parade was permitted for a specific series of dates. Those dates only covered the years 1996 through 2000. The event remains the same this year with the exception of the addition of a fireworks display. These temporary regulations will help control vessel traffic for the boat parade and fireworks display.

Discussion of Rule

The special local regulations for this event prohibit non-participant vessels from entering the regulated areas along the parade route and near the fireworks barge in Folly Island Channel. During the Christmas Boat Parade, non-participant vessels are required to stay 500 yards away from the lead parade vessel and 100 yards away from the last parade vessel. Non-participant vessels are also required to keep 50 yards away from the outermost parade vessel as the flotilla proceeds along the parade route.

The parade route begins in the Middle Ground, North of Charleston South Channel. The parade will proceed northeasterly along the west edge of Commercial Anchorage A, entering Rebellion Reach in the vicinity of Charleston Harbor Channel Lighted Buoy 2 (Light List Number 2520), thence proceeding northwesterly up Shutes Folly and Horse Reach to approximately two-tenths of a nautical mile north of USS Yorktown at position 32°47.7′N, 079°47.6′W, thence westerly across Hog Island Reach near Charleston Harbor North Channel Lighted Buoy 11 (Light List Number 2529) at approximate position 32°47.6′N, 079°55.1′W, entering Town Creek Lower reach near Town Creek Channel Lighted Buoy 2 (Light List Number 2715) at approximate position 32°47.7′N, 079°55.5′W thence south to 32°45.7′N, 079°55.3′W (approximately one half nautical mile southeast of Battery Point), thence northwesterly up the Ashley River, and continuing to the finishing point at City Marina at approximate position 32°46.6′N, 079°57.2′W.

Vessels are also prohibited from entering the regulated area encompassing the fireworks barge in Folly Island Channel. The regulated area encompasses a 300 yard radius around a fireworks barge in approximate position 32°46.192N, 079°54.327W. All coordinates referenced use datum: NAD 1983. This rule is effective from 5 p.m. to 8 p.m. on December 1, 2001.

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) because this rule is only in effect for 3 hours.

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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Charleston Harbor from 5 p.m. to 8 p.m. on December 1, 2001. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this regulation is only in effect for 3 hours.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This rule will not result in such an expenditure.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 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 safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast guard amends 33 CFR Part 100 as follows:

PART 100—[SAFETY OF LIFE ON NAVIGABLE WATERS]

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

Authority: 33 U.S.C. 1233 through 1236, 49 CFR 1.46, and 33 CFR 100.35.

2. Add § 100.35T–07–119 to read as follows:

§ 100.35T–07–119 Charleston Christmas Boat Parade and Fireworks Display, Charleston Harbor, Charleston SC.

(a) *Regulated areas.* (1) *Charleston Christmas Boat Parade.* A regulated area is established to include the waters 500 yards ahead of the lead parade vessel, 100 yards astern of the last parade vessel, and 50 yards to either side of all parade vessels along the parade route described in paragraph (b) of this section.

(2) *Fireworks display.* A regulated area is established for all waters in Folly Island Channel, Charleston Harbor, Charleston SC encompassing a 300 yard radius around a fireworks barge in approximate position 32°46.192N, 079°54.327W. All coordinates referenced use datum: NAD 1983.

(b) *Parade route.* The parade will organize in the Middle Ground, North of Charleston South Channel. The parade will proceed northeasterly along the west edge of Commercial Anchorage A, entering Rebellion Reach in the vicinity of Charleston Harbor Channel Lighted Buoy 2 (Light List Number 2520), thence proceeding northwesterly up Shutes Folly and Horse Reach to approximately two-tenths of a nautical mile north of USS Yorktown at position 32°47.7′N, 079°47.6′W, thence westerly across Hog Island Reach near Charleston Harbor North Channel Lighted Buoy 11 (Light List Number 2529) at approximate position 32°47.6′N, 079°55.1′W, entering Town Creek Lower reach near Town Creek Channel Lighted Buoy 2 (Light List Number 2715) at approximate position 32°47.7′N, 079°55.5′W thence south to 32°45.7′N, 079°55.3′W (approximately one half nautical mile southeast of Battery Point), thence northwesterly up the Ashley River, and continuing to the finishing point at City Marina at approximate position 32°46.6′N, 079° 57.2′W.

(c) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated in writing by the Commander, Coast Guard Group Charleston, South Carolina.

(d) *Special local regulations.* Non-participating vessels are prohibited from entering the regulated areas unless authorized by the Coast Guard Patrol Commander. Spectator craft may remain in the designated spectator area to be established by the event sponsor, The Charleston Cultural Affairs Office.

(e) *Dates:* This section is effective from 5 p.m. to 8 p.m. on December 1, 2001.

Dated: October 18, 2001.

D.B. Peterman,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 01–26992 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–01–121]

RIN 2115–AE46

Special Local Regulations; Waverly Hotel Fireworks Display, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for a fireworks display for the Waverly Hotel Opening in Biscayne Bay, Miami, FL. These regulations prohibit unauthorized vessels from entering the regulated area. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 7 p.m. to 10 p.m. on November 16, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD07–01–121 and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM1 Daniel C. Vaughn, Coast Guard Group Miami, at 305–535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the effective date of this regulation would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public because there will be numerous spectator craft in the area where fireworks will be launched. Moreover, a NPRM is unnecessary because the regulation will have a minimal impact on the public because the regulated area is outside of the shipping channel and the regulation is only in effect for 3 hours.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger associated with storing and launching fireworks near spectator craft. This fireworks display is to celebrate the opening of the Waverly Hotel in Miami, FL. These regulations prohibit unauthorized vessels from entering the regulated area around a fireworks barge in Biscayne Bay on November 16, 2001.

Discussion of Rule

This rule creates a regulated area around a fireworks barge in Biscayne Bay, Miami, Florida. All vessels are required to keep out of the regulated area, 1600 feet in diameter around the fireworks barge in Biscayne Bay, FL, at approximate position 25°46.618N, 080°08.4W unless specifically authorized by the Coast Guard Patrol Commander. All coordinates referenced use Datum NAD: 83. This rule is effective from 7 p.m. until 10 p.m. on November 16, 2001.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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) because this temporary rule will only be in effect for 3 hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the regulated area in Biscayne Bay, FL from 7 p.m. to 10 p.m. on November 16, 2001. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the regulation will only be in effect for 3 hours.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHUR INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

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

PART 100—[SAFETY OF LIFE ON NAVIGABLE WATERS]

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

Authority: 33 U.S.C. 1233 through 1236, 49 CFR 1.46, and 33 CFR 100.35.

2. Add § 100.35T–07–121 to read as follows:

§ 100.35T–07–121 Waverly Hotel Opening Fireworks Display, Biscayne Bay, Miami, FL.

(a) *Regulated area.* A regulated area is established 1600 feet in diameter around a barge in Biscayne Bay, FL, at approximate position 25°46.618N, 080°08.4W. All coordinates referenced use Datum NAD: 83.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Station Miami Beach.

(c) *Special local regulations.* Unauthorized vessels are prohibited from entering the regulated area without the permission of the Coast Guard Patrol Commander.

(d) *Dates:* This rule is effective from 7 p.m. until 10 p.m. on November 16, 2001.

Dated: October 18, 2001.

D.B. Peterman,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 01–26993 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–142]

RIN 2115–AE47

Drawbridge Operation Regulations:Dorchester Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the William T. Morrisey Boulevard Bridge, at mile 0.0, across Dorchester Bay at Boston, Massachusetts. This temporary change to the drawbridge operation regulations will allow the bridge to remain in the closed position from November 1, 2001 through May 10, 2002. This action is necessary to facilitate necessary maintenance at the bridge.

DATES: This rule is effective from November 1, 2001 through May 10, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–01–142) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 11, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Dorchester Bay, Massachusetts, in the **Federal Register** (66 FR 47123). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held. Pursuant to 5 U.S.C. 553, good cause exists for making this regulation effective in less than 30 days after publication in the **Federal Register**. The Coast Guard discussed the bridge closure with the members of the only marine facility, the Dorchester Yacht Club, effected by this change in operating regulations prior to publication of the notice of proposed rulemaking and no objections were received.

The NPRM specified that we anticipated that the final rule would become effective less than 30 days following publication. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to perform this project during the winter months when there have been few requests to open the bridge.

Background and Purpose

The William T. Morrisey Boulevard Bridge, at mile 0.0, across Dorchester Bay has a vertical clearance of 12 feet at mean high water and 22 feet at mean low water. The existing regulations at 33 CFR 117.597 require the draw to open on signal from April 16 through October 14; except that, the draw need not open for vessel traffic from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the draw shall open on signal if at least twenty-four hours notice is given.

The bridge owner, the Metropolitan District Commission (MDC), asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position from November 1, 2001 through May 10, 2002, to facilitate rehabilitation construction at the bridge. The bridge owner and the Coast Guard contacted all known waterway users to advise them of the proposed closure. No objections or negative comments were received in response to this proposal.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

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). This conclusion is based on the fact that the only marine facility affected by this rule has agreed to the closure period for the bridge.

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. ''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 less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the only marine facility affected by this rule has agreed to the closure period for the bridge.

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 Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs 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 unfunded mandate 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 Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 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

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.597 [Suspended]

2. From November 1, 2001 through May 10, 2002, § 117.597 is suspended.

3. From November 1, 2001 through May 10, 2002, § 117.T602 is temporarily added to read as follows:

§ 117.T602 Dorchester Bay.

The draw of the William T. Morrisey Boulevard Bridge, mile 0.0, at Boston, need not open for the passage of vessel traffic.

Dated: October 12, 2001.

G.N. Naccara,

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

[FR Doc. 01–26994 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–140]

RIN 2115–AA97

Security Zone; Sault Locks, St. Mary's River, Sault Ste. Marie, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone around the Sault Locks in Sault Ste. Marie, Michigan. This regulation is necessary to provide additional protection for the locks due to terrorist attacks that occurred on September 11, 2001. The security zone is intended to restrict vessel traffic movement through and around the Sault Locks.

DATES: This rule is effective from 1 p.m. October 11, 2001 until 1 p.m. June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–140] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Joe Cost, Chief, Coast Guard Marine Safety Office Sault Ste. Marie, MI, (906) 635–3220.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to public interest. Immediate action is necessary to ensure the safety of life, property, the environment, as well as safe passage for vessels transiting this area. The conduct of notice and comment rulemaking proceedings and compliance with advance notice requirements present significant public security and safety concerns that outweigh the public interest in compliance with these provisions. Public rulemaking proceedings and advance publication could provoke consequences that would pose a risk of harm to the public, military personnel, and law

enforcement personnel charged with enforcement of the security zone. This regulation is geographically limited so that it meets the needs of national security with a minimal burden on the public.

Background and Purpose

The security zone is established to provide additional protection of the locks in response to the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York City and on the Pentagon in Arlington, Virginia. The security zone is intended to restrict vessel traffic movement through and around the Sault Locks. All persons and vessels shall comply with the instructions of the Captain of the Port Sault Ste. Marie or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the security zone is prohibited unless authorized by the Captain of the Port Sault Ste. Marie or his designated on scene representative. The Captain of the Port Sault Ste. Marie may be contacted via the VTS at telephone number (906) 635–3232 or on VHF channel 12 (156.6 MHz) or VHF channel 14 (156.7 MHz).

Regulatory Evaluation

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

The security zone covers a vital portion of the St. Mary's River transited by commercial and recreational vessels and is being created to protect the Sault locks. The Coast Guard does foresee minor interruption to the passage of vessels through this area. While vessels will need authorization to transit the zone, the Coast Guard expects minimal interference with or delay in their passage.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and government jurisdictions with populations less than 50,000.

The Coast Guard certifies under section 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the St. Mary's River up-river, between, and down-river of the Sault Locks immediately until terminated by COTP Sault Ste. Marie.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic will be allowed to pass through the zone with the permission of the COTP or his designated on scene representative.

Assistance for Small Entities

Under section 213(a) of the small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for Federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs 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 unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–118 is added to read as follows:

§ 165.T09–118 Security Zone; St. Mary's River and St. Mary's Falls Canal, Sault St. Marie, MI.

(a) *Location.* The following area is a security zone: beginning at a line drawn from 46° 29.94′ N, 084° 20′ W to 46°

30.21′ N, 084° 20′ W (these coordinates are on opposite sides of the St. Mary's River and east of the Sault Locks); proceeding in a westerly direction, encompassing all waters in the river along the St. Mary's River and St. Mary's Falls Canal past the Sault Locks, to a line drawn from 46°29.86′ N, 084° 23′ W to 46° 30.27′ N, 084° 23′ W (these coordinates are on opposite sides of the St. Mary's River, west of the Sault locks). These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective dates.* This section is effective from 1 p.m. October 11, 2001 until 1 p.m. June 15, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Sault Ste. Marie, Michigan. The general regulations of § 165.33 of this part apply.

(2) Persons desiring to transit the area of the security zone must first notify the Captain of the Port Sault Ste. Marie via the Vessel Traffic Service (VTS) at telephone number (906) 635–3232 or on VHF channel 12 (156.6 MHz) or VHF channel 14 (156.7 MHz) and receive permission to transit the area. Approval will be made on a case-by-case basis.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Sault Ste. Marie or the designated on-scene patrol personnel.

Dated: October 11, 2001.

C. S. Gordon,

Captain, U.S. Coast Guard, Captain of the Port Sault Ste. Marie, MI.

[FR Doc. 01–27053 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4185; FRL–7089–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Post 1996 Rate-of-Progress Plan and One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the State Implementation Plans (SIPs) consisting of the Post 1996 rate-of-progress (ROP) plans and the one-hour ozone attainment demonstration for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area). These control strategy plans were submitted by the Pennsylvania Department of Environmental Protection (PADEP). The measures that have been adopted by the Commonwealth which comprise the control strategies of the Post-1996 ROP plans and the one-hour ozone attainment demonstration have and will result in significant emission reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the Philadelphia area. The intended effect of this action is to approve these SIP revisions as meeting the requirements of the Clean Air Act (CAA or the Act). The Philadelphia area is comprised of two counties in Delaware, one county in Maryland, seven counties in New Jersey, and five counties in Pennsylvania, namely Bucks, Chester, Delaware, Montgomery, and Philadelphia counties.

DATES: This final rule is effective on November 26, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jill Webster, (215) 814–2033 at the EPA Region III office above or by e-mail at Webster.Jill@epa.gov.

SUPPLEMENTARY INFORMATION:

This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

A. What action is EPA taking in this final rulemaking?
B. What previous action has been proposed on these SIP Revisions?
C. What were the conditions for approval provided in the Notice of Proposed Rulemaking for the attainment demonstration?
D. What amendments to the attainment demonstration SIP did Pennsylvania submit for the Philadelphia area since December 16, 1999?
E. What did the Supplemental Notices of Proposed Rulemaking cover?
F. When did EPA make a determination regarding the adequacy of the Motor Vehicle Emissions Budgets for the Philadelphia area?
G. Upon what SIP elements did EPA need to take final action before or concurrently with full approval of the attainment demonstration could be granted?
H. What measures are in the control strategy for the Post 1996 plan and the attainment demonstration?
I. What are the approved transportation conformity budgets, and what effects does this action have on transportation planning?
J. What happens to the approved 2005 budgets when States change their budgets using the MOBILE6 Model?
K. What is the Status of Pennsylvania's New Source Review (SIP)?
L. What comments were received on the proposed approvals and how has EPA responded to them?

A. What Action Is EPA Taking in This Final Rulemaking?

EPA is fully approving as meeting the requirements of section 182(c)(2) and (d) of the Act, the Post 1996 ROP plans and the one-hour attainment demonstration SIP, demonstrating attainment by November 2005, which were submitted by Pennsylvania for the Philadelphia area. The following tables identify submittal dates and amendment dates for the Post 1996 ROP plans and the attainment demonstration:

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SUBMITTAL DATES

	Date	Content
Initial submittal	April 30, 1998	Attainment demonstration.
Amendment	August 21, 1998	Supplement to the Attainment Demonstration for Regional Scale Modeling.
Amendment	February 25, 2000	Revised Motor Vehicle Emissions Budgets to Include Benefits from the National Low Emission Vehicle (NLEV) Program and Heavy Duty Diesel Engine (HDDE) Rule.

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SUBMITTAL DATES—Continued

	Date	Content
Amendment	July 31, 1998 & February 25, 2000	Commitments to Adopt Needed Measures for Attainment.
Amendment	July 19, 2001	Revised Motor Vehicle Emission Budgets to Include the Benefits from the Tier 2/Sulfur-in-fuel Rule.
Amendment	July 19, 2001	Reasonably Available Control Measures Analysis.

TABLE 2.—SUMMARY OF POST–1996 ROP SUBMITTAL DATES

	Date	Content
Initial submittal	July 31, 1998	ROP thorough 1999.
Initial submittal	April 30, 1998	ROP thorough 2005.
Amendment	February 25, 2000	Revised Motor Vehicle Emissions Budgets to Include Benefits from the NLEV Program and HDDE Rule.

B. What Previous Action Has Been Proposed on These SIP Revisions?

In a December 16, 1999 (64 FR 70428) notice of proposed rulemaking (the December 16, 1999 NPR), we proposed approval of Pennsylvania's 2005 attainment demonstration for the Philadelphia area.

On February 22, 2000 (65 FR 8703), EPA published a notice of availability on guidance memoranda relating to the ten one-hour ozone attainment demonstrations (including the Philadelphia area) proposed for approval or conditional approval on December 16, 1999. The guidance memoranda are entitled: ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations'' dated November 3, 1999, and ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas'' dated November 30, 1999.

On July 28, 2000 (65 FR 46383), EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration. In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in attainment demonstration SIP revisions. This supplemental notice is discussed in Section I.E. of this document.

On August 24, 2001 (66 FR 44568), EPA published a NPR proposing to approve Pennsylvania's Post 1996 plans for the Philadelphia area. We did not receive any comments on that NPR. In this final rulemaking action, we are approving the Post 1996 ROP plans submitted by Pennsylvania from 1996 through the 2005 attainment year.

On August 30, 2001 (66 FR 45797), EPA published a SNPR on the attainment demonstration. In that supplemental notice, we proposed to approve Pennsylvania's analysis and determination that there are no additional reasonably available control measures (RACM) for the area. We received no comments on that SNPR.

Comments received on the December 16, 1999 (64 FR 70428) and July 28, 2000 (65 FR 46383) proposed actions listed in this section relevant to the Philadelphia area attainment demonstration are discussed in Sections I. K. and II.

C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemaking for the Attainment Demonstration?

On December 16, 1999 (64 FR 70428), we proposed approval of the attainment demonstration submitted by the Commonwealth of Pennsylvania for the Philadelphia area. Our approval was contingent upon certain actions by Pennsylvania. These actions were to:

(1) Adopt and submit adequate motor vehicle emissions budgets.

(2) Submit a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to further reduce emissions to support the attainment test and a commitment that these measures would not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget.

(3) Adopt and submit a rule(s) for the regional NO_X reductions consistent with the modeling demonstration.

(4) Adopt and submit an enforceable commitment(s), or a reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and for additional emission reduction measures developed through the regional process, submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the regional process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP & motor vehicle emissions budget by October 31, 2001 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budgets 1 year after MOBILE6 issued.

(d) Perform a mid-course review by December 31, 2001.

D. What Amendments to the Attainment Demonstration SIP Did Pennsylvania Submit for the Philadelphia Area Since December 16, 1999?

Since December 16, 1999, Pennsylvania has submitted a number of amendments to the Pennsylvania SIP for Philadelphia:

(1) On February 25, 2000, the Commonwealth submitted the ''State Implementation Plan Revision to the Philadelphia Ozone Nonattainment Area'' dated January, 2000. This submittal contained the revised motor vehicle emissions budgets for the Post 1996 ROP plans and the attainment demonstration. The revised motor vehicle emissions budgets reflected the benefits achieved from the NLEV program and the HDDE rule.

(2) In the February 25, 2000 submittal, the Commonwealth included a commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE 6 model.

(3) On February 25, 2000, the Commonwealth also submitted a letter reaffirming a previous commitment to adopt additional measures needed to reach attainment by October 31, 2001

and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory in accordance with the requirements of the CAA. In its February 25, 2000 letter, the Commonwealth enclosed a copy of the Southeastern Pennsylvania's Stakeholder's report which includes a list of potential control measures that the work group identified and considered during the Stakeholder's process.

(2) On July 19, 2001 the Commonwealth submitted a revision to its 2005 attainment demonstration SIP which includes revised attainment year motor vehicle emissions budgets for the Philadelphia area. The revised motor vehicle emissions budgets reflect the benefits of the Tier 2/Sulfur rule estimated for the Philadelphia area. The Commonwealth also included in the July 19, 2001 submittal a formal SIP commitment to perform a mid course review by December 31, 2003.

(3) On July 19, 2001, the Commonwealth also submitted a supplement to its 2005 attainment demonstration SIP submittal consisting of a RACM analysis and determination.

E. What Did the Supplemental Notices of Proposed Rulemaking Cover?

(1) On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the 2005 attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in this attainment demonstration SIP revision:

(a) First, we proposed a clarification of what occurs if we finalize conditional or full approval of this and certain other attainment demonstration SIP revisions based on a state commitment to revise the SIP's motor vehicle emissions budgets in the future. Under the proposal, the motor vehicle emissions budgets in the approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment and we have found the new budgets adequate. Once we have found the newly revised budgets adequate, then they would apply instead of the previous conditionally or fully approved budgets. Normally, revisions to approved budgets cannot be used for conformity purposes until we approve the revised budgets into the SIP. Therefore, we proposed to clarify that when our approval of this and certain other 1-hour ozone attainment demonstrations is based on a commitment to future revisions to the budget, our approval of the budget lasts only until revisions to satisfy those conditions are submitted and we find them adequate.

(b) Second, we proposed that States may opt to commit to revise their emissions budgets 1 year after the release of the MOBILE6 model, as originally proposed on December 16, 1999; or, States may commit to a new option, i.e., to revise their budgets 2 years following the release of the MOBILE6 model, provided that conformity is not determined without adequate MOBILE6-derived SIP budgets during the second year. This second option did not affect the Philadelphia area because Pennsylvania has submitted an enforceable commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE6 model.

(c) In addition, we reopened the comment period to take comment on these two issues and to allow comment on *any* additional materials that were placed in the dockets for the proposed actions, close to or after the initial comment period closed on February 14, 2000 (65 FR at 46383, July 28, 2000). For many of the areas, additional information had been placed in the docket close to or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the States (65 FR at 46387, July 28, 2000).

(2) On August 24, 2001 (66 FR 44571), EPA published a SNPR for Pennsylvania's attainment demonstration for the Philadelphia area. In that supplemental notice, we proposed to approve Pennsylvania's revision to the motor vehicle emissions budgets for the attainment year of 2005 which reflected the benefits of the Federal Tier 2/Sulfur rule. In that SNPR, we also proposed to approve the Commonwealth's formal SIP commitment to perform a mid-course review by December 31, 2003. We received no comments on that SNPR.

(3) As noted earlier, on August 24, 2001 (66 FR 44568), EPA published a NPR proposing to approve Pennsylvania's Post 1996 plans for the Philadelphia area. We did not receive any comments on that NPR. In this final rulemaking action, we are approving the Post 1996 ROP plans submitted by Pennsylvania from 1996 through the 2005 attainment year.

(4) On August 30, 2001 (66 FR 45797), EPA published a SNPR on the attainment demonstration. In that supplemental notice, we proposed to approve Pennsylvania's RACM analysis and determination for the Philadelphia area. We received no comments on that SNPR.

F. When Did EPA Make a Determination Regarding the Adequacy of the Attainment Motor Vehicle Emissions Budgets for the Philadelphia Area?

Pennsylvania submitted a revision to the attainment plan SIP for the Philadelphia area on July 19, 2001. This revision contained revised motor vehicle emissions budgets for the attainment year of 2005 that reflected the benefits of the Federal Tier 2/Sulfur rule.[1]

On August 24, 2001 (66 FR 44571), we proposed to approve and proposed to find adequate the budgets in Pennsylvania's July 19, 2001 submittal of the revised attainment plan. Our August 24, 2001 proposed rulemaking opened a public comment period to take comment on the approvability and adequacy of the budgets. No public comments were received pursuant to the August 24, 2001 proposed rulemaking. We are fully approving and making a determination of adequacy in this final rule for the budgets for the Pennsylvania portion of the Philadelphia area submitted on July 19, 2001.

Pennsylvania has an acceptable commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model, and EPA is approving that commitment in this final rulemaking.

G. Upon What SIP Elements Did EPA Need to Take Final Action Before Full Approval of the Attainment Demonstration Could be Granted?

In the December 16, 1999 NPR for the Pennsylvania attainment demonstration SIP, EPA noted in Tables 3 through 6 the status of many of the control measures or part D requirements of the Act for serious and severe areas. The following provides the status of those SIP elements which are relied on in the attainment demonstration but which

[1] In the December 16, 1999 NPR, we proposed to disapprove the attainment demonstration if Pennsylvania did not submit motor vehicle emissions budgets for this area that EPA could find adequate by May 31, 2000 (see 64 FR at 70433). The budgets subject to this May 31, 2000 deadline did not necessarily have to account for Federal Tier 2/Sulfur rle reductions. On February 25, 2000 Pennsylvania submitted a SIP revision that included motor vehicle emissions budgets for the 2005 attainment year that did not include the benefits of the Federal Tier 2/Sulfur rule. EPA had determined that these budgets were adequate by the May 31, 2000 deadline (June 8, 2000 at 65 FR 36438). Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button).

were not fully approved as of December 16, 1999:

(1) On December 28, 1999, EPA approved Pennsylvania's NLEV SIP (64 FR 72564).

(2) On June 6, 2000, EPA approved Pennsylvania's NO_X OTC MOU Phase II rule(65 FR 35842).

(3) On August 21, 2001, EPA approved Pennsylvania's NO_X Budget Rule (66 FR 43795).

(4) On August 24, 2001, EPA approved Pennsylvania's, 15 percent VOC Reduction Plan (66 FR 44547).

(5) On October 15, 2001, EPA signed a final rule converting its limited approval of Pennsylvania's generic NO_X and VOC RACT regulations to a full approval as they apply in the Philadelphia area. This final rule has been or will be published in the **Federal Register** in the near future.

As stated previously, in this final rulemaking action, we are approving the Post 1996 ROP plans submitted by Pennsylvania from 1996 through the 2005 attainment year. These plans demonstrate ROP for milestone years 1999, 2002, and 2005.

H. What Measures Are in the Control Strategy for the Post-1996 Plans and the Attainment Demonstration?

TABLE 3.—CONTROL MEASURES IN THE 1-HOUR OZONE POST–1996 ROP AND ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA NONATTAINMENT AREA

Control measure	Type of measure	Credited in post–1996 plan for which milestone years	Credited in attainment plan
Enhanced Inspection & Maintenance.	Approved SIP	Yes—1999 through 2005	Yes
Federal Motor Vehicle Control program.	Federal	Tier 1—1999 through 2005	Tiers 1 and 2
NLEV [1]	Approved SIP opt-in	Yes—1999 through 2005	Yes
Reformulated Gasoline (Phase 1 & 2).	Federal	Phase 1—1999 Phase 2—2002 and 2005	Phase 2
Federal Non-road Gasoline Engine standards.	Federal	Yes—1999 through 2005	Yes
Federal Non-road Heavy Duty diesel engine standards.	Federal	Yes—1999 through 2005	Yes
NO_X RACT	Approved SIP	Yes—1999 through 2005	Yes
VOC RACT	Approved SIP	Yes—1999 through 2005	Yes
Stage II Vapor Recovery & On-board Refueling Vapor Recovery (ORVR).	Approved SIP Federal	Yes—1999 through 2005	Yes
AIM Surface Coatings	Federal	Yes—1999 through 2005	Yes
Consumer & commercial products	Federal	Yes—1999 through 2005	Yes
Rule Effectiveness for Point Sources [2].	Approved SIP	Yes—1999 through 2005	Yes
Shutdowns [2]	Approved SIP	Yes—1999 through 2005	Yes
Autobody refinishing	Federal/Approved SIP	Yes—1999 through 2005	Yes
Treatment, Storage, and Disposal Facilities.	Federal	Yes—1999 through 2005	Yes
Heavy Duty Diesel Engines (On-road).	Federal	Yes—2005	Yes
Beyond RACT NO_X Requirements on Utilities.	Approved SIP	Yes—1999 through 2005	Yes

Notes:
1. To the extent NLEV not superseded by Tier 2.
2. These state initiatives and credits are approved as part the of the Post–96 ROP plan.

I. What Are the Approved Transportation Conformity Budgets, and What Effects Does This Action Have on Transportation Planning?

(1) What Are the Approved Transportation Conformity Budgets in the Post-1996 ROP Plan and the Attainment Demonstration?

EPA has determined that the budgets in the Post–1996 ROP plan and the attainment demonstration are adequate. In this action EPA is approving these budgets which are listed in Table 4. by type of control strategy SIP.[2] Table 4. also provides the amounts of the budgets in tons per day (TPD), the year associated with the budgets, and the effective date of EPA's adequacy determination for those budgets.

[2] Note that the 2005 ROP budgets do not include the Federal Tier2/sulfur rule benefits. The 2005 attainment budgets do include the Federal Tier2/sulfur rule benefits.

TABLE 4.—TRANSPORTATION CONFORMITY BUDGETS FOR THE PHILADELPHIA AREA

Control strategy SIP	Year	VOC TPD	NO_X	Date of adequacy determination
Post–1996 ROP Plan	1999	88.6	109.6	June 23, 2000 (65 FR 36438, June 8, 2000)
Post–1996 ROP Plan	2002	69.52	93.13	June 23, 2000 (65 FR 36438, June 8, 2000)
Post–1996 ROP Plan	2005	61.76	86.42	June 23, 2000 (65 FR 36438, June 8, 2000)
Attainment Demonstration	2005	60.18	77.46	November 26, 2001

For a conformity analysis for year 2005, conformity must be shown to both sets of 2005 budgets, which effectively means that conformity must be demonstrated to the lower of the 2005 budgets. For conformity analysis year for any year after 2005, the attainment demonstration budgets are the applicable budgets.

EPA has concluded that these SIP revisions meet the requirements of the CAA applicable to the type of control strategy SIP, that is, demonstrates attainment or ROP, with the applicable budgets and contains the measures necessary to support these budgets. In this final action, EPA is approving these budgets.

(2) Is a Requirement to Redetermine Conformity Within 18-months Under Section 93.104 of the Conformity Rule Triggered?

Our conformity rule establishes the frequency by which transportation plans and transportation improvement programs must be found to conform to the SIP and includes trigger events tied to both submittal and approval of a SIP (40 CFR 93.104(e)). Both initial submission and initial approval trigger a redetermination of conformity. This final rule approves motor vehicle emissions budgets contained in the attainment demonstration and the Post 1996 ROP plans. We are advising affected transportation planning agencies that this final approval of the budgets in listed in Table 3 will require a re-determination that existing transportation plans and TIPs conform within 18 months of the effective date listed in the DATE Section of this document. See 40 CFR 93.104(e).

(3) What Happens to the Prior Restrictions on the Use of the Benefits of Federal Tier 2/Sulfur Rule in Conformity Determinations

In our December 16, 1999 NPR, we allowed States to submit motor vehicle emissions budgets that did not reflect the benefits of EPA's Tier 2/Sulfur rule. In that NPR, we explained that conformity analyses in the Pennsylvania portion of the Philadelphia area could begin including Tier 2/Sulfur program benefits once EPA's Tier 2/Sulfur rule was promulgated, provided that the attainment demonstration SIP and associated motor vehicle emissions budgets include the Tier 2/Sulfur benefits. For an area that requires all or some portion of the Tier 2/Sulfur benefits to demonstrate attainment but had not yet included the benefits in the motor vehicle emissions budgets, we noted that our adequacy finding will include a condition that conformity determinations may not take credit for Tier 2/Sulfur until the SIP budgets are revised to reflect Tier 2/Sulfur benefits.

On February 25, 2000, the Commonwealth submitted 2005-year motor vehicle emissions budgets for the Pennsylvania portion of the Philadelphia area that did not include the benefits from the Tier 2/Sulfur rule. These 2005-year motor vehicle emissions budgets applied to two separate types of control strategy SIP revisions: (1) rate-of-progress and (2) attainment. On May 31, 2000 (Letter from Katz to Salvaggio), EPA notified PADEP that the motor vehicle emissions budgets submitted on February 25, 2000 were adequate (see 65 FR 36438, June 8, 2000). That adequacy finding included a condition precluding the use of the emission reduction benefits from the Tier 2/Sulfur rule in conformity determinations.

As previously explained, on July 19, 2001, the Commonwealth submitted revised motor vehicle emissions budgets for the 2005 attainment demonstration SIP for the Pennsylvania portion of the Philadelphia area that did include the benefits from the Tier 2/Sulfur rule. We are approving the revised motor vehicle emissions budgets submitted by the Commonwealth on July 19, 2001 (which now reflect the Tier 2/Sulfur rule benefits). On November 26, 2001, the effective date of this approval of the 2005-year attainment motor vehicle emissions budgets submitted by Pennsylvania on July 19, 2001, supplant those attainment motor vehicle emissions budgets submitted on February 25, 2000, and become the budgets for the Pennsylvania portion of the Philadelphia area to which all future transportation plans and transportation improvement programs (TIPs) must conform (until replaced by the revised budgets discussed in Section I. J.); and the restriction on the use of the benefits from the Federal Tier 2/Sulfur rule in a conformity determination is removed.

J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?

All states whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. On February 25, 2000, Pennsylvania submitted a commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. In this action, EPA is approving this commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. If Pennsylvania fails to meet its commitment to submit revised budgets using the MOBILE6 model, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

As we proposed in our July 28, 2000 SNPR (65 FR 46383), today's final approval of the budgets contained in the 2005 attainment plan will be effective for conformity purposes only until such time as revised motor vehicle emissions budgets are submitted (pursuant to the commitment to submit revised budgets using the MOBILE6 model within one year of EPA's release of that model) and we have found those revised budgets adequate. We are only approving the attainment demonstration and its current budgets because Pennsylvania has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Pennsylvania has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP

consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

K. What Is the Status of Pennsylvania's New Source Review (SIP)?

The EPA approved the Commonwealth's NSR program on December 9, 1997 (62 FR 64722). As stated in the preamble of the proposed (62 FR 25060, May 2,1997) and final rulemaking notices, EPA's approval was limited in nature. EPA's sole reason for granting limited approval rather than full approval of Pennsylvania's NSR regulations was that they do not contain certain restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets. These restrictions, however, only apply in nonattainment areas without an approved attainment demonstration [see 40 CFR part 51.165(a)(ii)(C)]. As EPA is, today, taking final action to approve Pennsylvania's attainment demonstration SIP for the Philadelphia area, the Commonwealth's SIP-approved NSR program's lack of restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets, applicable only in nonattainment areas *without* an approved attainment demonstration, is a moot issue. EPA has already removed the limited nature of its approval of Pennsylvania's NSR program in all areas of the Commonwealth except for its portion of the Philadelphia area (Philadelphia, Delaware, Chester, Montgomery, and Bucks counties). Now that we have approved the attainment demonstration for the Philadelphia area, we intend to remove the limited nature of our approval of the Pennsylvania NSR program in Philadelphia, Delaware, Chester, Montgomery, and Bucks counties as well.

L. What Comments Were Received On the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 70428) for Pennsylvania's ozone attainment demonstration. Comments were received from Robert E. Yuhnke on behalf of Environmental Defense and Natural Resources Defense Council; the Midwest Ozone Group; the Clean Air Council; The Pennsylvania Chapter of the Sierra Club; and from PECO Energy. See Section II. of this document for a summary of these comments and EPA responses relevant to our approval of the Commonwealth's 2005 attainment demonstration.

EPA also received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383) on the attainment demonstrations, in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. Comments were received from Environmental Defense, from ELM Packaging Co. and Citizens for Pennsylvania's Future (PennFuture). See Section II. of this document for a summary of these comments and EPA responses relevant to our approval of the Commonwealth's 2005 attainment demonstration for the Philadelphia area.

We did not receive comments on our August 24, 2001 (66 FR 44568) proposed approval of the Commonwealth's Post 1996 plans. Nor did we receive comments on our August 24, 2001(66 FR 44571) SNPR for Pennsylvania's 2005 attainment demonstration, wherein we proposed to approve Pennsylvania's revision to the motor vehicle emissions budgets for the attainment year of 2005 which reflected the benefits of the Federal Tier 2/Sulfur rule and the Commonwealth's formal SIP commitment to perform a mid-course review by December 31, 2003. Last, we did not receive comments on our August 30, 2001 (66 FR 45797) SNPR on the Commonwealth's 2005 attainment demonstration, wherein we proposed to approve Pennsylvania's RACM analysis and determination for the area.

II. Response to Comments

The following discussion summarizes and responds to the comments received on December 16, 1999 (64 FR 70428) and July 28, 2000 (65 FR 46383) proposed actions on the Commonwealth's 2005 attainment demonstration SIP for the one hour ozone standard. These are the only proposed actions for which we received comments.

A. Attainment Demonstration—Weight of Evidence

Comment 1: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response 1: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that ''[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' As described in more detail below, the EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration ''be based on photochemical grid modeling,'' because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).'' [3] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment. * * *'' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or

[3] The August 12, 1996 version of ''Appendix W to Part 51—Guideline on Air Quality Models'' was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR 51 App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to *not* exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[4]

In 1996, EPA issued guidance[5] to update the 1991 guidance referenced in 40 CFR 51 Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance[6] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by

[4] Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA–454/B–95–007, June 1996.

[5] Ibid.

[6] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web Site: *http://www.epa.gov/ttn/scram.*

accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions-those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that States must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model—predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with Section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 3 exceedances in 3 years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the States and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each State's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a ''rollback'' modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR 51 App. W section 6.2.1.e. provides, ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20% improvement in ozone is needed for the area to reach attainment, it is assumed a 20% reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: it obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and /or modeling which is more consistent with recommendations referenced by Appendix W and does not assume a direct proportional relationship between ozone and its precursors. Last, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate

the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose the use the November 1999 guidance ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington, DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), States have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with States on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

Comment 2: We received comments asserting that the attainment demonstration for the Philadelphia area did not model the requisite number of episodes. The comments state that only two episodes were modeled.

Response 2: EPA did note that only two episodes were modeled in our December 16, 1999 proposed rule and in the TSD prepared for the proposed rule. EPA did not consider the lack of a third episode to be a deficiency due to the severity of the two episodes modeled. In both the December 16, 1999 proposed rulemaking and the associated TSD, we noted the following:

(1) Both of the episodes in the local UAM modeling represent very severe ozone events with meteorological ozone forming potential rankings of less than 80 out of all days over the last fifty years (Cox and Chu 1996).

(2) Given the severity of these episodes, they are likely to be the controlling episodes in the Philadelphia area in the determination of emission reductions needed for attainment.

(3) These episodes also represent the meteorological regime most frequently responsible for elevated ozone concentrations in the Philadelphia area.

B. Reliance on the NO_X SIP Call and the Tier 2/Sulfur Rule

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call, *Michigan* v. *United States Env. Prot. Agency,* 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S.Ct. 1225, 149 L.Ed. 135 (2001); Appalachian Power v. EPA, 251 F.3d 1026 (D.C. Cir. 2001), *cert. denied,*____ U.S.____, 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA,* 251 F.3d 1026 (D.C. Cir. 2001). In those cases, the court largely upheld the NO_X SIP Call. Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the SIP Call. Moreover, contrary to the commenter's suggestion, the SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2/Sulfur program for the severe area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the States to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these States and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the EGU growth factor, it is EPA's view that States should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the States are moving forward to implement the SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan.*

C. RACM (Including Transportation Control Measures)

Comment: Several commenters have stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM; nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the State must provide a justification for why they were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Philadelphia area and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these States address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from States with Severe 1-hour Ozone Nonattainment Area SIPs'').

On July 19, 2001 the Commonwealth of Pennsylvania formally submitted a supplement to its 2005 attainment demonstration SIP consisting of an analysis and determination of RACM. On August 30, 2001 (66 FR 45797), EPA proposed to approve this supplement to the attainment demonstration SIP as meeting the RACM requirements. EPA did not receive any comments on its August 30, 2001 proposal. Please see the discussion in I.E. of this document.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM.

Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, ''Guidance on

the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

The analysis submitted by Pennsylvania on July 19, 2001, as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Pennsylvania convened a stakeholders group (the Southeastern Pennsylvania Ozone Stakeholders Group) to examine a wide variety of potential stationary and mobile source controls. The stationary/area source controls that were considered included the adoption of South Coast Air Quality Management District/California Air Resources Board's (SCAQMD/CARB) limits for certain VOC source categories that are more stringent than the already adopted control technique guideline (CTG) limits, e.g., fabric/paper, magnet wire, vinyl, miscellaneous metal parts, coil and metal furniture coating; limits on area source categories not covered by a CTG, e.g., adhesives, motor vehicle refinishing, surface/cleaning degreasing, underground storage tank vents; rule effectiveness improvements; wood furniture coating (Pennsylvania has a SIP-approved rule consistent with RACT limits recommended under the CTG; under consideration for the RACM analysis was expanding the applicability of those limits to sources smaller than those covered by the CTG); ''beyond RACT'' controls on major stationary sources of NO_X; and other potential measures.

The mobile source control measures considered included the national low emission vehicle program, accelerated replacement of older buses with cleaner buses, compressed natural gas (CNG) fueled buses, and emissions-based vehicle registration fees. Mobile source controls also included control measures aimed at reducing vehicle trips, travel or congestion via land use planning, traffic flow improvements (signalization, ramp metering, speed limit restriction enforcement), improved mass transit, expanded parking at rail stations, telecommuting, bicycle lanes or access improvements at rail stations, parking taxes/surcharge, and increased gasoline taxes or miles travel based fees.

Pennsylvania considered an extensive list of potential control measures and chose measures for implementation which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. From the list of measures considered, the rules and measures adopted and submitted by Pennsylvania, as analyzed and examined by the stakeholders group, are as follows:

(1) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule for vehicle refinishing. The rule includes VOC content limits for motor vehicle refinishing coatings, application standards and storage and housekeeping work practices. This rule goes beyond the Federal rule in content limits and application and work practices standards. Compliance with this rule was required in 2000.

(2) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule requiring the sale of vehicles under the national low-emission vehicle program.

(3) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule to implement Phase II NO_X controls under the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU). This rule established a fixed cap on ozone-season NO_X emissions from major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and requires compliance during the ozone season. The implementation of this rule commenced May 1, 1999 and reduces NO_X emissions both inside and outside the Philadelphia area.

(4) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule to implement the NO_X SIP call. The Pennsylvania rule requires compliance commencing with the start of the 2003 ozone season. (This measure was identified as Phase III control under the OTC MOU on NO_X control in the RACM submittal because the evaluation occurred in 1996, well before the SIP call proposal.)

(5) Pennsylvania has also adopted rule effectiveness improvements for the implementation of regulations through the attainment year of 2005 for its portion of the Philadelphia area as part of its post 1996 Rate of Progress Plans which EPA is approving in this final rulemaking.

Pennsylvania considered a number of measures that have the potential to achieve benefits but concluded that some were not cost effective, that others have the potential for substantial widespread and long-term adverse impacts and that one measure, a mandatory ban on residential lawn care activities on high ozone days, was infeasible due to the impracticability of effective enforcement. These are explained in further detail in the docket for this rulemaking. For the reasons explained in our August 30, 2001 SNPR, EPA concluded that no additional measures could advance the attainment date for the Philadelphia area prior to full implementation of all controls scheduled for implementation by 2005.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Philadelphia area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that States consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, e.g., *http://www.epa.gov/otaq/transp.htm.* In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures—including the kind that Pennsylvania itself evaluated in its RACM analysis—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the CAA's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment date being approved is expeditiously as practicable.

The motor vehicle emissions budgets are adequate. The SIP includes all necessary RACM and provides for expeditious attainment as explained herein.

D. Approval of Attainment Demonstrations That Rely on State Commitments or State Rules For Emission Limitations to Lower Emissions in the Future not yet Adopted by a State and/or Approved by EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment and rate of progress demonstrations because (a) not all of the emissions reductions assumed in the demonstrations have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP, or (d) the commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

Response: EPA disagrees with the comments, and believes—consistent with past practice—that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[7] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

It is also noted that while the Commonwealth does rely on commitments to adopt additional measures for the purpose of demonstrating attainment, it does not rely on commitments to demonstrate ROP. See 66 FR 44568, August 24, 2001. The Commonwealth's Post 1996 plans demonstrate ROP with VOC and NO_X emission reductions achieved within the nonattainment area by the implementation of fully promulgated Federal and fully adopted, SIP-approved state measures.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Baltimore, and Philadelphia nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For Pennsylvania's attainment demonstration for the Philadelphia area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with each area's ability to meet its 2005 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. See, e.g., 62 FR 1150, 1187, Jan. 8, 1997 (ozone attainment demonstration for the South Coast Air Basin; 65 FR 18903, Apr. 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, Aug. 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (state implementation plan for New Jersey). Nothing in the Act speaks directly to the approvability of enforceable commitments.[8] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance*, as may be necessary or appropriate to met the applicable requirement of the Act.'' (Emphasis added). Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP ''include enforceable emission limitations and such other control measures, means or techniques * * * *as may be necessary or appropriate* to provide for attainment * * * by the applicable attainment date * * * '' (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Philadelphia area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow States to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here, EPA agrees with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. *See NRDC*, 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of the plan. For the Philadelphia area, the commitment addresses only 10.6% of the VOC and 0.7% of the NO_X emissions reductions necessary to attain the standard. A summary of the adopted control measures and other components credited in Pennsylvania's attainment demonstration submission are discussed in Sections G. and H. of this document. These adopted and implemented control measures are the majority of the

[7] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J. v. Kean,* 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC v. N.Y. State Dept. of Envs. Cons.,* 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't v. Deukmejian,* 731 F. Supp. 1448, *recon. granted in part,* 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air v. South Coast Air Quality Mgt. Dist.,* No. CV 97–6916 HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the Act, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

[8] Section 110(k)(4) provides for ''conditional approval'' of commitments that need not be enforceable. Under that section, a State may commit to ''adopt specific enforceable measures'' within one-year of the conditional approval. Rather than enforcing such commitments against the State, the Act provides that the conditional approval will convert to a disapproval if ''the State fails to comply with such commitment.''

emissions reductions needed to demonstrate attainment.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the Ozone Transport Commission (OTC) regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the States will be able to find sources of reductions to meet the shortfall. The States that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 29, 2001 recommended a set of control measures. Currently, the States are working through their adoption processes with respect to those, and in some cases other, control measures.

The Commonwealth is well into the adoption process for these measures. Although EPA has evidence that the Commonwealth may not make the submission on or before the date to which it has committed, EPA believes that it is making sufficient progress to support approval of the commitment because the Commonwealth will adopt and implement the measures within a time period fully consistent with the Philadelphia area attaining the standard by its approved attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the Philadelphia attainment demonstration is whether the commitment is for a reasonable and appropriate period. EPA recognizes that both the Act and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors—such as the need to consider innovative control strategies—support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes—a fairly ambitious schedule—i.e., until October 31, 2001. As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA ''SIP Call'' provision of the CAA—section 110(k)(5)—which provides States with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the States to submit the measures within 18 months of it's proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region (OTR) and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. See e.g., 64 FR 70428. EPA believed that allowing these States until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007. EPA still believes that this a reasonable schedule for the states to submit adopted control measures that will achieve the additional necessary reductions.

The enforceable commitments submitted by Pennsylvania for the Philadelphia nonattainment area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment and the commitments will not interfere with the area's ability to make reasonable progress under section 182(c)(2)(B) and (d). EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because the Commonwealth has obligated itself to submit the rules by specified short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its Technical Support Document (TSD), and Sections G. and H. of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

EPA believes that the Pennsylvania SIP meets the NRDC consent decree definition of a ''full attainment demonstration.'' The consent decree defines a ''full attainment demonstration'' as a demonstration according to CAA section 182(c)(2). As a whole, the attainment demonstration—consisting of photochemical grid modeling, adopted control measures, an enforceable commitment with respect to a limited portion of the reductions necessary to attain, and other analyses and documentation—is approvable since it ''provides for attainment of the ozone [NAAQS] by the applicable attainment date.'' See section 182(c)(2)(A).

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response: EPA's adequacy process for most of these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy of the ROP budgets that we are approving in this action, when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here.

On August 24, 2001 (66 FR 44571), we proposed to approve and to determine adequate the revised 2005 attainment budgets, shown in Table 4, which were submitted by the Commonwealth on July 19, 2001. We received no comments on the August 24, 2001 proposal. In this final rule we are finding the revised budgets of the 2005 attainment demonstration SIP submitted by the Commonwealth adequate, and are approving them.

All of our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the web site, EPA regional contacts are identified.

Comment 2: We received comments asserting that Pennsylvania has not provided a clear indication of how the conformity requirements of the Clean Air Act are being met. Conformity is an important tool to ensure that transportation programs or policies are fully developed with Clean Air Act obligations in mind.

Response 2: The attainment demonstration SIP is not required to describe how conformity requirements are being met. Demonstrations of conformity are a separate process and mandate upon certain recipients of Federal funds that are independently enforceable under the CAA and EPA regulations. See 42 U.S.C. 7506. The SIP does identify motor vehicle emissions budgets that will be used for the purposes of determining conformity in the future. EPA has found all the budgets adequate for conformity purposes as discussed in Sections I.F. and I.I. and in this action is approving the attainment demonstration and ROP plans each of which contain motor vehicle emissions budgets.

Comment 3: We received comments asserting that Pennsylvania's motor vehicle emissions budgets do not provide sufficient emission reductions to demonstrate attainment.

Response 3: In our December 16, 1999 NPR, we proposed to approve Pennsylvania's attainment demonstration for the Philadelphia area. For the reasons outlined in our December 16, 1999 NPR and in responses to comments regarding the weight of evidence, EPA concluded that Pennsylvania had adequate modeling demonstrating attainment for the Philadelphia area provided that Pennsylvania commit to adopting additional measures to strengthen the weight of evidence. Pennsylvania has adopted such an enforceable commitment and EPA is approving this commitment. In addition, approval under the December 16, 1999 NPR was contingent upon approval into the SIP of rules upon which the modeling demonstration and upon adoption of adequate motor vehicle emissions budgets that reflected the benefits from the Federal Tier 2/Sulfur rule. EPA has approved into the SIP the needed rules and is determining in this action that Pennsylvania has adopted and submitted adequate budgets incorporating the benefits from the Federal Tier 2/Sulfur rule. The adequacy criteria include a determination that the motor vehicle emissions budgets, when considered together with all other emissions sources, is consistent with applicable requirements for attainment. See 40 CFR 93.118(e)(4)(iv). EPA is approving Pennsylvania's attainment demonstration because it is supported by an adequate modeling demonstration and because the measures upon which the modeling demonstration is based are creditable and because the motor vehicle emissions budgets are consistent with the measures in the SIP and the attainment demonstration.

F. Attainment Demonstration and Rate of Progress Motor Vehicle Emissions Inventories

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. The Commonwealth modeled vehicle age distributions from 1993. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

G. VOC Emission Reductions

Comment: For States that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such a pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively. It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, States may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which States may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected State. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA § 612, EPA has identified acceptable foam blowing agents man of which are not VOCs (http://www.epa.gov/ozone/title6/snap/).

H. Credit for Measures not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the States are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [9] that provided that States could claim a 20% reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, States relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR Part 59 Subpart D. In the preamble to EPA's final AIM coatings regulation, EPA

[9] Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules,'' March 22, 1995, from John S. Seitz, Director, Office of air Quality Planning and Standards to Air Division Directors, Regions I–X.

estimated that the regulation will result in 20% reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, States have assumed a 20% reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway.

Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the States to take credit for a 20% emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy [10], many States claimed a 37% reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33% overall nationwide. The 37% emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40%. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36% for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1% difference between the 37% estimate of reductions assumed by States, following EPA guidance based on the proposal, and the 36% reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18. The Commonwealth revised the autobody rule in 1999, and EPA approved the revisions on August 14, 2000 [65 FR 49501]. The revised rule will achieve the 37% assumed reduction from the measure. EPA found the PADEP achieves a 36% reduction for milestone 1999 and 37% for years 2002 and 2005.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance [11], States claimed a 20% reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20% reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to State regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the States to take credit for a 20% emission reduction for the consumer products rule in their SIPs.

I. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Clean Air Act. Once approved by the EPA, there is no need for states to readopt and resubmit these programs with each and every SIP revision generally required by other sections of the Act. Pennsylvania has previously received approval of its section 110(a)(2) SIPs. In a final rulemaking action published on February 26, 1985, EPA approved Pennsylvania's financial and manpower resource commitments for Southeast Pennsylvania (50 FR 7772, 7775), after having proposed approval of these commitments on February 3, 1983 (48 FR 5096, 5099). In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

J. MOBILE6 and Motor Vehicle Emissions Budgets (MVEBS)

Comment 1: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE models are released.

Response 1: The attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released.

Comment 2: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 2: This is the reason that EPA proposed in the July 28, 2000, SNPR (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

[10] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[11] ''Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act,'' June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

Comment 3: If a State submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response 3: EPA agrees. The motor vehicle emissions budgets in the Philadelphia attainment demonstration reflect the motor vehicle control measures in the attainment demonstration. In addition, Pennsylvania has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment 4: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response 4: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Philadelphia attainment demonstration contains explicitly quantified motor vehicle emissions budgets.

Comment 5: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response 5: If a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Clean Air Act.

Comment 6: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response 6: As EPA proposed in its December 16, 1999 notices, we will work with States on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment 7: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response 7: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, Pennsylvania will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

K. MOBILE6 Grace Period

Comment 1: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response 1: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum 2-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment 2: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response 2: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

L. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the 1-year option, if desired, or submit a new commitment consistent with the alternative 2-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. Pennsylvania has committed to revise its budgets within one-year of MOBILE6's release.

M. Unapproved Measures

Comment 1: We received comments that objected to crediting the SIP with reductions from measures not approved into the SIP. The comments specifically mentioned conditionally approved RACT rules and asserted that credit should not be given for this program until EPA completes review and approval of all case-by-case RACT. The comments also specifically mentioned Phase II NO_X controls under the OTC MOU. We also received comments, which stated that NO_X RACT should be extended to 25 ton-per-year sources.

Response 1: On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in the conditional limited approval of its generic NO_X and VOC RACT regulations. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. On October 15, 2001, the Regional Administrator of Region III signed a final rule converting our limited approval of the Pennsylvania generic VOC and NO_X RACT regulation to a full approval as it applies in the Philadelphia area. This final rule has been recently or will be shortly published in the **Federal Register**. On June 6, 2000, EPA approved Pennsylvania's rule that implements the Phase II controls under the OTC MOU (65 FR 35840). Finally, the applicability threshold for RACT in Pennsylvania's SIP-approved generic NO_X and VOC RACT regulations for the Philadelphia area is 25 ton per year as required in a severe nonattainment area thus NO_X RACT extends to sources that emit 25 tons-per-year.

Comment 2: We received comments asserting that because Pennsylvania had

not adopted Phase II NO_X reductions as agreed to in the OTC MOU, has abandoned the NO_X SIP call strategy, and was behind in submitting its RACT submittals the SIP should not be credited with these measures.

Response 2: As discussed in the response to the previous comment, EPA has approved Pennsylvania's NO_X RACT and OTC MOU rules. As discussed in Section I.I. of this document, Pennsylvania submitted a revision to its SIP to address the requirements of the NO_X SIP Call. EPA fully approved this SIP (66 FR 43795, August 21, 2001).

N. Attainment and Post-1999 Rate of Progress Demonstrations

Comment 1: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met. The commenter states that EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions and that the statute does not allow EPA to use the NO_X SIP call or 126 orders as an excuse for waiving ROP deadlines. The commenter asserts that the statutory ROP requirement is for emission reductions—not ambient reductions. The commenter asserts that emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response 1: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 ROP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. EPA proposed to approve the Commonwealth Post 1996 ROP plans, which include ROP demonstrations for milestone years 1999, 2002, and 2005, on August 24, 2001 (66 FR 44568). We received no comments on that proposal. In this final rulemaking, EPA is approving the Commonwealth's Post 1996 ROP plans. Pennsylvania's Post 1996 plans demonstrate ROP by relying upon VOC and NO_X emissions reductions achieved within the nonattainment area from fully promulgated Federal and fully adopted SIP-approved state measures.

Comment 2: We received comment that the ''limited approval'' status of the Commonwealth's Post 1996 ROP plan is not authorized under the CAA.

Response 2: The comment is now moot, because EPA withdrew its previous action proposing ''limited approval'' of the Commonwealth's Post 1996 plan in the NPR it published on August 24, 2001 (66 FR 44568). EPA re-proposed full approval of the Post-1996 plan on August 24, 2001, and did not receive any comments on this proposal. In this final rulemaking, EPA is fully approving Pennsylvania's Post 1996 plan which relies only upon VOC and NO_X emissions reductions achieved within the nonattainment area from fully promulgated Federal and fully adopted SIP-approved state measures.

O. Comments on Specific Area and Point Source Measures

Comment 1: We received comments asserting that Pennsylvania has not adopted the OTC NO_X MOU's Phase II/III reductions and the NO_X SIP Call requirements.

Response 1: EPA has fully approved the Pennsylvania's NO_X Allowance Requirements as a SIP revision (65 FR 35840, June 6, 2000). These requirements implement Phase II of the OTC's MOU to control NO_X for the years 1999–2002. The Phase III reductions under the OTC MOU have been superceded by Pennsylvania's SIP-approved NO_X SIP Call rule. Compliance with that rule is required starting in 2003. EPA has fully approved the Pennsylvania Interstate Ozone Transport Reduction Plan as meeting the non-remanded portions of the NO_X SIP Call rule (66 FR 43795, August 21, 2001). Pennsylvania's Interstate Ozone Transport Reduction Plan establishes a NO_X budget trading program for fossil-fired combustion boilers with a maximum design heat input greater than 250 MMBTU per hour and electric utility generators with a capacity greater than 25 megawatts. Pennsylvania's Phase I NO_X SIP Call trading rule is consistent with the reductions modeled in the attainment demonstration and with EPA's requirements to establish an emission rate of 0.15 lb/MMBtu for electric generating units and 0.17 lb/MMBTU for non-electric generating units.

On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call ruling in favor of EPA on all the major issues. See *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000). However, the Court remanded certain matters for further rulemaking by EPA. EPA expects to publish a proposal that addresses the remanded portion of the NO_X SIP Call Rule. Pennsylvania will adopt and submit controls to meet the portions of the SIP call budget reflected by reduction from both internal combustion engines and cement kilns in the remanded portions of the NO_X SIP Call rule consistent with any schedule EPA establishes in response to the remand.

Comment 2: We received comments that express concerns about the accountability of the reductions from the implementation of the 126 petitions as compared to those assumed in the attainment demonstration.

Response 2: As noted in the December 16, 1999 proposal, Pennsylvania's attainment demonstration assumed NO_X reductions consistent with those called for by EPA's NO_X SIP Call. In consideration of recent court decisions on the NO_X SIP Call as previously described and as explained in EPA's response to comments on ''Reliance on NO_X SIP Call and Tier 2 Modeling'', EPA believes it is appropriate to allow states to continue to assume the reductions from the NO_X SIP Call. The fact that EPA has granted section 126 petitions does not remove the obligations of states subject to the NO_X SIP Call to reduce NO_X emissions as called for in that rule. Furthermore, implementation of either the section 126 rules (described in later Sections) or the NO_X SIP Call achieves emission reductions prior to the applicable attainment deadline, 2005. Under recent rulings by the U.S. Court of Appeals for the District of Columbia Circuit both the 126 rule and the NO_X SIP Call must be implemented early in the ozone season in 2004.

On August 14–15, 1997, we received petitions submitted individually by eight Northeastern States under section 126 of the CAA. Each petition requests us to make a finding that sources in certain categories of stationary sources in upwind States emit or would emit NO_X in violation of the prohibition in section 110(a)(2)(D)(i) on emissions that contribute significantly to nonattainment, or interfere with maintenance, in the petitioning State. On May 25, 1999, we promulgated a final rule (May 1999 Rule) determining that portions of the petitions are approvable under the one-hour and/or eight-hour ozone NAAQS based on their technical merit (64 FR 28250). Based on the affirmative technical determinations for the one-hour ozone NAAQS made in the May 1999 Rule, we promulgated a final rule on January 18, 2000 (January 2000 Rule) making section 126 findings that a number of large electric generating units (EGUs) and large industrial boilers and turbines named in

the petitions emit in violation of the CAA prohibition against significantly contributing to nonattainment or maintenance problems in the petitioning States (65 FR 2674). In the January 2000 Rule, we also finalized the Federal NO_X Budget Trading Program as the control remedy for sources affected by the rule. This requirement replaces the default remedy in the May 1999 Rule. The January 2000 Rule establishes Federal NO_X emissions limits that sources must meet through a cap-and-trade program by May 1, 2003. The January 2000 rule affects sources located in the District of Columbia, Delaware, Maryland, North Carolina, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia, and parts of Indiana, Kentucky, Michigan, and New York. All of the affected sources are located in States that are subject to the NO_X SIP Call.

On October 27, 1998 (63 FR 57356), EPA promulgated the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' commonly referred to as the NO_X SIP Call. On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call largely upholding the rule. See *Michigan* v. *EPA*, supra. On June 22, 2000, the Court ordered that we allow the States and the District of Columbia 128 days from June 22, 2000 to submit their SIPs. Accordingly, 19 States and the District of Columbia were required to submit SIPs in response to the NO_X SIP Call by October 30, 2000.[12] On August 30, 2000, the D.C. Circuit ordered that the June 22, 2000 Order be amended to extend the deadline for implementation of the NO_X SIP Call from May 1, 2003 to May 31, 2004. In a separate rulemaking, we are addressing the Court's remand of the definition of electricity generating units, the control level for large stationary internal combustion engines and the SIP submittal and compliance dates for these actions, which affect less than 10 percent of the total emission reductions called for by the NO_X SIP Call.

Furthermore, as noted in the response to a previous comment in this document, Pennsylvania has a state regulation in place to implement the SIP Call requirements. This state rule is in the approved Pennsylvania SIP and requires compliance commencing May 1, 2003.

Comment 3: We received comments asserting that Pennsylvania has failed to implement RACT in an expeditious manner.

Response 3: The Pennsylvania SIP has long included approved RACT regulations for sources and source categories of VOCs covered by the CTGs issued prior to 1990, by CAA section 182(b)(2)(A) and by the CTGs issued after 1990 as required by CAA section 182(b)(2)(B). Additional RACT regulations requiring RACT for all major sources of VOC, not covered by a CTG (non-CTG), and of NO_X were to be submitted to EPA as SIP revisions by November 15, 1992 and compliance required by May of 1995. On February 4, 1994, PADEP submitted a revision to its SIP (25 Pa Code Chapters 129.91 through 129.95) requiring major sources of NO_X and non-CTG VOC sources to implement RACT. These regulations require major sources of NO_X and VOC to submit to PADEP, by no later than July 15, 1994, a written RACT proposal.

In the Philadelphia area, Pennsylvania's RACT regulations require non-CTG sources that have the potential to emit 25 tpy or more of VOC and sources which have the potential to emit 25 tpy or more of NO_X comply with RACT. The regulations contain technology-based or operational ''presumptive RACT emission limitations'' for certain major NO_X sources. For other major NO_X sources, and all major VOC sources (not otherwise already subject to RACT pursuant to a source category regulation under the Pennsylvania SIP), the regulations contain a ''generic'' RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP. The Commonwealth's rule requires that the covered sources, upon PADEP's notification of approval of their RACT proposal, must implement the RACT ''as expeditiously as practicable'', but no later than May 31, 1995.

EPA granted conditional limited approval of the Commonwealth's VOC and NO_X RACT regulations on March 23, 1998 (63 FR 13789), and removed the conditional aspect of the approval on May 3, 2001 (66 FR 22123). On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania generic VOC and NO_X RACT regulations as they apply in the Philadelphia area on the basis that EPA would have approved source-specific or category-specific RACT rules for all sources subject to the CAA RACT requirement. We received no comments on that proposal. On October 15, 2001, the Regional Administrator of Region III signed a final rule converting our limited approval of Pennsylvania's generic VOC and NO_X RACT regulations to a full approval because EPA has SIP-approved all of the case-by-case RACT determinations submitted by PADEP for affected major sources of NO_X and/or VOC sources located in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, the five counties that comprise the Pennsylvania portion of the Philadelphia area.

Comment 3: We received comments criticizing the use of rule effectiveness as part of the demonstration. The comments assert that EPA should be skeptical of the reductions from this program based on the Commonwealth's past enforcement history. Other comments claim that with implementation of RACT on a case-by-case basis the change in rule effectiveness from 80 percent to 90 percent is unrealistic. These comments have been submitted in the form of statements with no accompanying analyses to support them.

Response 3: The EPA disagrees that it is inappropriate to allow credit for improved rule effectiveness (RE) in the attainment demonstration. The Commonwealth has supplied to EPA a protocol that has been implemented at the sources for which increased RE credits have been claimed. EPA conducted its evaluation of Pennsylvania's RE credits as part of our proposed approval of the Post-1996 ROP plans. That supporting documentation, namely the TSD for the Post-1996 ROP plan approval, is part of the docket for this final rulemaking. No comments were received on EPA's proposed action to approve the Commonwealth's Post 1996 ROP plans which included our proposed approval of the RE credits claimed by the Commonwealth. No one has brought to EPA's attention credible evidence that Pennsylvania is not implementing RE at the sources for which RE improvement credits are claimed. It would not be appropriate for EPA to discount credit from a state initiatives based upon unsubstantiated speculation that such a state will not enforce its own SIP.

EPA disagrees with the comment asserting that implementation of RACT on case-by-case basis, is reason to assume that 90 percent RE is unrealistic. To the contrary, EPA believes that RACT rules tailored to specific sources are much more likely to be implemented successfully because any factors that

[12] October 30, 2000 is the first business day following the expiration of the 128-day period.

could interfere with implementation of RACT would be considered by the Commonwealth under the SIP-approved provisions of 25 Pa Code Chapters 129.91 through 129.95 when imposing the source-specific RACT determinations.

Comment 4: We received comments expressing the opinion that Stage II controls in Pennsylvania are performing far below the stated efficiency. Therefore, EPA is granting too much credit to Pennsylvania for its Stage II controls. EPA should determine the present efficiency of these controls and use that level in the attainment demonstration. These comments have been submitted in the form of statements with no accompanying analyses to support them.

Response 4: Pennsylvania has adopted the Stage II control program recommended by EPA. No one has brought to EPA's attention any credible evidence that Pennsylvania is implementing their program in a manner inconsistent with EPA guidance, which might lower the expected reductions below levels which are conforming to past EPA estimates of Stage II efficiency.

P. Comments on Specific Mobile Source Measures

Comment: We received comments asserting that Pennsylvania is not fully implementing its SIP approved enhanced vehicle inspection and maintenance program and that EPA should not approve a demonstration that includes benefits from a program that is not fully implemented. The comments claim that Pennsylvania has not implemented all pass-fail standards on schedule in the Philadelphia area.

Response: EPA advised the Commonwealth, in a letter dated April 12, 2001 (Oge to Serian), that it should not implement final acceleration simulation mode (ASM) cutpoints on 1995 and older vehicles. EPA is currently conducting additional research on the effects of implementation of final ASM cutpoints on 1995 and older vehicles and will issue guidance in the near future. The issuance of this guidance will allow the Commonwealth to implement final ASM cutpoints for 1995 and older vehicles at least one year prior to the area's attainment date. This will allow the Commonwealth to complete at least one full cycle of tests at final cutpoints prior to the areas' attainment date. The Commonwealth has already implemented final cutpoints for 1996 and newer vehicles. Since all vehicles subject to the program will receive at least one inspection at final cutpoints prior to the area's attainment date, the Commonwealth will achieve the emission reductions that it has planned for in its attainment demonstration. At this time, EPA does not believe that it is necessary or justifiable to delay approval of the Commonwealth's attainment demonstration due to the fact that the Commonwealth has not implemented all pass-fail standards on schedule in the Philadelphia area. The Commonwealth has provided EPA assurances that it will implement the final cutpoints upon issuance of the guidance referenced herein. The Commonwealth has implemented a successful enhanced I/M program and continues to work with EPA on technical issues regarding the ASM program. EPA believes that the Commonwealth has achieved and will continue to gain air quality benefits from its enhanced I/M program as necessary for the Philadelphia area to achieve attainment of the ozone NAAQS.

Q. NO_X Substitution

Comment: We received comments that suggest that EPA should not allow States the opportunity to substitute NO_X reductions for the VOC reductions specifically required by section 182(c)(2)(B) of the CAA. In general, the commenter contends that methodology in EPA's NO_X Substitution Guidance is not ''at least as effective'' as photochemical grid modeling for making attainment demonstrations. The comment states that NO_X substitution ignores one of the Ozone Transport Assessment Group's (OTAG) key conclusions that ''VOC controls are effective in reducing ozone locally and are most advantageous to urban nonattainment areas.'' Additionally, the commenter notes that some data suggest that progress towards attainment in urban areas may not take place, or may even be reversed, by the substitution of NO_X reductions for required VOC reductions. Finally, the commenter states that EPA should not allow NO_X substitution as part of the attainment demonstration under section 182 (c)(2)(A). In particular, the commenter is opposed to the States being allowed to utilize, *carte blanche*, NO_X substitution for section 182(c)(2)(A) attainment demonstrations without undergoing an additional, more rigorous analytic test that considers local conditions and potential impacts to real world attainment.

Response: The EPA disagrees with the comment that the Agency should not allow NO_X substitution under section 182(c)(2)(B), Reasonable Further Progress Demonstration. Section 182(c)(2)(C) specifically allows NO_X substitution where the resulting reductions ''in ozone concentrations'' are ''at least equivalent'' to that which would result from the VOC reductions required in the demonstration of reasonable further progress (RFP) under section 182(c)(2)(B). The second sentence of section 182(c)(2)(C) requires EPA to issue guidance ''concerning the conditions under which NO_X control may be substituted for [or combined with] VOC control.'' In particular, the Agency is authorized to address in the guidance the appropriate amounts of VOC control and NO_X control needed, in combination, ''in order to maximize the reduction in ozone air pollution.'' Further, the Act explicitly provides that the guidance may permit RFP demonstrations which allow a lower percentage of VOC emission reductions. In light of the entire set of language and Congress's evident intent under this subsection to maximize the opportunity for ozone reductions, EPA believes that section 182(c)(2)(C) confers on the Agency the discretion to select, for purposes of determining equivalent reductions, a percentage of NO_X emission reductions which is reasonably calculated to achieve both the ozone reduction and attainment progress goals intended by Congress. This approach is described in detail in EPA's 1993 NO_X Substitution Guidance. Based on our review of all the information submitted in these attainment demonstrations and consistent with the 1993 NO_X Substitution Guidance, EPA believes that the percentage of ozone reduction benefits achieved by application of NO_X controls is at least equivalent as that achieved by application of VOC controls because both the NO_X and VOC controls are necessary if the areas are to attain the NAAQS. That is, the basis for equivalency is the ability of a given control strategy (i.e., any particular mix of NO_X and VOC emission reductions) to effect attainment of the ozone NAAQS by the designated attainment year (NO_X Substitution Guidance, EPA–452/R–93–015, January 1994, at page 2).

In addition to the OTAG conclusion as noted by the commenter, the States further concluded that widespread NO_X reductions are needed in order to enable many areas to attain the ozone NAAQS. EPA subsequently made the same determination through the NO_X SIP Call rulemaking. Thus, NO_X substitution is generally consistent with OTAG's and EPA's conclusions that NO_X reductions are effective in reducing ozone concentrations.

As described in the NO_X SIP call rulemaking, the OTAG process included

lengthy discussions on the potential increase in local ozone concentrations in some urban areas that might be associated with a decrease in local NO_X emissions. The OTAG modeling results indicate that urban NO_X emissions decreases produce increases in ozone concentrations locally, but the magnitude, time, and location of these increases generally do not cause or contribute to high ozone concentrations. In particular, for the NO_X emissions reductions due to the NO_X SIP call budgets, EPA determined that any disbenefits are expected to be very limited compared to the extent of the air quality benefits expected from these budgets.

Regarding section 182(c)(2)(A), Attainment Demonstration, EPA believes that NO_X substitution for VOC emissions deemed to be required as ''additional emission reductions'' is permissible as part of the Weight of Evidence analysis. The EPA agrees with the comment that such NO_X substitution must be justified through additional analyses. For example, if model-predicted peaks show greater improvement when low level NO_X emissions are reduced versus VOC or elevated NO_X emissions, then substituting an equal amount of low level NO_X reductions for the otherwise required ''additional emissions reductions'' of VOC would be acceptable.

R. Measures Under Legal Review

Comment: We received comments asserting that because the Tier 2/Sulfur and NO_X SIP call rules are under legal review EPA should not credit the attainment demonstrations with reductions from these programs.

Response: EPA disagrees with the comment. On October 27, 1998 (63 FR 57356), EPA promulgated the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' commonly referred to as the NO_X SIP call. On March 3, 2000, the DC Circuit issued its decision on the NO_X SIP Call regarding the 1-hour ozone NAAQS ruling in favor of EPA on all the major issues. See *Michigan* v. *EPA, supra.* On June 22, 2000, the Court ordered that we allow the States and the District of Columbia 128 days from June 22, 2000 to submit their SIPs. Accordingly, 19 States and the District of Columbia were required to submit SIPs in response to the NO_X SIP Call by October 30, 2000.[13] On August 30, 2000, the D.C. Circuit ordered that the June 22, 2000 Order be amended to extend the deadline for implementation of the NO_X SIP Call from May 1, 2003 to May 31, 2004. In a separate rulemaking, we are addressing the Court's remand of the definition of electricity generating units, the control level for large stationary internal combustion engines and the SIP submittal and compliance dates for these actions, which affect less than 10 percent of the total emission reductions called for by the NO_X SIP Call. Likewise, on February 10, 2000 (65 FR 6698), EPA promulgated the ''Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements,'' commonly referred to as the Tier 2/Sulfur rule.

S. Contingency Measures

Comment: We received comments asserting that the Post-1996 ROP and the attainment demonstration SIP lacks contingency measures as required under the CAA.

Response: EPA believes the contingency measure requirements of sections172(c)(9) and 182(c)(9) of the CAA are independent requirements from the rate-of-progress requirements under sections 172(c)(2) and 182(c)(2)(B) and the attainment demonstration requirements of sections 172(c)(1) and 182(c)(2)(A). The contingency measure requirements are to address the possibility that an area will fail to meet a rate-of-progress milestone or will fail to attain. The contingency measure requirements have no bearing on whether a state has submitted a SIP that projects that the SIP contains enough control measures to achieve sufficient rate-of-progress towards attainment or to attain the NAAQS. The ROP SIP provides a demonstration that the ROP requirement ought to be fulfilled, but the contingency measure SIP requirements concern what will happen only if ROP is not actually achieved. The attainment demonstration SIP provides a demonstration that the attainment requirement ought to be fulfilled, but the contingency measure SIP requirements concern what will happen only if the area fails to attain. EPA acknowledges that contingency measures are a required SIP revision, but does not believe that these measures must be approved as part of an attainment demonstration. Consequently, EPA believes it can approve this attainment demonstration even though the required contingency measures have not yet been submitted. Pennsylvania will still be required to submit contingency measures and EPA will act upon them when submitted.

T. Measures for the 1-Hour NAAQS and for Progress Toward 8-Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised eight-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the one-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the one-hour standard and that make as much progress toward implementing the eight-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The one-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the States with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the States' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the one-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the eight-hour standard. However, EPA generally believes that emission controls implemented to attain the one-hour ozone standard will be beneficial towards attainment of the eight-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call. Finally, EPA notes that although the eight-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The States and the EPA have yet to define the eight-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the eight-hour ozone standard.

U. Other Comments

Comment: We received comments that oppose the removal of any of Pennsylvania's 67 counties from the Ozone Transport Region on the grounds that the south-central and central counties have a significant impact on intrastate transport and attainment in Philadelphia.

[13] October 30, 2000 is the first business day following the expiration of the 128-day period.

Response: The comment is not germane to this action. EPA is approving the attainment demonstration and Post1996 ROP plans for the Philadelphia area. EPA is not approving removal of any Pennsylvania counties from the Ozone Transport Region.

III. Final Action

A. Attainment Demonstration

EPA is fully approving the Pennsylvania's one hour ozone attainment demonstration for the Philadelphia area which was submitted on April 30, 1998, and supplemented on August 21, 1998, February 25, 2000, and July 19, 2001, including its RACM analysis and determination. The attainment demonstration meets the requirements of section 182 (c)(2) and (d) of the Act and establishes an attainment date of November 15, 2005 for the Philadelphia area.

B. Commitments

EPA is approving the Pennsylvania commitments made on July 31, 1998, February 25, 2000, and July 19, 2001. The commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

C. Post-1996 ROP Plan

EPA is approving Pennsylvania's Post1996 ROP plans as a SIP revision for the Philadelphia area. These revisions were submitted on April 30, 1998, July 31, 1998, and supplemented on February 25, 2000.

D. Mobile Budgets of the Control Strategy Plans

EPA is approving the following mobile budgets of the Post-1996 ROP plans and the 2005 attainment demonstration plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE PHILADELPHIA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Date of adequacy determination
Post-1996 ROP Plan	1999	88.6	109.6	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2002	69.52	93.13	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2005	61.76	86.42	June 23, 2000 (65 FR 36438, June 8, 2000).
Attainment Demonstration	2005	60.18	77.46	November 26, 2001.

Please note that EPA is only approving the 2005 attainment demonstration and its current budgets because the Commonwealth has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Pennsylvania provided enforceable commitments to adopt additional measures to strengthen the attainment demonstration by October 31, 2001 and to submit revised budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory. Therefore, we are limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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 will submit 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the Post-1996 ROP plan, and the one hour ozone attainment demonstration as SIP revisions for the Philadelphia-Wilmington-Trenton ozone nonattainment area submitted by the Commonwealth may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—PA

2. Section 52.2037 is amended by revising the section heading and adding paragraphs (i), (j) and (k) to read as follows:

§ 52.2037 Control strategy and rate-of-progress plans: ozone.

* * * * *

(i) EPA approves the Commonwealth of Pennsylvania's Post 1996 (ROP) plan SIP revision for milestone years 1999, 2002, and 2005 for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. These revisions were submitted by the Pennsylvania Department of Environmental Protection on April 30, 1998, July 31, 1998 and supplemented on February 25, 2000.

(j) EPA approves the one hour ozone attainment demonstration SIP for the Philadelphia-Wilmington-Trenton area submitted by the Pennsylvania Department of Environmental Protection on April 30, 1998, August 21, 1998, February 25, 2000 and July 19, 2001 including its RACM analysis and determination. EPA is approving the enforceable commitments made to the attainment plan for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area submitted by the Pennsylvania Department of Environmental Protection on July 31, 1998, February 25, 2000 and July 19, 2001. The enforceable commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

(k) EPA approves the following mobile budgets of the Post-1996 plans and the 2005 attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE PHILADELPHIA AREA

Type of Control Strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Date of adequacy determination
Post-1996 ROP Plan	1999	88.6	109.6	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2002	69.52	93.13	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2005	61.76	86.42	June 23, 2000 (65 FR 36438, June 8, 2000).
Attainment Demonstration	2005	60.18	77.46	November 26, 2001.

(1) Please note that EPA is only approving the 2005 attainment demonstration and its current budgets because the Commonwealth has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

(2) Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Pennsylvania provided enforceable commitments to adopt additional measures to strengthen the attainment demonstration by October 31, 2001 and to submit revised budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory. Therefore, we are limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

[FR Doc. 01–26679 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–105; FCC 00–257]

Require 711 Dialing for Nationwide Access to Telecommunications Relay Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document corrects certain rules of the Federal Communications Commission (Commission) that concern access to telecommunications relay services (TRS). Regulations are corrected to add a definition for ''711'' telephone service, and to renumber the other definitions in the section. This definition, promulgated in CC Docket No. 92–105, was inadvertently omitted by the conflicting effective dates of amendments promulgated in CC Docket No. 98–67. Regulations are corrected to add a sentence in the undesignated introductory paragraph that was promulgated in CC Docket No. 92–105 but that was inadvertently omitted by the conflicting effective date of amendments promulgated in CC Docket No. 98–67.

DATES: Effective on October 12, 2000.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, (202) 418–2320 (voice), (202) 418–0484 (TTY), *smagnott@fcc.gov*, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Background

The Commission promulgated new rules to increase the type and quality of telephone relay service available to individuals with hearing and speech disabilities in CC Docket No. 98–67, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (released March 6, 2000), 65 FR 38432 (June 18, 2000). Some of these rules were subject to a delayed effective date of December 18, 2000. Shortly after these rules were published, the Commission promulgated new rules to establish ''711'' as a uniform, abbreviated dialing code for telephone relay service in CC Docket No. 92–105, *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, (released August 9, 2000), 65 FR 54799 (September 11, 2000). The new ''711'' rules were not subject to a delayed effective date, and became effective on October 11, 2000.

Need for Correction

Section 64.601's definition for ''711'' telephone service, added in CC Docket No. 92–105, was omitted by the later effective date of amendments to § 68.601 promulgated in CC Docket No. 98–67. This corrected amendment adds the definition back into the rule and renumbers the definitions (1) through (13) to (2) through (14).

Section 64.603 was amended in CC Docket No. 92–105 to add a sentence in the undesignated introductory paragraph that was omitted by the later effective date of amendments to § 64.603 promulgated in CC Docket No. 98–67. Accordingly, a new third sentence should be added to the undesignated introductory text of § 64.603 as follows:'' * * * In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call * * * .''

List of Subjects in 47 CFR Part 64

Communications common carriers, Individuals with disabilities, Relay service, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Accordingly, 47 CFR part 64 is corrected by making the following correcting amendments:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1).

2. In § 64.601, redesignate the definitions in paragraphs (1) through (13) as paragraphs (2) through (14) and add new paragraph (1) to read as follows:

§ 64.601 Definitions.

* * * * *

(1) *711.* The abbreviated dialing code for accessing all types of relay services anywhere in the United States.

* * * * *

3. In § 64.603, revise the undesignated introductory text to read as follows:

§ 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Speech-to-speech relay service and interstate Spanish language relay service shall be provided by March 1, 2001. In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2002, access vial the 711 dialing code to all relay services as a toll free call. A common carrier shall be considered to be in compliance with these regulations:

* * * * *

[FR Doc. 01–26942 Filed 10–25–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 102201D]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Coastwide General category closure.

SUMMARY: NMFS has determined that the 2001 fishing year Atlantic bluefin tuna (BFT) coastwide General category quota will be attained by October 23, 2001. Therefore, the coastwide General category fishery will be closed effective 11:30 p.m. on October 23, 2001. This action is being taken to prevent overharvest of the adjusted coastwide General category quota of 816.7 metric tons (mt).

DATES: Effective 11:30 p.m. local time on October 23, 2001, through May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various

domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 2001 fishing year General category quota and effort control specifications were issued on July 13, 2001 (66 FR 37421, July 18, 2001).

Coastwide General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the Federal Register for publication notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notification.

The adjusted 2001 fishing year BFT quota specifications issued pursuant to § 635.27 set a coastwide General category quota of 816.7 metric tons (mt) of large medium and giant BFT to be harvested from the regulatory area during the 2001 fishing year. Based on reported landings and effort, NMFS projects that this quota will be reached by October 23, 2001. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or Charter/Headboat categories must cease at 11:30 p.m. local time October 23, 2001. The intent of this closure is to prevent overharvest of the coastwide quota established for the General category.

General category permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26. Vessels permitted in the Charter/Headboat category that are still eligible for the Angling category trophy fish allowance under § 635.23(c)(1) and (2) may land one large medium or giant BFT prior to May 31, 2002.

Classification

This action is taken under § 635.28(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 22, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26978 Filed 10–23–01; 11:23 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 001215358–0358–01; I.D. 101601A]

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine

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

ACTION: Reallocation of Pacific Sardine.

SUMMARY: NMFS announces the reallocation of the remaining Pacific sardine harvest guideline in the exclusive economic zone off the Pacific coast. As of October 3, 2001, 72,306 metric tons (mt) of the 134,737 mt harvest guideline remains unharvested. The Coastal Pelagics Species Fishery Management Plan (FMP) requires that a review of the fishery be conducted 9 months after the beginning of the fishing season and any uncaught portion of the harvest guideline totaled and reallocated, with 50 percent allocated north and 50 percent allocated south of Pt. Piedras Blancas, CA; therefore, 36,153 mt is allocated to each area. The intended effect of this action is to ensure that a sufficient amount of the resource is available to all harvesters on the Pacific coast and to achieve optimum yield.

DATES: Effective October 26, 2001, through December 31, 2001, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: On December 27, 2000, NMFS published notice of a harvest guideline of 134,737 mt for Pacific sardine in the Federal Register (65 FR 81766) for the fishing season January 1, 2001, through December 31, 2001. The harvest guideline was allocated as specified in the FMP, that is, one-third (44,912 mt) for Subarea A, which is north of 35° 40' N. lat. (Pt. Piedras Blancas, California) to the Canadian border; and two-thirds (89,825 mt) for Subarea B, which is south of 35° 40' N. lat. to the Mexican border.

Section 5.2.2 of the FMP requires that a review of the fishery be conducted 9 months after the beginning of the fishing season and any uncaught portion of the harvest guideline totaled and divided equally between Subarea A and Subarea B. At its September 2001 meeting, the Pacific Fishery Management Council (Council) received a report on the sardine fishery from its Coastal Pelagic Species Management Team and heard statements about the harvest of Pacific sardine on the Pacific coast from representatives of California, Oregon, and Washington. Based on this testimony, the Council recommended that NMFS reallocate the remaining portion of the harvest guideline as specified in the FMP. Therefore, the 72,306 mt of the uncaught portion of the harvest guideline is reallocated in the following manner: 36,153 mt north of Pt. Piedras Blancas (Subarea A), and 36,153 mt south of Pt. Piedras Blancas (Subarea B).

Classification

This action is authorized by the FMP in accordance with 50 CFR 660.517 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(3)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary and impracticable. It is unnecessary because redistribution of the harvest guideline in this proportion is a ministerial act required by the FMP. It is impracticable because affording prior notice and opportunity for public comment would preclude NMFS from quickly taking action to redistribute the sardine quotas in the north and south areas in order to prevent the quotas in these areas from being exceeded.

Because this rule provides a redistribution of a harvest guideline to meet the requirements of the FMP and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable.

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

Dated: October 19, 2001.

Bruce C. Morehead,

Acting Director,Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26930 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 208
Friday, October 26, 2001

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NCUA is soliciting public comment on whether it should revise its rules governing federal credit union (FCU) investment authorities and practices. As part of its regulatory review process, NCUA has identified provisions that may warrant clarification or revision. NCUA is also considering permitting certain activities that are currently prohibited by its rules.

DATES: Comments must be received on or before January 24, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319, or e-mail comments to *regcomments@NCUA.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Scott Hunt, Senior Investment Officer, Office of Investment Services at the above address or telephone (703) 518–6620; Dan Gordon, Senior Investment Officer, Office of Investment Services at the above address or telephone (703) 518–6620; Kim Iverson, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; or Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA has identified areas of part 703 that it is considering revising or clarifying and believes it would be helpful to receive public comment before preparing proposed changes to the rule. NCUA also welcomes comments on other issues related to part 703 not specifically addressed in this advance notice.

B. Areas for Review

As explained more fully below, NCUA seeks comment on the following issues: broker requirements, safekeeper requirements, expanded investment authorities, limitations on accounts under discretionary control of an investment advisor, investment credit ratings, borrowing repurchase agreements, variable rate investments, and purchasing options to offer equity-linked certificates of deposit.

In addition, NCUA is also seeking comment on ways to change the format of part 703 to make it more user friendly. To that end, NCUA seeks comment on whether the current ''Question and Answer'' format is beneficial. We also seek comment on whether part 703 would be easier to read if existing sections were divided into smaller sections each covering fewer topics, and whether incorporating additional topic headings would make information easier to find.

Broker Requirements

Section 703.50(a) describes the minimum criteria a broker must meet in order for an FCU to purchase and sell investments using a broker. 12 CFR 703.50(a). NCUA is considering more clearly defining these requirements to remove ambiguity and establish suitable minimum standards. NCUA is concerned that the current language may permit a broker to engage in purchasing and selling activities with an FCU without having demonstrated it possesses the skills, knowledge, and understanding to conduct investment transactions. In particular, NCUA has identified cases where brokers have engaged in deceptive practices in the sale of investments to FCUs, such as misrepresenting yields, providing misleading information about the terms of the investment, and inducing purchases of unsuitable investments. FCUs have asked NCUA to intervene and pursue remedies on their behalf.

NCUA is considering setting standards for FCUs so that any brokerage firm that transacts purchases or sales of investments with an FCU must have at least one General Securities Principal (refer to the National Association of Securities Dealers'(NASD) Manual, section 1022 (a)) registered with the NASD. Alternatively, if a depository institution transacts purchases and sales of securities with an FCU, its broker-dealer activities must be regulated by a federal or state regulatory agency. An individual broker (whether the broker works for a brokerage firm with a General Securities Principal or a depository institution where its brokerage activities are regulated by a state or federal regulatory agency) who conducts purchases or sales of investments with an FCU must be registered with the NASD as a General Securities Representative (refer to the NASD Manual, section 1032 (a)). These requirements would extend to an FCU using an introducing broker or a person who receives financial remuneration from a broker for referring an FCU to a broker to transact a purchase or sale of an investment.

NCUA would not require an FCU that uses a person or firm to purchase and sell investments to comply with the above requirements if the person or firm acts only as a certificate of deposit or share certificate finder. In this regard, a finder would only identify the institution offering the certificate of deposit or share certificate and would not take custody of funds or the investment at any time. The FCU would be required to remit payment to the financial institution directly, the account would be established in the FCU's name at the financial institution, and all principal and interest payments would be remitted directly to the FCU or the FCU's designated account.

NCUA seeks comments on whether these standards represent prudent minimum criteria for FCUs to adopt when using a broker or whether there are other standards NCUA could put in place. NCUA is interested in commenters' views on the effect these standards would have on an FCU's ability to purchase and sell securities at competitive prices.

Safekeeper Requirements

Section 703.60 states the minimum criteria for safekeeping firms FCUs may use. 12CFR 703.60. Because safekeepers that do not operate safely and scrupulously can pose a risk to FCUs, NCUA is considering clarifying these requirements to remove ambiguity and

establish suitable standards. NCUA is concerned that the current language may not fulfill its intended purpose to ensure that the safekeeper is an independent entity, either in form or in function, that protects the FCU's beneficial ownership interest in its investments. FCUs incur significant risk of loss when a safekeeping firm does not maintain independence from the broker, is not bound by prudent practices, or is not subject to sufficient supervisory oversight. Therefore, NCUA is considering requiring that a safekeeper must be either a clearing broker-dealer (i.e., a broker-dealer that clears trades from its own inventory) that is registered, regulated, and supervised by the Securities Exchange Commission, or a depository institution regulated by a state or federal depository institution regulatory agency, if it is used to hold investments for an FCU.

NCUA seeks comments on whether this standard represents prudent minimum criteria and if this standard affords FCUs protection from dealings with safekeepers that have not adopted prudent practices. NCUA is also interested in understanding how this standard may impede an FCU's ability to engage a safekeeping firm at a reasonable cost, and if there are alternative standards NCUA could establish to reduce the risk an FCU would face if it engages a safekeeper that has not adopted prudent practices.

Expanded Investment Authorities

The Federal Credit Union Act specifies the statutory investment powers for FCUs. 12 U.S.C. 1757. NCUA has adopted regulatory prohibitions against certain investments and investment activities on the basis of safety and soundness concerns. 12 CFR 703.100 and 703.110. These include variable rate instruments where the interest rate is not tied to a domestic interest rate (e.g., foreign currencies or interest rates, commodity prices, equity prices, or inflation rates), financial derivatives, short sales, mortgage-backed security interest and principal strips, residual interests in collateralized mortgage obligations, mortgage servicing rights, commercial mortgage-related securities, and zero coupon securities with remaining maturities greater than 10 years.

Section 703.140 provides for investment pilot programs permitting FCUs, on a limited basis, to engage in investment activities permitted by statute, but prohibited by part 703. 12 CFR 703.140. Currently, pilot programs have been approved such as permitting credit unions to engage in derivative activities and to purchase equity-linked options in order to offer their members share certificates where the dividend is tied to the performance of the S&P 500 equity index. In keeping with the agency's objective of providing regulatory relief while maintaining safety and soundness standards, NCUA is considering streamlining the process and expanding investment authorities.

While expanding the authorities would permit more flexibility for FCUs, these transactions bear considerable risks. NCUA is not considering granting blanket approval to all FCUs. Instead, NCUA would consider permitting an FCU to engage in an activity after it has demonstrated it has the ability and expertise to manage these investments or investment transactions in a safe and sound manner. This approach is similar to the procedures for corporate credit unions applying for expanded authorities.12 CFR part 704, Appendix B.

NCUA is considering developing minimum standards and criteria that an FCU would have to meet to gain approval through an application process. By developing these standards for credit unions, NCUA believes it may encourage credit unions to seek expanded investment authorities. These standards would be made publicly available to assist FCUs in preparing an application for approval. This differs from the current pilot program approach where a credit union submits proposed standards to NCUA for approval.

NCUA would develop standards based on the experience gained from previously approved pilot programs and standard industry practices. By way of example, a credit union that requests approval to engage in derivative authority to hedge interest rate risk may be subject to standards such as:

1. Thorough policies and procedures pertaining to derivatives and risk management.

2. Minimum reporting requirements including a pre-execution analysis of risk, monthly evaluation of hedge effectiveness, and quarterly analysis of the earnings and value impact from +/− 100, 200, and 300 basis point interest rate shocks.

3. Approved counterparties must have a rating of AAA, or equivalent, and the credit union must perform annual credit reviews.

4. Pre-execution approval of each derivative transaction by executive management.

5. Maximum notional amounts of derivatives in total and by counterparty.

6. Staff experienced with analyzing and purchasing derivatives, including requirements for on-going training.

7. An independent audit of accounting systems to ensure compliance with generally accepted accounting principles pertaining to derivatives (i.e., FAS 138).

8. Risk measurement systems capable of measuring the interest rate risk associated with derivatives (e.g., option pricing or option-adjusted spread functionality).

9. Sound internal control systems that provide for adequate segregation of duties, independence of the risk measurement and risk taking functions, and performance monitoring by executive management and the board.

These standards and criteria may differ for each type of investment dependent upon the pertinent risks.

NCUA seeks comments on whether there are investments or investment transactions identified in §§ 703.100 and 703.110 that NCUA should continue to prohibit. NCUA seeks comments on whether the proposal to develop an application and approval process to engage in the currently prohibited activities is appropriate and reasonable, and what criteria or standards NCUA should require to participate in these activities.

NCUA is also interested in commenters' views on whether certain investments or investment transactions should be permitted without having to submit an application for approval and reasons supporting such a position.

Discretionary Control of Investments

Currently, an FCU may delegate discretionary control of investments to an investment advisor so long as the aggregate amount does not exceed 100 percent of the FCU's net capital at the time of delegation. 12 CFR 703.40. NCUA is considering raising the cap to provide FCUs more flexibility in managing their investments. An investment adviser can augment an FCU's investment expertise and assist the FCU in making sound and prudent investment decisions. However, NCUA also recognizes that raising the cap can lead to safety and soundness concerns for FCUs that may abdicate responsibility for making responsible investment decisions, and fail to understand and manage the risks associated with these investments.

Should NCUA raise the cap, it may set minimum criteria FCUs must meet or require FCUs to seek approval prior to exceeding the limit. Criteria that may be considered include the FCU's financial performance, policies and procedures governing the investment advisor, an assessment of management's ability to monitor the investment advisor's

actions, and the quality of the credit union's risk management procedures.

NCUA is seeking comments whether the cap should be raised. If the cap should be raised, commenters should address whether it is appropriate for NCUA to set minimum criteria in its rules or require FCUs to seek NCUA approval prior to exceeding the current cap. For those commenters supporting minimum criteria, NCUA is interested in specific criteria that would be appropriate.

Investment Credit Ratings

Currently, an FCU must conduct a credit analysis for any investment that is not issued by or fully guaranteed as to principal and interest by the U.S. government or its agencies, enterprises, or corporations, or fully insured by the NCUA or the FederalDeposit Insurance Corporation. 12 CFR 703.40(d). FCUs are not required to express credit exposure in terms of risk to capital and, except for municipal bonds and privately issued mortgage related securities, FCUs are not required to obtain or monitor credit ratings on the issue or issuer.

FCUs are not exposed to significant credit risk if they invest in obligations of or guaranteed by the U.S. government or its agencies, or if investments are insured by federal deposit insurance or are collateralized by high quality assets. However, credit risk exposure increases as FCUs purchase certificates of deposit and deposit notes exceeding insured limits, and invest in obligations that are not insured or guaranteed, such as bank notes and sales of federal funds. Also, in 2001, the Federal NationalMortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC) began issuing subordinated debt. While national credit rating organizations have assigned high quality ratings to both FNMA's and FHLMC's subordinated debt, the subordinated debt rating is lower than the senior unsecured debt rating.

NCUA is contemplating refining the requirements for evaluating credit risk, such as requiring FCUs to establish limits in terms of capital at risk or setting minimum credit criteria for all investments not fully guaranteed or insured. Many FCUs have adopted one or both practices as part of their credit analysis procedures. By establishing a regulatory requirement, NCUA would establish consistency in approach for all FCUs.

NCUA is seeking comments on whether it is reasonable to require credit risk to be expressed in terms of minimum credit ratings, risk to capital, or other standards. For those commenters supporting credit ratings, NCUA is interested in their views on acceptable minimum credit ratings and if FCUs should be permitted to define the minimum acceptable credit ratings. For those commenters in support of requiring credit exposure to be stated in terms of capital-at-risk, NCUA is seeking comments on whether NCUA or the FCU should establish the minimum capital-at-risk standards.

Borrowing Repurchase Agreements

Borrowing repurchase agreements enable an FCU to sell securities under an agreement to repurchase in order to borrow funds. Section 703.100(j)(2) prohibits an FCU from purchasing an investment with the proceeds from a borrowing repurchase agreement if the purchased investment matures after the maturity of the borrowing repurchase agreement. 12 CFR 703.100(j)(2). This restriction was initially adopted years ago to address problems where FCUs incurred significant interest rate risk by borrowing funds at short-term interest rates and investing in long-term fixed rate instruments. 44 FR 42673, July 20, 1979. Problems resulted when changes in interest rates adversely impacted earnings and capital.

NCUA has not established similar prohibitions for other borrowing arrangements. For example, if an FCU borrowed funds without engaging in a borrowing repurchase agreement, it would not be limited by the maturity limit of § 703.100(j)(2) when it invests the proceeds. Also, many FCUs have improved their understanding and management of balance sheet risk since the time the restriction was enacted, and NCUA can address safety and soundness concerns pertaining to borrowing during supervisory examinations. For these reasons, NCUA is considering removing this prohibition so that an FCU has the flexibility to invest the proceeds from a borrowing repurchase agreement at its discretion.

NCUA seeks comments on whether removing this restriction would raise any liquidity or safety and soundness concerns. If an approval process is recommended instead of removing the restriction, NCUA seeks comments on suggested standards that an FCU should meet in order to be excluded from the current restriction.

Purchase of Equity-Linked Options

While § 703.110(a) prohibits an FCU from purchasing financial derivatives, including options,12 CFR 703.110(a), NCUA has approved an investment pilot program permitting a vendor to act as an agent for FCUs to purchase equity-based options. In the pilot program, FCUs can offer share certificates where the dividend rate is tied to the performance of the S&P 500 stock index. NCUA established constraints to minimize risks, and prohibit FCUs from investing in options for their own accounts.

NCUA is considering expanding part 703 to permit FCUs to purchase equity options for the sole purpose of offering equity-linked dividends to their members. Because options bear considerable risks, NCUA would likely develop regulatory guidelines and constraints based on the experience gained from the pilot program. Based on NCUA's experience in overseeing the pilot program, these guidelines and constraints may include the following:

The FCU may purchase financial options contracts to fund the payment of dividends on member share accounts provided:

a. The option is a European option;

b. The option is based on a domestic equity index;

c. Dividends on the share accounts are derived solely from the change in the domestic equity index over a specified period;

d. Proceeds from the option are only used to fund dividends on the share accounts, and counterparty expenses and broker commissions associated with the option transaction.

e. The counterparty to the transaction is a domestic counterparty with a long-term senior unsecured debt rating from a nationally recognized statistical rating organization in one of the two highest rating categories (e.g., higher than A+ by Standard & Poors or higher than A1 by Moody's) and,

f. The program must be structured such that there can be no loss of principal to the member as a result of changes in the value of the option; and,

g. The options must be entered into pursuant to written policies and procedures pertaining to this program.

NCUA is interested in receiving comments on these and other standards an FCU should meet to engage in this activity. Also, NCUA would like to receive comments on what other indices would be appropriate for FCUs.

By the National Credit Union Administration Board on October 18, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–26934 Filed 10–25–01; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–409–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This proposal would require a one-time inspection for discrepancies of certain wire bundles in the forward cargo compartment, and corrective actions, if necessary. This action is necessary to prevent damage to wire bundles, particularly those of the fuel quantity indication system (FQIS), which are located in the subject area. Damage of FQIS wires could cause arcing between those wires and power wires in the damaged wire bundle, and may lead to transmission of electrical energy into the fuel tank, which would result in a potential source of ignition in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 10, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–409–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–409–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1279; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–409–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–409–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, prior to engine start-up on a Boeing Model 767 series airplane, several circuit breakers tripped and the flight crew observed unusual messages (i.e., STATUS, ADVISORY, and CAUTION) on the engine indication and crew alerting system display. An investigation by the maintenance crew revealed that numerous wires in wire bundles W738, W766, and W1256 had melted and burned. The affected wire bundles were located on the ceiling of the forward cargo compartment, and had chafed against stand-offs that attach the cargo ceiling lining to the floor beams. An unrelated water leak from a galley in the area may have contributed to the severity of this incident.

Such chafing and damage of wire bundles could lead to arcing of the damaged wires. Wires for the fuel quantity indication system (FQIS), which penetrate the fuel tank, are routed through one of the wire bundles that was damaged in the reported incident. Though the FQIS wires were not damaged in this incident, damage of FQIS wires could cause arcing between those wires and power wires in the damaged wire bundle, and may lead to electrical energy being transmitted into the fuel tank, which would result in a potential source of ignition in the fuel tank.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000. That service bulletin describes procedures for a one-time inspection for discrepancies of wire bundles routed along the ceiling of the forward cargo compartment, and corrective actions, if necessary. The discrepancies consist of chafing or damage of wire bundles near stand-offs that attach the cargo ceiling liner to the floor beams, and inadequate clearance between the wire bundles and stand-offs. If chafing or damage is found, corrective actions consist of repair of damaged wire bundles. If clearance is not within the limits specified in the service bulletin, corrective actions include installing protective sleeving on the wire bundles, as well as cable tie mounts and panduit straps. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed AD

Operators should note that, while the service bulletin refers only to an ''inspection'' for chafing or damage of wire bundles, this proposed AD would require a ''detailed visual inspection.'' The FAA has determined that the procedures in the service bulletin should be described as a detailed visual inspection. Note 2 has been included in this proposed AD to define this type of inspection.

Operators also should note that the service bulletin recommends accomplishing the inspection ''at the earliest opportunity when manpower and facilities are available.'' However, we have determined that such a compliance time will not ensure that operators address the unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (1 hour). In light of all of these factors, the FAA finds a 15-month compliance time for completing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, while the service bulletin specifies installation of cable tie mounts and panduit straps ''as needed,'' we find that the Work Instructions and Figure 1 of the service bulletin do not make clear when such installation is needed. Therefore, paragraph (a) of this proposed AD would require installation of cable tie mounts and panduit straps on all wire bundles on which protective sleeving is installed due to inadequate clearance.

Cost Impact

There are approximately 774 airplanes of the affected design in the worldwide fleet. The FAA estimates that 303 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $36,360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–409–AD.

Applicability: Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000; 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 damage of wire bundles in the forward cargo compartment, particularly wires of the fuel quantity indication system (FQIS) installed in that area, which could cause arcing between the FQIS wires and power wires in the damaged wire bundle, lead to transmission of electrical energy into the fuel tank, and result in a potential source of ignition in the fuel tank, accomplish the following:

One-Time Inspection

(a) Within 15 months after the effective date of this AD, do a one-time detailed visual inspection to find discrepancies of wire bundles in the forward cargo compartment, according to Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000. The discrepancies consist of chafing or damage of wire bundles near stand-offs that attach the cargo ceiling liner to the floor beams, and inadequate clearance between the wire bundles and stand-offs. Inspect all wire bundles routed along the ceiling of the forward cargo compartment from station 368 through 742 inclusive, at right buttock lines 43, 49, and 54.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive 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.''

Corrective Actions

(b) If any discrepancy is found during the inspection required by paragraph (a) of this AD, before further flight, do paragraphs (b)(1) and (b)(2) of this AD, as applicable, according to Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000.

(1) Repair chafed or damaged wire bundles.

(2) If clearance between wire bundle and stand-off is outside the limits specified in the service bulletin: Install protective sleeving over the affected wire bundle, and install cable tie mounts and panduit straps.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26954 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–132–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require a one-time inspection of the forward and aft lower bogies of the left- and right-hand sliding windows of the flightcrew compartment for the presence of a lock pin. If the lock pin is missing, this proposal would require corrective action. This action is necessary to prevent the inability of the flightcrew to open the left- or right-hand sliding window for evacuation in an emergency, due to a window jamming in the closed position. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 26, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket Number 2001–NM–132–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–132–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that there has been an incident of the right-hand sliding window jamming in the closed position on an in-service airplane. Investigation revealed that the jamming was due to a missing lock pin in the aft lower bogie on the affected airplane and that the bogie body had no hole for installation of the lock pin. The manufacturer has indicated that there may be a batch of airplanes which are missing the lock pin in the forward or aft lower bogie. This action is necessary to prevent the inability of the flightcrew to open the left- or right-hand sliding window for evacuation in an emergency, due to a window jamming in the closed position.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001, which describes procedures for a one-time detailed visual inspection of the forward and aft lower bogies of the left- and right-hand sliding windows for the presence of a lock pin. The service bulletin also describes procedures for replacement or temporary repair of the bogie, if the lock pin is missing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–518–157(B), dated December 13, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 77 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,620, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 2001–NM–132–AD.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category, as listed in Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001.

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 the inability of the flightcrew to open the left- or right-hand sliding window for evacuation in an emergency, due to a window jamming in the closed position, accomplish the following:

Inspection

(a) Within one year after the effective date of this AD: Perform a one-time detailed visual inspection of the forward and aft lower bogie of the left-hand and right-hand sliding windows to check for the presence of a lock pin, in accordance with Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive 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.''

Corrective Action

(b) If the inspection required by paragraph (a) of this AD reveals that a lock pin is missing: Prior to further flight, perform the action required by either paragraph (b)(1) or (b)(2) of this AD.

(1) Install a new bogie equipped with a lock pin, in accordance with paragraph C.(1) of the Accomplishment Instructions of Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001, or

(2) Perform a temporary repair in accordance with paragraph C.(2) of the Accomplishment Instructions of Airbus Service Bulletin A320–56–1007, Revision 01, dated February 9, 2001. Within 500 flight hours of the temporary repair, install a new bogie equipped with a lock pin, in accordance with paragraph C.(1) of the Accomplishment Instructions of the service bulletin.

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, Transport Airplane Directorate, FAA. 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

(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.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–518–157(B), dated December 13, 2000.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26955 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

31 CFR Part 1

[Docket No. 00–19]

RIN 1557–AB83

Office of the Comptroller of the Currency; Privacy Act of 1974; Proposed Implementation

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: With the concurrence of the Department of the Treasury (Department), the Office of the Comptroller of the Currency (OCC) issues a proposed rulemaking to amend this part to exempt five Privacy Act systems of records from certain provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(j)(2) and/or 5 U.S.C. 552a(k)(2).

DATES: Comments will be accepted until November 26, 2001.

ADDRESSES: You should direct comments to the Office of the Comptroller of the Currency, Public Information Room, Docket No. 01–19, 250 E Street, SW., Mailstop 1–5, Washington, DC 20219. You may inspect comments received at the same location. You may send your comments by facsimile transmission to FAX number 202–874–4448 or by electronic mail to *regs.comments@occ.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Harold J. Hansen, Assistant Director, Administrative and Internal Law Division, (202) 874–4460 or Ellen S. Warwick, Special Counsel, Administrative and Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, 5 U.S.C. 552a, as amended, a Federal agency is required, among other things, to: (1) Maintain only information about an individual that is relevant and necessary to accomplish an authorized purpose; (2) Notify an individual whether information about him or her is maintained in a system of records; (3) Provide an individual with access to the records containing information about him or her, including an accounting of disclosures made of that information; (4) Permit an individual to request amendment of records about him or her; and (5) Describe in system notices the sources of information maintained about individuals and the procedures under which notice, access and amendment rights may be exercised. Under certain circumstances, however, the head of a Federal agency may issue rules to exempt a particular system of records from these requirements (5 U.S.C. 552a(j) and (k)). Two of the six systems that the OCC proposes to alter are currently exempt from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). These systems, Treasury/Comptroller .013-Enforcement and Compliance Information System (to be renamed ''Reports of Suspicious Activities'') and Treasury/Comptroller .500-Chief Counsel's Management Information System will remain exempt from certain of the Privacy Act's requirements.

Notices of Proposed New and Altered Systems of Records

The Department and the OCC have published separately in the **Federal Register** a notice establishing five new systems of records, and a notice altering six existing systems of records.

In further regard to the proposal to alter six existing systems, the OCC proposes by this rulemaking to exempt two of the remaining four systems from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and/or (k)(2). These systems are: (1) Treasury/Comptroller .510-Litigation Information System; and (2) Treasury/Comptroller .600-Consumer Complaint and Inquiry Information System.

Additionally, the OCC has proposed to establish five new systems of records, three of which are proposed by this rulemaking to be exempted from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and/or (k)(2). The new systems of records that are proposed to be exempted by this rulemaking are: (1) Treasury/Comptroller .100—Enforcement Action Report System; (2) Treasury/Comptroller .120—Bank Fraud Information System; and (3) Treasury/Comptroller .220—Section 914 Tracking System.

Proposed Exemptions

The systems of records that are proposed to be exempted under 5 U.S.C. 552a(j)(2) are: (1) Treasury/Comptroller .510—Litigation Information System; and (2) Treasury/Comptroller .120—Bank Fraud Information System.

The provisions of the Privacy Act of 1974 from which exemption is proposed pursuant to 5 U.S.C. 552a(j)(2) are:

5 U.S.C. 552a(c)(3) and (4);
5 U.S.C. 552a(d)(1), (2), (3), and (4);
5 U.S.C. 552a(e)(1), (2), and (3);
5 U.S.C. 552a(e)(4)(G), (H), and (I);
5 U.S.C. 552a(f); and
5 U.S.C. 552a(g).

The systems of records that are proposed to be exempted under 5 U.S.C. 552a(k)(2) are: (1) Treasury/Comptroller .100—Enforcement Action Report System; (2) Treasury/Comptroller .120—Bank Fraud System; (3) Treasury/Comptroller .220—Section 914 Tracking System; (4) Treasury/Comptroller .510—Litigation Information System; and (5) Treasury/Comptroller .600—Consumer Complaint and Inquiry Information System.

The provisions of the Privacy Act of 1974 from which exemption is proposed pursuant to 5 U.S.C. 552a(k)(2) are:

5 U.S.C. 552a(c)(3);
5 U.S.C. 552a(d)(1), (2), (3), and (4);
5 U.S.C. 552a(e)(1); (e)(4)(G), (H), and (I); and
5 U.S.C. 552a(f).

Reasons for Exemptions Under 5 U.S.C. 552a(j)(2) and (k)(2)

(1) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. Access to such knowledge would impair the OCC's ability to carry out its mission, since individuals could:

(a) Take steps to avoid detection;

(b) Inform associates that an investigation is in process;

(c) Learn the nature of the investigation;

(d) Learn whether they are only suspects or identified as law violators;

(e) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(f) Destroy evidence needed to prove the violation.

(2)(a) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the OCC's ability to utilize and provide useful tactical and strategic information to law enforcement agencies.

(b) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(i) Discovering the facts that would form the basis for their detection or apprehension;

(ii) Enabling them to destroy or alter evidence of illegal conduct that would form the basis for their detection or apprehension;

(iii) Using knowledge that investigators had reason to believe that a violation of law was about to be committed, to delay the commission of the violation or commit it at a location that might not be under surveillance;

(c) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning illegal acts to structure their operations so as to avoid detection or apprehension;

(d) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the OCC's ability to carry out its mandate.

(e) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers or other persons who compiled information regarding the individual's illegal activities and thereby endanger the physical safety of those officers, persons, or their families by exposing them to possible reprisals.

(f) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (b) through (e) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the OCC and thus would restrict the OCC's access to information necessary to accomplish its mission most effectively.

(g) Finally, the dissemination of certain information that the OCC may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in subparagraphs (b) through (g) of paragraph (2), above, these provisions should not apply to the systems of records.

(4)(a) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(b) The application of this provision would impair the ability of the OCC, the Department, and law enforcement agencies outside the Department of the Treasury to make effective use of information maintained by the OCC. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that an agency is conducting an investigation into their illegal activities and could reveal the geographic location of the investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their illegal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for detection or apprehension.

(c) Providing accountings to the subjects of investigations would alert them to the fact that the OCC has information regarding their illegal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the OCC's information gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(5)(a) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the system of records could impair the OCC's ability to collect, utilize, and disseminate valuable law enforcement information.

(b) At the time that the OCC collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish an OCC purpose.

(c) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(d) Not all violations of law discovered by OCC analysts fall within the investigative jurisdiction of the OCC. To promote effective law enforcement, the OCC will have to disclose such violations to other law enforcement agencies, including State, local, and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, the OCC might be placed in the position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the OCC's attention during the collation and analysis of information in its records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the OCC's ability to complete or continue investigations or inquiries or to provide useful

information to law enforcement agencies, since revealing sources for the information could:

(a) Disclose investigative techniques and procedures;

(b) Result in threats or reprisals against informers by the subjects of an investigation; and

(c) Cause informers to refuse to give full information to investigators for fear of having their identities as sources disclosed.

Reasons for Additional Exemptions Claimed Solely Under 5 U.S.C. 552a(j)(2)

(1) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, this provision should not apply to the systems of records.

(2)(a) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the systems of records would impair the OCC's ability to collate, analyze, utilize, and disseminate investigative, intelligence, and enforcement information.

(b) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his or her criminal activities.

(c) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(d) In certain instances, the subject of a criminal investigation is not required to supply information to investigators as a matter of legal duty.

(e) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(3)(a) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The systems of records should be exempted from this provision to avoid impairing the OCC's ability to collect and collate investigative and enforcement information. Confidential sources or law enforcement officials often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(c) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(d) Individuals may be contacted during preliminary information gathering before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(e) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(4)(a) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(b) Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect'' and ''disseminate,'' application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the OCC's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because the OCC may not have the expertise with which to make such determinations.

(c) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators in the exercise of their judgment in reporting results obtained during criminal investigations.

(5) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(6) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The system of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which the OCC is exempted. Exemption from this provision will also protect the OCC from baseless civil court actions that might hamper its ability to collate, analyze,

utilize, and disseminate investigative, intelligence, and law enforcement data.

The Regulatory Flexibility Act (RFA) requires Federal agencies either to certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or to prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment (5 U.S.C. 603, 605). This regulation will exempt five systems of records from the Privacy Act. Because this regulation affects only internal agency administration, these exemptions are not expected to generate any costs for banks of any size. Therefore, the OCC and the Department certify that the proposed rule, if adopted in final form, will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC and the Department have determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and the Department have determined that the proposed rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC and Department have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

The OCC and the Department have determined that this proposed rule, if adopted as a final rule, would not constitute a ''significant regulatory action'' under Executive Order 12866 and, therefore, does not require a Regulatory Impact Analysis.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of Subpart C is amended as follows:

a. Paragraph (c)(1)(iii) is amended by adding ''CC .120 Bank Fraud Information System'' and ''CC .510 Litigation Information System'' to the table in numerical order.

b. Paragraph (g)(1)(iii) is amended by adding ''CC .100 Enforcement Action Report System,'' ''CC .120 Bank Fraud Information System,'' ''CC .220 Section 914 Tracking System,'' ''CC .510 Litigation Information System,'' and ''CC .600 Consumer Complaint and Inquiry Information System'' to the table in numerical order.

The additions to § 1.36 read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U. S. C. 552a and this part.

* * * * *

(c) * * *
(1) * * *
(iii) * * *

Number	System name
* *	* * *
CC .120	Bank Fraud Information System.
CC .510	Litigation Information System.
* *	* * *

(g) * * *
(1) * * *
(iii) * * *

Number	System name
* *	* * *
CC .100	Enforcement Action Report System.
CC .120	Bank Fraud Information System.
CC .220	Section 914 Tracking System.
CC .510	Litigation Information System.
CC .600	Consumer Complaint and Inquiry Information System.
* *	* * *

Dated: September 10, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 01–27003 Filed 10–25–01; 8:45 am]

BILLING CODE 4810–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 3, 51, 60, 63, 70, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745, and 763

[FRL–7090–9]

RIN 2025–AA07

Public Hearings on the Proposed Establishment of Electronic Reporting; Electronic Records Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; public hearings.

SUMMARY: This document announces dates and locations for two public hearings EPA is holding to take comments on the Agency's proposed rule for establishment of electronic reporting and electronic records, published on August 31, 2001. These public hearings are being held during the ninety-day public comment period for the proposed rule, which ends on November 29, 2001. The meeting will be structured by topics as follows: 9:30–10:00 a.m.—Welcome and Introduction; 10:00–11:00 a.m.—General Requirements for Electronic Reporting/Electronic Signature; 11:00 a.m.–12:30 p.m.—EPA's Electronic Reporting System: ''The Central Data Exchange''; 1:30–4:00 p.m.—Electronic Recordkeeping Requirements; and 4:00–5:30 p.m.—Criteria for State Electronic Reporting and Recordkeeping Programs.

DATES: The hearings will be held on:

1. Monday, October 29, 2001, 9:30 a.m. to 5:30 p.m. (EST);
2. Friday, November 9, 2001, 9:30 a.m. to 5:30 p.m. (CST).

ADDRESSES: The hearings will be held at:

1. The U.S. EPA Auditorium at 401 M Street, SW., Washington, DC;
2. The Ralph H. Metcalfe Federal Building, 3rd Floor, 77 West Jackson Blvd., Chicago, IL.

FOR FURTHER INFORMATION CONTACT: David Schwarz (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 260–2710, *schwarz.david@epa.gov*, or Evi Huffer (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC, 20460, (202) 260–8791, huffer.evi@epa.gov.

SUPPLEMENTARY INFORMATION: EPA published its proposed rule for Establishment of Electronic Reporting; Electronic Records in the **Federal Register** on August 31, 2001 (66 FR

46162–46195). EPA proposes to allow electronic reporting and electronic recordkeeping under the environmental regulations in Title 40 of the Code of Federal Regulations. It proposes to remove regulatory obstacles to electronic reporting and recordkeeping and sets forth the conditions for the submission of electronic documents or maintenance of electronic records in lieu of paper documents or records. EPA is proposing the rule, in part, under the authority of the Government Paperwork Elimination Act (GPEA) of 1998, Public Law 105–277.

The proposed rule is available electronically on the Internet at http://www.epa.gov/fedrgstr/EPA-GENERAL/2001/August/Day-31/g21810.htm. The proposed rule and supporting materials are also available for viewing in the Enforcement and Compliance Docket and Information Center, located at 1200 Pennsylvania Avenue, NW., (Ariel Rios Building), 2nd Floor, Room 2213, Washington, DC 20460. The documents are available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 564–2614 or (202) 564–2119.

Dated: October 18, 2001.

Janette Petersen,

Acting Director, Collection Services Division, Office of Information Collection, Office of Environmental Information.

[FR Doc. 01–27059 Filed 10–23–01; 4:21 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 416, 418, 460, 482, and 483

[CMS–3047–P]

RIN 0938–AK35

Medicare and Medicaid Programs; Fire Safety Requirements for Certain Healthcare Facilities

AGENCY: Centers for Medicare & Medicaid Services, (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule replaces the proposed rule of August 1, 1990, on the same subject, which we are withdrawing. This proposed rule would amend the fire safety standards for hospitals, long-term care facilities, intermediate care facilities for the mentally retarded (ICFs/MR), ambulatory surgery centers (ASCs), hospices which provide in-patient services, religious non-medical health care institutions, and Programs of All-Inclusive Care for the Elderly (PACE) facilities. Further, this proposed rule would adopt the 2000 edition of the Life Safety Code (LSC) and eliminate references in our regulations to all earlier editions.

DATES: In order to ensure that comments will be considered, all comments should be mailed to the appropriate address as provided below, postmarked by December 26, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3047–P, P.O. Box 8018, Baltimore, MD 21244–8010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW, Washington, D.C. 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244.

Because of staffing and resource limitation, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–3047–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, contact Ms. Freddie Wilder at (410) 786–7195 or (410) 786–0082.

FOR FURTHER INFORMATION CONTACT: Mayer Zimmerman, 410–786–6839, Jim Merrill, 410–786–6998, or Tamara Syrek, 410–786–3529.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Proposed Rule of August 1, 1990 (55 FR 31196)

On August 1, 1990, we published a proposed rule that would have applied to hospitals, long term care (LTC) facilities, and intermediate care facilities for the mentally retarded (ICFs/MR). It would have eliminated the use of the 1967 and 1973 editions of the Life Safety Code (LSC), which is updated and published periodically by the National Fire Protection Association (NFPA), a private, non-profit organization created in 1896, dedicated to reducing loss of life and property due to fire. That rule would have required all Medicare and Medicaid participating providers and suppliers subject to the LSC to meet either the 1981 or 1985 edition of the LSC, depending on the date the provider first entered the program. The August 1, 1990 proposed rule did not include references to ambulatory surgery centers (ASCs) or hospices because they were already required to meet either the 1981 or 1985 edition of the LSC. Additionally, no reference was made to Programs of the All-Inclusive Care for the Elderly (PACE) facilities and Religious Non-Medical Health Care Institutions (RNHCIs) because these provider and supplier types did not exist when the August 1, 1990 proposed rule was published. However, in this proposed rule we are proposing PACE and RNHCIs comply with the requirements of the 2000 LSC along with other providers.

We proposed deletion of the 1967 and 1973 editions of the LSC because they relied heavily on ''compartmentation,'' a construction technique that divides buildings into separate compartments or rooms so as to limit the spread of fire and smoke. Moreover, earlier editions of the LSC did not encourage the use of sprinklers. However, subsequent editions of the LSC have encouraged sprinklers and, as a trade-off, less costly construction material may be used if sprinklers are installed. The authors of the newer editions of the LSC no longer believe compartmentation is effective and rely on early detection and extinguishment. Further, every year fewer facilities rely on the concept of compartmentation, and as older, less efficient buildings are upgraded or replaced and newer editions of the LSC are applied, which use early fire detection and extinguishment rather than compartmentation.

In the past, our authority to grant waivers was critical to our ability to continuously improve fire safety in the Medicare and Medicaid programs and not impose an undue burden on providers. The Secretary has broad authority to grant waivers to hospitals under Section 1861(e)(9) of the Social Security Act (the Act), and to LTC facilities at sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act. Currently, the Secretary allows for a waiver to be granted on a case-by-case basis if specific provisions of the LSC would result in unreasonable hardship on the provider, and if the safety of patients

would not be compromised. In addition, the Secretary may accept a State's fire and safety code instead of the LSC if the State's fire and safety code adequately protects patients. Further, the NFPA's Fire Safety Evaluation System (FSES), an equivalency system, provides alternatives to meeting various provisions of the LSC, thereby achieving the same level of fire protection as the LSC. Application of the FSES for either health care or board and care, as applicable, also mitigated the effects of the proposed rule.

In the August 1, 1990 proposed rule, we relied heavily on our waiver authority, the application of the FSES, and existing regulations ''grandfathering'' providers that were already in compliance with the 1967 and 1973 editions of the LSC. We asserted that the deletion of the references to the 1967 and 1973 editions of the LSC would not impose an undue burden on most facilities because the 1981 and 1985 LSC updated provisions were minor, and because most facilities would be able to comply with little expense.

B. Analysis of Comments on the August 1, 1990 Proposed Rule

We received 52 timely comments on the August 1, 1990 proposed rule, from nursing homes, State health departments, associations and organizations representing SNFs, NFs, and ICFs/MR. Since we are withdrawing this NPRM, we will not detail each comment and response. We will summarize the major concern those parties raised about the proposed rule and address our approach to meeting this concern in a later section detailing the provisions of this new proposed rule.

A majority of commenters expressed concern regarding the deletion of references to the 1967 and 1973 editions of the LSC, and requested that we codify specific waiver and prior compliance provisions in the regulations to prevent possible arbitrary and inconsistent application of waivers and the FSES. We do not believe it is possible to provide blanket waivers to an entire class of requirements because waivers and the FSES are intended as a response to specific situations and are granted on a case-by-case basis.

C. Decision To Withdraw the August 1, 1990 Proposed Rule

Since the August 1, 1990 proposed rule was published, the 1991, 1994, 1997 and, 2000 editions of the LSC have been published. The 1997 edition has been adopted by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), which accredits over 4,000 hospitals, as well as ASCs, LTC facilities, and hospices that provide inpatient services. In addition, individual States have adopted various editions of the LSC.

The 2000 edition of the LSC includes new provisions that we believe are vital to the health and safety of all beneficiaries. We are not proposing to grandfather any facility under these new provisions because we believe the provisions will not impose an undue burden. This proposed rule is intended to ensure beneficiaries continue to experience the highest degree of fire safety possible.

In addition to developing a notice of proposed rulemaking (NPRM) to adopt the 2000 edition of the LSC, we were intending to propose a more efficient process to allow CMS to adopt future editions of the LSC in a more timely manner. We explored incorporating, by reference, the NFPA LSC without specific dates in the regulation text and publishing a **Federal Register** notice, instead of a NPRM, each time we planned to adopt the next edition. The **Federal Register** notice would ask for public comment. We worked closely with the Office of Federal Register (OFR) staff and counsel on our draft proposed approach; however, it has become clear that adoption of multiple successive editions of the LSC via reference is not possible. The rationale is that the changes in the future LSCs may be substantial, necessitating that we go through a NPRM and public comment period. Moreover, we can not automatically incorporate successive versions of the LSC because of the statutory restrictions of 5 U.S.C. section 552(a) and accompanying regulations at 1 CFR part 51. All LSC editions we adopt must include a specific edition and a copy of the edition cited must be on file at the Office of the Federal Register. Based on this new information we are revising the draft NPRM to propose to adopt the 2000 LSC only.

II. Provisions of the Proposed Regulations

A. General Description

We are proposing to (1) require that all providers and suppliers meet the provisions of the 2000 edition of the LSC with certain exceptions; and (2) delete references to all previous editions of the LSC.

B. The 2000 Edition of the Life Safety Code

Some requirements in the 2000 edition of the LSC are substantially different than earlier LSC editions. We believe the standards set out in the 2000 edition of the LSC should be met by health care providers, as applicable, depending on provider type.

We are soliciting comments regarding whether to adopt Chapter 5, Performance Based Option, of the LSC. We would like to know (1) are health care facilities using performance based design; and (2) what benefits the facility receives by using performance based design (i.e., better fire safety).

The LSC fire safety goals establish overall outcomes to be achieved with regards to fire safety. These overall outcomes are communicated through specific requirements in the LSC. Performance based design option, Chapter 5, translate fire safety goals into performance objectives and performance criteria. Performance based design establishes broad goals and objectives with a team effort. The performance-based design is applied to make the building safe as well as functional. The design is specific to the building. Computer fire models and other calculation methods are used in combination with the building design specifications, specified fire scenarios and assumptions to calculate the overall performance criteria and whether it meets the fire life safety goals and is in compliance with the intent of the code.

Chapter 19, Existing Health Care Occupancies, Section 19–3.6.3.2 (exception No. 2), roller latches is the only provision of the LSC we propose not to adopt for any provider. A roller latch is a type of door latching mechanism to keep a door closed. The 2000 edition of the LSC prohibits the use of roller latches on corridor doors in buildings not fully protected by an approved sprinkler system. Exception number 2, however, allows for the use of roller latches notwithstanding this prohibition, if the latch can withstand a specific level of force applied to it. Nonetheless, we are proposing not to CMS adopt exception No. 2 regarding existing roller latches. Through fire investigations by, roller latches have proven to be an unreliable door latching mechanism requiring extensive maintenance to operate properly. Many roller latches in fire situations failed to provide adequate protection to residents in their rooms during an emergency. The estimated cost to be in compliance with this provision is $30,754,540 ($190 per door for 161,866 doors). The cost estimate was derived from information given to us by the American Health Care Association (AHCA).

C. Analysis of Selected New Provisions in the 2000 Edition of the LSC

The following are new provisions in the 2000 edition of the LSC from Chapter 19, ''Existing Health Care Occupancies.'' We are providing the LSC citation, a description of the requirement, an explanation of why we believe it is critical to the safety of beneficiaries to require it, and a brief discussion of our analysis of the burden imposed by the requirement. The cost estimates were derived from information given to us by the American Health Care Association (AHCA).

(1) 19.1.1.4.5—Renovations, Alterations, and Modernization—This provision requires that renovations, alterations, and modernizations must comply with standards applicable to new construction when possible. Existing facilities that are extensively renovated must meet the requirements of a newly constructed facility, including the installation of sprinkler systems in non-sprinklered buildings. The Fire Analysis & Research Division of the NFPA has shown that sprinklers have been the most important life safety system installed in health care facilities. The LSC generally requires sprinkler systems in renovations, regardless of construction techniques or materials used in constructing the facility. The estimated cost of installing sprinkler systems in buildings that presently do not have them is $2.50 per square foot, or approximately $125,000 for a 50,000 square foot building. This requirement is not imposed on facilities not undergoing renovations. There is a total of 255 facilities who currently do not have sprinkler systems. Because a facility does not have to comply with this provision unless the facility chooses to renovate an existing building we estimate approximately 128 facilities may renovate in a year. The total amount to implement this provision would be $16,000,000 annually.

(2) 19.2.9—Emergency Lighting—This provision requires emergency lighting for a period of 1½ hours in health care facilities, enabling those inside to move about safely in an emergency. We are phasing in this requirement over a three year period, to allow for the normal replacement cycle of batteries used in emergency lighting systems. We believe this phase-in period will not adversely impact the health and safety of the beneficiaries. The cost to install this equipment is estimated to be $600 per light. Approximately 790 existing facilities do not have emergency lighting for 1½ hours. To be in compliance we estimate each building will need twelve emergency light units for a total of 9,482 units. This provision will be phased-in over three years. The total amount to implement this provision over a three-year period will be $5,452,150 or $1,817,383 annually.

(3) 19.3.1—Protection of vertical openings—Unprotected vertical openings (e.g., open stairwells) permit fire and toxic gases to spread from one level to another in a building, making evacuation difficult, if not impossible. The estimated cost of compliance with this requirement is $2,938 per vertical opening. Approximately 9,877 vertical openings in 1,976 facilities will need to be upgraded for compliance. Total cost of compliance of this provision is $29,018,626.

(4) 19.3.4.3.2—Emergency Forces Notification—This provision requires the fire alarm system to provide automatic notification of a fire to emergency forces. This is of great importance to the protection of all patients/residents. Any delay in the notification of fire or rescue personnel could adversely impact the health and safety of patients/residents and expose them to a fire or toxic gases created by the fire. Approximately 2,750 buildings at $900 per facility would need to be connected to a fire alarm retransmission system. The cost is estimated to be a total of $2,475,000.

(5) 19.3.6.1—Corridors—This provision requires all areas in non-sprinklered buildings must be separated from the corridor by corridor walls that are fire-rated. This requirement, which provides a protected passageway for movement during an emergency, is necessary to increase the safety of the beneficiaries. The cost to upgrade a facility to meet this requirement is estimated to be approximately $7,124 for 1,976 buildings that currently meet the 1967 LSC and approximately $5,735 for 46 buildings meeting the 1973 code. The total estimated cost for compliance is $14,341,000.

(6) 19.7.5.2 & 19.7.5.3—Upholstered furniture—These provisions allow patient/resident-owned furniture to be brought into the facility without meeting the requirements of 10.3.2(2) and 10.3.3 (regarding fire resistant furniture) if a single station smoke detector is placed in the sleeping room where the furniture is located. This gives the facility a more home-like atmosphere. The cost to the facility is estimated at $100 per sleeping room in which patient/resident-owned furniture is located. We estimate approximately 18,498 smoke detectors will need to be installed at a total cost of $1,849,800.

We are also proposing to retain our existing authority to waive provisions of the LSC, on a case-by-case basis, further reducing the exposure to additional cost and burden for facilities with unique situations that can justify the application of waivers, which we determine will not endanger the health and safety of patients. A waiver may be granted for a specific LSC requirement if: (1) We determine that the waiver would not adversely affect patient/staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. Generally, a provider may request a waiver from its State Agency. The State Agency will review the request and make a recommendation to the appropriate CMS Regional Office. The CMS Regional Office will review the waiver request and the State Agency's recommendation and make a final decision. A waiver cannot be granted if patient safety is compromised in any way. A State may request that the State LSC be applicable to all facilities rather than the LSC proposed in this rule. The State must submit the request to the appropriate CMS Regional Office and the Regional Office will forward the request to CMS central office for final determination.

We will also retain our authority to apply the Fire Safety Evaluation System (FSES) as an alternative approach to meeting the requirements of the LSC, as well as accept alternative State Codes (discussed above) as provided in this proposed regulation.

D. Discussion of Fire Safety Requirements for Individual Providers and Suppliers

In addition to the proposed changes to the requirements that affect all provider types, as described in sections II. A. and II. B. of this preamble, we propose the following changes which are specific to distinct types of providers:

1. Religious Nonmedical Health Care Institutions: 42 CFR 403.744 Condition of Participation: Life Safety From Fire

We propose to retain the provisions of the existing interim final regulation for Religious Nonmedical Health Care Institutions (RNHCI) published in the **Federal Register** on November 30, 1999 (64 FR 67028), except insofar as they conflict with the 2000 LSC and are not within the exceptions detailed in section II. B. of this preamble (regarding our exceptions to the LSC).

2. Ambulatory Surgery Centers: 42 CFR 416.44 Condition of Participation: Environment

For the sake of clarity, we propose to change the terminology in paragraph (b)(1) of 42 CFR 416.44 to reflect that the Life Safety Code refers to ASCs as

Ambulatory Health Care Centers. We propose that all ASCs meet the provisions applicable to Ambulatory Health Care Centers in the 2000 edition of the LSC, except as detailed in section II. B. of this preamble, regardless of the number of patients the facility serves.

We believe the protection provided in the Ambulatory Health Care Centers chapter is necessary to protect the health and safety of patients who are incapable of caring for themselves. We do not believe that the Business Occupancy chapter of the LSC (applied by some authorities having jurisdiction to ASCs treating fewer than 4 patients at a time) affords an adequate level of protection to patients in an ASC.

We are also proposing to retain the discretion to accept compliance with fire and safety codes imposed by a State, if we determine that the state's code will adequately protect patients in ASCs. We have included this provision in paragraph (b)(3) of this section.

3. Hospices: 42 CFR 418.100(d) Condition of Participation: Hospices That Provide Inpatient Care Directly

We propose that all inpatient hospices meet the provisions applicable to nursing homes in the 2000 edition of the LSC, with the exceptions discussed in section II. B. of this preamble, regardless of the number of patients they serve. This is not a change in requirements, but merely a clarification that, for LSC purposes, an inpatient hospice is considered a nursing home, and not another type of occupancy.

We also propose not to adopt for hospices Chapter 18—Section 3.4.5.3 of the 2000 LSC. This section requires new nursing homes to be equipped with corridor smoke detection systems. We believe there is no technical justification for this requirement because the 2000 LSC requires that newly constructed patient sleeping zones be provided with quick-response sprinklers. Quick response sprinklers activate quickly enough to serve a detection function, thus making corridor smoke detection unnecessary. The 1991 and 1994 editions of the LSC required quick response sprinklers in new nursing homes but did not require smoke detection. Therefore, we see no technical reason to require detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

We are also proposing in paragraph (d)(3) to permit a hospice to meet a fire and safety code imposed by the State in lieu of the LSC if we determine that the State code adequately protects patients. We propose to do this for two reasons: (1) To afford hospices the benefit of meeting a state code in lieu of the federal requirements where the state code offers adequate protection; and (2) because we recognize that hospices are often located within buildings containing other providers already subject to this provision. For example, a hospice may be located entirely within a skilled nursing facility (SNF). If the SNF is exempt from the LSC by virtue of meeting a state code, other participating providers within the same building should also be afforded this exception.

We also propose to delete § 418.100(d)(4), the requirement that blind and nonambulatory patients may not be housed above the street level floor unless the building is fully sprinklered or has achieved a passing score on the Fire Safety Evaluation System (FSES) comparison, which is less stringent than the LSC. We are proposing this for several reasons. This requirement was deleted from the SNF regulations in 1989; however, CMS did not delete it from the parallel hospice regulations. In addition, the provision is redundant since any facility which meets the requirements of the LSC would, by definition, achieve a passing score on the FSES comparison.

4. Programs of All-Inclusive Care for the Elderly: 42 CFR 460.72 Condition of Participation: Physical Environment

We propose to retain most of the provisions of the existing interim final regulation for Programs of All-Inclusive Care for the Elderly (PACE) published in the **Federal Register** on November 24, 1999 (64 FR 66234). PACE providers will continue to be required to meet LSC specifications for the type of facilities in which the programs are located (i.e., hospitals, office buildings, etc.).

We are proposing to require the PACE center to meet the requirements for use of fire alarm systems in accordance with the occupancy section of the LSC that applies to its building. Each occupancy section of the LSC also requires evacuation plans, fire exit drills, and fire procedures, and these will be applicable to the PACE program.

Moreover, we propose to retain paragraph (b)(2)(i) of 42 CFR 460.72, which permits a PACE center to meet fire and safety requirements imposed by the State in lieu of the LSC if we determine that the State code adequately protects patients. We have done this for two reasons: (1) To afford a PACE center the benefit of meeting a state code in lieu of the federal requirements where the state code offers adequate protection; and (2) because we recognize that PACE centers are often located within buildings containing other providers already subject to this provision. For example, a PACE center may be located within a hospital. If the hospital is exempt from the LSC by virtue of meeting a state code, other participating providers within the same building should also be afforded this exemption.

Further, in some buildings it may be impractical or impossible to provide a specific feature due to the construction of the building. Therefore, we propose to retain paragraph (b)(2)(ii), which allows for the waiver of specific provisions of the LSC which, if rigidly applied, might result in unreasonable hardship on the organization. We may waive specific provisions only if the waiver does not adversely affect the health and safety of the participants and staff.

5. Hospitals: 42 CFR 482.41 Condition of Participation: Physical Environment

We propose only the changes to this section described in sections II. A. and II. B. of this preamble, for the reasons described therein.

6. Long Term Care Facilities: 42 CFR 483.70 Condition of Participation: Physical Environment

As with hospices, we propose not to adopt Chapter 18-Section 3.4.5.3 of the 2000 LSC for long term care (LTC) facilities such as skilled nursing facilities (SNFs). This section requires new nursing homes to have corridor smoke detection systems. We believe there is no technical justification for this new requirement because the 2000 LSC requires that new construction patient sleeping zones be provided with quick response sprinklers. We believe that quick response sprinklers activate quickly enough to serve a detection function, thus making corridor smoke detection unnecessary. Further, the 1991, 1994 and 1997 editions of the LSC required quick response sprinklers in new nursing homes, but did not require smoke detection. Therefore, we do not see any technical reason to require detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

7. Intermediate Care Facilities for the Mentally Retarded: 42 CFR 483.470 Condition of Participation: Physical Environment

We propose to retain most of the provisions of the existing regulation for Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). ICFs/MR will continue to be permitted to meet either the Residential Board and Care Occupancies chapter or the Health Care

Occupancy chapter of the Life Safety Code, as appropriate.

We propose to retain the provision in paragraph (j)(1)(ii) that allows the State survey agency to apply different chapters of the LSC to different buildings or parts of buildings so as not to place an undue burden on providers to have an entire building comply with the more stringent provisions of the Health Care chapter when they could instead meet the Board and Care for part of their facility, when appropriate.

We also propose that, for ICFs/MR under Board and Care, the Evacuation Difficulty Index (EDI) must be determined by use of the Fire Safety Evaluation System for Board and Care Facilities (FSES/BC). In referring to the EDI, we propose to delete from paragraph (j)(1)(iii) the reference to Appendix F, since the FSES/BC is no longer an appendix of the LSC, but appears as its own NFPA document in the NFPA 101A Guide on Alternative Approaches to Life Safety. Additionally, we propose to delete the reference to facilities of 16 beds or less from this paragraph to clarify that a larger facility could be subject to the Board and Care Chapter, and that its EDI would have to be calculated based on the FSES/BC. Again, this provision would allow certain ICFs/MR to meet the less restrictive Board and Care Chapter rather than the health care chapter.

In paragraph (j)(2)(ii), we propose to change ''the Secretary'' to ''CMS'' to more accurately reflect the statutory authority (this provision currently appears in paragraph (j)(2)(i)(B)).

We propose in paragraph (j)(3) that waivers of specific provisions of the LSC apply only to facilities that meet the LSC definition of a Health Care occupancy. There are no waivers for facilities under Board and Care, since the FSES/BC affords the flexibility of alternative arrangements for compliance.

III. Regulatory Impact Statement

This proposed rule, adopting the 2000 edition of the LSC, whose objective is to provide safety to life during fires and other emergencies. Adoption and use of the 2000 edition of the LSC will bring us up to date in requiring the latest and best technology in fire protection for our beneficiaries. These requirements are designed to protect people, both staff and beneficiaries. The 2000 edition of the LSC also protects property and can reduce the dollar loss associated with a fire. For example, this edition of the LSC requires that any new construction must install quick response sprinkler systems increasing the level of protection to our beneficiaries. By adopting the 2000 edition of the LSC and deleting references to all older editions of the LSC this will decrease confusion. Currently, the provider community must comply with a variety of editions of the LSC. By adopting the 2000 edition of the LSC we will eliminate any confusion as to which edition a health care facility must follow. This is particularly important when a facility has multiple buildings constructed at differing times or a single building with multiple wings/additions constructed at different times. Instead of each building complying with different editions of the LSC, the proposed rule will require all the buildings to comply with the same edition of the LSC. The use of a single edition of the code should also contribute to lowering the cost of complying with the requirements for testing and maintenance of fire protection systems.

We have examined the impact of this proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). This proposed rule is neither expected to meet the criteria to be considered economically significant, nor do we believe it will meet the criteria for a major rule. Therefore, an initial regulatory impact analysis is not required.

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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less annually (see 65 FR 69432).

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

There are several reasons it was determined that this rule will not meet the criteria to be considered economically significant, or the criteria for a major rule. Each new edition of the LSC builds on prior editions, changes from one edition to the next have been relatively minor since 1985. The 1985 Code, for the first time, required newly constructed facilities which met the health care occupancy requirements and which were over 75 feet or higher to be fully equipped with sprinklers. The 1991, 1994, 1997 and 2000 editions require mandatory universal sprinklers in new construction for health care occupancies. While we do not know how many new facilities will be built under this requirement, the provision of sprinkler systems in health care facilities is standard practice today. In addition, for those facilities constructed prior to 1985, the use of the FSES and Secretary approved waivers has enabled older buildings to meet requirements that ensure patient safety from fire without undue cost burdens on providers. The vast majority of facilities that needed to make major physical environment changes to comply with LSC requirements have long since done so or are no longer in service. We estimate the annual regulatory impact of this rule to be approximately $96,356,599. While $96 million seems high, this cost does not take into account any waiver the Secretary may grant to waive provisions of the LSC. We are proposing to retain the existing authority of the Secretary to waive provisions of the LSC, further reducing the exposure to additional cost and burden for facilities with unique situations that can justify the application of waivers, and which the Secretary determines will not endanger the health and safety of patients. We also note that the 2000 LSC permits the use of the FSES as an alternative approach which may also reduce the cost of compliance significantly. The FSES is an equivalency design system. The FSES may allow a facility to comply with the LSC without having to make changes to the facility due to other offsetting or compensating fire protection features that exist in the facility. We do not know the amount this may save a health care facility because each facility must be reviewed individually to determine compliance under the FSES.

Finally, the cost does not estimate any reductions if the Secretary accepts a State's fire and safety code instead of the NFPA's LSC if the State's fire and safety code adequately protects patients. The cost we estimated, $96 million, for

all health care facilities to come into compliance with the 2000 LSC is the total cost without factoring in any waivers that may be granted which could significantly reduce the total amount to the industry.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. This rule will not have an effect on the governments mentioned, and the private sector costs will not be greater than the $100 million threshold.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the office of Management and Budget.

IV. Federalism

Executive Order 13132 establishes requirements an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule and have determined that this final rule will not have a substantial direct impact on the rights, rules and responsibilities of State, local or tribal governments.

V. Collection of Information Requirements

This rule does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 42 CFR

Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

Part 460

Aged, Health, Incorporation by reference, Medicare, Medicaid, Reporting and record keeping requirements.

Part 482

Grant programs-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

Part 483

Grant programs-health , Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, 42 CFR Chapter IV would be amended as follows:

PART 403—RELIGIOUS NON-MEDICAL HEALTH CARE INSTITUTIONS

A. Part 403 is amended as set forth below:

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E—Conditions of Participation: Other Services

2. Amend § 403.744 as follows:

a. The introductory text to paragraph (a) is republished.

b. Paragraph (a)(1) is revised.

§ 403.744 Condition of participation: Life safety from fire.

(a) *General.* An RNHCI must meet the following conditions:

(1) Except as otherwise provided in this section, the RNHCI must meet the new or existing health care occupancies provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. (The Director of the Office of the Federal Register has approved the NFPA® 101 2000 edition of the Life Safety Code (issued January 14, 2000) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish a notice in the **Federal Register** to announce the changes.) The following provisions of the adopted Life Safety Code do not apply to an RHNCI:

(i) Chapter 5—Performance Based Option.

(ii) Chapter 19.3.6.3.2, exception number 2.

* * * * *

PART 416—AMBULATORY SURGICAL SERVICES

B. Part 416 is amended as set forth below:

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Specific Conditions for Coverage

2. Amend § 416.44 by revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 416.44 Condition for coverage—Environment.

* * * * *

(b) *Standard: Safety from fire.* (1) Except as otherwise provided in this section, the ASC must meet the provisions applicable to Ambulatory Health Care Centers of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter), regardless of the number of patients served. The following provisions of the adopted edition of the LSC do not apply to an ASC:

(i) Chapter 5—Performance Based Option.

(ii) Chapter 19.3.6.3.2, exception number 2.

* * * * *

(3) The provisions of the Life Safety Code do not apply in a State if CMS finds that a fire and safety code imposed by State law adequately protects patients in an ASC.

* * * * *

PART 418—HOSPICE CARE

C. Part 418 is amended as set forth below:

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E—Conditions of Participation: Other Services

2. Amend § 418.100 as follows:

a. Paragraphs (d)(1) and (d)(3) are revised.

b. Paragraph (d)(4) is removed.

§ 418.100 Condition of participation: Hospices that provide inpatient care directly.

* * * * *

(d) *Standard: Fire protection.* (1) Except as otherwise provided in this section, the hospice must meet the

provisions applicable to nursing homes of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter), regardless of the number of patients served. The following provisions of the adopted edition of the LSC do not apply to a hospice:

(i) Chapter 5—Performance Based Option.

(ii) Chapter 18.3.4.5.3.

(iii) Chapter 19.3.6.3.2, exception number 2.

* * * * *

(3) The provisions of the Life Safety Code do not apply in a State if CMS finds that a fire and safety code imposed by State law adequately protects patients in hospices.

* * * * *

PART 460—PROGRAMS FOR ALL-INCLUSIVE CARE FOR THE ELDERLY

D. Part 460 is amended as set forth below:

1. The authority citation for part 460 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395).

Subpart E—PACE Administrative Requirements

2. Revise § 460.72(b)(1) to read as follows:

§ 460.72 Physical Environment.

* * * * *

(b) *Fire safety*— (1) *General rule.* (i) Except as otherwise provided in this section, a PACE center must meet the occupancy provisions of the 2000 edition of the Life Safety Code (LSC) of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter) that apply to the type of setting in which the center is located.

(ii) The following provisions of the adopted edition of the LSC do not apply to PACE centers:

(A) Chapter 5—Performance Based Option.

(B) Chapter 19.3.6.3.2, exception number 2.

* * * * *

Subchapter E—Standards and Certification

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

E. Part 482 is amended as set forth below:

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Basic Hospital Functions

2. Amend § 482.41 by revising paragraph (b)(1) to read as follows:

§ 482.41 Condition of participation: Physical environment.

* * * * *

(b) *Standard: Life safety from fire.* (1) Except as otherwise provided in this section, the hospital must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter).

(i) The following provisions of the adopted edition of the LSC do not apply to hospitals:

(A) Chapter 5—Performance Based Option.

(B) Chapter 19.3.6.3.2, exception number 2.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

F. Part 483 is amended as set forth below:

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

2. Amend § 483.70 by revising paragraph (a)(1) to read as follows:

§ 483.70 Physical environment.

* * * * *

(a) *Life safety from fire.* (1) Except as otherwise provided in this section, the facility must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter). The following provisions of the adopted edition of the LSC do not apply to long term care facilities:

(i) Chapter 5—Performance Based Option.

(ii) Chapter 18.3.4.5.3.

(iii) Chapter 19.3.6.3.2, exception number 2.

* * * * *

Subpart I—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

3. Amend § 483.470 as follows:

a. Paragraph (j)(1)(i) is revised.

b. Paragraph (j)(1)(iii) is revised.

c. Paragraph (j)(2) is revised.

d. Paragraph (j)(3) is added.

§ 483.470 Condition of participation: Physical environment.

* * * * *

(j) *Standard: Fire protection*—(1) *General.* (i) Except as otherwise provided in this section, the facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the 2000 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference in § 403.744(a)(1)(i) of this chapter).

* * * * *

(iii) A facility that meets the LSC definition of a residential board and care occupancy must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Fire Safety Evaluation System for Board and Care facilities (FSES/BC).

(2) *Exceptions for all facilities.* (i) The following provisions of the adopted LSC do not apply to a facility:

(A) Chapter 5—Performance Based Option.

(B) Chapter 19.3.6.3.2, exception number 2.

(ii) If CMS finds that the State has a code imposed by State law that adequately protects a facility's clients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC.

(3) *Facilities that meet the LSC definition of a health care occupancy.*

(i) After consideration of State survey agency recommendations, CMS may waive, for appropriate periods, specific provisions of the Life Safety Code if the following requirements are met:

(A) The waiver would not adversely affect the health and safety of the clients; and

(B) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(ii) [Reserved]

* * * * *

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: September 17, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 1, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–25422 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 408

[CMS–4007–P]

RIN 0938–AK42

Medicare Program; Supplementary Medical Insurance Premium Surcharge Agreements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement legislation contained in section 1839(e) of the Social Security Act, as amended by section 144 of the Social Security Act Amendments of 1994 and section 4582 of the Balanced Budget Act of 1997. That legislation created a new Medicare premium payment arrangement whereby States and local government agencies can enter into an agreement with the Secretary to make periodic lump sum payments for the Supplementary Medical Insurance (SMI) late enrollment premium surcharge amounts due for a designated group of eligible enrollees. Under this proposal, we would define and set out the basic rules for the new SMI premium surcharge billing agreement.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 26, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4007–P, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver, by courier, your written comments (one original and three copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW, Washington, DC 20201, or

Centers for Medicare and Medicaid Services, C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS–4007–P on each comment.

Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT: Sandy Clarke, (410) 786–7451.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1839(e) of the Social Security Act (the Act), as amended by section 144 of the Social Security Act Amendments of 1994 (Pub. L. 103–432, October 31, 1994), allows States to enter into agreements with us to pay a lump sum for the Part B premium late enrollment surcharge amounts due for a designated group of eligible enrollees. Section 4582 of the Balanced Budget Act of 1997 (Pub. L. 105–33) (BBA) amended the Act by adding new language that allows local government agencies to also pay the surcharge. Under section 4582 of the BBA, any appropriate State or local government agency specified by the Secretary may enter into a Supplementary Medical Insurance (SMI) premium surcharge agreement.

This legislation was requested to enable State and local government agencies that are discontinuing to offer a health benefits package to their retirees, and requesting that the retirees utilize Medicare for their health insurance, to pay the ensuing SMI premium surcharge on a lump sum basis.

While covered by the State or local government agency health care plans, some retirees, who believed that these health plans were sufficient to cover their health care needs, chose not to enroll in Medicare when they first became eligible, or enrolled and subsequently canceled their Medicare coverage. When these retirees were notified by their State or local government agency retirement offices that those agencies would no longer offer a health benefit package (and that it therefore would be necessary for the retirees to enroll or reenroll in Medicare) they learned that they were subject to the late enrollment premium surcharge. State and local government agency retirement offices contacted us and requested either a waiver of the surcharge or establishment of a special enrollment period for the affected retirees. We denied these requests and determined that the affected retirees were subject to the late enrollment premium surcharge. This prompted some State and local government agency retirement offices to offer to pay the surcharge portion of the Supplemental Medical Insurance premium on behalf of their affected retirees. It also prompted a request from a local government agency to enter into a special billing and payment arrangement with us in order periodically to receive a single bill and pay a lump sum for the surcharge amounts due from a specified group of its retirees.

Since there was no law or regulation in place that would have allowed us to send a State or local government agency a single bill to pay a lump sum for the SMI premium surcharge portion for a group of enrollees, we initially denied the request. Subsequently, the Congress enacted legislation that allowed States to pay the Secretary, on a quarterly or other periodic basis, a lump sum for the total amount of the SMI premium surcharges for a group of Medicare enrollees (section 1839(e) of the Act, section 144 of the Social Security Act Amendments (Pub. L. 103–432)). Section 4582 of the BBA subsequently amended section 1839(e) of the Act by adding language that would also allow any appropriate State or local government agency specified by the Secretary to enter into an agreement to pay the SMI premium surcharges on a periodic lump sum basis. Because the CMS third party billing system, which will be used for billing and payment of these surcharge amounts, was developed to accommodate monthly billing and payments, all SMI premium surcharge amounts would be billed and paid on a monthly basis.

The election to make lump sum payments of SMI premium surcharges by a State or local government agency under an SMI premium surcharge agreement would be strictly voluntary and would be provided as a convenience to the State or local government agency.

II. Provisions of the Proposed Regulations

We are proposing rules to implement section 1839(e) of the Act, section 144 of the Social Security Act Amendments of 1994 (Pub. L. 103–432), and section 4582 of the BBA. We would make the following changes in 42 CFR part 408:

We would add a new subpart H to the regulations in part 408 (Premiums for Supplementary Medical Insurance). The new subpart would be entitled Supplementary Medical Insurance Premium Surcharge Agreements.

Within the subpart, we propose to add a section that would contain the authority for allowing States and local government agencies to enter into an agreement with us to pay, on a periodic basis, a lump sum for the total amount of the SMI premium surcharges for a group of eligible Medicare enrollees.

Since there are no existing regulations that prescribe or describe the basic rules for making periodic lump sum payments of the SMI premium surcharge under a special billing arrangement, we propose to add sections entitled Definitions, Conditions for participation, Application procedures, Billing and payment procedures, and Termination of SMI premium surcharge agreements. In the Definitions section, we would define SMI premium surcharge and SMI premium surcharge agreement. SMI premium surcharge would be defined as the amount that the standard monthly SMI premium would be increased for late enrollment and for reenrollment as specified in §§ 408.22 through 408.25. SMI premium surcharge agreement would be defined as an agreement entered into between a State or local government agency and us whereby the State or local government agency would periodically pay a lump sum for the premium surcharge amounts due from a specified group of eligible enrollees.

The Conditions for participation section would identify individuals who could be included under an SMI premium surcharge agreement, identify individuals excluded from coverage under an agreement, and state the need to secure the written consent of each enrollee covered under the agreement. This section would also state that as a condition for participation, the State or local government agency would be required to establish an automated data exchange with us to electronically transmit accretion, deletion, and change records and make all monthly SMI premium surcharge payments via electronic funds transfer.

We would identify eligible individuals as those who are currently enrolled under Medicare Part B (SMI) and are currently billed for SMI base premiums and surcharges either through direct remittance or benefit withholding. Eligible individuals may also be those who receive a Railroad Retirement Board or Civil Service annuity and are having the SMI premium and surcharge withheld.

We would identify individuals excluded from coverage under an SMI premium surcharge agreement as those who are not currently enrolled in SMI, those whose SMI premiums are currently being paid by a State Welfare Agency under a State buy-in agreement, or those whose SMI premiums and surcharges are currently being paid under a group billing agreement.

In the Application procedures section, we would describe how the State or local government agency may contact its regional office, obtain an application, and return it for approval.

The Billing and payment section would state that the State or local government agency must pay the SMI premium surcharge for each eligible enrollee who is included in the agreement for the time period beginning with the month the enrollee is accreted and continuing through the month the State or local government agency notifies us to delete the enrollee, the month the enrollee's Part B coverage terminates, or the month of the enrollee's death, whichever comes first.

In the Termination of SMI premium surcharge agreement section, we would say that a State or local government agency may voluntarily terminate an SMI premium surcharge agreement by notifying us, in writing, at least 30 days before the termination date.

We would also state that we may terminate an SMI premium surcharge agreement with 30 days notice if the State or local government agency fails to comply with the terms of the agreement, is delinquent in payment 60 days or more three times in any calendar year, or fails to comply with regulations or instructions the Secretary may prescribe.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA 1995), we are required to provide 60 days notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- The minimization of the information collection burden on the affected public, including automated collection techniques.

We are seeking comments on these issues for the provisions discussed below:

Section 408.202 Conditions for Participation

Under this section, a State or local government agency must secure from each enrollee a written signed, written authorization statement that contains authorizations for us to send billing notices directly to the State or local government agency and for the release to us of information required under the SMI premium surcharge agreement. The burden associated with this requirement is the time and effort for the enrollee to sign the required authorization statement. It is anticipated that for the two States affected by this requirement, each State will be required to obtain an average of 1,175 authorizations per State. Since this requirement will be standardized and incorporated into the enrollment process, we anticipate that it will take each enrollee 5 minutes to provide the necessary authorization. Therefore, the total burden associated with this requirement is 196 hours (5 minutes × 1,175 enrollees × 2 entities = 196 total hours).

This section also requires that the States maintain the authorization statement for each enrollee in the State or local government agency files for so long as the enrollee is covered by the agreement. Given that this requirement affects only two States, it is not subject to the PRA under 5 CFR 1320.3(c).

Lastly, this section requires a State or local government agency to certify to us, in writing, that an authorization statement is on file for each enrollee covered under the SMI premium surcharge agreement. Only one certification is necessary for the entire group of covered enrollees. Given that this this requirement affects only two States, it is not subject to the PRA under 5 CFR 1320.3(c).

Section 408.205 Application Procedures

Under this section, a State interested in entering into an agreement must return to the Regional Office (RO) two

copies of the signed agreement, the third party information form, and a description of the enrollees who will be covered by the agreement, showing that they meet the conditions for participation described in § 408.202(a).

We estimate that two States/agencies will apply for an agreement. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

Section 408.207 Billing and Payment Procedures

Under paragraph (a), *Accreting and deleting enrollees,* of this section, the State or local government agency must electronically transmit an input file to us containing accretion and deletion records at least once each calendar month, but may transmit this information as often as once a day.

We estimate that two States/agencies will apply for an agreement and be subject to this requirement. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

Under paragraph (d) of this section, if a State or local government agency disagrees with the amount assessed in a billing statement or interest charge, it must notify us as required under this section. Given that this activity is conducted as part of an administrative action, audit, and/or investigation, this requirement is exempt from the PRA under 5 CFR 1320.4.

Section 408.210 Termination of SMI Premium Surcharge Agreement

Under paragraph (a) *Termination by the State or local government agency*, if the State or local government agency voluntarily terminates its agreement with us, it must notify us, in writing, at least 30 days before the effective date of the termination.

We estimate that two States/agencies will be subject to the provisions of this section. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirement in § 408.202. This requirement is not effective until it has been approved by the OMB.

If you have any comments on any of these information collection and recordkeeping requirements, please mail one original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Standards and Security Group, Division of CMS Enterprise Standards, 7500 Security Boulevard, Room N2–14–26, Baltimore, MD 21244–1850, Attn: Julie Brown, CMS 4007–P.

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This is not a major rule. It would have no economic impact, on either costs or savings, because either the enrollee or the State or local government agency would remit the same amount to us whether or not there is an SMI premium surcharge agreement in effect. The only difference is that under this proposed rule, the State or local government agency would be allowed to voluntarily elect to remit SMI premium surcharge amounts in a lump sum payment on behalf of eligible Medicare enrollees.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of small entities. Therefore, we have determined, and we certify, that this proposed regulation would not result in a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area with fewer than 50 beds. This rule would have no impact on any small rural hospitals. Therefore, we have determined, and we certify, that this proposed regulation would not have a significant effect on the operations of a substantial number of small rural hospitals.

B. The Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This proposed rule would have no effect on the annual expenditures of any State, local, or tribal government, or the private sector. Participation in an SMI premium surcharge agreement is strictly voluntary and would not change the total amount of SMI premium surcharges paid by a State or local government agency. Therefore, we have determined, and we certify, that this proposed regulation would not result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications. Participation is strictly voluntary and would not change the total amount of SMI premium surcharges paid by a State or local government agency.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget. This proposed rule is not a major rule as defined at 5 USC 804(2).

List of Subjects in 42 CFR Part 408

Medicare.

Accordingly, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 408 as follows:

PART 408—PREMIUMS FOR SUPPLEMENTAL MEDICAL INSURANCE

1. The authority citation for part 408 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Add a new subpart H , consisting of §§ 408.200 through 408.210, to part 408 to read as follows:

Subpart H—Supplementary Medical Insurance Premium Surcharge Agreements

Sec.
408.200 Statutory basis.
408.201 Definitions.
408.202 Conditions for participation.
408.205 Application procedures.
408.207 Billing and payment procedures.
408.210 Termination of SMI premium surcharge agreement.

Subpart H—Supplementary Medical Insurance Premium Surcharge Agreements

§ 408.200 Statutory basis.

This subpart implements provisions of section 1839(e) of the Social Security Act (the Act) as amended by section 4582 of the Balanced Budget Act of 1997 (BBA). Section 1839(e) of the Act, as amended, allows State or local government agencies to enter into an agreement with the Secretary to pay, on a quarterly or other periodic basis, a lump sum for the total of the Supplementary Medical Insurance (SMI) premium late enrollment surcharge amounts due for a group of eligible enrollees.

§ 408.201 Definitions.

For purposes of this subpart, the following definitions apply:

SMI premium surcharge means the amount that the standard monthly SMI premium is increased for late enrollment and for reenrollment as specified in §§ 408.22 through 408.25.

SMI premium surcharge agreement means a written arrangement between the Secretary and a State or local government agency to pay, on a quarterly, monthly, or other periodic basis, a lump sum for the SMI premium surcharge amounts due for a designated group of eligible enrollees.

§ 408.202 Conditions for participation.

(a) A State or local government agency may apply to CMS to enter into an SMI premium surcharge agreement if the following conditions are met:

(1) Each individual designated for coverage under the agreement must be currently enrolled in Medicare Part B at the time the individual is accreted.

(2) Each enrollee designated for coverage under the agreement must be paying the base premium and surcharge through direct remittance or benefit withholding from social security or railroad retirement benefits or a civil service annuity at the time of accretion.

(3) Each enrollee designated for coverage under the agreement must not have premiums currently paid by a State Welfare Agency under a State buy-in agreement as described in § 407.40 of this chapter or under a group billing arrangement as described in § 408.80.

(b) The State or local government agency must secure from each enrollee a signed, written authorization statement that must contain authorization for CMS to send billing notices directly to the State or local government agency and for the release to CMS of information required under the SMI premium surcharge agreement.

(c) The authorization statement for each enrollee must be retained in the State or local government agency files for so long as the enrollee is covered by the agreement. These authorization statements need not be forwarded to CMS.

(d) The State or local government agency must certify to CMS, in writing, that an authorization statement is on file for each enrollee covered under the SMI premium surcharge agreement. Only one certification is necessary for the entire group of covered enrollees.

(e) A State or local government agency must establish an automated data exchange with CMS using the Third Party Premium Collection System, in order to electronically transmit an input file that will be used to accrete or delete enrollees from the billing system.

§ 408.205 Application procedures.

(a) A State or local government agency must contact its CMS regional office (RO) to request an information packet, consisting of the Premium Surcharge Payment Handbook, the Agreement, and the Third Party Agency Information Form.

(b) If interested in entering into an agreement, the State or local government agency must return to the RO two copies of the signed Agreement, two completed copies of the Third Party Information Form, and two copies of a description of the enrollees who will be covered by the agreement, showing that they meet the conditions for participation described in § 408.202(a).

(c) CMS reviews the application documents, and, when approved, sends the State or local government agency, and the RO, a signed copy of the agreement and instructions for initiating the electronic funds transfer process.

§ 408.207 Billing and payment procedures.

(a) *Accreting and deleting enrollees.* The State or local government agency must electronically transmit an input file to CMS containing accretion and deletion records as follows:

(1) Input files must be transmitted at least once each calendar month, but may be transmitted as often as once a day.

(2) With the exception of a deletion because of the death of an enrollee, CMS will not accrete or delete enrollees retroactively.

(3) The State or local government agency must pay the SMI premium surcharge for each eligible enrollee who is included in the agreement for the time period beginning with the month the enrollee is accreted and continuing through the month the State or local government agency notifies CMS to delete the enrollee, the month the enrollee's Part B coverage terminates, or the month of the enrollee's death, whichever comes first.

(b) *Payment and grace period.* Payment must be made to CMS as follows:

(1) Payment to CMS must be received by CMS by the 1st day of each month.

(2) There is a 25-day grace period for receipt of payment.

(3) Payment must be made to CMS via electronic funds transfer.

(c) *Late payment penalties.* CMS will assess interest for any payment it does not receive by the 1st day of the month as follows:

(1) Interest will be assessed at the Supplementary Medical Insurance trust fund rate as computed for new investments in accordance with section 1841(c) of the Social Security Act.

(2) Interest will be waived if the full payment is received by the 25th day of the month in which it is due.

(3) Interest will be calculated and assessed in 30-day increments.

(4) Interest will be assessed on the balance of the amount billed that remains unpaid at the expiration of the grace period and unpaid balances from prior periods.

(5) Interest will continue to accrue on unpaid amounts until the balance is paid in full.

(d) *Disagreement over billing amounts or interest.* If the State or local government agency disagrees with the amount assessed in a billing statement or interest charge, it must notify CMS as follows:

(1) The State or local government agency must provide evidence suitable to CMS to substantiate its claim.

(2) The State or local government agency must continue to make full payment while CMS evaluates the evidence provided.

(3) Credit for payment amounts or interest that CMS determines to be due to the State or local government agency will be reflected as an adjustment in subsequent bills, effective on the date the corrected amount would have been due.

§ 408.210 Termination of SMI premium surcharge agreement.

(a) *Termination by the State or local government agency.* The State or local government agency may voluntarily terminate its agreement with CMS as follows:

(1) The State or local government agency must notify CMS, in writing, at least 30 days before the effective date of the termination.

(2) The State or local government agency must pay any unpaid premium surcharge amounts and interest due within 30 days after the effective date of the termination.

(3) Interest will continue to accrue until all amounts due are paid in full.

(b) *Termination by CMS.* CMS may terminate the agreement with a State or local government agency as follows:

(1) If CMS finds that the State or local government agency is not acting in the best interest of the enrollees, or CMS, or for any other reason, the arrangement may be terminated at any time.

(2) If a State or local government agency's payments are delinquent 60 days or more, 3 times in any calendar year, CMS may terminate the agreement with 30 days advance notice.

(3) If the State or local government agency fails to comply with the terms of the agreement and/or procedures promulgated by CMS, CMS may terminate the agreement with 30 days advance notice.

(4) The State or local government agency must pay all outstanding premium surcharge and interest amounts due within 30 days after the effective date of the termination.

(5) Interest will continue to accrue until all amounts due are paid in full.

(6) After the agreement is terminated, CMS will resume collection of the premium surcharge from the enrollees covered under the terminated agreement.

(7) If an agreement is terminated by CMS, the State or local government agency must wait 3 years from the effective date of the termination before it can request to enter into another SMI premium surcharge agreement.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: September 21, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 24, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–27120 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2437, MM Docket No. 01–301, RM–10207]

Digital Television Broadcast Service; Mississippi State, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Mississippi Authority for Educational Television, licensee of noncommercial station WMAB–TV, NTSC channel *2, Mississippi State, Mississippi, requesting the substitution of DTV *10 for station WMAB–TV's assigned DTV channel *38. DTV Channel *10 can be allotted to Mississippi State, Mississippi, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (33–21–14 N. and 89–09–00 W.). As requested, we propose to allot DTV Channel *10 to Mississippi State with a power of 6.5 and a height above average terrain (HAAT) of 349 meters.

DATES: Comments must be filed on or before December 14, 2001, and reply comments on or before December 31, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert A. Woods, Schwartz, Woods & Miller, Suite 300, 1350 Connecticut Avenue, NW, Washington, DC 20036–1717 (Counsel for the Mississippi Authority for Educational Television).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–301, adopted October 18, 2001, and released October 23, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Mississippi is amended by removing DTV Channel ''*38'' and adding DTV Channel ''*10'' at Mississippi State.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–26943 Filed 10–25–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2379, MM Docket No. 01–296, RM–10299]

Radio Broadcasting Services; Rosecommon, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 246A at Rosecommon, Michigan, providing the community with additional local FM service. The coordinates for Channel 246A at Rosecommon are 44–30–55 and 84–38–21. There is a site restriction 4.2 kilometers (2.6 miles) northwest of the community. Since Rosecommon is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment at Rosecommon.

DATES: Comments must be filed on or before December 3, 2001, and reply comments on or before December 18, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–296, adopted October 3, 2001 and released October 12, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *sex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 246A at Rosecommon.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26986 Filed 10–25–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2380, MM Docket No. 01–297, RM–10297]

Radio Broadcasting Services; Paragould, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 257A at Paragould, Arkansas, providing the community with additional local FM service. The coordinates for Channel 257A at Paragould are 36–06–55 and 90–26–53. There is a site restriction 7.9 kilometers (4.9 miles) northeast of the community.

DATES: Comments must be filed on or before December 3, 2001, and reply comments on or before December 18, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–297, adopted October 3, 2001 and released October 12, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint @ aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 257A at Paragould.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–26987 Filed 10–25–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 102201B]

Magnuson-Stevens Act Provisions; Essential Fish Habitat; Public Meeting

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

ACTION: Notification of public meeting.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) will hold an essential fish habitat (EFH) committee meeting on November 5 and 9, 2001, to review the NMFS draft summary of EFH scoping comments and issues, to identify significant issues and preliminary alternatives, and to review the mission of the EFH Committee. NMFS will hold a workshop November 6 through 9, 2001, to develop a range of alternatives for the designation of EFH and habitat areas of particular concern (HAPC), and to determine the steps necessary to develop a range of alternatives for the minimization of the effects of fishing on EFH.

DATES: The EFH committee will meet from 10:30 p.m. to 5 p.m. on Monday, November 5, 2001, and from 8:30 a.m. to noon on Friday, November 9, 2001. The NMFS EFH workshop will be held Tuesday, November 6 through Friday, November 9. The workshop will start at 10 a.m. Tuesday and at 8 a.m. Wednesday through Friday.

ADDRESSES: The EFH Committee meetings and the NMFS workshop will meet in Juneau, AK, at the Juneau Federal Building, 709 West 9th Street in Room 445. On Friday, the EFH Committee will meet in Room 150.

Questions should be addressed to NMFS, Habitat Conservation Division, Attn: Cindy Hartmann, 709 West 9th Street, Suite 461, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, (907) 586–7585, e-mail: *Cindy.Hartmann@noaa.gov*; or David Witherell, North Pacific Fishery Management Council (NPFMC), (907) 271–2809, e-mail: *David.Witherell@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The NPFMC EFH committee was formally established by the NPFMC's acting executive director in May 2001. The committee was established in response to the need to prepare a supplemental environmental impact statement (SEIS) for the EFH fishery management plan amendments. For further information about the SEIS, see the notice of intent to prepare an SEIS published in the Proposed Rules section of the **Federal Register** (66 FR 30396, June 6, 2001).

The function of the EFH Committee is to serve as a steering committee for the EFH EIS process. The Committee's overarching goal is to facilitate input by the industry, conservation community, NPFMC, and general public to the EFH EIS process. This will be the fourth meeting of the EFH Committee. Prior meetings were held May 30, August 13 & 14, and October 4, 2001.

Agenda items for the EFH Committee meeting include:

1. Discussion of NEPA requirements and objectives;

2. Discussion of Draft Purpose and Need statement;

3. Discussion of issues including issue statements, issue categories and key or significant issues;

4. Discussion of alternatives for EFH and HAPC;

5. Selection of EFH and HAPC Alternatives to recommend to the NPFMC; and

6. EFH Committee tasks, timetable and next meeting.

Although other issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notification.

Agenda items for the NMFS EFH workshop include the above listed tasks. Participants at the workshop will also discuss data sources and availability, discuss criteria for selecting an EFH and HAPC alternative, screen EFH and HAPC concepts, evaluate potential EFH and HAPC alternatives, and map and describe EFH by life history stage for managed species. There will be an evaluation of the workshop and a discussion of the steps necessary to determine effects of fishing on EFH and measures to minimize effects of fishing to the extent practicable. Tasks will be discussed and possibly assigned and the next workshop date set.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, (907) 586–7235, at least 5 working days prior to the meeting date.

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

Dated: October 23, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–27040 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 208

Friday, October 26, 2001

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.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 26, 2001.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled,Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 7, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (66 FR 46770) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is 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 service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Service

Grounds Maintenance
Naval Air Warfare Center Weapons Division, Buildings 456 (N97) and 1438 (Main Post Area), White Sands Missile Range, New Mexico

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.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–27038 Filed 10–25–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 26, 2001.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each commodity and service will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Commodities

Shelf Assembly, Top, 3920–00–000–8908
NPA: Rauch Rehabilitation & Developmental Services, Inc., New Albany, Indiana
GOVERNMENT AGENCY: U.S. Postal Service, Topeka, Kansas
Ballistic Protection Carrier, 8470–00–NSH–0001
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York
GOVERNMENT AGENCY: U.S. Army Acquisition Center, Natick, Massachusetts
Insert, Flotation, Hardcell, 8470–00–NSH–0002
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York

GOVERNMENT AGENCY: U.S. Army Acquisition Center, Natick, Massachusetts
Pocket, Helicopter Aviation Breathing Device, 8470–00–NSH–0003
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York
GOVERNMENT AGENCY: U.S. Army Acquisition Center, Natick, Massachusetts

Services

File Maintenance, VA Medical Center, Northport, New York
NPA: The Corporate Source, Inc., New York, New York
GOVERNMENT AGENCY: VA Medical Center
Office Supply Store, Federal Building, 700 W. Capitol, Little Rock, Arkansas
NPA: The Arkansas Lighthouse for the Blind, Little Rock, Arkansas
GOVERNMENT AGENCY: GSA, Public Building Services
Operation of Support Services, National Advocacy Center, 1620 Pendleton Street, Columbia, South Carolina
NPA: CCAR Services, Inc., Green Cove Springs, Florida
GOVERNMENT AGENCY: National Advocacy Center

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–27039 Filed 10–25–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 011012250–1250–01]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code (U.S.C.), sections 182, 224, and 225, the Bureau of the Census (Census Bureau) has determined that limited financial data (revenue, expenses, and the like) for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data also apply to a variety of public and business needs. To obtain the desired data, the Census Bureau announces the administration of the Service Annual Survey.

FOR FURTHER INFORMATION CONTACT: Ruth A. Bramblett, Chief, Current Services Branch, Service Sector Statistics Division, on (301) 457–2766.

SUPPLEMENTARY INFORMATION: The Census Bureau conducts surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, U.S.C. The Service Annual Survey provides continuing and timely national statistical data each year. Data collected in this survey are within the general scope, type, and character of those inquiries covered in the economic census. These data are not publicly available from nongovernment or other governmental sources.

The Census Bureau needs reports only from a limited sample of service sector firms in the United States. Selected service industries include professional, scientific, and technical services; administrative and support services; healthcare and social assistance; telecommunications, publishing, broadcasting and other information service industries; trucking, courier, messenger, and warehousing; financial services; and arts, entertainment, and recreation. The probability of a firm's selection is based on its revenue size (estimated from payroll). We are mailing report forms to the firms covered by this survey and require their submission within thirty days after receipt.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the Service Annual Survey under OMB Control Number 0607–0422. Copies of the proposed forms are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: October 19, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 01–26944 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Certified Trade Fair Program: Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before December 26, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Don Huber, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2212, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–2525, and fax number: (202) 482–0115.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trade Fair Certification (TFC) program is a service of the U.S. Department of Commerce (DOC) that provides DOC endorsement and support for high quality international trade fairs that are organized by private-sector firms. The TFC program seeks to broaden the base of U.S. firms, particularly new-to-market companies by introducing them to key international trade fairs where they can achieve their export objectives. Those objectives include one or more of the following: direct sales; identification of local agents or distributors; market research and exposure; and joint venture and licensing opportunities for their products and services. The objective of the application is to make a determination that the trade fair organizer is qualified to organize and manage U.S. exhibitions at a foreign trade show, and to ensure that the show is a viable marketing opportunity for U.S. companies.

II. Method of Collection

Form ITA–4100P is sent by request to organizers of international trade fairs.

III. Data

OMB Number: 0625–0130.
Form Number: ITA–4100P.
Type of Review: Regular.
Affected Public: Companies applying to participate in Commerce Department Certified Trade Fair program events.

Estimated Number of Respondents: 90.

Estimated Time Per Response: 10 hours.

Estimated Total Annual Burden Hours: 900 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $40,500.00 ($31,500.00 for respondents and $9,000.00 for the Federal Government).

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 22, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–27004 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Certified Trade Mission Program: Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 26, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Nancy Hesser, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2810, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–4663, and fax number: (202) 482–2718.

SUPPLEMENTARY INFORMATION:

I. Abstract

Certified Trade Missions are overseas events that are planned, organized and led by both Federal and non-Federal government export promotion agencies such as industry trade associations, agencies of State and local governments, Congressional representatives, chambers of commerce, regional groups and other export-oriented groups. Certified Trade Mission Program Application form is the vehicle by which individual mission organizers apply, and if accepted agree, to participate in the Department of Commerce (DOC) trade promotion events program, recruit U.S. companies, identify the products or services they intend to sell or promote, and report on results. The collection of information is required for DOC to properly assess the credentials of the missions and applicants.

II. Method of Collection

Form ITA 4127P is sent by request to U.S. export oriented organizations seeking DOC certification of their trade mission . Applicant firms complete the form and return it to the Department of Commerce.

III. Data

OMB Number: 0625–0215.

Form Number: ITA–4127P.

Type of Review: Regular Submission.

Affected Public: Mission organizers applying to participate in trade missions facilitated but not led by Department of Commerce officials.

Estimated Number of Respondents: 60.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 60 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $5,100.00 ($2,100.00 for respondents and $3,000.00 for the federal government).

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 22, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–27005 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping duty order in part.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Large Newspaper Printing Presses and Components Thereof from Germany .

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2002.

	Period to be reviewed
Antidumping Duty Proceedings	
Germany:	
Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, A–428–821	9/1/00–8/31/01
Koenig & Bauer Albert,AG	
MAN Roland Druckmaschinen AG	
Japan:	
Large Newspaper Printing Pressess and Components Thereof, Whether Assembled or Unassembled, A–588–837	9/1/00–8/31/01
Mitsubishi Heavy Industries, Ltd.	
Tokyo Kikai Seisakusho, Ltd.	
Mexico:	
Certain Cut-to-Length Carbon Steel Plate, [1] A–201–809	8/1/00—7/31/01
Altos Hornos de Mexico, S.A. de C.V.	
Sweden:	
Stainless Steel Wire Rod, A–401–806	9/1/00—8/31/01
Fagersta Stainless AB	
Taiwan:	
Stainless Steel Wire Rod, A–583–828	9/1/00—8/31/01
Walsin Lihwa Corporation	
The People's Republic of China:	
Freshwater Crawfish Tail Meat, [2] A–570–848	9/1/00—8/31/01
China Everbright.	
China Kingdom Import & Export Co., Ltd., aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd.	
Coastal (Jiang Su) Foods Co., Ltd.	
Fujian Pelagic Fishery Group Co.	
Hefei Zhongbao Aquatic Co., Ltd.	
Huaiyin Foreign Trade Corporation (5), aka Jiangsu Hilong International Trading	
Huaiyin Foreign Trade Corporation (30)	
Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp.	
Nantong Delu Aquatic Food Co., Ltd.	
Nantong Shengfa Frozen Food Co., Ltd.	
Ningbo Nanlian Frozen Foods Co., Ltd.	
North Supreme Seafood (Zhejiang) Co., Ltd.	
Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs.	
Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods.	
Rizhao Riyuan Marine and Food Products Co., Ltd.	
Shanghai Toaen International Trading Co., Ltd.	
Shantou SEZ Yangfeng Marine Products Co.	
Shouzhou Huaxiang Foodstuffs Co., Ltd.	
Suqian Foreign Trade Corp., aka Suqian Foreign Trading	
Taizhou Tianhe Aquatic Products Co., Ltd.	
Weishan Fukang Foodstuffs Co., Ltd.	
Yancheng Baolong Biochemical Products Co., Ltd.	
Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Chen Foreign Trading.	
Yancheng Haiteng Aquatic Products & Foods Co., Ltd.	
Yancheng Yaou Seafoods.	
Yangzhou Lakebest Foods Co., Ltd.	
Yixing Ban Chang Foods Co.	
Countervailing Duty Proceedings	
Italy:	
Stainless Steel Wire Rod, C–475–821	1/1/00—12/31/00
Acciaierie Valbruna S.p.A.	
Suspension Agreements	
None.	

[1] Case inadvertently omitted from previous initiation notice.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 23, 2001.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, AD/CVD Enforcement.

[FR Doc. 01–27058 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–816]

Notice of Initiation of Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and request for comments.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Albert Hsu, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4491.

SUMMARY: The Department of Commerce is initiating an inquiry into the status of the Russian Federation as a non-market economy country under the antidumping and countervailing duty laws.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department's'') regulations are to 19 CFR part 351 (2001).

Background

On July 26, 2001, the Department of Commerce (''the Department'') received a letter from Novolipetsk Iron & Steel Corporation (''NLMK'') requesting a review of the status of Russia as a non-market economy (''NME'') country in the proceeding on hot-rolled flat-rolled carbon-quality steel products from the Russian Federation (A–821–813) (''Hot-Rolled Steel from Russia''). On August 3, 2001, the Government of the Russian Federation formally submitted NLMK's request on the record of the hot-rolled steel proceeding. On September 7, 2001, JSC Severstal submitted, also in the Hot-Rolled Steel from Russia proceeding, a formal request that the Department revoke the Russian Federation's status as a NME country. In response to these requests, the Department is initiating an inquiry into the Russian Federation's status as an NME in a separate proceeding pursuant to section 771(18)(C)(ii) of the Act.

The Department has treated Russia as a nonmarket economy (NME) country in all past antidumping duty investigations and administrative reviews. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (Jan. 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (Nov. 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (Mar. 30, 1995). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act.

Opportunity for Public Comment

As part of this inquiry to determine whether to revoke Russia's NME status, the Department is interested in receiving public comment with respect to Russia on the factors listed in section 771(18)(B) of the Act, which the Department must take into account in making a market/non-market economy determination:

(i) The extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management;

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;

(iv) the extent of government ownership or control of the means of production;

(v) the extent of government control over allocation of resources and over price and output decisions of enterprises; and

(vi) such other factors as the administering authority considers appropriate.

Comments—Deadline, Format, and Number of Copies

The deadline for submission of comments will be 45 days after the date of publication of this notice in the **Federal Register**. All comments should be filed at the Department of Commerce Central Records Unit located at the address listed below. Rebuttal comments may be submitted up to 45 days after the date initial comments are due.

Each person submitting comments should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments should be submitted in the following format: (1) Begin each comment on a separate page; (2) concisely state the issue identified and discussed in the comment and include any supporting documentation in exhibits or appendices; (3) provide a brief summary of the comment (a maximum of 3 sentences) and label this section ''summary of comment;'' (4) provide an index or table of contents; and (5) include the case number A–821–816 in the top right hand corner of the submission.

To simplify the processing and distribution of comments, the Department encourages the submission of documents in electronic form accompanied by an original and 5

copies in paper form. We request that documents filed in electronic form be on DOS formatted 3.5′ diskettes and prepared in either WordPerfect 9 format or a format that the Word Perfect program can convert and import into Word Perfect 9. Please submit comments in separate files on the diskette.

Comments received on diskette will be made available to the public on the Internet at Import Administration's website, *http://ia.ita.doc/gov.* Paper copies will be available for reading and photocopying in the Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Import Administration Webmaster, (202) 482–0866.

Hearing

After reviewing all comments and rebuttal comments, the Department will determine if a public hearing is warranted, and, if so, will announce a place and time for that hearing.

This determination is issued and published in accordance with section 771(18)(c)(ii).

Dated: October 19, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–27056 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–870]

Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary determination of antidumping duty investigation.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary determination of the investigation of certain circular welded carbon-quality steel pipe from the People's Republic of China (''China'').

EFFECTIVE DATES: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Postponement of Determination Results

The Department has determined that this case is extraordinarily complicated and additional time beyond the current October 31, 2001, deadline is necessary to make the preliminary determination. *See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Faryar Shirzad, Assistant Secretary for Import Administration,* October 17, 2001. The Department is postponing the preliminary determination until 190 days after initiation in accordance with section 733(c)(1)(B) of the Act.

The deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26938 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–816, A–602–804, A–423–811, A–351–834, A–427–822, A–428–834, A–533–826, A–588–859, A–580–848, A–421–810, A–614–803, A–570–872, A–821–815, A–791–814, A–469–812, A–401–807, A–583–839, A–549–819, A–489–810, A–307–822]

Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt (Argentina, Brazil, South Africa, Spain) at (202) 482–0629; Paige Rivas (Australia, India, Korea, New Zealand) at (202) 482–0651; Brian Ledgerwood (the Netherlands, Sweden) at (202) 482–3836; Fred Baker (France, Germany, the People's Republic of China, the Russian Federation) at (202) 482–2924; Michael Stollo (Japan, Thailand, Turkey, Venezuela) at (202) 482–5255; and Victoria Schepker (Belgium, Taiwan) at (202) 482–1756; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

The Petitions

On September 28, 2001, the Department of Commerce (the Department) received petitions filed in proper form by the following parties: Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel

Corporation,[1] Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC., WCI Steel, Inc., and Weirton Steel Corporation [2] (collectively, the petitioners). The Department received information supplementing the petitions on October 12, 2001 and on October 18, 2001, petitioners submitted additional information concerning industry support.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain cold-rolled carbon steel flat products (cold-rolled steel) from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. (*See* the *Determination of Industry Support for the Petitions* section below.)

Scope of Investigations

For purposes of these investigations, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness, having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (HTSUS), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight%	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm 2.

MECHANICAL PROPERTIES—Continued

Hardness	≥475 Vickers hardness number.

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width.

[1] National Steel Corporation is not a petitioner in the Japan case.

[2] Weirton Steel Corporation is not a petitioner in the Netherlands case.

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

Sulfide Inclusion	≤0.04
Oxide Inclusion	≤0.05%

COMPRESSIVE STRESS: 10 TO 40 KGF/MM^2

Surface Roughness

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.310	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:

Thickness: ≤0.100 mm ±7%

Width 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm.
Flatness (in 2.0 m)	≤0.5 mm.
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm.

- Certain silicon steel, which meets the following characteristics:

Thickness: 0.024 inch ±.0015 inch

Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %	.....	.....	.....	.....	0.65	
Max. Weight %	0.004	0.4	0.09	0.009	.....	0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish Smooth	(30–60 microinches).
Gamma Crown (in 5 inches)	0.0005 inch, start measuring one-quarter inch from slit edge.
Flatness	20 I–UNIT max
Coating	C3A–.08A max. (A2 coating acceptable).
Camber (in any 10 feet)	1/16 inch.
Coil Size I.D	20 inches.

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical, 1500 minimum.

- Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm

Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02		0.08	0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA microinches (micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International (''CSI'') Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds.
Theoretical Thickness	0.0061 inch (+/−10 percent of theoretical thickness).
Width	31 inches.
Tensile Strength	45,000–55,000 psi.
Elongation	minimum of 15 percent in 2 inches.

• Concast cold-rolled drawing quality sheet steel, ASTM a-620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch.
Hardness	T2/HR 30T 50–60 aiming.
Elongation	≥15%.

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Tensile Strength	51,000.0 psi ±4.0.

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch).
Width	10 inches (+¼ to ⅜ inch/−0).
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches.

• Certain ''blued steel'' coil (also known as ''steamed blue steel'' or ''blue oxide'') with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≤0.019 inch

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics:

Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight%	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• Certain band saw steel, which meets the following characteristics:

Thickness: ≤ 1.31 mm

Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: Fully spheroidized having >80% of carbides, which are ≤0.003 mm and uniformly dispersed

Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams Smooth edges.

Edge camber (in each 300 mm of length): ≤ 7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Si	Mn

CHEMICAL COMPOSITION—Continued

Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).
Min. Yield Point (MPa)	320.
Max Yield Point (MPa)	480.
Min. Tensile Strength (MPa)	590.
Min. Elongation %	24 (if 1.000–1.199 thickness range). 25 (if 1.200–1.599 thickness range). 26 (if 1.600–1.999 thickness range). 27 (if 2.000–2.300 thickness range).

Variety 2:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).
Min. Yield Point (MPa)	340.
Max Yield Point (MPa)	520.
Min. Tensile Strength (MPa)	690.
Min. Elongation %	21 (if 1.000–1.199 thickness range). 22 (if 1.200–1.599 thickness range). 23 (if 1.600–1.999 thickness range). 24 (if 2.000–2.300 thickness range).

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive).
Min. Yield Point (MPa)	370.
Max Yield Point (MPa)	570.
Min. Tensile Strength (MPa)	780.
Min. Elongation %	18 (if 1.200–1.599 thickness range). 19 (if 1.600–1.999 thickness range). 20 (if 2.000–2.300 thickness range).

- Certain cold-rolled steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm):	0.7
Elongation %: ≥	35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petitions

Section 771(4)(A) of the Act defines the ''industry as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[3]

[3] *See Algoma Steel Corp. Ltd., v. United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation, *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petitions. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

The petitions cover certain cold-rolled steel as defined in the *Scope of the Investigation* section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Finally, section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using any statistically valid sampling method to poll the industry.

The Department has determined, pursuant to section 732(c)(4)(D), that there is support for the petitions as required by subparagraph (A). Specifically, the Department made the following determinations. For Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petitions, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the *Initiation Checklist.*

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to home market price, U.S. price, constructed value (CV) and factors of production (FOP) are detailed in the *Initiation Checklist*. Where the petitioners obtained data from foreign market research, we contacted the researchers to establish their credentials and to confirm the validity of the information being provided. *See e.g., Memorandum to the File from Fred Baker: Contacts with Source of Market Research for Antidumping Petitions Regarding Imports of Cold-Rolled Steel from Australia, Belgium, France, Germany, India, Japan, Korea, the Netherlands, and Thailand* (October 18, 2001) (*Market Research for Australia, Belgium, France, Germany, India, Japan, Korea, the Netherlands, and Thailand*).

The margins alleged in the petitions are as follows: Argentina, 89.89 percent; Australia, 24.06 percent; Belgium, 25.41 percent; Brazil, 26.4 percent; France, 7.93 to 22.12 percent; Germany, 17.41 to 26.03 percent; India, 153.65 percent; Japan, 109.90 to 115.22 percent; Korea, 45.77 to 53.72 percent; the Netherlands, 58.50 to 58.61 percent; New Zealand, 21.72 percent; the People's Republic of China, 70.68 to 74.16 percent; the Russian Federation, 130.58 to 137.33 percent; South Africa, 54.59 percent; Spain, 45.88 percent; Sweden, 40.54 percent; Taiwan, 16.8 percent; Thailand, 112.09 to 142.78 percent; Turkey, 28.23 to 51.71 percent; and Venezuela, 53.9 percent.

The Department has analyzed the information in the petitions and considers the country-wide import statistics for the anticipated period of investigation (POI), price quotes, and market research information used to calculate the estimated margins for the subject countries to be sufficient for purposes of initiation. Based on the information submitted in the petitions, adjusted where appropriate, we are initiating these investigations, as discussed below and in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Period of Investigation

The anticipated POI for the market economy countries is July 1, 2000, through June 30, 2001, while the anticipated POI for the People's Republic of China and the Russian Federation, the non-market economy (NME) countries, is January 1, 2001, through June 30, 2001.

Non-Market Economies

Regarding an investigation involving an NME, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Moldova*, 66 FR 33525 (June 22, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Ammonium Nitrate from Ukraine*, 66 FR 38632 (July 25, 2001). In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of the People's Republic of China's and the Russian Federation's NME status and the granting of separate rates to individual exporters.

Argentina

Export Price

The petitioners based export price (EP) on price quotes from an Argentine producer to an unaffiliated U.S. purchaser for grades and sizes of subject merchandise comparable with products falling under one HTSUS category. In order to obtain ex-factory prices, the petitioners deducted international transportation and customs duty, ocean freight, U.S. inland freight, and U.S. custom duties from the sales value.

Normal Value

With respect to normal value (NV), the petitioners provided home market prices that were obtained from foreign

market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The quoted price was given in U.S. dollars per metric ton. In order to obtain ex-factory prices, the petitioners deducted inland freight from the sales value.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Australia

Export Price

The petitioners based EP on import average unit value (AUV) data from official U.S. Census Bureau statistics for the POI for one HTSUS category. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States, which serve as the basis for EP. The home market price was in effect during the period of the AUV data. The petitioners made an adjustment for home market credit expenses.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (see Initiation Checklist).

Belgium

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners obtained home market price quotes in effect during the POI from foreign market research, for specific products representative of the HTSUS categories which served as the basis for EP. These prices were in effect during the period of the AUV data. The market researcher provided a table for calculating price extras based on the dimensions of the product. The petitioners selected products from the middle of the width and thickness ranges for the two HTSUS categories used to calculate EP. Based on the selected product dimensions, they used the table to calculate the price extras. The petitioners made no other adjustments to NV.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Belgium using publicly available data. To calculate SG&A and interest expense, the petitioners relied upon amounts reported in a Belgian cold-rolled producer's 2000 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Belgian home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Belgium on CV. The petitioners calculated CV using the same COM, depreciation, SG&A and interest expense figures used to compute Belgian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the Belgian cold-rolled producer's 2000 financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Brazil

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS number. This HTSUS number encompasses the type of merchandise in the price quote used to establish NV. The petitioners state that the import statistics are ex-factory export prices. Petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel encompassed by the HTSUS category in the AUV data used to establish EP. The home market price was in effect during the period of the AUV data. Because the price quote was ex-works, petitioners made no adjustments to the price quote when calculating NV.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

France

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research. The petitioners state that the home market price quotations were ex-factory, exclusive of all taxes and inclusive of quantity rebates. The market researcher provided a table for calculating price extras based on the dimensions of the product. Petitioners calculated the price extra for each HTSUS category by

averaging the price extra for each length-width combination on the chart that falls within the length-width range of the HTSUS category, and adjusted the prices accordingly.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and France using publicly available data. To calculate depreciation, SG&A, and interest, the petitioners used the consolidated, 2000 financial statements of a French cold-rolled steel producer that petitioners believe to be representative of cold-rolled steel producers in France. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the French home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in France on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute French home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the same French steel producer's consolidated 2000 financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Germany

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research. The petitioners state that the home market price quotations were ex-factory, exclusive of all taxes and inclusive of quantity rebates. The market researcher provided a table for calculating price extras based on the dimensions of the product. Petitioners calculated the price extra for each HTSUS category by averaging the price extra for each length-width combination on the chart that falls within the length-width range of the HTSUS category, and adjusted the prices accordingly. No other adjustments to prices were made.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Germany using publicly available data. To determine depreciation, SG&A, and interest, the petitioners used the consolidated, 2000 financial statements of a German cold-rolled steel producer that petitioners believe to be representative of cold-rolled steel producers in Germany. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the German home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Germany on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute German home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. The petitioners relied upon amounts reported in the same German steel producer's consolidated 2000 financial statements to determine the amount for profit.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

India

Export Price

Petitioners obtained an offer which documents the sales terms for certain Indian cold-rolled steel in the United States. Petitioners calculated a net U.S. price by deducting port charges, freight charges, shipping charges, custom duties, and trading company mark-up. No other adjustments to prices were made.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States, which serve as the basis for EP. The petitioners made no adjustment to NV.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners used publicly available data from Ispat Industries, Ltd.'s (Ispat's) March 31, 2001 financial statements for the cost of the raw material input, hot-rolled coil. The cost of transforming the hot-rolled coil into subject merchandise was based on petitioners' own experience adjusted for known differences between costs

incurred to produce cold-rolled steel in the United States and India using publicly available data. To calculate depreciation, SG&A and interest expense, the petitioners relied upon amounts reported in Ispat's 2001 financial statements. However, because Ispat does not separately report depreciation attributable to the company's cold-rolling operations, petitioners excluded depreciation relative to the cold-rolling operations from the calculation of COP. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Indian home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in India on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Indian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Tata Iron and Steel Company, Ltd.'s 2001 financial statements because Ispat reported a net loss for the year. Because the Department prefers COM, SG&A and profit to be obtained from the same source, we have included a profit rate of zero. However, if we need to rely on the use of facts otherwise available in the future, we will then pursue alternative methods for computing the profit rate.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Japan

Export Price

To calculate EP, petitioners obtained two U.S. price quotes for merchandise produced in Japan for sale to the United States. Petitioners stated that the merchandise quoted would fall under HTSUS numbers 7209.16.00.90 and 7209.17.00.90. Because terms of sale were cost, insurance, and freight (CIF), petitioners made adjustments to these prices for ocean freight, customs duties, port charges (unloading and wharfage), and a trading company mark-up to calculate net EP. No other adjustments to prices were made.

Normal Value

With respect to NV, petitioners used foreign market research to obtain home market price quotes corresponding to the merchandise for which petitioners obtained its U.S. price information. Petitioners made no adjustments to the home market price. Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Price-to-CV Comparisons

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Japan using publicly available data. To calculate SG&A and interest expense, the petitioners relied upon amounts reported in a Japanese cold-rolled producer's 2001 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Japanese home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Japan on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Japanese home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the Japanese steel producer's 2001 financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Korea

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States, which serve as the basis for EP. The home market price employed was the average of the range of Korea's transaction prices reported in the foreign market research report and are for products comparable to the HTSUS categories used for EP. The petitioners state that the price is ex-factory and have made no adjustments.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners' calculated COM based on their own experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Korea using publicly available data. To calculate depreciation, SG&A, and interest, the petitioners used the consolidated, 2000 financial statements of a Korean cold-rolled steel producer that petitioners believe to be representative of cold-rolled steel producers in Korea. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Korean home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Korea on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Korean home market costs. Consistent with section 773(e)(2) of the Act, the petitioners calculated an amount for profit. For profit, the petitioners relied upon amounts reported in the same Korean steel producer's consolidated 2000 financial statements. However, this amount was not included in their margin calculations.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

The Netherlands

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of subject merchandise comparable with products falling under two HTSUS categories 7209.16.00.90 and 7209.17.00.90, the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation excluded delivery charges (i.e., FOB plant) and they made an adjustment only for published price extras.

Price-to-CV Comparisons

Petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. Petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and the Netherlands using publicly available data. To calculate SG&A, petitioners relied upon amounts reported in a Dutch cold-rolled producer's consolidated 2000 financial statements. For interest expense, petitioners also used the Dutch company's consolidated 2000 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Dutch home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, petitioners based NV for sales in the Netherlands on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Dutch home market costs. Consistent with section 773(3)(2) of the Act, petitioners included in CV an amount for profit. For profit, petitioners relied upon figures reported in the financial statements for the cold-rolled producer's parent company, because such information was not reported in the Dutch cold-rolled producer's financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (see Initiation Checklist).

New Zealand

Export Price/Contructed Export Price

The petitioners based U.S. price on import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS category. Petitioners state that U.S. price should be based upon CEP because they believe that much if not all of the cold-rolled steel produced by New Zealand Steel Ltd. (NZS), a subsidiary of BHP Billiton, is sold by BHP Steel Americas, which is also owned by BHP Billiton. Therefore, petitioners argue that U.S. sales should be classified as CEP sales. However, as petitioners have no information regarding the nature or the amount of expenses incurred in the United States for BHP Steel Americas' sales of cold-rolled steel produced by NZS, they have made no adjustments to U.S. price to reflect CEP expenses. Therefore, we have used EP as the basis for our comparison.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from sales offers for grades and sizes of cold-rolled steel comparable to the products exported to the United States, which serve as the basis for EP. The petitioners made an adjustment for home market freight expenses.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (see *Initiation Checklist*).

The People's Republic of China

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make an adjustment to the AUV data for foreign inland freight when calculating EP, because they argued that most of the PRC producers' mills are close to the port.

Normal Value

Petitioners assert that the Department has long treated the PRC as an NME country. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioners determined the dumping margin using a FOP analysis.

The petitioners assert that information regarding the PRC's mills' consumption rates is not available. Therefore, petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. producer of the subject merchandise (U.S. surrogate). Petitioners assert that both the U.S. surrogate and the Chinese producers use basic oxygen converters to make steel.

Petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita GNP. Based on the information provided by the petitioners, we believe that the petitioners' use of

India as a surrogate country is appropriate for purposes of initiating this investigation.

For most raw material inputs, petitioners used the values reported in the *Monthly Statistics of the Foreign Trade of India (Indian Import Statistics)* for February 2001. The petitioners excluded the imports from NME countries in the calculation of import surrogate values. Petitioners believed that the Indian value of slag as given in the *Indian Import Statistics* was aberrational because it was over $1,000/ton. Therefore, petitioners used the price derived from *Mineral Commodity Summaries,* January 2001. Because this value was for the year 2000, petitioners inflated the value to June 2001 levels using the U.S. Producer's Price Index. Petitioners made a by-product offset to COM for coke oven gas, blast furnace gas, and salvageable scrap. They valued these by-products using the *Indian Import Statistics.* Regarding iron input costs, petitioners amended their original calculation in their amendment to the petitions dated October 12, 2001. Please see the proprietary discussion in the *Initiation Checklist.*

Petitioners valued direct labor using the labor rates indicated on the Import Administration's website *(http://ia.ita.doc.gov/wages).*

Petitioners valued electricity using *Energy Prices and Taxes, Second Quarter 2001,* published by the Organization for Economic Cooperation and Development's International Energy Agency. Because the latest price is for the year 1997, petitioners adjusted this price to June 2001 levels using the Indian wholesale price index. Petitioner took the surrogate value for natural gas from the 1999 financial report of EOG Resources, Inc. Because this figure is denominated in U.S. dollars, petitioners inflated this figure to June 2001 levels using the U.S. wholesale price index. Petitioners derived the surrogate value for blast furnace gas from a ratio the Department calculated and utilized in *Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation,* 64 FR 38626 (July 19, 1999) (factor value memorandum). Petitioners took the surrogate values for oxygen, argon, and nitrogen from a price quote published in 1997 on the website of Bhoruka Gases Limited, an Indian gas manufacturer, adjusted for inflation.

For depreciation, overhead, SG&A expenses, and profit, the petitioners applied rates derived from the 2000–2001 financial statement of an Indian producer of subject merchandise, Tata Iron & Steel Co., Ltd.

Petitioners did not include packing materials in its computation because it was unable to obtain information on this expense. Petitioners valued packing labor using the direct labor rate published on the Department's website.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

The Russian Federation

Export Price

The petitioners based EP on the import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. Petitioners deducted estimated foreign inland freight by applying a surrogate freight rate to the average distance from two Russian producers' mills to the nearest port. No other adjustments to prices were made.

Normal Value

Petitioners assert that the Department has long treated Russia as a NME country. Pursuant to section 771(18)(C)(i) of the Act, because Russia's status as an NME remains in effect, the petitioners determined the dumping margin using a FOP analysis.

The petitioners assert that information regarding Russian mills' consumption rates is not available. Therefore, petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. producer of the subject merchandise (U.S. surrogate). Petitioners assert that both the U.S. surrogate and the Russian producers use basic oxygen converters to make steel.

Petitioners assert that South Africa is the most appropriate surrogate country for the PRC, claiming that South Africa is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to Russia in terms of per capita GNP. Based on the information provided by the petitioners, we believe that the petitioners' use of South Africa as a surrogate country is appropriate for purposes of initiating this investigation.

For most raw material inputs, petitioners used the values reported in the United Nations Commodity Trade Statistics (UNCTS) for 1998. The petitioners excluded the imports from NME countries in the calculation of import surrogate values. They adjusted these prices to June 2001 levels using the South African consumer price index. Petitioners believed that the South African values for slag and limestone as given in the UNCTS were too high and were, therefore, aberrational. Therefore, petitioners used the prices reported in the *World Trade Atlas,* compiled by Global Trade Information Services, Inc. Regarding iron input costs, petitioners amended their original calculation in their amendment to the petition dated October 12, 2001. Please see the proprietary discussion in the *Initiation Checklist.* Petitioners made a by-product offset to COM for coke oven gas, blast furnace gas, and salvageable scrap. They valued these by-products using the UNCTS.

Petitioners valued direct labor using the labor rates indicated on the Import Administration's website (*http://ia.ita.doc.gov/wages*).

Petitioners valued electricity using statistics reported in the 2000 annual financial statement of Eskom, the electricity provider in South Africa. Because the latest price is for the year 2000, petitioners adjusted this price to June 2001 levels using the South African wholesale price index. Petitioners took the surrogate value for natural gas from the 1999 edition of *Key World Energy Statistics* published by OECD's International Energy Agency. Petitioners applied an inflator based on the Producer's Price Index (PPI) to adjust it to June 2001 levels. Petitioners derived the surrogate value for blast furnace gas, oxygen, argon, and nitrogen from ratios the Department calculated and utilized in *Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation,* 64 FR 38626 (July 19, 1999) (factor value memorandum).

For depreciation, overhead, SG&A expenses, and profit, the petitioners applied rates derived from the 1999–2000 financial statement of a South African steel producer.

Petitioners did not include packing materials in its computation because it was unable to obtain information on this expense. Petitioners valued packing labor using the direct labor rate published on Import Administration's website (*http://ia.ita.doc.gov/wages*).

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

South Africa

Constructed Export Price

The petitioners identified one company that produces subject merchandise in South Africa. The petitioners state that this one producer accounts for the majority of all cold-rolled steel production in South Africa. Also, the petitioners state that this producer sells subject merchandise through its U.S. affiliate, a global trading company. The petitioners based CEP on the import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS category. This HTSUS category encompasses the type of merchandise in the price quote used to establish NV. The petitioners state that the import statistics are the ex-factory export prices and they made no adjustments for transportation to the AUV data when calculating CEP. The petitioners calculated a net U.S. price by subtracting port charges.

Normal Value

The petitioners based NV on domestic prices of cold-rolled steel comparable to the products exported during a month within the POI. The petitioners used prices for a recent offer for sale by Iscor, a South African company, to unaffiliated customers in South Africa as the starting point in calculating NV. The price quote covered the same products that were included in the HTSUS category used as the basis to establish EP. The petitioners adjusted this price by adding processing fees and by subtracting home market movement charges and home market credit expenses.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Spain

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS classification. This HTSUS classification encompasses the type of merchandise in the price quote used to establish NV. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioners provided home market prices that were obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The home-market price was in effect during the period of the AUV data. The price quote was ex-works so petitioners made no adjustments to the price quote when calculating NV.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Sweden

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS category. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

From a market researcher, petitioners obtained an affidavit reporting the home market prices based upon a price quote from SSAB Svenskt Stal AB to an unaffiliated purchaser in Sweden. The quoted price was given in Swedish kroner per metric ton. The terms of sale were delivered. The petitioner deducted freight costs from the home market prices. Conservatively, the highest freight cost (*i.e.*, maximum freight expense for longest distance) were used as stated in the given quote. The petitioners price quote did not include credit terms so no adjustment was made for credit expense. For comparisons to EP, the petitioners converted the net home market prices to U.S. dollars based on the average exchange rate in effect during the POI.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Taiwan

Export Price

The petitioners based EP on import AUV data from official U.S. Census Bureau statistics for one HTSUS classification. This HTSUS classification encompasses the type of merchandise in the price quote used to establish NV. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, the petitioner obtained home market prices, through market research, for a grade of cold-rolled steel comparable to the product exported to the United States (which serves as the basis for EP). The home market price was in effect during the period of the AUV data. Petitioners made no adjustments to the price quote when calculating NV.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Thailand

Export Price

To calculate EP, petitioners used import AUV data from official U.S. Census Bureau statistics for the POI for two HTSUS categories. The petitioners did not make any adjustment to the AUV data when calculating EP, because they argued that using an unadjusted AUV as the export price is a conservative methodology.

Normal Value

With respect to NV, petitioners provided home market prices obtained through foreign market research for various sizes of cold-rolled steel comparable to the products exported to the United States which serve as a basis for EP. As these were ex-factory prices, petitioners made no adjustments to the calculated average home market prices.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs

incurred to produce cold-rolled steel in the United States and Thailand using publicly available data. To calculate SG&A and interest, the petitioners relied upon amounts reported in a Thai producer of cold-rolled steel's 1999 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Thai home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Thailand on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Thai home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the Thai cold-rolled steel producer's 1999 financial statements.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Turkey

Export Price

To calculate EP for Turkish producers of cold-rolled steel, petitioners obtained a U.S. price quote for merchandise produced in Turkey for sale to the United States. For this U.S. price quote, petitioners made adjustments to net EP for ocean freight and U.S. Customs duty. Petitioners also provided import AUV data from official U.S. Census Bureau statistics. We based net EP on the price quote obtained.

Normal Value

With respect to NV, petitioners provided home market prices obtained through foreign market research for various sizes of cold-rolled steel comparable to the products exported to the United States which serve as a basis for EP. Petitioners adjusted the ex-factory normal value to account for a quantity discount, a payment in cash discount, and rebates.

Price-to-CV Comparisons

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled steel in the United States and Turkey using publicly available data. To determine depreciation, SG&A, and interest, the petitioners used the consolidated, 2000 financial statements of a Turkish cold-rolled steel producer that petitioners believe to be representative of cold-rolled steel producers in Turkey. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Based on the cost data discussed above, petitioners found that the Turkish home market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Turkey on CV. The petitioners calculated CV using the same COM, SG&A, and interest expense figures used to compute Turkish home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. The petitioners relied upon amounts reported in the same Turkish steel producer's consolidated 2000 financial statements to determine the amount for profit.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to CV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Venezuela

Export Price

To calculate EP, petitioners used import AUV data from official U.S. Census Bureau statistics for the POI for one HTSUS category. Because the import price represented a free-along-side price, no adjustments were made to calculate net EP.

Normal Value

With respect to NV, petitioners provided home market prices obtained through foreign market research for various sizes of cold-rolled steel comparable to the products exported to the United States which serve as a basis for EP. The terms of sale were ex-factory. No adjustments were made to normal value.

Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing EP to NV, we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred (*see Initiation Checklist*).

Initiation of Cost Investigations

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Belgium, France, Germany, India, Japan, Korea, the Netherlands, Thailand, and Turkey were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations for these countries. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H. Doc. 103–316, Vol. 1, 103d Cong., 2d Session, at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.'' Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' Id. Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their COPs, we find the

existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products in the markets of Belgium, France, Germany, India, Japan, Korea, the Netherlands, Thailand, and Turkey were made at prices below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

The Department has examined the adequacy and accuracy of the information the petitioners used in their calculations of U.S. and home market prices and has found that it represents information reasonably available to petitioners supporting the allegations of dumping (*see Initiation Checklist*).

Based on the data provided by the petitioners, there is reason to believe that imports of certain cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the stagnation of U.S. producers' sales volumes and profits, the decline of their capacity utilization, the increase of U.S. inventories and closures of U.S. production facilities. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have examined the accuracy and adequacy of the evidence provided in the petitions and have determined that the petitions allege the elements necessary for the imposition of a duty under section 731 of the Act and contain information reasonably available to the petitioner supporting the allegations (see Initiation Checklist, Material Injury section).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on certain cold-rolled steel and the petitioners' responses to our supplemental questionnaires clarifying the petitions, as well as our conversations with the foreign market researchers who provided information concerning various aspects of the petition, we have found that the petitions meet the requirements of section 732 of the Act. See Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public versions of the petitions have been provided to the representatives of the governments of Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. We will attempt to provide a copy of the public version of the petitions to each exporter named in the petitions, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than November 13, 2001, whether there is a reasonable indication that imports of certain cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26937 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–009]

Industrial Nitrocellulose From France: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 7, 2001, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers one manufacturer/exporter, Bergerac, NC. The period of review is August 1, 1999, through July 31, 2000.

We have made no changes to the margin calculation used for the preliminary results of review. Therefore, the final results do not differ from the preliminary results in which we found that sales of the subject merchandise were made below normal value. The final weighted-average dumping margin for Bergerac, NC is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: David Dirstine, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4033.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On September 7, 2001, the Department of Commerce (the Department) published in the **Federal Register** (66 FR 46773) the preliminary results of the antidumping duty order on industrial nitrocellulose (INC) from France. The review covers one manufacturer/exporter, Bergerac, NC (BNC). The period of review (POR) is August 1, 1999, through July 31, 2000. The Department is conducting this administrative review in accordance with section 751 of the Act.

We invited interested parties to comment on our preliminary results. BNC submitted a case brief on September 24, 2001, and the petitioner submitted a rebuttal brief on September 28, 2001. On October 3, 2001, the parties requested to withdraw the case and rebuttal briefs, to which there was no objection from any other party. See the October 3, 2001, letter from respondent's counsel to the Secretary of Commerce. On October 5, 2001, we withdrew the case and rebuttal briefs from the record pursuant to the requests of the parties and destroyed them. See memorandum to file from J. David Dirstine dated October 5, 2001. We have not considered or relied upon any argument or information contained in the withdrawn case and rebuttal briefs in making this determination.

Scope of Order

The product covered by this order is INC containing between 10.8 and 12.2 percent nitrogen. INC is a dry, white amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in serveral viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. Imports of this product are classified under the *Harmonized Tariff Schedule of the United States Annotated* (HTSUS) subheadings 3912.20.00 and 3912.90.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of this proceeding remains dispositive.

Final Results of Review

We made no changes to our preliminary analysis for these final results. The final weighted-average dumping margin for BNC for the period August 1, 1999, through July 31, 2000, is 3.26 percent.

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific ad valorem duty-assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs entered value of the sales used to calculate these duties. We will direct the Customs Service to assess the resulting percentage margin for the reviewed sales uniformly on all entries of that particular importer during the POR as well as on those entries of subject merchandise for which we applied the special rule for merchandise with value added after importation under section 772(e) of the Act. See 19 CFR 351.212(a).

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rate for BNC will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will 1.38 percent. This is the ''All Others'' rate from the less-than-fair-value investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–27057 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–804, A–471–806]

Notice of Initiation of Antidumping Duty Investigations: Sulfanilic Acid From Hungary and Portugal

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

SUMMARY: The Department of Commerce is initiating antidumping duty investigations to determine whether producers or exporters of sulfanilic acid from Hungary and Portugal are selling sulfanilic acid to the United States at less than fair value.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder at (202) 482–0189 or John Brinkmann at (202) 482–4126, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are references to the provisions codified at 19 CFR part 351 (April 2001).

The Petitions

On September 28, 2001, the Department received petitions filed in proper form by Nation Ford Chemical Company (''the petitioner''). The Department received supplemental

information to the petitions on October 9 and 12, 2001.

In accordance with section 732(b)(1) of the Act, the petitioner alleges that imports of sulfanilic acid from Hungary and Portugal are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to each of the antidumping investigations that it is requesting the Department to initiate. *See infra,* ''Determination of Industry Support for the Petition.''

Scope of Investigations

Imports covered by these investigations are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free-flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of Harmonized Tariff Schedule (''HTS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

This scope is identical to the scope of the antidumping duty order on Sulfanilic Acid from the People's Republic of China. *See Antidumping Duty Order: Sulfanilic Acid from the People's Republic of China,* 57 FR 37524 (August 19, 1992) (as currently reflected in *Sulfanilic Acid from the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 66 FR 47003 (September 10, 2001)). Nevertheless, during our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (''CRU'') at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law. *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the *Scope of Investigation* section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

The Department has determined that the petitions contain adequate evidence of industry support; therefore, polling is unnecessary. *See Initiation Checklist* for each country at Industry Support. Information on the record demonstrates that the producer who supports the petitions account for more than 50 percent of the production of the domestic like product. Additionally, no interested party pursuant to section 771(9)(A), (C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Initiation Standard for Cost Investigations

Pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to

believe or suspect that sales in the comparison markets for Hungary and Portugal were made at prices below the cost of production (''COP'') and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with these investigations. The Statement of Administrative Action (''SAA''), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. *See* H.R. Doc. No. 103–316, 103d Cong., 2d Sess. 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that new section 773(b)(2)(A) of the Act retains the requirement that the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the comparison market in question are at below-cost prices. *Id.* We have analyzed the country-specific allegations as described below.

Export Price (''EP'') and Normal Value (''NV'')

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. A more detailed description of these allegations is provided in the *Initiation Checklist* for each country. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, as appropriate.

Hungary

EP

The petitioner claims that one producer, Nitrokemia 2000 Co. (''Nitrokemia''), accounts for all of the sulfanilic acid production in Hungary and, accordingly, all of the sulfanilic acid products exported to the United States from Hungary. The petitioner provided pricing and cost information for this producer. According to the petitioner, Nitrokemia sells sulfanilic acid directly to unaffiliated U.S. customers. For Nitrokemia, the petitioner based EP on the average U.S. Customs values classifiable under 2921.42.2200 of the HTS, as reported in the ITC's Dataweb (*http://dataweb.usitc.gov*), for the period of July 1, 2000 through June 30, 2001. The petitioner did not make any deductions to this FOB port of exportation price of sulfanilic acid. *See Hungary Initiation Checklist.*

NV

According to the petitioner, Nitrokemia has no home market for sulfanilic acid and, therefore, it was unable to obtain price information for sales in the home market. The Department confirmed with the U.S. Commercial Service in Budapest, Hungary (''Commercial Service Budapest'') that there were no other producers of sulfanilic acid in Hungary, nor were there any known Hungarian industries which utilized commercial quantities of sulfanilic acid. *See Hungary Initiation Checklist.* Therefore, the petitioner turned to third-country sales for purposes of calculating NV. For a third-country market, the petitioner selected Germany because, based on the Hungarian export statistics, Germany is the largest export market for Nitrokemia. After examining this evidence, we found the petitioner's selection of Germany as the comparison market to be reasonable because it met the criteria for viable third-country sales pursuant to section 773(a)(1)(B)(ii) of the Act.

The petitioner used Hungarian export statistics to determine third-country prices in Germany. These export statistics pertained to a basket category, aniline derivatives, in which sulfanilic acid is included. The petitioner presented evidence that Nitrokemia is the only producer of aniline derivatives in Hungary and that this basket category provides the best approximation of Nitrokemia's sulfanilic acid exports. We confirmed with the Commercial Service Budapest that sulfanilic acid falls under the Hungarian basket category of HS #2921.42, aniline salts and derivatives, and that the volume and value of exports in the Hungarian export statistics are maintained on a DAF (''delivered to frontier'') basis. Furthermore, from the description of this Hungarian basket category and discussions with the Commercial Service Budapest, we found that these products are comparable to the products exported to the United States which served as the basis for EP. The petitioner did not make any deductions to the comparison market price.

Price-to-CV Comparisons

The petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of sulfanilic acid in the comparison market (Germany) were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation in this country. *See* section 773(b)(2)(A) of the Act.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (''COM''), selling, general, and administrative expenses, including financial expenses (''SG&A''), and packing. The petitioner calculated COM based on the petitioner's own factors of production to estimate the cost in Hungary. The petitioner valued raw materials (*i.e.,* natural gas, electricity, activated carbon, aniline, sulfuric acid, caustic soda, and hydrochloric acid) using Hungarian values obtained from a market research report prepared by the Commercial Service Budapest. The petitioner relied upon Nitrokemia's 2000 annual report to estimate labor cost as well as SG&A and financial expenses. The petitioner relied upon its own factory overhead percentage, claiming that Nitrokemia's annual report did not provide sufficient detail for this purpose.

Based upon the comparison of the prices of the foreign like product in the comparison market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, in the event that we determine that Germany is the appropriate market upon which to base NV, we will conduct a COP investigation.

Because the comparison-market price was below the COP, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioner based NV for sales in the comparison market on CV. The petitioner calculated CV using the same COM, SG&A and financial expenses used to compute comparison market costs. Consistent with section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. For profit, the petitioner relied upon its own financial experience inasmuch as Nitrokemia reported a negative profit for 2000. The petitioner did not make any other adjustments to CV for comparisons to EP.

Based upon the comparison of CV to EP, as adjusted by the Department (*see Hungary Initiation Checklist*), the

petitioner calculated estimated dumping margins ranging from 43.52 to 45.14 percent. *See Hungary Initiation Checklist.*

Portugal

EP

The petitioner claims that one producer, Quimigal S.A. (''Quimigal''), accounts for all of the sulfanilic acid production in Portugal and, accordingly, all of the sulfanilic acid products exported to the United States from Portugal. The petitioner provided pricing and cost information for this producer. According to the petitioner, Quimigal sells its product through an unaffiliated reseller in the United Kingdom (''UK'') to unaffiliated U.S. customers. For Quimigal, the petitioner based EP on U.S. Customs values classifiable under 2921.42.2200 of the HTS, as reported in the ITC's Dataweb (*http://dataweb.usitc.gov*) for the period of July 1, 2000 through June 30, 2001. The petitioner adjusted this FOB port of exportation price by deducting an amount for gross profit realized on the transaction by the unaffiliated UK reseller. No further adjustments were made by the petitioner.

While the petitioner provided some support for this adjustment, we have adopted the more conservative approach of using Portuguese export statistics to measure EP. This approach should avoid any inflation of the U.S. prices as reported in U.S. import statistics due to the reseller's markup, without attempting to quantify the markup. *See Portugal Initiation Checklist* for a complete discussion of the changes we made to the EP. These export statistics pertained to a basket category, aniline derivatives, in which sulfanilic acid is included. The petitioner presented evidence that Quimigal is the only producer of aniline derivatives in Portugal and that this basket category provides the best approximation of Quimigal's sulfanilic acid exports. The Portuguese export statistics were already in U.S. dollars, so there was no need to perform any conversions.

NV

According to the petitioner, Quimigal has no home market for sulfanilic acid and, therefore, it was unable to obtain price information for sales in the home market. Therefore, the petitioner turned to third-country sales for purposes of calculating NV. For third-country markets, the petitioner selected Spain, the UK, and Pakistan. After examining the evidence, we find that the UK is the most reasonable comparison market because, based on the Portuguese export statistics, the UK is the largest export market for Quimigal and because it meets the criteria for viable third-country sales pursuant to section 773(a)(1)(B)(ii) of the Act. *See Portugal Initiation Checklist.*

Price-to-CV Comparisons

According to the petitioner, the per-unit prices for the comparison market, calculated using Portuguese export statistics, are below Quimigal's estimated cost of production. Therefore, the petitioner requested that the Department conduct a country-wide sales-below-cost investigation in the comparison market. *See* section 773(b)(2)(A) of the Act.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses (which include financial expenses), and packing. Because Quimigal also produces aniline, a major input in the production of sulfanilic acid, the petitioner included estimated costs for Quimigal's aniline production in its overall calculation of COP.

As an estimation of the cost of aniline production in Portugal, the petitioner calculated Quimigal's COM for aniline based on a Stanford Research Institute (''SRI'') report [1] of the estimated cost of producing aniline in Germany. The petitioner valued raw materials using the same research report except in the case of benzene, where the petitioner used prices from the Weekly DeWitte Newsletter for Benzene and Derivatives, and in the case of nitric acid and hydrogen, where the petitioner used quotes taken from suppliers to a European producer of sulfanilic acid.

To calculate Quimigal's COM for sulfanilic acid, the petitioner used its own factors of production to estimate the cost in Portugal. The petitioner valued raw materials from various sources. Sulfuric acid and activated carbon were valued based on quotes and invoices obtained from the European producer. Labor, natural gas and electricity were valued based on Portuguese values obtained from market research performed by the U.S. Commercial Service in Lisbon, Portugal. The petitioner was unable to obtain Quimigal's financial statements for purposes of deriving factory overhead, SG&A, and interest expense. Consequently, the petitioner relied upon its own experience for SG&A and interest expense, while factory overhead was calculated using the SRI report, which we found resulted in a more conservative percentage than if the petitioner had relied upon its own experience.

Based upon the comparison of the prices of the foreign like product in the comparison market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, in the event that we determine that the UK is the appropriate market upon which to base NV, we will conduct a COP investigation.

Because the comparison-market prices were below the COP, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioner based NV for sales in the comparison market on CV. The petitioner calculated CV using the same COM, SG&A and financial expenses it used to compute comparison market costs. Consistent with section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. For profit, the petitioner relied upon its own financial experience for the year for 2000 because it was unable to obtain Quimigal's financial statements. The petitioner did not make any other adjustments to CV for comparisons to EP.

Based upon the comparison of CV to EP, as adjusted by the Department, the estimated dumping margin is 91.82 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of sulfanilic acid from Hungary and Portugal are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise. The petitioner contends that the industry's injured condition is evident in the declining trends in employment, domestic prices, production, net sales volume and value, and inventory. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Hungary Initiation Checklist* and *Portugal Initiation Checklist*).

[1] This report is part of SRI's Process Economics Program. It was provided to NFC on a confidential basis.

Initiation of Antidumping Investigations

Based upon our examination of the petitions on sulfanilic acid, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of sulfanilic acid from Hungary and Portugal are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(c)(1), we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each respective petition has been provided to the representatives of the governments of Hungary and Portugal. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than November 13, 2001, whether there is a reasonable indication that imports of sulfanilic acid from Hungary or Portugal are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26941 Filed 10–25–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–817, C–351–835, C–427–823, C–580–849]

Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea have received countervailable subsidies.

ACTION: Initiation of countervailing duty investigations.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam (Argentina, Brazil, and France) at (202) 482–0176 and Jonathon Lyons (Argentina and the Republic of Korea) at (202) 482–0374; Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the ''Department'') regulations are references to the provisions codified at 19 CFR part 351 (April 2001).

The Petitions

On September 28, 2001, the Department received petitions filed in proper form by Bethlehem Steel Corp., United States Steel LLC., LTV Steel Company, Inc., Steel Dynamics, Inc., National Steel Corp., Nucor Corp., WCI Steel, Inc., and Weirton Steel Corp. (collectively, ''the petitioners''). The Department received supplemental information to support the petition for France on October 3, 2001.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of the subject merchandise from Argentina, Brazil, France, and the Republic of Korea receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and they have demonstrated sufficient industry support. *See* ''Determination of Industry Support for the Petitions'' section, below.

Scope of Investigations

For purposes of these investigations, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by

weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS; Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm².
Hardness	≥475 Vickers hardness number.

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width.

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

Thickness (mm)	Roughness (μm)
Sulfide Inclusion	>0.04%
Oxide Inclusion	>0.05%

Compressive Stress: 10 to 40 Kgf/mm ^{2}

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7

SURFACE ROUGHNESS—Continued

Thickness (mm)	Roughness (µm)
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum).
Total Elongation	<3%.
Tensile Strength	600 to 850 N/mm^2.

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron.
Camber (in 2.0 m)	<3.0 mm.
Flatness (in 2.0 m)	≤0.5 mm.
Edge Burr	<0.01 mm greater than thickness.
Coil Set (in 1.0 m)	<75.0 mm.

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inch ± .0015 inch
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %	.....	.....	.....	.....	0.65	.....
Max. Weight %	0.004	0.4	0.09	0.009	.....	0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches).
Gamma Crown (in 5 inches)	0.0005 inch, start measuring one-quarter inch from slit edge.
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable).
Camber (in any 10 inch feet)	1/16.
Coil Size I.D	20 inches.

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical, 1500 minimum.

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
• Thickness: 0.025 to 0.245 mm
• Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

- Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20	.....	.....	.....	0.03	.....	.....	.....	0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08	.....	0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA microinches (micrometers)		
	Aim	Min.	Max
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

- Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International (''CSI'') Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds.
Theoretical Thickness	0.0061 inch (+/−10 percent of theoretical thickness).
Width	31 inches.
Tensile Strength	45,000–55,000 psi.
Elongation	Minimum of 15 percent in 2 inches.

- Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.
- Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).
- Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.
- Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).
- Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch.
Hardness	T2/HR 30T 50–60 aiming.
Elongation	≥15%.
Tensile Strength	51,000.0 psi ±4.0 aiming.

- Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (± 0.0005 inch).
Width	10 inches (+ ¼ to ⅜ inch/ – 0).
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches.

- Certain ''blue steel'' coil (also known as ''steamed blue steel'' or ''blue oxide'') with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;
- Certain cold-rolled steel sheet, coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≤0.019 inch
Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

- Certain cold-rolled steel, which meets the following characteristics:

Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

- Certain band saw steel, which meets the following characteristics:

Thickness: ≤ 1.31 mm
Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.00	0.3 to 0.5	0.25

Other properties:
Carbide: Fully spheroidized having >80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams Smooth edges.
Edge camber (in each 300 mm of length): ≤ 7 mm arc height Cross bow (per inch of width): 0.015 mm max.

- Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Yield Point (MPa)	320.
Max Yield Point (MPa)	480.
Min. Tensile Strength (MPa)	590.
Min. Elongation %	24 (if 1.000–1.199 thickness range). 25 (if 1.200–1.599 thickness range). 26 (if 1.600–1.999 thickness range). 27 (if 2.000–2.300 thickness range).

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive).
Min. Yield Point (MPa)	340.
Max. Yield Point (MPa)	520.
Min. Tensile Strength (MPa)	690.
Min. Elongation %	21 (if 1.000–1.199 thickness range). 22 (if 1.200–1.599 thickness range). 23 (if 1.600–1.999 thickness range). 24 (if 2.000–2.300 thickness range).

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive).
Min. Yield Point (MPa)	370.
Max. Yield Point (MPa)	570.
Min. Tensile Strength (MPa)	780.
Min. Elongation %	18 (if 1.200–1.599 thickness range). 19 (if 1.600–1.999 thickness range). 20 (if 2.000–2.300 thickness range).

- Certain cold-rolled steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %	.....	.....	.....	0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
Max. Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %	.....	.....	.....	0.15
Max. Weight %	0.05	0.40	0.08	0.35

Variety 3

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max. Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm):	0.7
Elongation %: ≥	35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Governments of Argentina (''GOA''), Brazil (''GOB''), France (''GOF''), the Republic of Korea (''GOK''), and the European Commission (''EC'') for consultations with respect to the petitions filed. The GOK did not accept our invitation to hold consultations. On October 12, 2001, the Department held separate consultations with the GOA, GOB, and the GOF/EC. The GOA also submitted additional information on October 15, 2001. The points raised in the consultations are described in the individual country-specific consultation memoranda to the file dated October 12, 2001, which are on file in the Department's Central Records Unit, Room B–099 of the main Department of Commerce building.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petitions. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

The petitions cover certain cold-rolled steel as defined in the ''Scope of the Investigations'' section, above, a single

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F.Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

class or kind of merchandise. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Finally, section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using any statistically valid sampling method to poll the industry.

The Department has determined, pursuant to section 732(c)(4)(D), that there is support for the petitions as required by subparagraph (A). Specifically, the Department made the following determinations. For Argentina, Brazil, France, and the Republic of Korea, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petitions, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the Initiation Checklists for each country dated October 18, 2001 (''*Initiation Checklist*'').

Injury Test

Because Argentina, Brazil, France, and the Republic of Korea are each a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from these countries materially injure, or threaten material injury to, an industry in the United States.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise. The petitioners contend that the industry's injured condition is evident in the stagnation of U.S. producers' sales volumes and profits, the decline of their capacity utilization, the increase of U.S. inventories and closures of U.S. production facilities. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have examined the accuracy and adequacy of the evidence provided in the petitions and have determined that the petitions allege the elements necessary for the imposition of a duty under section 731 of the Act and contain information reasonably available to the petitioners supporting the allegations (*see Initiation Checklists*, Injury Allegation section).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

Period of Investigation

The period of investigation (''POI'') for which we are measuring subsidies is the calendar year 2000.

Initiation of Countervailing Duty Investigations

The Department has examined the countervailing duty petitions on certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation in each country to determine whether manufacturers, producers, or exporters of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea receive countervailable subsidies (*see Initiation Checklist* for each country).

Argentina

A. *General*. The petitioners argue that the Department's current formula for allocating non-recurring subsidies understates the time value of money, and thus undervalues every non-recurring subsidy. According to the petitioners, this undervaluing is biased in favor of the respondents, inconsistent with the statute and the Department's regulations, inconsistent with commercial reality, and inconsistent with other agency practices. In its place, the petitioners propose that the Department adopt a mid-year allocation methodology, which they claim would recognize that, on average, subsidies are received in the middle of the year, as opposed to the beginning of the year (as under our current methodology).

In the past, we have considered and rejected the same argument advocated now by the petitioners that the Department's long-standing allocation formula should be replaced by a mid-year convention approach. *See* Preamble to the Department's CVD Regulations, 63 FR at 65399; 1989 Proposed Regulations, 54 FR 23366, 23375–76 (May 31, 1989); *Subsidies Appendix* in *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 49 FR 18006, 18018 (April 26, 1984); and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277, 73298 (December 29, 1999) (''*French Plate*''). As we have explained on several occasions, our current allocation formula, codified at 19 CFR 351.524(d)(1), has proven to be predictable and easy to administer. It has been implemented for almost twenty years without controversy in virtually every CVD proceeding, and its reasonableness has been upheld by the Court of International Trade in *Michelin Tire Corp.* v. *United States*, 6 CIT 320 (1983), *vacated on other grounds*, 9 CIT 38 (1985). Accordingly, for purposes of this initiation, we will continue applying our allocation formula as it stands in 19 CFR 351.524(d)(1). Consequently, with respect to Argentina, we will not examine any previously investigated subsidies

received prior to 1986, which have already been determined to have a fifteen-year average useful life (''AUL''), because these subsidies have already been fully allocated.

B. *Equityworthiness and Creditworthiness.* The petitioners allege that the principal producer/exporter of subject merchandise in Argentina is Siderar Sociedad Anonima Industrial Y Comercial (''Siderar''). According to the petitioners, prior to 1993, Siderar was known as Sociedad Mixta Siderugica Argentina (''SOMISA''), and briefly from 1992 to 1993, was known as Aceros Parana S.A. (''APSA'').

The petitioners claim that the Department previously found SOMISA to be unequityworthy from 1984 through 1990 in *Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina: Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 38257, 38260 (July 17, 1997) (''*1997 Cold-Rolled Prelim*''). In addition, the petitioners allege that SOMISA was found uncreditworthy in 1992 in *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina*, 66 FR 10990, 10994 (February 21, 2001) (''*Hot-Rolled Prelim*''). The petitioners claim that, although the determination of uncreditworthiness in that case was based on adverse facts available, the Department's decision was nonetheless supported by sufficient facts presented in the petition in that case. In particular, the petitioners state that, in the two years prior to 1992, SOMISA's return on sales worsened from negative seventy-nine percent in 1991 to negative eighty-seven percent in 1992. Furthermore, according to the petitioners, SOMISA's operating margins were negative fifty-nine percent and negative eighty-one percent in 1991 and 1992, respectively, and that SOMISA's debt went from 388 million pesos in 1991 to 570 million pesos in 1992, while net worth fell from 717 million pesos to negative 913 million pesos in the same period. The petitioners note that, in the *Hot-Rolled Prelim*, we stated that SOMISA was (1) losing approximately 20 million dollars a month, (2) not a viable economic entity on its own, and (3) in a state of technical insolvency. 66 FR at 10994–95. Finally, the petitioners allege that SOMISA/APSA was unequityworthy in 1992. Citing to *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina*, 66 FR 37007 (July 16, 2001) and accompanying *Issues and Decision Memorandum*, at section on ''Programs Determined to Confer Subsidies: Investment Commitment,'' the petitioners state that the Department implicitly found the company unequityworthy in a previous case because it countervailed ''committed investments'' as an equity infusion made in that year. In addition, the petitioners argue that, assuming the Department determines, as it did in the *Hot-Rolled Prelim*, to treat the ''committed investments'' as being received in 1993 and 1994, it should open an equityworthiness/creditworthiness investigation for these years, and allow parties to comment.

Unless a company provides new information to the contrary, once a determination of unequityworthiness has been made for certain years, the Department's practice is to continue to find that company unequityworthy for those same years in subsequent cases. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil*, 58 FR 37295, 37297 (July 9, 1993) (''*Brazil Certain Steel*''). Based on our previous finding of unequityworthiness for SOMISA in *1997 Cold-Rolled Prelim* from 1984 through 1990, we will consider this unequityworthiness in analyzing any equity infusions received in those years.

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. 19 CFR 351.505(a)(4). Regarding the uncreditworthiness allegation for 1992, the financial information submitted in the *Hot-Rolled Prelim*, and restated again here, suggests that SOMISA may have not been able to obtain such financing in 1992. Therefore, if we find that SOMISA received any non-recurring grants, loans, or loan guarantees in 1992, we will investigate its creditworthiness in that year.

In the case of a government equity infusion, the Department measures the benefit by examining the investment decision against the usual investment practice of a private investor. 19 CFR 351.507(a)(1). Specifically, the Department compares the purchase price paid by the government to prices paid for new shares by private investors, if such prices exist. 19 CFR 351.507(a)(2). If actual private investor prices are unavailable, the Department will determine the equityworthiness of a company at the time of the equity infusion. 19 CFR 351.507(a)(3). Regarding the unequityworthiness allegation for 1992, the determination that the committed investments were countervailable in the *Hot-Rolled Prelim* was based on adverse facts available. However, in this investigation, based on the same information used to determine creditworthiness in 1992, we find that the petitioners provided sufficient information demonstrating that SOMISA may have been unequityworthy in 1992. Therefore, if we find that SOMISA received any equity infusions in 1992, we will examine its equityworthiness in that year.

Finally, regarding SOMISA's equityworthiness in 1993 and 1994, the petitioners have not provided any evidence that SOMISA may have been unequityworthy during that period. Absent such evidence, we will not examine SOMISA's equityworthiness during that period.

C. *Programs.* We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Argentina:

1. Equity Infusions
2. Assumption of Debt and Liquidation Costs
3. Subsidies Under Decree 1144/92
4. ''Committed Investment'' Into APSA
5. Export Subsidies
6. Zero Tariff Turnkey Bill

Brazil

A. *General.* The petitioners argue that, as a result of cross-ownership between Usinas Siderurgicas de Minas Gerais (''USIMINAS'') and Companhia Siderurgica Paulista (''COSIPA''), the Department should allocate subsidies received by both companies over the combined sales of both companies. In the course of this investigation, we will examine any cross-ownership between USIMINAS and COSIPA to determine how and whether to allocate subsidies among these companies.

B. *Equityworthiness and Creditworthiness.* The petitioners allege that there are three principal producers of subject merchandise in Brazil: Companhia Siderurgica Nacional (''CSN''), USIMINAS, and COSIPA.

Unless a company provides new information leading the Department to reconsider a previous finding of unequityworthiness or uncreditworthiness, once a determination of unequityworthiness or uncreditworthiness has been made for certain years, the Department's practice is to continue to find that company unequityworthy or uncreditworthy for those same years in subsequent cases. *See, e.g., Brazil Certain Steel*, 58 FR at 37297.

The petitioners claim that CSN, USIMINAS, and COSIPA were previously found unequityworthy in various years. Based on our previous determinations, we initially find the following: CSN to be unequityworthy from 1986 through 1992; USIMINAS to be unequityworthy from 1986 through 1988; and COSIPA to be unequityworthy from 1986 through 1989 and from 1992 through 1993. *See Final Affirmative Countervailing Duty Determinations: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5536, 5546 (February 4, 2000); *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38742, 38746 (July 19, 1999); and *Brazil Certain Steel*, 58 FR at 37297. Accordingly, we will take into account CSN's, USIMINAS's, and COSIPA's unequityworthiness if we determine that any of these companies received equity infusions in years in which they were determined to be unequityworthy.

The petitioners also state that CSN, USIMINAS, and COSIPA were previously found uncreditworthy in various years. Based on our previous determinations, we initially find the following: CSN to be uncreditworthy from 1986 through 1992; USIMINAS to be unequityworthy from 1986 through 1988; and COSIPA to be unequityworthy from 1986 through 1989 and from 1991 through 1993. *See id.* Accordingly, we will take into account CSN's, USIMINAS's, and COSIPA's uncreditworthiness if we determine that any of these companies received non-recurring grants, loans, or loan guarantees in years in which they were determined to be uncreditworthy.

C. *Programs.* We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Brazil:

1. Equity Infusions into CSN, USIMINAS, and COSIPA
2. PROEX

We are not including in our investigation the following program alleged to benefit producers and exporters of the subject merchandise in Brazil:

1. Exemption of Exports from Taxes under the Social Integration Program (''PIS'') and the Social Contribution of Billings (''COFINS'')

In determining not to investigate this program, we stated the following in the *Notice of Initiation of Countervailing Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey*, 66 FR 49931, 49934 (October 1, 2001):

> Within the context of a countervailing duty proceeding, taxes on revenues such as PIS and COFINS would generally be considered indirect taxes. (*See* 19 CFR 351.102(b) of the Department's regulations for the definition of an indirect tax.) In the case of these particular taxes, the Department's regulations at 19 CFR 351.517(a) state that a benefit exists to the extent that the amount remitted or exempted exceeds the amount levied. There is no information in this instance of any excessive remission.

Likewise, in this investigation, because we consider these taxes to be indirect and because there was no evidence of excessive remission presented in the petition, there is no basis to believe that a financial contribution was provided as required by section 771(5)(D) of the Act. Therefore, we will not investigate this allegation.

France

A. *General.* As they did with respect to Argentina, the petitioners propose that, in considering subsidies to France, the Department adopt a mid-year allocation methodology, which they claim would recognize that, on average, subsidies are received in the middle of the year, as opposed to the beginning of the year (as under our current methodology). For the reasons stated above, in the ''General'' section for Argentina, we will continue to allocate non-recurring subsidies according to 19 CFR 531.524(d). Consequently, with respect to France, we will not examine the previously investigated subsidies received prior to 1987 (*i.e.*, the ''Write-Off of PACS'' and ''Shareholder Advances Up Through 1986'' (*see* further discussion below)) which have already been determined to have a fourteen-year AUL, because these subsidies have already been fully allocated.

B. *Equityworthiness and Creditworthiness.* The petitioners allege that the principal producer/exporter of subject merchandise in France is Usinor.

The petitioners claim that Usinor was both unequityworthy and uncreditworthy up through 1988, consistent with our previous determination in *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From France*, 58 FR 37304, 37305–06 (July 9, 1993) (''*French Certain Steel*'').

In *French Certain Steel*, we found Usinor to be unequityworthy from 1986 through 1988. *Id.* at 37305 In the same determination, we found Usinor to be uncreditworthy from 1982 through 1988. *Id.* at 37306; *see also French Plate*, 64 FR at 73291 (Usinor was uncreditworthy from 1985 through 1988); and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From France*, 64 FR 30774, 30779 (June 8, 1999) (''*French Stainless*'') (Usinor was uncreditworthy from 1984 through 1988).

Unless a company provides new information leading the Department to reconsider a previous finding of unequityworthiness or uncreditworthiness, once a determination of unequityworthiness or uncreditworthiness has been made for certain years, the Department's practice is to continue to find that company unequityworthy or uncreditworthy for those same years in subsequent cases. *See, e.g., Brazil Certain Steel*, 58 FR at 37297. Based on our previous determinations of unequityworthiness in *French Plate, French Stainless*, and *French Certain Steel*, for those years in which we found Usinor to be unequityworthy and which remain relevant in this investigation (*i.e.*, from 1987 through 1988), we will consider its unequityworthiness if we find that any equity infusions were received during this period. Also, based on our previous determinations of uncreditworthiness, for those years in which we found Usinor to be uncreditworthy and which remain relevant in this investigation (*i.e.*, from 1987 through 1988), we will consider its uncreditworthiness if we find that any non-recurring subsidies, loans, or loan guarantees were received during this period.

C. *Programs.* We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in France (note: some of these programs have certain parts that we will not be investigating (*see Initiation Checklist* for France)):

1. FIS Bonds
2. Shareholder Advances After 1986
3. GOF Advances for SODIs
4. Investment/Operating Subsidies
5. Funding for Electric Arc Furnaces
6. Funding for Myosotis Project
7. Repayable Grant to Sollac for ''Pre-Coating'' Technology
8. Tax Subsidies Under Article 39
9. ESF Grants
10. ECSC Article 54 Loans
11. ECSC Article 56 Funding
12. ERDF Funding
13. Funding Under Resider and Resider II

In addition to those parts of the above programs we will not be investigating,

we are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in France:

1. Write-Off of PACS. The petitioners allege that certain debts of Usinor were converted into loans with special characteristics, or ''PACS.'' In 1986, these PACS were converted into common stock, effectively releasing Usinor of its repayment obligations under the PACS. Consistent with our previous findings in *French Plate*, 64 FR at 73281–82 and *French Stainless*, 64 FR at 63878–79, the petitioners claim that these conversions constitute countervailable equity infusions and request that the Department continue to countervail the subsidy.

We do not intend to investigate this allegation. Because we have rejected the use of the petitioners' proposed mid-year allocation methodology (*see* ''General'' section above), all benefits under this program have been fully amortized over the applicable AUL prior to the POI.

2. Shareholder Advances Up Through 1986. The petitioners claim that the GOF provided Usinor with grants in the form of shareholder advances in 1985 and 1986 to finance the revenue shortfall needs of both these companies. In 1986, the GOF converted these shareholder advances into common stock. However, no shares were ever received by the GOF with the conversion. According to the petitioners, the GOF provided roughly FF 20 billion to Usinor in the years 1982 through 1986 in the form of these shareholder advances. Consistent with our previous findings in *French Plate*, 64 FR at 73282 and *French Stainless*, 64 FR at 63879, the petitioners claim that these conversions constitute countervailable equity infusions and request that the Department continue to countervail the subsidy.

We do not intend to investigate this allegation. As discussed above, under ''Write-Off of PACS,'' because we have rejected the use of the petitioners' proposed mid-year allocation methodology (*see* ''General'' section above), all benefits under this program have been fully amortized over the applicable AUL prior to the POI.

The Republic of Korea

A. *General.* As they did with respect to Argentina and France, the petitioners propose that, in considering subsidies to the Republic of Korea, the Department adopt a mid-year allocation methodology, which they claim would recognize that, on average, subsidies are received in the middle of the year, as opposed to the beginning of the year (as under our current methodology). For the reasons stated above, in the ''General'' section for Argentina, we will continue to allocate non-recurring subsidies according to 19 CFR 531.524(d). Consequently, with respect to the Republic of Korea, we will not examine any previously investigated subsidies received prior to 1986, which have already been determined to have a fifteen-year AUL, because these subsidies have already been fully allocated.

B. *Programs.* We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the Republic of Korea (note: some of these programs have certain parts that we will not be investigating (*see Initiation Checklist* for the Republic of Korea)):

1. Loans Inconsistent with Commercial Consideration (GOK Directed Credit) Programs
2. Government Infrastructure Assistance at Kwangyang Bay
3. Asan Bay Infrastructure Subsidies
4. Other Subsidies Related to Operations at Asan Bay
5. Reserve for Export Loss (TERCL Article 16)
6. Reserve for Overseas Market Development (TERCL Article 17)
7. Technical Development Fund (TERCL Article 8)
8. Short-term Export Financing
9. Investment Tax Credits (under various TERCL Articles)
10. Electricity Discounts
11. Asset Revaluation—TERCL Article 56(2)
12. Tax Exemption for Balanced Development (TERCL Article 43)
13. Research and Development Subsidies
14. Special Depreciation for Energy-Saving Equipment
15. Export Insurance
16. POSCO's Provision of Steel Inputs at Less-Than-Adequate Remuneration (Dual Pricing Scheme for Input Products)
17. Government Grants to Dongbu
18. Special Depreciation for Union
19. Export Industry Facility Loans

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the Republic of Korea:

1. Reduction of Import Duties on Steelmaking Equipment. The petitioners allege that the GOK subsidizes steelmakers by waiving or reducing the eight percent tariff on imports of steelmaking equipment that cannot be purchased domestically. The petitioners provide a Korea Iron and Steel Report that shows that steel producers, including companies that produce cold-rolled steel, have benefitted from this program. The petitioners concede that the Department found these duty reductions not countervailable in *Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea*, 65 FR 41051 (July 3, 2000) (''*Structural Beams*'') and in the *Remand Determination Pursuant to Bethlehem Steel Corp.,* v. *United States*, Slip Op. 01–38, Court No.: 00–03–00116 (April 4, 2001) (''*Carbon Plate Remand*'') because they were part of a broader program of duty reductions, but argue that a specificity analysis must be undertaken for cold-rolled producers, and the steel industry as a whole.

We are not investigating this allegation. The Department has examined this program in *Structural Beams* and found it not countervailable because the program did not meet any of the specificity criteria of section 771(5A) of the Act. This position was reaffirmed in the *Carbon Plate Remand*. The petitioners have provided no new information or evidence of changed circumstances to warrant a re-examination of this program.

2. Reduction of Import Duties on Hot-Rolled Steel. The petitioners allege that, in the *Final Affirmative Countervailing Duty Determination: Certain Cut-to-length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176 (December 29, 1999) (''*Carbon Plate*''), it was discovered that the GOK subsidizes slab imports through a duty reduction program. Under the program, the petitioners assert that the GOK monitors the available supply of slabs and reduces the tariff rate on slabs when domestic supply contracts or when the domestic industry makes a request. The petitioners observe that, although the Department did not address this program in the *Carbon Plate* final determination, it did so in the *Carbon Plate Remand*, where it was found not countervailable. The petitioners allege that there is no indication that rigorous policing of the program's rules on physical incorporation and wastage takes place, and that any finding related to Korea's duty drawback system (which was investigated separately in *Carbon Plate*) would not apply to this distinct up-front duty exemption used by plate producers. The petitioners further allege that the Department must take the ''time value of money'' benefit associated with getting an up-front duty reduction into

account when determining the program benefit.

The petitioners further assert that the Department must examine whether cold-rolled steel producers benefitted from hot-rolled steel duty reductions in the POI, given that hot-rolled steel is the main input into cold-rolled steel. As support for their claims, the petitioners provide a Ministry of Commerce, Industry and Energy announcement of a reduced duty rate for slabs in the second half of 2000. Finally, the petitioners note that the Department found a similar program to be countervailable in the *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 20255 (April 20, 2001) (''*Thailand Prelim*''). Thus, the petitioners request that the Department initiate an investigation to examine the extent to which Korean cold-rolled steel producers may have benefitted from this program.

We are not investigating this allegation. As the petitioners note, the Department examined this program in *Carbon Plate Remand* and found it to be not countervailable because the slabs to which it applied were physically incorporated into exported products, and because producers would have been entitled to duty drawback even if the duties were not waived up front. We also found that the ''time value of money'' issue asserted by the petitioners does not meet the benefit criteria of section 771(5)(E) of the Act. Further, the Department's preliminary finding in *Thailand Prelim* provides no insight into the Korean program at issue here. The petitioners have provided no new information or evidence of changed circumstances relating to the benefit conferred by this program to warrant re-examination at this time.

3. R&D Aid for Anthracite Coal Technology & Related Price Stabilization Measures. The petitioners allege that the GOK subsidizes research related to technology permitting the use of sintered anthracite coal in steel production. The petitioners assert that POSCO has increased its use of anthracite coal as a result of this research and development assistance. The petitioners further allege that the GOK suppresses anthracite coal prices for users such as producers of subject merchandise through the Support Program for the Coal Industry, which was notified to the WTO in both 1997 and 1998. Petitioners also allege that the steel industry is the predominant user of anthracite coal, and thus the beneficiary of subsidized prices.

As the petitioners have provided no information on research and development subsidies linked to the production or use of anthracite coal, we are not initiating an investigation on research and development subsidies. We also are not initiating an investigation as to whether producers of subject merchandise benefit from subsidized coal prices. Because coal can be used as an input in the production of subject merchandise, petitioners must provide sufficient evidence supporting their claim of an upstream subsidy under section 771(A) of the Act. Additionally, the petitioners would have to meet the requirements outlined in 19 CFR 351.523(a) in order for the Department to initiate an investigation of an upstream subsidy.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the respective petitions has been provided to the GOA, GOB, GOF, GOK, and EC. We will attempt to provide a copy of the public version of the respective petitions to each exporter named in each petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than November 13, 2001, whether there is a reasonable indication that imports of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea are causing material injury, or threatening to cause material injury, to an industry in the United States. A negative ITC determination for any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26939 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–437–805]

Notice of Initiation of Countervailing Duty Investigation: Sulfanilic Acid From Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: The Department of Commerce is initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of sulfanilic acid from Hungary receive countervailable subsidies.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Melani Miller, AD/CVD Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are references to the provisions codified at 19 CFR part 351 (April 2001).

The Petition

On September 28, 2001, the Department received a petition filed in proper form by Nation Ford Chemical Company (''the petitioner''). The Department received supplemental information to the petition on October 9 and 12, 2001.

In accordance with section 702(b)(1) of the Act, the petitioner alleges that manufacturers, producers, or exporters of sulfanilic acid, the subject merchandise, from Hungary receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section

771(9)(C) of the Act and has demonstrated sufficient industry support. *See Determination of Industry Support for the Petition* section, below.

Scope of Investigation

Imports covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of Harmonized Tariff Schedule (''HTS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

This scope is identical to the scope of the antidumping duty order on Sulfanilic Acid from the People's Republic of China. *See Antidumping Duty Order: Sulfanilic Acid from the People's Republic of China,* 57 FR 37524 (August 19, 1992) (as currently reflected in *Sulfanilic Acid from the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 66 FR 47003 (September 10, 2001)). Nevertheless, during our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (''CRU'') at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Hungary (''GOH'') for consultations with respect to the petition filed in this proceeding. The Department held consultations with the GOH on October 9, 2001. The points raised in the consultations are described in the Memorandum to the File, ''CVD Consultations with Officials from the Government of Hungary,'' dated October 9, 2001, which is on file in the Department's CRU, Room B–099 of the main Department of Commerce building.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law. *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the *Scope of Investigation* section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

The Department has determined that the petition contains adequate evidence of industry support; therefore, polling is unnecessary. *See Industry Support* section from the October 18, 2001 *Initiation Checklist*, which is on file in the Department's CRU. Information on the record demonstrates that the producer who supports the petition accounts for more than 50 percent of the production of the domestic like product. Additionally, no interested party pursuant to section 771(b)(A), (C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Hungary is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the

subject merchandise from Hungary materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise. The petitioner contends that the industry's injured condition is evident in the declining trends in employment, domestic prices, production, and net sales volume and value. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Initiation Checklist*).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on sulfanilic acid from Hungary and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of sulfanilic acid from Hungary receive countervailable subsidies.

A. Change in Ownership

The petitioner alleges that, in November 1997, Nitrokemia, a government-owned entity, was split into two parts: Nitrokemia 2000, which received certain of the former Nitrokemia's assets including the sulfanilic acid production facilities, and Nitrokemia Rt., which received the remainder of the former Nitrokemia's assets and the former Nitrokemia's environmental liabilities. According to its web site, Nitrokemia 2000 continued to be a fully-owned subsidiary of the former Nitrokemia (now Nitrokemia Rt.) until May 1998, at which point it became an independent stock company owned by the State Privatization Company. Subsequently, in November 2000, Nitrokemia 2000 was privatized.

The petitioner alleges that the current Nitrokemia 2000 is the same ''person'' as it was prior to its privatization. Thus, consistent with the Department's recent *Final Results of Redetermination Pursuant to Court Remand in Acciai Speciali Terni S.p.A.* v. *United States., et al., (Ct. No. 99–06–00364)* (December 19, 2000), the past countervailable subsidies received by pre-privatized Nitrokemia 2000 would continue to be countervailable after the change in ownership. We will examine this issue in the course of the investigation to determine whether any non-recurring subsidies provided to Nitrokemia 2000 prior to its privatization should be attributed to Nitrokemia 2000 in our period of investigation.

B. Creditworthiness

The petitioner alleges that the former Nitrokemia, Nitrokemia Rt., and Nitrokemia 2000 were uncreditworthy from 1997 through 2000. To support its allegation, the petitioner states that the financial statements for all three companies show that they have all been unprofitable since 1997, and that these companies could not possibly borrow money without government guarantees. The petitioner further claims that no company with such substantial environmental liabilities (*see Programs* section, below, as well as the *Initiation Checklist*) would be able to successfully borrow funds from any commercial institution. As additional support, the petitioner provided a current Dun and Bradstreet report for Nitrokemia 2000, as well as a financial analysis derived from Nitrokemia 2000's financial statement for 2000.

With respect to the petitioner's uncreditworthiness allegations for 1999 and 2000, as noted below in the *Programs* section, we are not initiating an investigation of any alleged subsidies bestowed in those years. Thus, we are not initiating a creditworthiness investigation for 1999 and 2000. If, however, in the course of this investigation we discover that any non-recurring subsidies, loans, or loan guarantees were bestowed during 1999 and 2000, we will consider any new uncreditworthiness allegations made at that time.

With respect to 1997 and 1998, which is the time period during which the former Nitrokemia was split and the contingent environmental liabilities were assigned to Nitrokemia Rt. (*see Programs* section, below, as well as the *Initiation Checklist*), the petitioner must establish a reasonable basis to believe or suspect that a company was uncreditworthy in each of these years in order for the Department to investigate the company's creditworthiness. Pursuant to section 351.505(a)(4)(i) of the Department's regulations, the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources.

In this instance, the only evidence provided by the petitioner relating to these years was the companies' financial statements which showed losses. While a loss in a particular year may provide some information about a company's financial position, the Department looks not only to present indicators but also to past indicators of financial health (*see* section 351.505(a)(4)(i)(B) of the Department's regulations) and to present and past indicators of the firm's ability to meet its costs and fixed financial obligations (*see* section 351.505(a)(4)(i)(C) of the Department's regulations). In both the petition and the petitioner's response to the Department's supplemental petition question with respect to the uncreditworthiness allegations, the petitioner did not provide financial ratios to support its creditworthiness argument for 1997 and 1998. Moreover, although the petitioner provided the financial statement for old Nitrokemia for 1997 from which 1997 financial ratios could be derived, the petitioner did not provide any information or financial statements that could be used to derive financial ratios for any of the preceding years. Thus, because the petitioner did not provide sufficient relevant evidence to support a reasonable basis to believe or suspect that these companies were uncreditworthy in 1997 and 1998, we are also not initiating a creditworthiness investigation for these years.

C. Programs

We are including in our investigation the following program alleged in the petition to have provided a countervailable subsidy to producers and exporters of the subject merchandise in Hungary:

Forgiveness of Environmental Liabilities

We are not including in our investigation at this time the following programs alleged to benefit producers and exporters of the subject merchandise in Hungary:

1. *Forgiveness of Short-Term Liabilities.* The petitioner alleges that, because the combined short-term liabilities listed on the 1998 financial statements from Nitrokemia Rt. and Nitrokemia 2000 are significantly smaller than the short-term liabilities listed on the former Nitrokemia's 1997 financial statements, the GOH forgave some of the former Nitrokemia's short-term liabilities when the company was split.

The petitioner has not provided sufficient evidence that any short-term debts were actually forgiven by the GOH. Although the combined short-term debts were less than the short-term debts from the former Nitrokemia's financial statements, the petitioner has provided no evidence that the short-term debt was not simply paid off or converted to long-term debt. Thus, lacking sufficient evidence of a financial contribution or a benefit from the GOH at this time, we are not including this program in our investigation.

2. *Provision of Natural Gas for Less Than Adequate Remuneration.* The petitioner alleges that the GOH subsidizes the price of natural gas to the Hungarian industry because natural gas prices in Hungary are significantly lower than they are in the rest of the world. Without this alleged subsidy, the petitioner states that the cost of natural gas for Nitrokemia 2000's sulfanilic acid production would be one percent higher.

The petitioner has provided no evidence to support its claim that the GOH provided natural gas for less than adequate remuneration to a specific enterprise or industry in Hungary. The petitioner admits that it was not able to locate any information that this alleged provision of low-priced natural gas was not generally available in Hungary. Thus, because no information was provided in support of the specificity claim, at this time we are not including this program in our investigation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOH. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than November 13, 2001, whether there is a reasonable indication that imports of sulfanilic acid from Hungary are causing material injury, or threatening to cause material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 18, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26940 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

DATE: November 15, 2001.

TIME: 9 a.m. to 12 p.m.

PLACE: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting on November 15, 2001, at the U.S. Department of Commerce.

ETTAC will hear reports on programs in the International Trade Administration, and on the status of U.S. Commercial Service support for the U.S.-Asia Pacific Environmental Partnership. ETTAC will also hold a roundtable on the effects of the September 11 terrorism attacks on the environmental industry and the industry's response. The meeting is open to the public.

ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. The ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). The ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2002.

For further information phone Jane Siegel, Office of Technologies Industries, (ETI), U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: October 22, 2001.

Carlos F. Montoulieu,

Acting Deputy Assistant Secretary.

[FR Doc. 01–27055 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102201E]

Proposed Information Collection; Comment Request; Fisheries Finance Program Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 26, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Constituent Services, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2396).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA operates a direct loan program to assist in financing certain actions relating to commercial fishing vessels, shoreside fishery facilities, aquaculture operations, and individual fishing quotas (IFQ). Application information is

required to determine eligibility pursuant to 50 CFR Part 253 and to determine the type and amount of assistance requested by the applicant. An annual financial statement information is collected to monitor the financial status of the loan.

II. Method of Collection

Form submitted in paper format.

III. Data

OMB Number: 0648–0012.

Form Number: NOAA Form 88–1.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,250.

Estimated Time Per Response: 8 hours for a traditional FFP loan application; 4 hours for an IFQ loan application; and 8 hours for an annual financial statement.

Estimated Total Annual Burden Hours: 10,000.

Estimated Total Annual Cost to Public: $5,375.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 17, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–27041 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101601C]

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from November 6–8, 2001.

DATES: The meetings are scheduled as follows:

1. November 6, 2001, 8:30 a.m.– 4:30 p.m.
2. November 7, 2001, 8:30 a.m.– 4 p.m.
3. November 8, 2001, 9 a.m.–1:30 p.m.

ADDRESSES: The meetings will be held at Wyndham Sugar Bay Resort, 6500 Estate Smith Bay, St. Thomas, U.S. Virgin Islands. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Designated Federal Official; telephone: (301) 713–2259.

SUPPLEMENTARY INFORMATION: As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC and MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, tribal, and other national interests.

Matters to Be Considered

November 6, 2001

General Overview, Administrative Issues, Magnuson-Stevens Act Reauthorization, and National Environmental Policy Act.

November 7, 2001

Ecosystem Management, Sustainability, Marine Protected Areas, Constituent Meeting.

November 8, 2001

Wrap-up reports and adjournment.

Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: October 22, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service

[FR Doc. 01–27027 Filed 10–23–01; 2:38 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102201C]

Endangered Species; Permits

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

ACTION: Receipt of request to modify research permits 1178 and 1295.

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 under the Endangered Species Act (ESA): NMFS has received a request to modify permits (1178 and 1295) from Dr. Michael Sissenwine, of Northeast Fisheries Science Center.

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on November 26, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for

review in the indicated office, by appointment:

For permits 1178, 1295: Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov)

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. Scientific research and/or enhancement permits are issued under section 10 (a)(1)(A) 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 Assistant Administrator for Fisheries, NOAA. 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

Threatened and endangered Green turtle (*Chelonia mydas*)

Endangered Hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Endangered Leatherback turtle (*Dermochelys coriacea*)

Threatened Loggerhead turtle (*Caretta caretta*)

Modification Requests Received

Permit 1178

The applicant requests a modification to Permit 1178. Permit 1178 authorizes the tagging, handling, collection of skin biopsies, and release of the above listed turtles. Modification #3 would authorize the importing and exporting of dead turtles and turtle specimens to/from the US and to import live turtles for the purpose of rehabilitation.

Permit 1295

The applicant requests a modification to Permit 1295. Permit 1295 authorizes the tagging, handling, biopsy, and release of the above listed turtles. Modification #1 would authorize the importing and exporting of dead turtles and turtle specimens to/from the US and to import live turtles for the purpose of rehabilitation.

Dated: October 22, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–27042 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office.

ACTION: Notice; Update membership list of the United States Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Director, Office of Human Resources, United States Patent and Trademark Office, One Crystal Park, Suite 707, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Sydney Rose at (703) 305–8062.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Clarence Crawford, Chair, Chief Financial Officer and Chief Administrative Officer, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Nicholas Godici, Commissioner for Patents, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Anne Chasser, Commissioner for Trademarks, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Douglas Bourgeois, Chief Information Officer, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2004.

Janice Falcone, Director, Patent Examining Group, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

James Toupin, General Counsel, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2004.

Robert Anderson, Deputy Commissioner for Trademarks, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Robert Stoll, Administrator for External Affairs, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Dieter Hoinkes, Deputy Administrator for External Affairs, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Bruce Campbell, Executive Associate Director, Operations Support Directorate, Federal Emergency Management Agency, Washington, DC 20742, Term expires September 30, 2002.

K. David Holmes, Jr., Deputy Assistant Secretary for Security, Department of Commerce, Washington, DC 20230, Term expires September 30, 2004.

Dated: October 19, 2001.

Nicholas P. Godici,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 01–27017 Filed 10–25–01; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0013]

Federal Acquisition Regulation; Submission for OMB Review; Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0013).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data. A notice published in the **Federal Register** at 66 FR 45014, on August 27, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, AcquisitionPolicy Division, GSA (202) 501–3221.

ADDRESSEES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Truth in Negotiations Act requires the Government to obtain certified cost or pricing data under certain circumstances. Contractors may request an exemption from this requirement under certain conditions and provide other information instead.

B. Annual Reporting Burden

Respondents: 33,332.
Responses Per Respondent: 6.
Total Responses: 199,992.
Hours Per Response: 50.51.
Total Burden Hours: 10,101,684.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FARSecretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost Pricing Data, in all correspondence.

Dated: October 23, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–27052 Filed 10–25–01; 8:45 pm]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Air Force announces the proposed reinstatement of the Accident Report form and seeks public comment on provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 26, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to HQ Air Force Security Forces Center, SMSgt Walter P. Filipiak, 1720 Patrick Street, Suite 18, Lackland AFB, TX 78236.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to above address.

Title, Associated Form, and OMB Number: Air Force Form 1315, ''Accident Report,'' OMB Number 0701–0133.

Needs and Uses: The information collection requirement is necessary in order to thoroughly process major motor vehicle accidents. These accidents are those where there are fatalities, injuries, there is disabling damage to a vehicle, the vehicle accident is hard to explain or the amount of damage is in excess of $10,000. Once the investigation is completed, the report is filed with the local Security Forces Reports and Analysis Section. Copies of the completed investigations/reports are available upon request to the personnel involved in the accident, which can then be used by their insurance companies. This information collection which is made for these vehicle accidents is in compliance with 10 U.S.C. 8013; 44 U.S.C. 3101; and E.O. 9397.

Affected Public: Individuals and households.

Annual Burden Hours: 5,000.

Number of Respondents: 20,000.

Responses per Respondent: Depends on the amount of times an individual is involved in a major motor vehicle accident. There will be one form completed per accident.

Average Burden per Response: 15 Minutes.

Frequency: Once per major accident.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Air Force Form 1315, Accident Report, is used solely by security forces patrol personnel who are dispatched to investigate major motor vehicle accidents. The accident report allows the patrol person to collect all vital/detailed information on a vehicle accident. The individual investigating the accident completes and signs the

form upon completion of the investigation of the accident. The completed form, along with all attachments pertaining to the accident, is then forwarded to the Security Forces Reports and Analysis Section for filing and further disposition. The completed form provides the required information for the vehicle accident to be thoroughly investigated/processed. Copies of the completed investigations/reports are available upon request to the personnel involved in the accident, which can then be used by their insurance company.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–26979 Filed 10–25–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the United States Air Force Personnel Center, Personnel Procurement and Development Divisions, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 26, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to United States Air Force Personnel Center, Line Officer Programs Section, 550C Street West, Suite 10, Randolph AFB, TX 78150.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address, or call United States Air Force Personnel Center, Line OfficerPrograms Section, (210) 665–2102.

Title, Associated Form, and OMB Number: Application & Evaluation For Training Leading To A Commission In The United States Air Force, Air Force Form 56, OMB Number 0701–0001.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 21,000.

Number of Respondents: 7,000.

Responses per Respondent: 1.

Average Burden per Response: 180 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Information contained on Air Force Form 56 supports the Air Force's selection for officer training programs for civilian and military applicants. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to a commissioning program. Data from this form is used to select fully qualified persons for the training leading to commissioning. Data supports the Air Force in verifying the eligibility of applicants and in the selection of those best qualified for dedication of funding and training resources. Eligibility requirements are outlined in Air Force Instruction 36–2013.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–26980 Filed 10–25–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–418–000]

B–R Pipeline Company; Notice of Application

October 22, 2001.

Take notice that on July 27, 2001, B–R Pipeline Company (B–R) tendered for filing pursuant to section 7 of the Natural Gas Act and Part 284, Subparts G and J, of the Commission's Regulations an application for blanket certificates of public convenience and necessity. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room of the Commission's offices. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

B–R also requests waiver of certain Commission regulations, as more fully set forth in its application. B–R states that the waivers are needed to avoid undue compliance burdens under the unique circumstances presented.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, on or before November 12, 2001, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26969 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–004]

Colorado Interstate Gas Company; Notice of Proposed Changesin FERC Gas Tariff

October 22, 2001.

Take notice that on October 16, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective November 1, 2001.

CIG states that the tariff sheets are being filed to address the reallocation of costs resulting from the rejection of Rate Schedules TF–2 and TSW–1 in CIG's general rate case in Docket No. RP01–350–000, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26975 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–397–002]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

October 22, 2001.

Take notice that on October 17, 2001, Great Lakes Gas Transmission LimitedPartnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2001:

Substitute Third Revised Sheet No. 8A
Substitute Tenth Revised Sheet No. 9
Substitute Second Revised Sheet No. 50A

Great Lakes states that these tariff sheets are being filed to (a) remove the ''Third Party Charges'' language relative to Off-System Capacity from proposed section 22.1 of Great Lakes' FERC Gas Tariff, Second Revised Volume No.1, as directed in the Commission's October 15, 2001 Order Accepting Tariff Sheets with Modification and Granting Waiver and (b) reflect a sheet effective date of November 1, 2001 as directed in the Commission's May 31, 2001 Order Accepting and Suspending Tariff Filing and Requesting Additional Information.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26977 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–040]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate Filing

October 22, 2001.

Take notice that on October 17, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective February 1, 2003.

Natural states that the purpose of this filing is to implement a negotiated rate transaction entered into by Natural and FPLE Forney, L.P. under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

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. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26972 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–403–001]

Northern Border Pipeline Company; Notice of Compliance Filing

October 22, 2001.

Take notice that on October 15, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, Pro Forma First Revised Volume No. 1, the pro forma tariff sheets listed in Appendix A to the filing.

Northern Border states that the pro forma tariff sheets are being filed in compliance with the Commission's Order No. 637 issued in Docket Nos. RM98–10–000 and RM98–12–000 issued May 19, 2000.

Northern Border states that it has served copies of the pro forma filing upon all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26973 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–432–000]

Northern Natural Gas Company; Notice to Abandon Service

October 22, 2001.

Take notice that on August 23, 2001, Northern Natural Gas Company (Northern) filed a request, pursuant to section 7(b) of the Natural Gas Act, requesting permission and approval to abandon service under an individually certificated agreement, all as more fully set forth in the application. Specifically, Northern proposes to abandon service with Westar Transmission Company under Rate Schedule X–45, contained in its FERC Gas Tariff, Original Volume No. 2. Northern further states that the underlying contract has not provided service for several years and has been terminated in accordance with the contract terms. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26970 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–382–006]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2001.

Take notice that on October 16, 2001, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective November 1, 2001.

58 Revised Sheet No. 50
59 Revised Sheet No. 51
26 Revised Sheet No. 52
Eighth Revised Sheet No. 56
Eighth Revised Sheet No. 263
Eighth Revised Sheet No. 263A
Fourth Revised Sheet No. 263B

Northern and the parties have reached a settlement in principle that resolves all issues in this proceeding as well as all issues in Northern's System Levelized Account (SLA) proceedings in Docket Nos. RP01–76 and RP01–396. The reason for this filing is to request permission to implement effective November 1, 2001, a Carlton Commodity Surcharge of $0.0175, subject to refund and subject to the outcome of Commission action on a settlement that will be filed in the near future.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26976 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–278–002]

Texas Gas Transmission Corporation; Notice of Compliance Filing

October 22, 2001.

Take notice that on October 17, 2001, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective October 1, 2001:

Primary
- Third Revised Sheet No. 181
- Third Revised Sheet No. 182
- Third Revised Sheet No. 183
- Sheet No. 184 (reserved)
- Second Revised Sheet No. 185

Alternate
- Alternate Third Revised Sheet No. 181
- Alternate Third Revised Sheet No. 182
- Alternate Third Revised Sheet No. 183

Texas Gas states that this filing is being submitted in compliance with the Commission's Order issued on September 19, 2001 in the above-referenced docket. As directed, the tariff sheets removed the daily high/low

index price for cash-out. In response, Texas Gas proposes to establish a cash-out price based on a weekly high/low index price determined from the weeks within the applicable month, plus the first week of the following month. The primary and alternate sheets require in-kind make-up of imbalances up to 2% and use the same index price for imbalances above 5%. However, the primary sheets also propose to eliminate cash-out for all imbalances up to 5% by also requiring a mandatory in-kind make-up level from 2% to 5% and by eliminating any use of the 100% price index for this tier of imbalance.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26974 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 22, 2001.

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.:* 12121–000.

c. *Date filed:* September 18, 2001.

d. *Applicant:* The City of Rice Lake Utilities, Wisconsin.

e. *Name of Project:* Rice Lake Dam.

f. *Location:* On Rice Lake and Red Cedar River, in Barron County, Wisconsin. The project does not utilize Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Scott Reimer GM/CEO, Rice Lake Utilities, 320 West Coleman Street, Rice Lake, Wisconsin 54868, (715) 234–7004; Loyal Gake, North American Hydro, Inc., P.O. Box 167, Neshkoro, Wisconsin 54960, (920) 293–4628 ext. 12.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests, and comments:* 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–12121–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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. *Description of Project:* The proposed project would consist of: (1) An existing 21-foot-high, 171-foot-long concrete dam owned by Barron County, (2) three proposed 4-foot-long, 54-inch-diameter steel penstocks, (3) a proposed powerhouse containing three generating units having a total installed capacity of 336 kW, (4) a proposed 200-foot-long, 15 kV transmission line, and (5) appurtenant facilities. The project would have an annual generation of 1.3 GWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

m. 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.

n. 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.

o. 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.

p. 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.

q. 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, 385.211,

385.214. 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.

r. 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,NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, 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.

s. 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. 01–26971 Filed 10–25–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7090–6]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology, Standing Committee on Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The Environmental Protection Agency is inviting nominations for membership on its National Advisory Council for Environmental Policy and Technology (NACEPT), Standing Committee on Compliance Assistance. The Agency is seeking qualified senior level decision makers from diverse stakeholder groups throughout the United States to be considered for appointments. The nominee should have an interest and experience in addressing environmental problems through compliance assistance and other alternative approaches such as environmental management systems and pollution prevention. EPA is requesting that each nominee provide a resume or short biography describing his/her educational and professional qualifications, and that contains a current business address and daytime telephone number.

DATES: Nominations will be accepted until close of business on November 26, 2001.

ADDRESSES: Submit nominations and requested documentation to Ms. Joanne Berman, Designated Federal Officer, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, MC 2224A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also E-mail nominations to *berman.joanne@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Berman, Designated Federal Officer, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, MC 2224A, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Phone 202/564–7064. E-mail *berman.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. Maintaining a balance and diversity of experience, knowledge, and judgment is an important consideration in the selection of members. The Standing Committee on Compliance Assistance, a subcommittee of NACEPT, has existed for two years and provides a federal advisory forum from which the Agency can continue to receive valuable multi-stakeholder advise and recommendations on enhancing EPA's compliance assistance program. The Standing Committee on Compliance Assistance assisted EPA in the development of the Agency's National Clearinghouse (www.epa.gov/clearinghouse), the Compliance Assistance Providers Forum, and the EPA Compliance Assistance Activity Plan (*http://es.epa.gov/oeca/main/compasst/activityplan.pdf*). Most recently, the Standing Committee on Compliance, through NACEPT, provided recommendations focusing on six key areas to improve the Agency's compliance assistance program and emphasizing the point that an effective compliance assistance program will complement EPA's approach to inspections and enforcement. The complete set of recommendations can be located at *www.seattle.battelle.org/epa-icaa.*

The new Standing Committee on Compliance Assistance will, through NACEPT, assist EPA in: (1) Strengthening the national compliance assistance network by helping identify opportunities to enhance communication among compliance assistance providers and by promoting collaboration in compliance assistance planning and tool development; (2) developing and testing performance measurement systems to demonstrate the effectiveness and environmental outcomes of compliance assistance; (3) acting as a sounding board to provide feedback on compliance assistance policies, strategies or other related matters; and (4) formulating the agenda for the Agency's third annual Compliance Assistance Providers Forum currently scheduled to take place on December 4–6, 2002 in San Antonio, Texas.

We are accepting nominations for approximately 20 members. Representatives must have senior level authority for their respective organization and nominees must demonstrate experience in the following:

—Development of compliance assistance programs and/or the delivery of compliance assistance;

—Application of qualitative and quantitative performance measurement methods; and

—Working collaboratively with stakeholder groups.

Dated: October 17, 2001.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 01–27010 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6623–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5073 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements

Filed October 15, 2001 Through October 19, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010390, Draft EIS, BLM, AZ, Diamond Bar Road Improvement Project, To Pave the Road and Realign Sections through Grapevine Wash, Right-of-Way Permits, Mohave County, AZ , Comment Period Ends: December 10, 2001, Contact: Don McClure (520) 692–4400.

EIS No. 010391, Draft EIS, FHW, NY, NYS Route 17, Horseheads Project, Reconstruction from RM 17–6205–1069 to RM 14–6201–3040, Town and Village of Horseheads (P.I.N. 6239.00) Chemung County, NY, Comment Period Ends: December 10, 2001,Contact: Robert E. Arnold (518) 431–4127.

EIS No. 010392, Final EIS, NPS, CA, Alcatraz Island Historic Preservation and Safety Construction Program, Protection and Implementation, San Francisco County, CA, Wait Period Ends: November 26, 2001, Contact: Jonathan Gervars (415) 561–4936.

EIS No. 010393, Draft EIS, NPS, AR, Little Rock Central High School National Historic Site, General Management Plan, Implementation, For Future Management and Use, Little Rock, AR, Comment Period Ends: December 26, 2001, Contact: David C. Forney (501) 324–5682. This document is available on the Internet at: *http://www.nps.gov/planning/chse/dgmp/home.htm.*

EIS No. 010394, Draft EIS, AFS, NM, Viveash Fire Timber Salvage Project, Proposal to Harvest a Portion of the Fire-Killed Trees, Pecos/Las Vegas Ranger District, Santa Fe National Forest, NM, Comment Period Ends: December 10, 2001, Contact: Chris Napp (505) 757–6121.

EIS No. 010395, Draft EIS, NOA, AK, American Fisheries Act Amendments 61/61/13/8: Amendments 61 Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Amendments 61 Groundfish of the Gulf of Alaska; Amendents 13 Bering Sea and Aleutian Islands King and Tanner Crab, and Amendments 8 to the Scallop Fishery off Alaska, Fishery Management Plans, AK, Comment Period Ends: December 10, 2001, Contact: Kent Lind (907) 586–7228.

EIS No. 010396, Draft EIS, USA, Programmatic EIS —Army Transformation, Army Vision to Address the Changing Circumstances of the 21st Century, Transformation in three Phases: Initial Phase, Interim Capability Phase, and an Objective Force Phase, Comment Period Ends: December 10, 2001, Contact: Jim Lucas (703) 602–9794.

EIS No. 010397, Draft EIS, CGD, Programmatic EIS —Integrated Deepwater System Project, For Surface, Air, Logistics Communication and Sensor Systems, To Replace Its Aging Nation-Wide System, Nation-Wide, Comment Period Ends: December 10, 2001, Contact: Eric Johnson (202) 267–1665.

EIS No. 010398, Final EIS, AFS, OR, South Fork Burnt River Ranger Planning Area, Development of Five New Allotment Management Plans (AMPS), Wallowa-Whitman National Forest, Unity Ranger District, Baker County, OR, Wait Period Ends: November 26, 2001, Contact: Jean Lavell (541) 446–3351.

EIS No. 010399, Draft EIS, FHW, SC, James E. Clyburn Connector Project, Constructing a Two-Lane Rural Roadway Northeast of Orangeburg and Southwest of Sumter, Funding and COE Section 404 Permit, Calhoun, Claredon and Sumter Counties, SC, Comment Period Ends: December 14, 2001, Contact: Robert L. Lee (803) 765–5411.

EIS No. 010400, Draft EIS, MMS, AL, MS, TX, WA, AL, FL, LA, CA, OR, Outer Continental Shelf Oil and Gas Leasing Program: From Mid-2002 Through Mid-2007, 5-Year Schedule Leasing Program for 20 Sales in 8 of the Outer Continental Shelf Planning Areas, AL, AK, CA, FL, LA, MS, OR, TX and WA, Comment Period Ends: January 24, 2002, Contact: Richard Wildermann (703) 787–1670.

Amended Notices

EIS No. 010127, Draft EIS, AFS, ID, CaribouNational Forest Land and Resource ManagementPlan, Implementation Revised Forest Plan,Bannock, Bear Lake. Bingham, Bonneville, Caribou,Franklin, Oneida and Power Counties, Cache andRich Counties, UT, Lincoln County, WY , Due:November 01, 2001, Contact: Ric Rine (208)557–5766. Published FR–04–28–10—Review Period Reopened, so that Errata Sheet can be reviewed. From 08–31–01 to 11–01–2001.

EIS No. 010357, Draft EIS, SFW, Light GooseManagement Plan, Implementatin, Reducing andStabilizing Specific Populations ''Light Geese'' in North America , Due: December 14, 2001, Contact:Jon Andrew (703) 358–1714. Revision of FR Notice Published on 09/28/2001: CEQ Comment Period Ending 11/28/2001 has been extended to 12/14/2001.

EIS No. 010383, Draft EIS, NOA, CA, Goat CanyonEnhancement Project, Implementation, TijuanaRiver Estuary, City and County of San Diego, CA,Due: November 26, 2001, Contact: Nina Garfield(301) 563–1171. Published FR 10–12–01 Correction to Title and also changing the ContactPerson Name and Phone Number.

Dated: October 23, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–27043 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6623–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (97 FR 27647).

Draft EISs

ERP No. D–AFS–J65338–UT Rating EC2, Units National Forest Revised Land and Resource Management Plan, Implementation, Juab, Sanpete, Tooele, Utah and Wasatch Counties, UT.

Summary

EPA expressed environmental concerns with the small number of wilderness area acres recommended for

designation in the two preferred alternatives compared to the 594,350 acres that qualified and the lack of management guidelines and the analysis of potential impacts to water quality that would result from increasing motorized trail use.

ERP No. D–AFS–J65349–UT Rating EC2, Griffin Springs Resource Management Project, Implementation, Commercial Timber Harvesting, Aspen Regeneration, Management Ignited Prescribed Fire, and Road Work, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary

EPA expressed environmental concerns with potential adverse impacts from road upgrades and maintenance, beetle suppression and routine management activities to old growth forests, wetlands and wildlife. The FEIS should include additional site specific analysis/description of road and beetle management strategies.

ERP No. D–AFS–J65352–MT Rating EC2, Kelsey-Beaver Fire Recovery Project, Implementation of Fuel Reduction and Salvage of Fire-Killed Trees within Roderick South, Kelsey Creek, and Upper Beaver Areas, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT.

Summary

EPA supported proposed watershed and road system improvements. EPA expressed environmental concerns with the limited range of alternatives analyzed and potential adverse impacts to water quality. EPA recommended that additional winter logging be considered and stabilization of eroding banks on streams to reduce sediment production. EPA also suggests the final EIS address the consistency of proposed actions with State TMDL development needs for the 303(d) listed South Fork Yaak River.

ERP No. D–NPS–D65023–DC Rating LO, Mary McLeod Bethune Council House National Historic Site, Implementation, General Management Plan, Washington, DC.

Summary

EPA expressed lack of objections and concurs with the selection of Alternative 2.

ERP No. DS–AFS–J65288–CO Rating EC2, Uncompahgre National Forest Travel Plans Revision, and Forest Plan Amendment, Updated Information, Grand Mesa, Uncompahgre and Gunnison National Forests, Garrison, Hinsdale Mesa, Montrose, Ouray, San Juan Counties, CO.

Summary

EPA expressed environmental concerns with the lack of detail provided for the monitoring plan and its implementation and there are no adaptative management strategies discussed to address unanticipated impacts to natural resources.

ERP No. DS–MMS–L67008–ID Rating EO2, Smoky Canyon Mine Panels B and C, Propose to Mine Phosphate Ore Reserves in the Final Two Mine Panels, National Forest System Lands and Federal Mineral Leases, Caribou National Forest, Permit, Caribou County, ID.

Summary

EPA expressed environmental objections based on predicted selenium contamination of the Wells Formation aquifer exceeding the national ground water standard, the absence of a low-permeable cap design to minimize impacts to ground water, a narrow project scope which did not examine impacts from continued use of the tailings pond and possible mitigation measures, and inadequate mitigation, monitoring, and financial assurance for the entire project. EPA requested that these issues be addressed before issuing a final EIS.

Final EISs

ERP No. F–BLM–K65340–NV Reno Clay Plant Project, Construct and Operate an Open-Pit Clay Mine and Ore Processing Facility, Plan-of-Operations, Oil-Dri Corporation of Nevada, Hungry Valley, Washoe County, NV.

Summary

EPA expressed continuing environmental concerns regarding the project's potential impacts to water quality and the need for additional information regarding monitoring and mitigation to address air and water quality concerns. Any adverse impacts from the project would disproportionately affect the Reno-Sparks Indian Colony adjacent to the project site. EPA commended BLM and Oil-Dri for working with a private land owner to secure a road right-of-way that will reduce air, noise and traffic impacts to local residents. EPA will review Washoe CountyAQMD's draft minor source air permit when it becomes available for public review.

ERP No. F–FHW–G40157–TX Tyler Loop 49 West, Construction from the TX–155

Highway to I–20 Highway, Funding, NPDES and

COE Section 404 Permits, Smith County, TX.

Summary

EPA had no objections to the action as proposed.

ERP No. F–NPS–G65079–OK Washita Battlefield National Historic Site, General Management Plan, Implementation, Roger Mill County, OK.

Summary

EPA had no objections or comments on the Final EIS.

Dated: October 23, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–27044 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00734A; FRL–6809–1]

Workshop Series on Bt Corn Insect Resistance Management Framework Development; Notice of Public Meeting; Change of Meeting Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: In the **Federal Register** of August 31, 2001 (66 FR 45985) (FRL–6797–8), EPA announced that it would hold a series of workshops focusing on Bt corn insect resistance management (IRM). This notice announces a change in the date for the meeting originally scheduled for October 29 and 30, 2001. The meeting will now be held on November 5 and 6, 2001.

DATES: The meeting scheduled for October 29 and 30, 2001, will now be held on November 5 and 6, 2001, from 8 a.m. to 5 p.m. Requests for participation in the meeting must be received on or before November 2, 2001.

ADDRESSES: The meeting will be held at EPA, Crystal Station, Room C, 2800 Crystal Drive, Arlington, VA 22202. Space is limited. Requests to participate 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** of the originally published notice of August 31, 2001. To ensure proper receipt by EPA, your request must identify docket control number OPP–00734A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: John Glaser; National Risk Management Research Laboratory, Environmental Protection Agency, 26 W. King Dr.,

Cincinnati, OH 45268; telephone number: (513) 569–7568; fax number: (513) 487–2511; e-mail address: glaser.john@epa.gov.

SUPPLEMENTARY INFORMATION: This action is directed to the public in general. This action may, however, be of interest to: Registrants and users of Bt corn under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as well as non-users of Bt corn and the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Bt corn.

Dated: October 19, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01–27008 Filed 10–23–01; 2:38 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7090–8]

EPA Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the US EPA Science Advisory Board (SAB), will meet on Friday, November 30, 2001 in the Rachel Carson Great Hall of the EPA Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20005. The meeting will begin at 8:30 a.m. and adjourn no later than 3:00 p.m. Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting—The purpose of the meeting will be to: (a) Receive a status briefing on EPA's continuing efforts to enhance its practices for estimating the benefits of environmental actions that reduce mortality risks; (b) to engage in a Consultation with EPA representatives on possible opportunities for using incentives in the area of water and other areas of environmental pollution control; and (c) to engage in a Consultation with EPA representatives on the approach they wish to implement to develop their economic research strategy.

Background—(a) Value of Statistical Life (VSL) as a Measure of Benefits From Environmental Actions—The EEAC, and other Science Advisory Board Committees, have held a series of interactions with EPA representatives over the past few years on ways to estimate the benefits that are predicted to come from environmental actions. Examples of such interactions include: (a) The review of EPA's guidelines for economic analysis (see 63 FR 150:41820; 64 FR 56:14232; 64 FR 205:57452); (b) the review of EPA's white paper on Valuing Fatal Cancer Risk Reductions (see 65 FR 24:5637); (c) the SAB review of the benefits and costs of arsenic control in drinking water (see 66 FR 74:19770; 66 FR 127:34924) and (d) the SAB reviews of the benefits and costs of the Clean Air Act (e.g., see SAB reports EPA–SAB–COUNCIL–LTR–97–001, EPA–SAB–COUNCIL–ADV–00–001, EPA–SAB–COUNCIL–ADV–01–004—please see the SAB website *www.epa.gov/sab* for copies of these reports). The EPA National Center for Environmental Economics (NCEE) and other EPA offices now intend to present a draft plan to the EEAC that outlines EPA's efforts that will help EPA reach a resolution on best practices for a more complete and reliable accounting of the benefits of mortality risk reductions.

The Agency now uses a central estimate for valuation of reduced mortality risks, and makes adjustments to reflect the impact of factors such as identifiable latency periods and income growth over time. There are recognized limitations to these estimates, and these limitations provide the focus for an active research agenda for economists at EPA and outside the Agency. NCEE and other EPA offices conduct a variety of activities related to valuation of reduced mortality risks. These activities include: (a) The development of a review and assessment of the empirical literature that serves as a basis for EPA's value of statistical life (VSL) estimates, (b) development of more complete and reliable benefit transfer values for an environmental context, and (c) identification of directions for policy-relevant research.

EPA will outline its activities for collecting and disseminating new information as well as conducting and funding additional research designed to fill research needs. The Committee will consider how it might continue to interact with EPA as the Agency moves forward with this effort.

(b) Economic Incentives Consultation—The Committee will engage in a Consultation with EPA representatives on the Agency's consideration of opportunities for application of innovative and incentives-based approaches for environmental and health protection. EPA desires feedback from individual members of the Committee on criteria that might be used to select candidate areas for considering the applicability of such methods and for feedback on what topical areas might be considered as part of the agency's agenda for further development.

Over the last 20 years, and particularly during the past decade, economic incentives have been increasingly used to control pollution and improve environmental and health protection at the federal, state and local levels. Economic incentives are instruments that use financial means to motivate polluters to reduce the health and environmental risks posed by their facilities, processes, or products. Examples include pollution charges, fees, and taxes; deposit-refund systems; and trading programs. Economic incentives offer several advantages that make them attractive environmental management tools. In many cases incentives generate benefits beyond what is possible with traditional regulations; sometimes they are applied where traditional regulations might not be possible. They are particularly useful for small and geographically dispersed sources. They can also provide impetus for technological change.

EPA plans to continue to explore opportunities to use, significantly expand, or usefully support State or local governments in the use of innovative approaches, particularly market-based economic incentives. EPA will discuss possible opportunities for using incentives in the area of water pollution as well as other areas, and hope to share some recent examples of experiences where incentives have been used successfully for environmental pollution control.

(c) Research Strategy Development—The Committee will engage in a Consultation with EPA representatives on the approach they are considering for development of an environmental economics research strategy. EPA desires feedback from individual members of the Committee on whether this is an appropriate approach, given the goals of the strategy, for its development. Further, they would like to learn of additional techniques or considerations that might improve the proposed developmental approach. The Agency intends to return to the SAB for a formal peer review of their completed research strategy in late FY 2002.

EPA has discussed the need to develop an environmental economic research strategy with the EEAC on a number of occasions (see 63 FR 56:14112; 63 FR 150:41826; 64 FR 205:57452). Now, EPA's National Center for Environmental Research (NCER) and the National Center for Environmental Economics (NCEE) are initiating the development of an EPA-wide ''Economic Research Strategy'' with widespread program input and external consultation and peer review. The Economic Research Strategy will provide a blueprint for economic research priorities for EPA and will help coordinate dispersed but related economic research efforts throughout the Agency.

An initial effort to identify economic research strategies was undertaken by the Office of Policy, now the Office of Policy, Economics, and Innovation's NCEE, in 1997. Evaluation of this effort pointed out some needed supplemental information, such as an assessment of current research, that should be included in a comprehensive economic research strategy. In response, NCEE and NCER have decided to develop a revised research strategy. This project will build on the accomplishments of the first effort, which have provided guidance for research for the past 3 years, but will augment them with new components, such as assessments of research in priority areas, and a reassessment of program and regional priorities for economic research.

The research strategy will describe not only the priorities identified by program practitioners, but will evaluate the state of the science in the identified priority areas, so that research efforts can be focused where the incremental effort will have the greatest practical payoff. It will also provide differential foci on the short, medium and long run that will allow EPA to develop an implementation plan using its full suite of economic research tools and vehicles, such as in-house research, contracts, cooperative agreements or research grants, to meet the identified need with the most appropriate tool.

For Further Information—Any member of the public wishing further information concerning this meeting should contact Mr. Thomas O. Miller, Designated Federal Officer, EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–4558; FAX (202) 501–0582; or via e-mail at *miller.tom@epa.gov.* For a copy of the draft meeting agenda, please contact Ms. Wanda Fields, Management Assistant at (202) 564–4539, or by FAX at (202) 501–0582 or via e-mail at *fields.wanda@epa.gov.*

Background Information—is available on the EPA from: (1) For topics ''a'' and ''b'' above, Ms. Jennifer Bowen, Research and Program Support Division, National Center for Environmental Economics, U.S. EPA, 1200 Pennsylvania Avenue, Mail Code 1809, Washington, DC 20460; Phone: (202) 260–4396; or E-Mail, *bowen.jennifer@epa.gov*; (2) for topic ''c'' above, Dr. Matthew Clark, Economics, Social and Behavioral Science Program; National Center for Environmental Research, 1200 Pennsylvania Avenue, NW., Mail Code 8722R, Washington, DC 20460; Phone: (202) 564–6842; or E-Mail: *clark.matthew@epa.gov.*

Public Oral or Written Comments—Members of the public who wish to make a brief oral presentation (5 minutes or less) to the Committee must contact Mr. Miller *in writing* (by letter or by fax—see contact information above) no later than 12 noon Eastern Time, Wednesday, November 21, 2001 in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. Written comments will be accepted until close of business December 7, 2001. See below for more information on providing written or oral comments.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments*: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of five minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments*: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 18, 2001.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 01–27009 Filed 10–25–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1394–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1394–DR), dated October 12, 2001, and related determinations.

EFFECTIVE DATE: October 12, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 12, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5204c (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and a tornado on August 17–18, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gracia Szczech of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Dakota County for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–26985 Filed 10–25–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 2001.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Jayne L. Coleman Revocable Trust, Jayne L. Coleman or Gary M. Coleman, Trustees, Valley Falls, Kansas; to acquire voting shares of Northeast Kansas Bancshares, Inc., Valley Falls, Kansas, and thereby indirectly acquire voting shares of Kendall State Bank, Valley Falls, Kansas.

Board of Governors of the Federal Reserve System, October 23, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–27029 Filed 10–25–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2001.

Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Capital Bank Corporation, Raleigh, North Carolina; to merge with First Community Financial Corporation, Burlington, North Carolina, and thereby indirectly acquire Community Savings Bank, Inc., Burlington, North Carolina.

Board of Governors of the Federal Reserve System, October 22, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26933 Filed 10–25–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. H2H Bancshares, Inc., Hosmer, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Hosmer, South Dakota.

2. Mesaba Bancshares, Inc., Grand Rapids, Minnesota; to merge with Bovey Financial Corporation, Bovey, Minnesota, and thereby indirectly acquire The First National Bank of Bovey, Bovey, Minnesota.

Board of Governors of the Federal Reserve System, October 23, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–27028 Filed 10–25–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: November 15, 2001–9 a.m.–6 p.m.; November 16, 2001–10:10 a.m.–1 p.m.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the first day the full Committee will be briefed by HHS staff on a number of topics including an update on activities of the HHS Data Council; Departmental responses to recent reports and recommendations from the Committee; and the status of implementation of the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 including the status of privacy and data standards regulations. The Committee will be briefed by the HHS Chief Information Officer on HHS Information Technology activities. The Committee will then review the status of its draft report on the National Health Information Infrastructure (NHII). In the afternoon of the first day the Committee will review its privacy recommendations and be briefed on a Department of Defense E-Health Initiative. The Subcommittees on Privacy and Confidentiality and on Populations will hold working sessions late in the afternoon as will the NHII Workgroup.

The Subcommittee on Standards and Security and the Workgroup on Quality will hold working sessions from 8 to 10 in the morning of the second day before the full Committee convenes. Day two of the full Committee meeting will feature an update on statistical activities of the National Center for Health Statistics from the Center's director. The Subcommittees and Working Groups will then report out from their working sessions and the remainder of the agenda will be devoted to planning future agendas.

Notice: In the interest of security, HHS has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Persons without a government identification card may need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Dated: October 23, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–27035 Filed 10–25–01; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2133–N]

RIN 0938–ZA17

State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: Title XXI of the Social Security Act (the Act) authorizes payment of Federal matching funds to States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under the State Children's Health Insurance Program (SCHIP). This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year 2002. States may implement SCHIP through a separate State program under title XXI of the Act, an expansion of a State Medicaid program under title XIX of the Act, or a combination of both.

EFFECTIVE DATE: This notice is effective on November 26, 2001. Final allotments are available for expenditures after October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2002 under title XXI of the Social Security Act (the Act). Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for 3 fiscal years, including the year for which the final allotment was provided. That is, the FY 2002 allotments will be available to States for FY 2002, and unexpended amounts may be carried over to FYs 2003 and 2004. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan.

Section 2104(b) of the Act requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths have approved plans for FY 2002. Therefore, the FY 2002 allotments contained in this notice pertain to all States, the District of Columbia, and U.S. Territories and Commonwealths.

II. Methodology for Determining Final Allotments for States, the District of Columbia, and U.S. Territories and Commonwealths

This notice specifies, in the Table under section III, the final FY 2002 allotments available to individual States, the District of Columbia, and U.S. Territories and Commonwealths for either child health assistance expenditures under approved State child health plans or for claiming an enhanced Federal medical assistance percentage rate for certain SCHIP-related Medicaid expenditures. As discussed below, the FY 2002 final allotments have been calculated to reflect the methodology for determining an allotment amount for each State, the District of Columbia, and each U.S. Territory and Commonwealth as prescribed by the Balanced Budget Refinement Act of 1999 (BBRA) (Public Law 106–113), enacted on November 29, 1999.

Section 2104(a) of the Act provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: $4,295,000,000 for FY 1998; $4,275,000,000 for each FY 1999 through FY 2001; $3,150,000,000 for each FY 2002 through FY 2004; $4,050,000,000 for each FY 2005 through FY 2006; and $5,000,000,000 for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the U.S. Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. The total amounts are allotted to the U.S. Territories and Commonwealths according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Section 2104(c)(4)(B) of the Act, as amended by the BBRA, provides for additional amounts for allotment to the Territories and Commonwealths: $34,200,000 for each FY 2000 through FY 2001; $25,200,000 for each FY 2002 through FY 2004; $32,400,000 for each FY 2005 through FY 2006; and $40,000,000 for FY 2007. Therefore, for FY 2002, title XXI of the Act provides an additional $25,200,000 for allotment to the U.S. Territories and Commonwealths. Therefore, the total amount available for allotment to the U.S. Territories and Commonwealths in FY 2002 is $33,075,000 (that is, $25,200,000 plus $7,875,000 (0.25 percent of the FY 2002 appropriation of $3,150,000,000)).

Furthermore, under sections 4921 and 4922 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), enacted on August 5, 1997, the total amount available for allotment to the 50 States and the District of Columbia is reduced by an additional total of $60,000,000; $30,000,000 is allocated to the Public Health Service for a special diabetes research program for children with Type I diabetes, and $30,000,000 for special diabetes programs for Indians. The diabetes programs are funded from FYs 1998 through 2002 only.

Therefore, the total amount available nationally for allotment for the 50 States and the District of Columbia for FY 2002 was determined in accordance with the following formula:

$$A_T = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$$

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in section 2104(a) of the Act. For FY 2002, this is $3,150,000,000.

$T_{2104(c)}$ = Total amount available for allotment for the U.S. Territories and Commonwealths; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia. For FY 2002, this is:.0025 × $3,150,000,000 = $7,875,000.

D_{4921} = Amount of grant for research regarding Type I Diabetes under section 4921 of the BBA. This is $30,000,000 for each of the fiscal years 1998 through 2002.

D_{4922} = Amount of grant for diabetes programs for Indians under section 4922 of the BBA. This is $30,000,000 for each of the fiscal years 1998 through 2002. Therefore, for FY 2002, the total amount available for allotment to the 50 States and the District of Columbia is $3,082,125,000. This was determined as follows:

$$A_T (\$)3{,}082{,}125{,}000 = S_{2104(a)}(\$3{,}150{,}000{,}000) - T_{2104(c)}(\$7{,}875{,}000) - D_{4921}(\$30{,}000{,}000) - D_{4922}(\$30{,}000{,}000)$$

For purposes of the following discussion, the term ''State,'' as defined in section 2104(b)(1)(D)(ii) of the Act, ''means one of the 50 States or the District of Columbia.''

Under section 2104(b) of the Act, as amended by BBRA, the determination of the Number of Children applied in determining the SCHIP allotment for a particular fiscal year is based on the three most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The determination of the State Cost Factor is based on the Annual Average Wages Per Employee in the health services industry, which is determined using the most recent 3 years of such wage data as reported and determined as final by the Bureau of Labor Statistics (BLS) of the Department of Labor to be officially available prior to the beginning of the calendar year in which the fiscal year begins. Because FY 2002 begins on October 1, 2001, (that is, in calendar year 2001,) in determining the FY 2002 SCHIP allotments, we are using the most recent official data from the Bureau of the Census and the BLS, respectively, available before January 1 of calendar year 2001.

Number of Children

For FY 2002, as specified by section 2104(b)(2)(A)(iii) of the Act, the Number of Children is calculated as the sum of 50 percent of the number of low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State. The Number of Children factor for each State is developed from data provided by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in the annual CPS on these topics. As part of a continuing formal process between the Centers for Medicare & Medicaid Services (CMS, formerly known as HCFA) and the Bureau of the Census, each fiscal year we obtain the Number of Children data officially from the Bureau of the Census.

Under section 2104(b)(2)(B) of the Act, the Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the CPS officially available from the Bureau of the Census

before the beginning of the 2001 calendar year. In particular, through December 31, 2000, the most recent official data available from the Bureau of the Census on the numbers of children were data from the three March CPSs conducted in March 1998, 1999, and 2000 (representing data for years 1997 through 1999).

State Cost Factor

The State Cost Factor is based on annual average wages in the health services industry in the State. The State Cost Factor for a State is equal to the sum of: 0.15, and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia.

Under section 2104(b)(3)(B) of the Act, as amended by the BBRA, the State Cost Factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State using data for each of the most recent 3 years as reported and determined as final by the BLS in the Department of Labor and available before the beginning of the calendar year in which the fiscal year begins. Therefore, the State cost factor for FY 2002 is based on the most recent 3 years of BLS data officially available as final before January 1, 2001 (the beginning of the calendar year in which FY 2002 begins); that is, it is based on the BLS data available as final through December 31, 2000. In accordance with these requirements, we used the final State Cost Factor data available from BLS for 1996, 1997, and 1998 in calculating the FY 2002 final allotments.

The State Cost Factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the national average annual wages in the health care industry. Because BLS is required to suppress certain State-specific data in providing us with the State-specific average wages per health services industry employee due to the Privacy Act, we calculated the national average wages directly from the State-specific data provided by BLS. As part of a continuing formal process between CMS and the BLS, each fiscal year CMS obtains these wage data officially from the BLS.

Under section 2104(b)(4) of the Act, as amended by the BBRA, each State and the District of Columbia is allotted a ''proportion'' of the total amount available nationally for allotment to the States. The term ''proportion'' is defined in section 2104(b)(4)(D)(i) of the Act and refers to a State's share of the total amount available for allotment for any given fiscal year. In order for the entire total amount available to be allotted to the States, the sum of the proportions for all States must exactly equal one. Under the statutory definition, a State's proportion for a fiscal year is equal to the State's allotment for the fiscal year divided by the total amount available nationally for allotment for the fiscal year. In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year in accordance with the following formula:

$SA_i = P_i \times A_T$

SA_i = Allotment for a State or District of Columbia for a fiscal year.

P_i = Proportion for a State or District of Columbia for a fiscal year.

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year. For FY 2002, this is $3,082,125,000.

In accordance with the amended statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a ''product'' for each State. The products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding the State's preadjusted proportion.

Application of Floors and Ceiling

Under the second step, the preadjusted proportions are subject to the application of proportion floors, ceilings, and a reconciliation process, as appropriate. The amended SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to $2,000,000 divided by the total of the amount available nationally for the fiscal year. This proportion ensures that a State's minimum allotment would be $2,000,000. For FY 2002, no State's preadjusted proportion is below this floor. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the allotment proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the FY 1999 proportion.

Each State's allotment proportion for a fiscal year is limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must be no higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over the life of the program as compared to FY 1999. The floors and ceilings on proportions are not applicable in determining the allotments of the U.S. Territories and Commonwealths; they receive a fixed percentage specified in the statute of the total allotment available to the U.S. Territories and Commonwealths.

As determined under the first step for determining the States' preadjusted proportions, which is applied before the application of any floors or ceilings, the sum of the proportions for all the States and the District of Columbia will be equal to exactly one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the floors, while other States' proportions may need to be lowered to the maximum ceiling. If this occurs, the sum of the proportions for all States and the District of Columbia may not exactly equal one. In that case, the statute requires that the proportions will need to be adjusted, under a method that is determined by whether the sum of the proportions is greater or less than one.

The sum of the proportions would be greater than one if the application of the floors and ceilings resulted in raising the proportions of some States (due to the floors) to a greater degree than the proportions of other States were lowered (due to the ceiling). If, after application of the floors and ceiling, the sum of the proportions is greater than one, the amended statute requires the Secretary to determine a maximum percentage increase limit, which, when applied to the State proportions, would result in the sum of the proportions being exactly one.

If, after the application of the floors and ceiling, the sum of the proportions is less than one, the statute requires the States' proportions to be increased in a ''pro rata'' manner so that the sum of the proportions again equals one. It is also possible, although unlikely, that the sum of the proportions (after the application of the floors and ceiling) will be exactly one, and therefore, the proportions would require no further adjustment.

Determination of Preadjusted Proportion

The following is an explanation of how we applied the two State-related factors specified in the statute to determine the States' preadjusted proportions for FY 2002. The term ''preadjusted,'' as used here, refers to the States' proportions prior to the application of the floors and ceiling and adjustments, as specified in the amended SCHIP statute. The determination of each State and the District of Columbia's preadjusted proportion for FY 2002 is in accordance with the following formula:

$PP_i = (C_i \times SCF_i)\ \Sigma\ (C_i \text{ x } SCF_i)$

PP_i = Preadjusted proportion for a State or District of Columbia for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(i) of the Act) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income uninsured children for a State for a fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the three most recent March supplements to the CPS of the Bureau of the Census, officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(2)(B) of the Act.)

For fiscal year 2002, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State for the fiscal year and 50 percent of the number of low-income children in the State for the fiscal year. (*See* section 2104(b)(2)(A)(iii) of the Act.)

SCF_i = *State cost factor for a State* (section 2104(b)(1)(A)(ii) of the Act). For a fiscal year, this is equal to:

$0.15 + 0.85 \times (W_i/W_N)$

W_i = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I) of the Act).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II) of the Act).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry (SIC 80), as reported and determined as final by the BLS of the Department of Labor for each of the most recent three years officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(3)(B) of the Act).

$(C_i \times SCF_i)$ = The sum of the products of $(C_i \times SCF_i)$ for each State (section 2104(b)(1)(B) of the Act).

The resulting proportions would then be subject to the application of the floors and ceilings specified in the amended SCHIP statute and reconciled, as necessary, to eliminate any deficit or surplus of the allotments because the sum of the proportions was either greater than or less than one.

Section 2104(e) of the Act requires that the amount of a State's allotment for a fiscal year be available to the State for a total of 3 years; the fiscal year for which the State child health plan is approved and the 2 following fiscal years. Section 2104(f) of the Act requires the Secretary to establish a process for redistribution of the amounts of States' allotments that are not expended during the 3-year period to States that have fully expended their allotments.

III. Table of State Children's Health Insurance Program Final Allotments for FY 2002

Key to Table

Column/Description

Column A = Name of State, District of Columbia, U.S. Commonwealth or Territory.

Column B = Number of Children. The Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income uninsured children, and is based on the three most recent March supplements to the CPS of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The FY 2002 allotments were based on the 1998, 1999, and 2000 March supplements to the CPS. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be without health insurance coverage. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in its annual March CPS on these topics.

For FY 2002, the Number of Children is equal to the sum of 50 percent of the number of low-income uninsured children in the State and 50 percent of the number of low-income children in the State.

Column C = State Cost Factor. The State Cost Factor for a State is equal to the sum of: 0.15, and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such wage data for each State as reported and determined as final by the BLS in the Department of Labor for each of the most recent 3 years and available before the beginning of the calendar year in which the fiscal year begins. The FY 2002 allotments were based on final BLS wage data for 1996, 1997, and 1998.

Column D = Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States and the District of Columbia.

Column E = Proportion of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F = Adjusted Proportion of Total. This is the calculated percentage share for each State of the total allotment available after the application of the floors and ceilings and after any further reconciliation needed to ensure that the sum of the State proportions is equal to one. The three floors specified in the amended statute are: (1) A floor of $2,000,000 divided by the total of the amount available for all allotments for the fiscal year; (2) an annual floor of 90 percent of (that is, 10 percent below) the preceding fiscal year's allotment proportion; and (3) a cumulative floor of 70 percent of (that is, 30 percent below) the FY 1999 allotment proportion. There is also a cumulative ceiling of 145 percent of (that is, 45 percent above) the FY 1999 allotment proportion.

Column G = Allotment. This is the SCHIP allotment for each State, Commonwealth, or Territory for the fiscal year. For each of the 50 States and the District of Columbia, this is determined as the Adjusted Proportion of Total in Column F for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the U.S. Territory and Commonwealths, the allotment is determined as the Proportion of Total in Column E multiplied by the total amount available for allotment to the U.S. Territories and Commonwealths. For the U.S. Territories and Commonwealths, the Proportion of Total in Column E is specified in section 2104(c) of the Act. The total amount is then allotted to the U.S. Territories and Commonwealths according to the percentages specified in section 2104 of the Act. There is no adjustment made to the allotments of the U.S. Territories and Commonwealths as they are not subject to the application of the floors and ceiling. As a result, Column F in the table, the Adjusted Proportion of Total, is empty for the U.S. Territories and Commonwealths.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR

A	B	C	D	E	F	G
State	Number of children (000)	State cost factor	Product	Proportion of total [3] (percent)	Adjusted proportion of total [3] (percent)	Allotment [1]
ALABAMA	303	0.9688	293.0755	1.5729	1.5764	$48,585,422
ALASKA	41	1.0379	42.0330	0.2256	0.2261	6,968,138
ARIZONA	501	1.0495	525.8013	2.8220	2.8281	87,166,211
ARKANSAS	244	0.8972	218.9183	1.1749	1.1775	36,291,812
CALIFORNIA	2,885	1.1051	3,187.6789	17.1082	17.1455	528,466,560
COLORADO	205	1.0083	206.7040	1.1094	1.1118	34,266,951
CONNECTICUT	141	1.1072	156.1201	0.8379	0.8434	25,993,944
DELAWARE	49	1.1164	54.1443	0.2906	0.2764	8,520,205
DISTRICT OF COLUMBIA	38	1.2626	47.3485	0.2541	0.2547	7,849,329
FLORIDA	964	1.0272	990.2267	5.3145	5.3261	164,157,649
GEORGIA	635	0.9981	633.2945	3.3989	3.4063	104,986,194
HAWAII	71	1.1617	81.8966	0.4395	0.3071	9,463,732
IDAHO	117	0.8931	104.4926	0.5608	0.5451	16,800,022
ILLINOIS	767	1.0005	767.4131	4.1187	4.1277	127,220,093
INDIANA	306	0.9286	283.6953	1.5226	1.5259	47,030,390
IOWA	158	0.8556	135.1884	0.7256	0.7271	22,411,236
KANSAS	152	0.8751	132.5787	0.7115	0.7131	21,978,619
KENTUCKY	250	0.9293	231.8518	1.2443	1.2471	38,435,891
LOUISIANA	393	0.8866	348.0072	1.8677	1.8718	57,691,885
MAINE	66	0.9134	60.2861	0.3236	0.3243	9,994,099
MARYLAND	195	1.0422	202.6996	1.0879	1.1008	33,927,307
MASSACHUSETTS	294	1.0530	309.0552	1.6587	1.4704	45,318,822
MICHIGAN	580	1.0078	584.5496	3.1373	3.1437	96,893,382
MINNESOTA	236	0.9919	233.5856	1.2537	0.9747	30,041,680
MISSISSIPPI	256	0.8934	288.7227	1.2276	1.2302	37,917,154
MISSOURI	300	0.9248	276.9879	1.4866	1.4898	45,918,455
MONTANA	78	0.8509	65.9479	0.3539	0.3547	10,932,695
NEBRASKA	99	0.8673	85.4243	0.4585	0.4595	14,161,451
NEVADA	141	1.1856	166.5704	0.8940	0.8959	27,613,689
NEW HAMPSHIRE	56	0.9881	54.8419	0.2943	0.2950	9,091,578
NEW JERSEY	374	1.1206	419.1061	2.2493	2.2542	69,478,513
NEW MEXICO	213	0.9300	197.6156	1.0606	1.0867	33,494,942
NEW YORK	1,312	1.0758	1,411.4867	7.5754	7.5919	233,993,235
NORTH CAROLINA	495	0.9897	489.3856	2.6265	2.6323	81,129,294
NORTH DAKOTA	49	0.8723	42.7421	0.2294	0.1730	5,332,879
OHIO	675	0.9663	652.2300	3.5005	3.5081	108,125,285
OKLAHOMA	224	0.8519	190.3994	1.0219	1.4789	45,583,004
OREGON	225	1.0102	226.7945	1.2172	1.2199	37,597,497
PENNSYLVANIA	616	0.9950	612.8914	3.2894	3.2966	101,603,820
RHODE ISLAND	46	0.9908	45.0812	0.2420	0.2425	7,473,463
SOUTH CAROLINA	283	1.0101	285.3444	1.5314	1.5348	47,303,777
SOUTH DAKOTA	41	0.8742	35.8415	0.1924	0.1928	5,941,727
TENNESSEE	373	1.0021	373.7781	2.0061	2.0104	61,964,136
TEXAS	1,957	0.9306	1,820.7473	9.7719	9.7932	301,839,575
UTAH	152	0.9135	138.8483	0.7452	0.7468	23,017,975
VERMONT	29	0.8730	25.3169	0.1359	0.1214	3,740,343
VIRGINIA	335	0.9858	329.7350	1.7697	1.7735	54,662,752
WASHINGTON	269	0.9518	256.0424	1.3742	1.3772	42,446,166
WEST VIRGINIA	112	0.9008	100.4372	0.5390	0.5402	16,650,270
WISCONSIN	249	0.9539	237.5144	1.2747	1.2775	39,374,631
WYOMING	36	0.8876	31.9531	0.1715	0.1719	5,297,121
TOTAL STATES ONLY			18,632.4311	100.0000	100.0000	3,082,125,000
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES [2]						
PUERTO RICO				91.6		30,296,700
GUAM				3.5		1,157,625

STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR—Continued

A	B	C	D	E	F	G
State	Number of children (000)	State cost factor	Product	Proportion of total [3] (percent)	Adjusted proportion of total [3] (percent)	Allotment [1]
VIRGIN ISLANDS				2.6		859,950
AMERICAN SAMOA				1.2		396,900
N. MARIANA ISLANDS				1.1		363,825
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.0		33,075,000
TOTAL STATES AND COMMONWEALTHS AND TERRITORIES						3,115,200,000

FOOTNOTES

The numbers in Columns B–F are rounded for presentation purposes, the actual numbers used in the allotment calculations are not rounded.

[1] Total amount available for allotment to the 50 States and the District of Columbia is $3,082,125,000; determined as the fiscal year appropriation ($3,150,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories under section 2104(c) of the Act ($7,875,000) and amounts for Special Diabetes Grants under sections 4921 ($30,000,000) and 4922 ($30,000,000) of BBA.

[2] Total amount available for allotment to the Commonwealths and Territories is $7,875,000 (determined as 25 percent of $3,150,000,000, the fiscal year appropriation) plus $25,200,000, as specified in section 2104(c)(4)(B) of the Act.

[3] Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Act.

IV. Impact Statement

We have examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the allotments. This notice merely announces the results of our application of this formula, and therefore does not reach the economic significance threshold of $100 million in any one year.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted each year for inflation) in any one year. Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal government are made voluntarily. This notice will not create an unfunded mandate on States, tribal, or local governments because it merely notifies states of their SCHIP allotment for FY 2002. Therefore, we are not required to perform an assessment of the costs and benefits of this notice.

Low-income children will benefit from payments under SCHIP through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and U.S. Territories and Commonwealths of the extent to which they are permitted to expend funds under their child health plans using their FY 2002 allotments.

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism. We have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities because it does not set forth any new policies.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: August 2, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 31, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–26037 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8011–N]

RIN 0938–ZA19

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), 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 2002 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 $812. The daily coinsurance amounts will be: (a) $203 for the 61st through 90th day of hospitalization in a benefit period; (b) $406 for lifetime reserve days; and (c) $101.50 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, 2002.

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 2002

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) (Pub. L. 105–33) and section 301(a) of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554, enacted on December 21, 2000), the percentage increase used to update the payment rates for fiscal year 2002 for hospitals paid under the prospective payment system is the market basket percentage increase minus 0.55 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 2002 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 2002 is 3.3 percent, as announced in the final rule titled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs of Graduate Medical Education: Fiscal Year 2002 Rates; Provisions of the Balanced Budget Refinement Act of 1999; and Provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'' published in the **Federal Register** on August 1, 2001 (66 FR 39828). Therefore, the percentage increase for hospitals paid under the prospective payment system is 2.75 percent. The average payment percentage increase for hospitals excluded from the prospective payment system is 0.88 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 2002 is 2.54 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 2001 compared to fiscal year 2000. (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 CMS as of July 2001. These bills represent a total of about 8.6 million discharges for fiscal year 2001 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 2001 is −1.0 percent. Based on past experience, we expect the overall case mix change to be −0.8 percent as the year progresses and more fiscal year 2001 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 2001. 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 2001 is 0.0 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 2.54 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 2002 is $812. This deductible amount is determined by multiplying $792 (the inpatient hospital deductible for 2001) by the payment-weighted average increase in the payment rates of 1.0254 multiplied by the increase in real case mix of 1.00, which equals $812.12 and is rounded to $812.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for 2002

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 2002, 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 $203 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $406 (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 $101.50 (one-eighth of the inpatient hospital deductible).

IV. Cost to Beneficiaries

We estimate that in 2002 there will be about 8.67 million deductibles paid at $812 each, about 2.14 million days subject to coinsurance at $203 per day (for hospital days 61 through 90), about 0.99 million lifetime reserve days subject to coinsurance at $406 per day, and about 26.28 million extended care days subject to coinsurance at $101.50 per day. Similarly, we estimate that in 2001 there will be about 8.53 million deductibles paid at $792 each, about 2.11 million days subject to coinsurance at $198 per day (for hospital days 61 through 90), about 0.97 million lifetime reserve days subject to coinsurance at $396 per day, and about 25.84 million extended care days subject to coinsurance at $99 per day. Therefore, the estimated total increase in cost to beneficiaries is about $430 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 formulae 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 those formulae. 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) (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. We have determined that this notice will not have a significant economic impact on a substantial number of 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 100 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.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $430 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.

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.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

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: September 7, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 27, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–26701 Filed 10–19–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMSR–3080–NR]

Medicare Program; the National and Local Coverage Determination Review Process for an Individual With Standing as Defined in Section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protections Act of 2000

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of CMS Ruling.[1]

SUMMARY: This notice announces a CMS Ruling concerning the appropriate actions to be taken upon receipt of a complaint seeking review of a national or local coverage determination under section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106–554. The Ruling establishes the interim administrative procedures that CMS contractors, and Administrative Law Judges (ALJs) are to follow in processing such complaints until final regulations are published regarding the adjudication of the complaints and the effectuation of ALJ and Departmental Appeals Board decisions with respect to complaints.

FOR FURTHER INFORMATION CONTACT: Jim Bossenmeyer, (410) 786–9317.

[1] **EDITORIAL NOTE:** Future CMS Rulings may appear in the Rules Section of the **Federal Register** if they are interpretations of or general policy statements concerning CMS rules (See 1 CFR 5.9(b)).

SUPPLEMENTARY INFORMATION: The CMS Administrator signed Ruling CMSR–01–1 on September 24, 2001. The text of the CMS Ruling follows: The National and Local Coverage Determination Review Process for an Individual with Standing as Defined in Section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protections Act of 2000.

Summary: Under section 1869(f)(5) of the Social Security Act (the Act), as added by section 522 of BIPA, effective October 1, 2001, certain individuals (''aggrieved parties'') may file a complaint to initiate a review of a national or local coverage determination. Complaints filed under section 1869(f) of the Act concerning national coverage determinations are to be reviewed by the Departmental Appeals Board (DAB) of the Department of Health and Human Services; complaints filed under section 1869(f) of the Act concerning local coverage determinations are to be reviewed by ALJs of the Social Security Administration. The purpose of this Ruling is to establish the interim administrative procedures that CMS contractors, ALJs, and the DAB are to follow in processing such complaints until final regulations are published regarding the adjudication of the complaints and the effectuation of ALJ and DAB decisions with respect to complaints.

Citations: Section 1869 of the Social Security Act (42 U.S.C. 1395ff), and section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protections Act of 2000, Pub. L. 106–554 (2000).

Background

Section 522 of BIPA amends section 1869 of the Act to create a new administrative review process that enables certain beneficiaries to challenge CMS Medicare policies, commonly referred to as national coverage determinations (NCDs) and local coverage determinations (LCDs). These administrative challenges are distinct from the existing appeal rights for the adjudication of Medicare claims.

Prior to BIPA, there was no administrative mechanism for any party to challenge a coverage policy. Section 1869(b)(3) of the Act, however, provided a remedy for judicial review of NCDs based on section 1862(a)(1) of the Act, that is, determinations as to whether an item or service is reasonable and necessary. Section 1869(f) of the Act requires that CMS establish an administrative review process for NCDs and LCDs. Under the statute, beneficiaries who are in need of a service that is the subject of a coverage determination may challenge an NCD in an administrative proceeding before the Departmental Appeals Board (DAB). Similar provisions allow aggrieved parties to challenge LCDs before an ALJ. An aggrieved party dissatisfied with the ALJ's decision may seek review by the DAB. In this type of appeal, the DAB acts as an appellate body. The decision of the DAB relating to an LCD challenge or an NCD challenge becomes a final agency action and is subject to judicial review.

The effective date for these provisions is October 1, 2001. Section 521 of BIPA sets forth additional changes to our existing claim appeals process that are to take effect on October 1, 2002.

Delay of Reviews Under Section 1869(f)

Section 522(d) of BIPA establishes an effective date of October 1, 2001 for new section 1869(f) of the Act. Although the statute thus permits aggrieved parties to file complaints with respect to NCDs and LCDs beginning October 1, 2001, we believe it is clearly in the public interest to complete notice and comment rulemaking to develop the rules and procedures for adjudicating these policy challenges. Notice and comment rulemaking will ensure that the public has an opportunity to fully participate in the development of these rules. It also will ensure that the DAB and the ALJs have a uniform adjudicative process for resolving these issues in a fair and efficient manner.

It is essential that these complaints be handled in a uniform manner for several reasons. First, the coverage determinations to be reviewed under the provisions of section 1869(f) of the Act apply to a broader group of beneficiaries than just the individual beneficiary who has raised the complaint. NCDs apply to all claims nationwide for the particular item or service in question and are binding on both the Medicare contractors and the ALJs who hear individual claims appeals. LCDs apply to beneficiaries within the jurisdiction specified by the contractor and are binding on the contractors making claims determinations. Due to the broad impact of these policies, review of these policies must be done in a consistent, predictable manner. It is important to establish final regulatory guidance on these provisions with the benefit of public notice and comment before the provisions are fully implemented. For example, regulatory guidance is necessary to ensure that the provisions identifying those beneficiaries with standing to file a complaint about an NCD or LCD are interpreted consistently and that consistent remedies be available to beneficiaries whose challenge to a coverage determination is successful.

In addition, the coverage determination reviews are a new responsibility for the ALJs and the DAB. We believe that establishing a consistent system for handling these reviews from the beginning will enable these entities to process this additional workload as efficiently as possible.

Therefore, to ensure consistent handling of NCD and LCD review requests and to ensure that all aggrieved parties are afforded equal rights and protections, CMS is delaying full implementation of section 1869(f) of the Act until final regulations are issued. This delay will avoid inefficient and ad hoc proceedings that could occur if each contractor, ALJ, and the DAB establish separate procedures.

Restrictions on Medicare Contractors in Absence of a Regulation

Until a final regulation is issued that fully implements section 1869(f) of the Act, carriers, fiscal intermediaries, and program safeguard contractors (PSCs) must *not* provide or furnish any materials, information, background, or any other pertinent information regarding the development or implementation of an NCD or LCD to either the DAB or an ALJ. Instead, any request for NCD or LCD documentation from the DAB or an ALJ should be referred immediately to the appropriate contact in the CMS central office (see below). Furthermore, if an administrative decision requiring the carrier, fiscal intermediary, or PSC to take any action with respect to a specific NCD or LCD is issued, the contractor must refer this request to CMS central office before taking any action.

Medicare Contractor Administrative Process for Any Reviews of National or Local Coverage Determinations

If a complaint under section 1869(f) of the Act is filed with a carrier, fiscal intermediary or PSC requesting a review of a national or local coverage determination under section 1869(f) of the Act, the carrier, fiscal intermediary, or PSC must within 10 business days, forward a complaint concerning an LCD to SSA's Office of Hearings and Appeals and a complaint concerning an NCD to the DAB at the addresses below. After forwarding the complaint to the Office of Hearings and Appeals or DAB, the contractor must notify the appropriate contact in the CMS central office and provide them a copy of the complaint.

LCD Referral

Office of Hearings and Appeals

Social Security Administration
One Skyline Tower
Suite 1702
Attention: LCD Complaint
5107 Leesburg Pike
Falls Church, Virginia 22041

NCD Referral

Department Appeals Board
U.S. Dept. of Health and Human Services
Room 637D, Humphrey Building
Attention: NCD Complaint
200 Independence Avenue, SW.
Washington, DC 20201

Administrative Review Process With Respect to NCDs or LCDs

If a complaint under section 1869(f) of the Act is filed with or forwarded to the DAB or an ALJ, the DAB or ALJ will:

(1) Within 10 business days, send a written response to the requestor informing them that the review process for the complaint is being delayed under this Ruling, and that the Department of Health and Human Services intends to publish regulations establishing uniform procedures.

(2) Docket any such requests.

(3) Inform the CMS of any requests received. (This should be accomplished by sending a copy of the complaint to the appropriate notification contact.)

LCD Notification Contact

Melanie Combs
7500 Security Blvd.
C3–02–16
Baltimore, MD 21244–1850
Attention: LCD Challenge Staff
Telephone Number: (410) 786–7683

NCD Notification Contact

Vadim Lubarsky
7500 Security Blvd.
C1–10–23
Baltimore, MD 21244–1850
Attention: NCD Challenge Staff
Telephone Number: (410) 786–0840

(4) Take no further action until final regulations are effective.

Once the regulation is effective, inform the requestor that processing of complaints under the new review procedures will continue.

Authority: Section 1869 of the Social Security Act (42 U.S.C. 1395ff), and section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 2, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–26289 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8010–N]

Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 1839 of the Social Security Act (the Act), this notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2002. It also announces the monthly SMI premium to be paid by all enrollees during 2002. The monthly actuarial rates for 2002 are $109.30 for aged enrollees and $123.10 for disabled enrollees. The monthly SMI premium rate for 2002 is $54.00. (The 2001 premium rate was $50.00). This compares to projections of the 2002 SMI premium of $58.50 in the 2001 Trustees Report and $54.50 in the 2000 Trustees Report. The 2002 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 2002 (five-sixths) and the amount in Part B that is included in the premium calculation (five-sevenths). Included in the monthly premium rate is $3.91 for home health services being transferred into Part B.

EFFECTIVE DATE: January 1, 2002.

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 the Department of Health and Human Services (the Secretary) 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. Under this section, expenditures for home health services not considered ''post-institutional'' are 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, 2/3 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 next year, 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 2002 is $54.00. Included in the premium rate is $3.91 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 (MCCA 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 MCCA 1988.) Section 1839(f), referred to as the hold-harmless provision, 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 decrease in payment 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 of the Act 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.

Generally, if a beneficiary qualifies for hold-harmless 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 2002 are $109.30 for enrollees age 65 and over, and $123.10 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 $54.00 during 2002. Included in the monthly premium rate is $3.91 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 2002

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 2000 and 2001.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 2000	44,027	5,086	38,941
Dec. 31, 2001	41,781	6,043	35,739

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 ⅚ of the cost of the home health services being transferred be included in the actuarial rate for 2002, rather than the full cost of such benefits.

The monthly actuarial rate for enrollees age 65 and older for 2002 is determined by first establishing per-enrollee cost by type of service from program data through 2000 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, 1999 through December 31, 2002, 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 2002 is $118.74. Included in the total of $118.74 is $9.25 for home health services and $21.64 for managed care services. The amount of $9.25 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 ($9.02) as well as (2) the cost of furnishing all home health services to those individuals enrolled in SMI only ($0.23). The amount of $21.64 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 ($1.92), as well as (2) the cost of furnishing all other SMI services to those individuals enrolled in managed care plans ($19.72). Since section 4611(e)(2) of BBA 1997 requires that only ⅚ of the cost for those services being transferred be included in the actuarial rate for 2002, the monthly actuarial rate provides for an adjustment of −$1.82, representing ⅙ of the full cost of such −$3.20 for interest earnings and −$4.42 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 (ESRD) program. Projected monthly costs for disabled enrollees (other than those suffering from ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD 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 2002 is $128.43. Included in the total of $128.43 is $6.64 for home health services and $10.98 for managed care services. The amount of $6.64 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 $10.98 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 ($1.00) as well as (2) the cost of furnishing all other SMI services to those individuals enrolled in managed care plans ($9.98). Since section 4611(e)(2) of BBA 1997 requires that only 5/6 of the cost for those services being transferred be included in the actuarial rate for 2002, the monthly actuarial rate provides for an adjustment of −$1.27, representing 1/6 of the full cost of such services. The monthly actuarial rate of $123.10 also provides an adjustment of −$2.72 for interest earnings and −$1.34 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.

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 $32,077 million by the end of December 2002. This amounts to 28.0 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 $18,336 million by the end of December 2002, which amounts to 14.4 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 $44,795 million by the end of December 2002, which amounts to 44.0 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 2002, for both aged and disabled enrollees, is $54.00.

TABLE 2.—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 1999–2002

[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab[4]	Other carrier services[5]	Outpatient hospital	Home health agency	Hospital lab[6]	Other intermediary services[7]	Managed care
	Fees[2]	Residual[3]								
Aged:										
1999	2.7	1.3	5.0	0.0	9.8	6.5	−21.3	8.5	−20.1	4.6
2000	5.9	3.6	10.6	7.7	15.2	−4.1	3.6	5.9	18.0	5.9
2001	6.1	0.6	12.4	1.7	10.1	6.8	4.9	3.9	11.8	5.5
2002	−3.2	3.6	7.1	1.8	7.8	2.4	23.8	3.7	6.0	3.1
Disabled:										
1999	2.7	0.4	3.3	3.1	9.7	6.9	−14.5	14.4	−8.6	−0.9
2000	5.9	3.9	11.8	6.0	12.8	−3.9	−1.9	1.8	−11.3	−0.2
2001	6.1	0.5	11.1	2.7	13.6	6.5	2.7	7.5	4.2	7.9
2002	−3.2	3.6	7.1	1.8	7.6	2.4	22.5	3.7	7.2	4.4

[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 physician's office or an independent lab.
[5] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in rehabilitation and psychiatric hospitals, dialysis facilities, rural health clinics, federally qualified health centers, etc.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 1999 THROUGH DECEMBER 31, 2002

	Financing periods			
	CY 1999	CY 2000	CY 2001	CY 2002
Covered services (at level recognized):				
Physician fee schedule	$50.47	$55.51	$60.83	$61.01
Durable medical equipment	5.73	6.35	7.32	7.84
Carrier lab [1]	2.29	2.47	2.57	2.62
Other carrier services [2]	9.13	10.54	11.89	12.83
Outpatient hospital	19.26	18.51	20.28	20.77
Home health	[5] 6.69	[5] 6.94	[5] 7.47	[5] 9.25
Hospital lab [3]	1.76	1.87	1.99	2.06
Other intermediary services [4]	5.37	6.35	7.28	7.72
Managed care	[6] 21.21	[6] 22.26	[6] 21.05	[6] 21.64
Total services	121.89	130.80	140.68	145.75
Cost-sharing:				

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 1999 THROUGH DECEMBER 31, 2002—Continued

	Financing periods			
	CY 1999	CY 2000	CY 2001	CY 2002
Deductible	−3.78	−3.78	−3.80	−3.81
Coinsurance	−22.72	−24.15	−25.34	−25.45
Total benefits	95.39	102.87	111.54	116.49
Transfer to Medicaid	[7] 0.00	[7] 0.00	[7] 0.07	[7] 0.07
Administrative expenses	1.77	1.95	2.03	2.18
Incurred expenditures	97.16	104.82	113.64	118.74
Value of interest	−3.52	−4.18	−3.60	−3.20
Adjustment for home health agency services transferred from HI	[8] −5.47	[8] 4.21	[8] −2.95	[8] −1.82
Contingency margin for projection error and to amortize the surplus or deficit	4.13	−4.53	−6.09	−4.42
Monthly actuarial rate	$92.30	$91.90	$101.00	109.30

[1] Includes services paid under the lab fee schedule furnished in the physician's 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 managed care.
[7] Section 1933(c)(2) of the Act, as added by section 4732(c) 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 ⅙ of the full cost for such services, for 1999, ⅓, for 2000, ½, for 2001, ⅔, and for 2002, ⅚. Therefore, the adjustment for 1999 represents ⅔ of the full cost, for 2000, ½, for 2001, ⅓, and for 2002, ⅙. 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, 1999 THROUGH DECEMBER 31, 2002

	Financing periods			
	CY 1999	CY 2000	CY 2001	CY 2002
Covered services (at level recognized):				
Physician fee schedule	$51.26	$55.87	$60.12	$60.21
Durable medical equipment	9.04	10.04	11.27	12.05
Carrier lab [1]	2.70	2.85	2.95	3.01
Other carrier services [2]	10.03	11.12	12.99	14.05
Outpatient hospital	23.77	22.43	24.08	24.66
Home health	[5] 5.35	[5] 5.24	[5] 5.43	[5] 6.64
Hospital lab [3]	2.58	2.59	2.78	2.89
Other intermediary services [4]	27.84	27.11	28.61	29.37
Managed care	[6] 10.28	[6] 10.44	[6] 10.32	[6] 10.98
Total services	142.86	147.70	158.55	163.85
Cost-sharing:				
Deductible	−3.40	−3.41	−3.42	−3.43
Coinsurance	−32.69	−33.45	−34.20	−34.40
Total benefits	106.77	110.83	120.93	126.02
Transfer to Medicaid	[7] 0.00	[7] 0.00	[7] 0.05	[7] 0.05
Administrative expenses	2.00	2.10	2.20	2.36
Incurred expenditures	108.78	112.93	123.18	128.43
Value of interest	−0.91	−1.56	−1.92	−2.72
Adjustment for home health agency services transferred from HI	[8] −4.17	[8] −3.07	[8] −2.09	[8] −1.27
Contingency margin for projection error and to amortize the surplus or deficit	−0.69	12.80	13.03	−1.34
Monthly actuarial rate	$103.00	$121.10	$132.20	$123.10

[1] Includes services paid under the lab fee schedule furnished in the physician's 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 managed care.

[7] Section 1933(c)(2) of the Act, as added by section 4732(c) 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 ⅙ of the full cost for such services, for 1999, ⅓, for 2000, ½, for 2001, ⅔, and for 2002, ⅚. Therefore, the adjustment for 1999 represents ⅔ of the full cost, for 2000, ½, for 2001, ⅓, and for 2002, ⅙. 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, 2002

As of December 31,	2000	2001	2002
This projection:			
Actuarial status (in millions):			
Assets	$44,027	$41,781	$38,514
Liabilities	5,086	6,043	6,438
Assets less liabilities	$38,941	$35,739	$32,077
Ratio (in percent) [1]	38.3	33.0	28.0
Low cost projection:			
Actuarial status (in millions):			
Assets	$44,027	$46,007	$50,877
Liabilities	5,086	5,573	6,082
Assets less liabilities	$38,941	$40,434	$44,795
Ratio (in percent) [1]	40.1	40.4	44.0
High cost projection:			
Actuarial status (in millions):			
Assets	$44,027	$37,012	$25,174
Liabilities	5,086	6,572	6,838
Assets less liabilities	$38,941	$30,439	$18,336
Ratio (in percent) [1]	36.4	25.9	14.4

[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 of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually (65 FR 69432). For purposes of the RFA, States and individuals are not considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 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 section 1102(b) of the Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2002 are $109.30 for enrollees age 65 and over, and $123.10 for disabled enrollees under age 65. It also announces that the monthly SMI premium rate for calendar year 2002 is $54.00. The SMI premium rate of $54.00 is 8% higher than the $50.00 premium rate for 2001. We estimate that the cost of this increase from the current premium to the approximately 38 million SMI enrollees will be about $1.831 billion for 2002. 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.

V. Waiver of Proposed Notice

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, for 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 applying that formula. Moreover, the statute establishes the time period for which the premium rates will apply, and delaying publication of the SMI premium rate such that it would not be published before that time 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: September 17, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 27, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–26700 Filed 10–19–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3061–NC]

RIN 0938–AH15

Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

AGENCY: Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces the request we received from Alcon Laboratories seeking review of the appropriateness of the Medicare payment amount for new technology intraocular lenses furnished by an ambulatory surgical center. This document also announces the 30-day period for the public to comment on the appropriateness or the payment amount of the IOL for which a review was requested.

DATES: We will consider comments regarding the lenses listed in this notice if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 26, 2001.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services (HHS), Attention: CMS–3061–NC, P.O. Box 8017, Baltimore, MD 21244–8017.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201, or Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244.

Because of the staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–3061–NC. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Betty Shaw, (410) 786–6100.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–14–03 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone (410) 786–7195 or (410) 786–7201.)

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

On June 16, 1999, we published a final rule in the **Federal Register** titled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers' (64 FR 32198), which added subpart F to 42 CFR part 416.

In accordance with the June 16, 1999 final rule, we published a notice in the **Federal Register**, titled ''Annual Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical'' (66 FR 18959) on April 12, 2001. In this notice, we solicited interested parties to submit requests for review of the appropriateness of the payment amount with regard to a particular intraocular lens.

II. Provisions of this Notice

On May 16, 2001, the following request was submitted to the Centers for Medicare & Medicaid Services for review:

Manufacturer: Alcon Laboratories.

Model Numbers: ACRYSOF ® Acrylic Foldable Sterile UV-Absorbing Multipiece Posterior Chamber Lenses, Models MA30BA ,MA60BM, MA50BM, MA60MA, MA30AC, MA60AC.

Reason for Requesting Review: The manufacturer states that these lenses provide the following:

—Reduced risk of intra- or post-operative complications or trauma by a reduction in the area of lens epithelial cells (LEC), a major contributor to posterior capsule opacification (PCO) when compared with silicone and PMMA lenses, as evidenced by reduced Sommering's Ring scores.

—Ability to fold smaller, requiring a smaller incision than required for PMMA lenses, inducing less astigmatism thereby promoting accelerated postoperative recovery. Smaller size allows the lens to be easily explanted through the original incision.

—Reduced induced astigmatism because the lens can be inserted into the anterior ocular chamber with an average incision size of 3.5mm.

—Improved postoperative visual acuity due to their findings that the loss of visual acuity associated with

biocompatibility and inflammatory response was statistically significantly greater in patients with polymethylmethacrylate (PMMA) as compared to silicone or ACRYSOF® lenses.

—More stable postoperative vision by reducing need for Nd:YAG capsulotomy. There is a difference in ND:YAG capsulotomy rates between ACRYSOF® and a similar designed PMMA lens but not between ACRYSOF® and a silicone lens.

—A high refractive index material that allows the thinner ACRYSOF® lens to impart the same optical correction as a comparable diopter silicone or PMMA IOL.

—A clinical advantage for diabetic patients requiring posterior segment surgery to manage visual problems related to condensation and silicone oil. ACRYSOF® Lens allows removal of silicone oil with relative ease.

—A clinical advantage for pediatric and uveitic patients due to the combination of foldability and size of the ACRYSOF® lens.

—A decrease in anterior capsule movement when compared to similarly designed silicone PMMA lenses.

This notice solicits comments on the appropriateness of the payment amount for the IOL for which a review was requested.

Authority: Sections 1832 (a)(2)(F)(i) and 1833(i)(2)(A) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 13951(i)(2)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 25, 2001.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–26036 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Medicare & Medicaid Services

[CMS–3076–PN]

Medicare Program: Application by the Indian Health Service for Recognition as a National Accreditation Organization for Accrediting American Indian and Alaska Native Entities To Furnish Outpatient Diabetes Self-Management Training

AGENCY: Center for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: In this proposed notice, we announce the receipt of an application from the Indian Health Service (IHS) for CMS recognition as a national accreditation organization for accrediting American Indian and Alaska Native entities that wish to furnish outpatient diabetes self-management training to Medicare beneficiaries. Section 1865(b)(3) of the Social Security Act requires that the Secretary publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 26, 2001.

ADDRESSES: In commenting, please refer to file code CMS–3076–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Center for Medicare and Medicaid Services, Department of Health and Human Services, Attention: HCFA–3076–PN, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Eva Fung, (410) 786–7539, or Joan A. Brooks, (410) 786–5526.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments:

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Center for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195 or (410) 786–5241.

I. Background

Section 4105 of the Balanced Budget Act of 1997 authorized expanded Medicare coverage for outpatient diabetes self-management training when ordered by the physician (or qualified non-physician practitioner) treating the beneficiary's diabetes, provided certain requirements are met. We sometimes use national accrediting organizations to determine whether an entity meets some or all of the requirements that are necessary to provide a service for which Medicare payment can be made. Reliance on accreditation organizations is authorized by section 1865 of the Social Security Act (the Act) and our regulations in 42 CFR part 410, subpart H. A national accreditation organization must have an agreement in effect with the Secretary and must meet the standards and requirements specified in section 1865(b)(2) of the Act and 42 CFR part 410. The applicable regulations require a national organization applying to become a body accrediting entities that furnish such training to use one of three types of quality standards: CMS's own standards, the standard developed by a national advisory group (referred to as the NSDSMEP), or other standards that we determine meet or exceed our standards. The accreditation organization, after being approved and recognized by CMS, may accredit an entity to meet one of the sets of quality standards in § 410.144 (Quality standards for deemed entities).

The regulations pertaining to application procedures for national accreditation organizations for diabetes self-management training services are at § 410.142 (CMS process for approving national accreditation organizations). We may approve and recognize a nonprofit or not-for-profit organization with demonstrated experience in representing the interests of individuals with diabetes to accredit entities to furnish training.

A national accreditation organization applying for deeming authority must provide us with reasonable assurance that the accrediting organization requires accredited entities to meet requirements that are at least as stringent as CMS's. Section 1865(b)(1) of the Act provides that if the Secretary finds that accreditation of an entity by a national accreditation body demonstrates that all of the applicable conditions and requirements are met or exceeded, the Secretary will deem those entities as meeting the applicable Medicare requirements. Section 1865(b)(2) of the Act further requires

that the Secretary's findings consider the applying accreditation organization's requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and supplying information for use in enforcement activities, its monitoring procedures for entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation. The Secretary then examines the national accreditation organization's accreditation requirements to determine if they meet or exceed the Medicare conditions as we would have applied them.

Section 1865(b)(3)(A) of the Act requires that the Secretary publish within 60 days of receipt of a completed application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. In addition, the Secretary has 210 days from receipt of the request to publish a finding of approval or denial of the application. If the Secretary recognizes an accreditation organization in this manner, any entity accredited by the national accreditation body's CMS-approved program for that service will be ''deemed'' to meet the Medicare conditions of coverage.

II. Purpose

The purpose of this notice is to notify the public of the Indian Health Service's (IHS) request for the Secretary's approval as a national accreditation organization for accrediting American Indian and Alaska Native entities to furnish outpatient diabetes self-management training services. The IHS proposes to endorse the NSDSMEP as its quality standards. This notice also solicits public comments on the ability of the IHS to develop and apply its standards to entities furnishing outpatient diabetes self-management training services that meet or exceed the Medicare conditions for coverage.

We understand the current template for the proposed notice includes only the identity of the organization seeking to become an accrediting body, but no other information on its proposed program to inform those proposing to comment in response to the notice. Since our regulation highlights the quality standards as a key factor in our determination of whether or not to accept an entity as an accrediting body, some basic information on this subject would make comments we receive more useful and relevant to our decision, both in the IHS case and in other cases.

III. Outpatient Diabetes Self-Management Training ServicesConditions for Coverage and Requirements

The regulations specifying the Medicare conditions for coverage for outpatient diabetes self-management training services are located in 42 CFR part 410, subpart H. These conditions implement section 1861(qq) of the Act, which provides for Medicare Part B coverage of outpatient diabetes self-management training services specified by the Secretary.

Under section 1865(b)(2) of the Act and our regulations at §§ 410.142 (CMS process for approving national accreditation organizations) and 410.143 (Requirements for approved accreditation organizations), we evaluate a national accreditation organization based on (but not necessarily limited to) the criteria set forth in § 410.142(b), and we review the ongoing responsibilities of an approved accreditation organization.

We may visit the prospective organization's offices to verify information in the organization's application, including, but not limited to, review of documents, and interviews with the organization's staff. For oversight activities, we may conduct an onsite visit to inspect the approved accreditation organization's operations and office in order to assess its compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing documentation of meetings concerning the accreditation process, evaluating accreditation results or the accreditation status decision making process, and interviewing the organization's staff.

IV. Notices Upon Completion of Evaluation

The process for becoming an accrediting body, as outlined in the regulation, includes two **Federal Register** notices. The first notice would solicit comments on the accreditation organization's proposed accreditation program. Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish the second notice announcing CMS's approval or disapproval of the organization as an accrediting body.

V. Responses to Public Comments

Because of the large number of comments we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice and will respond to them in a forthcoming notice document.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this notice.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: October 1, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–25770 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3072–FN]

Medicare Program; Approval of Application by the American Diabetes Association (ADA) for Recognition as a National Accreditation Program for Accrediting Entities to Furnish Outpatient Diabetes Self-Management Training

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the American Diabetes Association (ADA) as a national accreditation organization for purposes of determining that an entity meets the necessary quality standards to furnish outpatient diabetes self-management and training services under Part B of the Medicare program. Therefore, diabetes self-management training (DSMT) programs accredited by the ADA will receive deemed status under the Medicare program.

EFFECTIVE DATE: This accreditation is effective on October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Joan A. Brooks, (410) 786–5526; Eva L. Fung, (410) 786–7539.

SUPPLEMENTARY INFORMATION:

I. Background

To participate in the Medicare program, diabetes self-management training (DSMT) programs must meet conditions for coverage specified in our

regulations at 42 CFR part 410, subpart H. One requirement is that entities must satisfy required quality standards. Currently, one way of satisfying the quality standards under 42 CFR 410.145 is to be approved by an approved accrediting body. The regulations pertaining to the application procedures for national accreditation organizations for DSMT are at 410.142. After we approve and recognize the accreditation organization, it may accredit an entity to meet one of the sets of quality standards described in 410.144.

II. Review Process and Findings

A. Review Process

In evaluating an application from an accrediting organization, we consider the following factors under section 1865(b)(2) of the Act:

- Accreditation requirements.
- Survey procedures.
- Ability to provide adequate resources for conducting required surveys and to supply information for use in enforcement activities.
- Monitoring procedures.
- Ability to provide us with the necessary data for validation.

We are required by 410.142(d) to publish a proposed notice in the **Federal Register** after the receipt of a written request for approval from a national accreditation organization. After review of the national accreditation organization's application, the regulations require that we publish a notice of our approval or disapproval after we receive a complete package of information and the organization's deeming application.

B. Review Findings

We received a complete application from the American Diabetes Association (ADA) on April 20, 2001. On June 27, 2001, we published a proposed notice in the **Federal Register**, (66 FR 34223) announcing the application of the ADA for approval as an accreditation program for diabetes self-management training programs. We reviewed their application to determine if the ADA used one of the sets of quality standards described in 410.144.

III. Analysis of and Responses to Public Comments and Provisions of the Final Notice

We received no public comments on our proposed notice. Therefore, we have approved the ADA's application as an accreditation program for diabetes self-management training programs under 410.142(d). The ADA is the first accreditation organization that we have approved for accrediting diabetes self-management training programs.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: September 19, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–26288 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8012–N]

RIN 0938–ZA20

Medicare Program; Part A Premium for 2002 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the hospital insurance premium for calendar year 2002 under Medicare's hospital insurance program (Part A) for the uninsured, not otherwise eligible aged (hereafter known as 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, 2002 for these individuals is $319. The reduced premium for certain other individuals as described in this notice is $175. Section 1818(d) of the Social Security Act specifies the method to be used to determine these amounts.

EFFECTIVE DATE: This notice is effective January 1, 2002.

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 under the Old Age Survivors and Disability Insurance Program (OASDI) or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the OASDI or Railroad Retirement Acts and certain others do not have to 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 determine, during September of each year, the monthly actuarial rate for the following year (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 2001 premium under this method was $300 and was effective January 1, 2001. (See 65 FR 62733, October 19, 2000.)

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 are individuals who are not currently entitled to Part A coverage, but who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, and who would still be entitled to Part A coverage if their earnings had not exceeded the statutorily defined substantial gainful activity amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through (f) 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 premium amount for certain voluntary (section 1818 and 1818A) enrollees. The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least

10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for calendar year 2002 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for 2002

- The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement, for the 12 months beginning January 1, 2002, is $319.
- The monthly premium for those individuals subject to the 45 percent reduction in the monthly premium is $175.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for 2002 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of individuals aged 65 and over entitled to hospital insurance and the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for 2002 on (a) current historical data, and (b) projection assumptions derived from current law and the Midsession Review of the President's Fiscal Year 2002 Budget.

We estimate that in calendar year 2002, 33.852 million people aged 65 and over will be entitled to benefits (without premium payment) and that they will incur $129.550 billion of benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $318.91 and the monthly premium is $319. The full monthly premium reduced by 45 percent is $175.

IV. Costs to Beneficiaries

The 2002 premium of $319 is about 6.3 percent higher than the 2001 premium of $300.

We estimate that approximately 392,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 5,000 enrollees will pay the reduced premium. We estimate that the aggregate cost to enrollees paying these premiums will increase by about $90 million in 2002 over 2001.

V. Waiver of Notice of Proposed Rulemaking

We are not using notice and comment rulemaking in this notification of Part A premiums for 2002, as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The Administrative Procedure Act permits agencies to waive notice and comment rulemaking when this notice and public procedure thereon are unnecessary. Furthermore, given that we are statutorily bound to make these estimates and promulgate these rates all in the month of September, the Congress clearly did not envision the use of notice and comment rulemaking, as it is not feasible to conduct such a process in a 30-day period. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually.) The estimated overall effect of the changes in the premium will be a cost to voluntary (section 1818 and 1818A) enrollees of about $90 million. Therefore, this notice is not a major rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million (see 65 FR 69432.) For purposes of the RFA, individuals are not considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

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: September 17, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 27, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–26702 Filed 10–19–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1197–N]

Medicare Program; December 10–11, 2001, Meeting of the Practicing Physicians Advisory Council and Request for Nominations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council and invites all organizations representing physicians to submit nominees for membership on the Council. There will be several vacancies on the Council as of February 28, 2002. The meetings are open to the public.

Meeting Registration: Persons wishing to attend this meeting must call the meeting coordinator Diana Motsiopoulos at (410) 786–3379 at least 72 hours in advance to register. Persons who are not registered in advance will not be permitted into the Federal Building and thus not be able to attend the meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid drivers' license before entering the building. Please note that if the meeting is cancelled we will post that information on our website.

DATES: The meeting is scheduled for December 10, 2001 from 8:30 a.m. until 5 p.m. e.s.t. and December 11, 2001 from 8:30 a.m. until 12 noon e.s.t.

Nominations: Nominations will be considered if received at the appropriate address, provided below no later than 5 p.m. e.s.t., December 17, 2001.

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Nominations: Mail or deliver nominations to the following address: Centers for Medicare and Medicaid Services, Center for Medicare Management, Office of Professional Relations, Attention: Paul Rudolf, M.D. JD, Executive Director, Practicing Physicians Advisory Council,7500 Security Boulevard, Mail Stop C5–17–14, Baltimore, MD 21244–1850.

Website: You may access the Internet at *http://www.hcfa.gov/fac/* for additional information and updates on committee activities.

Advisory Committees Information Line: (1–877–449–5659 toll free)/(410–786–9379 local).

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, M.D., J.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Blvd., Mail Stop C5–17–14, Baltimore, MD 21244–1850, (410) 786–3379. News media representatives should contact the CMS Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physician services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 of the members of the Council shall be physicians described in Section 1861(r)(1) of the Social Security Act. The remaining members may include dentists, podiatrists, optometrists and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action prior to its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: Jerold M. Aronson, M.D.; Richard Bronfman, D.P.M.; Joseph Heyman, M.D.; Sandral Hullett, M.D.; Stephen A. Imbeau, M.D.; Jerilynn S. Kaibel, D.C.; Angelyn L. Moultrie-Lizana, D.O.; Derrick K. Latos, M.D. (Pending re-appointment); Dale Lervick, O.D.; Sandra B. Reed, M.D.; Amilu Rothhammer, M.D.; Maisie Tam, M.D.; Victor Vela, M.D.; Kenneth M. Viste, Jr., M.D.; and Douglas L. Wood, M.D.

Council members will be updated on the status of recommendations made during the past year.

The agenda will provide for discussion and comment on the following topics:

- Advanced Beneficiary Notice (provider education materials/carrier instructions)
- Documentation Requirements for Teaching Physicians
- Physician Regulatory Issues Team (the team will seek advice on physician issues and elicit suggestions for improving agency responsiveness)
- Role of the Carrier Medical Director
- HIPAA (Health Insurance Portability and Accountability Act)

For additional information and clarification on the topics listed, call the contact person in the ''For Further Information Contact'' section of this notice. Individual physicians or medical organizations that represent physicians wishing to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, November 19, 2001, to be scheduled. Testimony is limited to agenda topics. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to the Executive Director no later than 12 noon, November 19, 2001 for distribution to Council members for review prior to the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact Diana Motsiopoulos at (410) 786–3379 at least 10 days before the meeting.

This notice also serves as an invitation to all organizations representing physicians to submit nominees for membership on the Council. Current members whose terms expire on February 28, 2002 will be considered for reappointment, if renominated, subject to the Department's administrative guidelines for advisory committee management. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Section

1868(b) of the Act provides that the Council meet quarterly, as requested by the Secretary, to discuss proposed changes in regulations and manual issuance's that relate to physicians' services. Council members are expected to participate in all meetings. Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services/Center for Medicare and Medicaid Services provides management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 24, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–27121 Filed 10–25–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the National Longitudinal Study of Environmental Effects on Child Health and Development Advisory Committee (Committee).

This Committee shall advise, consult with, and make recommendations to the Director, National Institute of Child Health and Human Development, and the Interagency Coordinating Committee of the National Longitudinal Study, on the planning and implementation of the Longitudinal Cohort Study.

Unless renewed by appropriate action prior to its expiration, the charter for the National Longitudinal Study of Environmental Effects on Child Health and Development Advisory Committee will expire two years from the date of establishment.

Dated: October 22, 2001.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 01–27025 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Macromolecular Imaging Agents for Liver Imaging

Martin W. Brechbiel (NCI) and Hisataka Kobayashi (EM)

[DHHS Reference No. E–240–01/0 filed 25 June 2001]

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

The invention is a macromolecular imaging agent comprising a polyalkylenimine dendrimer conjugated to a metal chelate that has been shown to be an excellent agent for imaging liver micrometastases as small as about 0.3 mm in a magnetic resonance image of the human liver. In a particular embodiment, the imaging agent is a diaminobutane-core polypropylenimine dendrimer having surface amino groups conjugated to gadolinium metal chelates. The invention makes possible the earlier detection of metastatic disease, leading to earlier application of a therapeutic regime and an improved prognosis.

Nucleic Acid and Amino Acid Sequences of Hemoglobin-Response Genes in *Candida albicans* and the Use of Reagents Derived from these Sequences in the Diagnosis of Disseminated *Candida albicans* Infections

David D. Roberts, Sizhuang Yan (NCI)

[Serial No. 09/258,634 filed 26 Feb 1999]

Licensing Contact: Uri Reichman; 301/496–7736 ext. 240; e-mail: *reichmau@od.nih.gov.*

This invention relates to diagnostic methods and kits for the detection of disseminated candidiasis. *Candida albicans (C. albicans)* is the most common pathogen involved in fungal infections in immunocompromised individuals, including AIDS, cancer patients, and organ transplant recipients. Systemic candidiasis is life-threatening in immunosuppressed patients and candidemia results in high morbidity and mortality. Within the last decade candidemia has increased ten-fold and is the third most common cause of positive blood cultures according to the Centers for Disease Control and Prevention. Accurate diagnosis of *C. albicans* and adequate treatment are of a great importance as disseminated infections are prevalent in hospitalized populations. However, a rapid and accurate diagnostic test for candidemia is not yet available. The traditional fungal culture is cumbersome and time consuming. Existing diagnostic kits based on serological ELISA tests detect antibodies against Candida cytoplasmic proteins but cannot differentiate between past and present infections. Diagnostic tests based on the present invention will be more accurate and will provide additional information related to the current status of hospitalized patients. The invention is based on the identification of three novel genes of *C. albicans*, which are expressed in the presence of hemoglobin. The expression and detection of these genes in patients would indicate disseminated candidiasis and is highly specific for *C. albicans* infection.

Dated: October 17, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–27026 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.
Date: November 8, 2001.
Time: 2 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892, (Telephone Conference Call).
Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 496–5561.

Name of Committee: National Eye Institute Special Emphasis Panel.
Date: November 27–28, 2001.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–496–5561.

Name of Committee: National Eye Institute Special Emphasis Panel.
Date: December 5, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD.
Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 496–5561.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 17, 2001.

LaVerne L. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27021 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Midcareer Investigator Award in Patient-Oriented Research (PA–00–005).
Date: November 15, 2001.
Time: 2 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: 6701 Rockledge Dr, Room 4100, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Diane M. Reid, MD, Review Branch, Room 7182, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0277.
(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 18, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27023 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: November 12, 2001.
Time: 3 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David I. Sommers, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6740, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: November 14, 2001.
Time: 11 AM to 12 PM.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David I. Sommers, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6770, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: November 19, 2001.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Houmam H Araj, PHD, Scientific Review Administrator, Division of

Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 28, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Houmam H Araj, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 17, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27020 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Minority RFA's.

Date: November 4–5, 2001.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Town Center Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Roy L. White, PhD, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 18, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27024 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 29, 2001.

Time: 12 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH. Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 31, 2001.

Time: 12 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6, 2001.

Time: 3 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, 301–435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 7, 2001.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 8, 2001.

Time: 11 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 9, 2001.

Time: 12 PM. to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 12, 2001.

Time: 8 AM to 9 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: AIDS and Related Research Integrated Review Group. AIDS and Related Research 4.
Date: November 12–13, 2001.
Time: 8 AM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Eduardo A. Montalvo, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 12–13, 2001.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.
Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 12, 2001.
Time: 1 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MS 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13–14, 2001.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.
Contact Person: Sharon K. Pulfer, BA, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *pulfers@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 11 AM to 12 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 11 AM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 11:30 AM to 1:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, 301–435–0902, *mkrause@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: November 13, 2001.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda MD 20892 (Telephone Conference Call).
Contact Person: George W. Chacko, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 1:30 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda MD 20892 (Telephone Conference Call).
Contact Person: Victor A. Fung, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *fungv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 2001.
Time: 12 PM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301)435–1786.

Name of Committee: Center Scientific Review Special Emphasis Panel.
Date: November 14, 2001.
Time: 8:30 AM to 11 AM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Cardiovascular Sciences Integrated Review Group. Hematology Subcommittee 2.
Date: November 14–15, 2001.
Time: 8:30 AM to 12 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, 301–435–1777, friedj@csr.nib.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2001.
Time: 11 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 14, 2001.
Time: 11:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administror, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892 (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2001.
Time: 8 AM to 6 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contact Person: Arnold Revzin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: AIDS and Related Research Integrated Review Group. AIDS and Related Research 6.
Date: November 15–16, 2001.

Time: 8 AM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Sami A. Mayyasi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892 (301) 435–1169.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15–16, 2001.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.
Contact Person: Michael R. Schaefer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 7890, Bethesda, MD 20892, 301–435–2477, *schaefem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2001.
Time: 8:30 AM to 6 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15–16, 2001.
Time: 8:30 AM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Square, 2000 N Street, NW., Washington, DC 20036.
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, (301) 435–1159 *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 15, 2001.
Time: 3 PM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 2001.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.
Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 2001.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 2001.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Sharon K. Pulfer, BA, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *pulfers@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 2001.
Time: 1 PM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 18, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27022 Filed 10–25–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4649–N–21]

Notice of Proposed Information Collection: Comment Request, Loan Guarantee Recovery Fund

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: December 26, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jackie W. Mitchell, Director, Office of Rural Housing and Economic Development, Room 7136, Washington, DC 20410, telephone: (202) 708–2290, (this is not a toll-free number) for copies of the proposed forms and other available documents:

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Loan Guarantee Recovery Fund.

OMB Control Number, if applicable: 2506–0159.

Description of the need for the information and proposed use: To appropriately determine whether entities that submit applications for assistance under the Loan Guarantee Recovery Fund (Section 4 of the Church Arson Prevention Action of 1996) are eligible applicants and submit applicants otherwise in compliance with the regulations, certain information is required. Among other necessary criteria, HUD must determine whether; the (1) financial institution is eligible as defined at 24 CFR 573.2 of the regulation; (2) the borrower is eligible as defined under 24 CFR 573.2; (3) the loan will assist in addressing damage or destruction caused by acts of arson or terrorism; (4) the activities which will be assisted by the guaranteed loans are eligible activities under § 573.3; (5) the financial institution utilizes sufficient underwriting standards; and (6) the assisted activities will comply with all applicable environmental laws and requirements.

Agency form numbers, if applicable: Form HUD–40076–LGA (1/200).

Members of affected public: Financial institutions such as banks, trust companies, savings and loan associations, credit unions, mortgage companies, or other issues regulated by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Credit Union Administration, or the U.S. Comptroller of the Currency. Certain not-for-profit organizations affected by acts of arson or terrorism.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: A total of 100 respondents are expected and the total estimated burden hours is 9440.

Status of the proposed information collection: The Department does not have a critical mass of respondents to serve as a source of information from which conclusions can be drawn with respect to the accuracy of its current estimates.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 18, 2001.

Donna M. Abbenante,

General Deputy Assistant, Secretary for Community Planning and Development.

[FR Doc. 01–26949 Filed 10–25–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–77]

Notice of Submission of Proposed Information Collection to OMB: Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 26, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval (2506–0087) number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities.

OMB Approval Number: 2506–0087.

Form Numbers: HUD–7015.15.

Description of the Need for the Information and its Proposed Use: This information collection is used to document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes, executive orders, and authorities in accordance with the procedures identified in 24 CFR part 58. Recipients certify compliance and make request for the released of funds.

Respondents: Not-for-profit institutions, State, or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	18,785		1		0.6		11,271

Total Estimated Burden Hours: 11,271.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 19, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–26948 Filed 10–25–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–43]

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.

EFFECTIVE DATES: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 18, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 01–26710 Filed 10–25–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Truckee River Water Quality Settlement Agreement, Federal Water Rights Acquisition Program, for Washoe, Storey, and Lyon Counties, NV

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice provides the public with supplemental information, and announces public hearings to receive comments on a draft Environmental Impact Statement (DEIS) for the Truckee River Water Quality Settlement Agreement, Federal Water Rights Acquisition Program, that the Bureau of Indian Affairs filed with the Environmental Protection Agency (EPA). The EPA published its notice of availability for the DEIS on Friday, October 5, 2001, in the **Federal Register** (66 FR 51036). This DEIS analyzes the potential impacts of implementing the provisions of the Truckee River Water Quality Settlement Agreement (WQSA), signed in 1996 by the U.S. Department of Justice (DOJ), U.S. EPA, U.S. Department of the Interior (DOI), Nevada Division of Environmental Protection (NDEP), Washoe County, Nevada , City of Reno, Nevada, City of Sparks, Nevada and the Pyramid Lake Paiute Tribe (Tribe).

DATES: Written comments on the DEIS must arrive by December 3, 2001. The public hearings will be held from 5 to 8 p.m. on Tuesday, November 27, 2001, Wednesday, November 28, 2001, and Friday, November 30, 2001.

ADDRESSES: You may mail or hand carry written comments to Steve Alcorn, Bureau of Reclamation, Lahontan Basin Area Office, 705 North Plaza Street, Room 320, Carson City, Nevada 89701; or Tom Strekal, Bureau of Indian Affairs, Western Nevada Agency, 1677 Hot Springs Road, Carson City, Nevada 89706.

The November 27, 2001, public hearing will be in the Fernley City Complex, 595 Silver Lace Boulevard, Fernley, Nevada. The November 28, 2001, public hearing will be in the Pyramid Lake Tribal Council Chambers, 208 Capital Hill (Highway 447), Nixon, Nevada. The November 30, 2001, public hearing will be in the Sparks City Council Chambers, 431 Prater Way, Sparks, Nevada.

To obtain a copy the DEIS, you may contact Steve Alcorn or Tom Strekal at the respective addresses provided above. Copies of the DEIS are also available for review at these addresses, as well as at the following locations: Bureau of Indian Affairs, Western Regional Office, 400 North 5th Street, Two Arizona Center, Phoenix, Arizona; Washoe County Public Library, 301 South Center Street, Reno, Nevada; Fernley City Hall, 595 Silver Lace Blvd., Fernley, Nevada; and Pyramid Lake Tribe Water Resources Office, 208 Capital Hill, Nixon, Nevada. In addition, the DEIS is available electronically on the BIA Internet Web site at *http://phxao.az.bia.gov/branches/environment/eis/htm.*

FOR FURTHER INFORMATION CONTACT: Steve Alcorn, 775–882–3436, or Tom Strekal, 775–887–3500.

SUPPLEMENTARY INFORMATION: On October 10, 1996, DOJ, EPA, and DOI joined NDEP, Washoe County, Reno, Sparks, and the Tribe in signing WQSA. This agreement resulted in dismissal of litigation brought by the Tribe against Reno, Sparks, the State of Nevada, and the United States over approval and operation of the Truckee Meadows Wastewater Reclamation Facility (TMWRF), owned jointly by Reno and Sparks. WQSA establishes a joint program to improve Truckee River water quality by increasing flows in the river through the purchase and dedication of Truckee River water rights for instream flow. WQSA also provides for the use of treatment plant effluent in place of river water for certain purposes.

WQSA grew from negotiations among the signatory parties during 1994–1995 to resolve litigation in a mutually agreeable manner. DOI, EPA, NDEP, and the Tribe had concerns about the quality and quantity of water in the lower Truckee River downstream from Reno and Sparks, as well as the water flowing to Pyramid Lake. Reno, Sparks, and Washoe County were concerned about those issues as well, but were primarily focused on securing permits to expand TMWRF while achieving water quality standards in the Truckee River with their discharge. Public scoping meetings for this project were held in Reno, Carson City, Fallon and Fernley, Nevada, in September 1995, and in Reno, Fallon and Fernley, Nevada, in March 1997.

Non-point sources of water pollution, such as agricultural return flows and urban runoff, as well as point sources, such as effluent from TMWRF, affect Truckee River water quality. Violations of the Federal Clean Water Act's dissolved oxygen standard (minimum of 5 mg/l) occur in the lower river as a consequence of algae production

stimulated by high concentrations of total dissolved solids, nitrogen and phosphorus. This condition is exacerbated during periods of low flow.

WQSA is an effort to address Truckee River water quality conditions by directly increasing river flow during the period of the year characterized by low flow. WQSA obligates the United States to allocate $12 million to acquire Truckee River water rights for water quality purposes. Whenever possible, water associated with the exercise of such rights will be stored in Truckee River reservoirs managed by BOR. Stored water-quality water is anticipated to be released primarily during periods of low flow (normally July, August and September). The resulting flow augmentation is expected to increase the nutrient assimilative capacity of the Truckee River and to dilute pollutants.

BIA, the U.S. Fish and Wildlife Service and BOR will be responsible for implementing the federal commitments identified in WQSA. Federal funds for this program have been fully appropriated by Congress and are managed by BIA. Accordingly, BIA is the lead agency in preparing this DEIS. BIA has contracted the acquisition program with the Tribe and the Tribe has, in turn, subcontracted with a broker to acquire water rights. Water rights acquired using federal money pursuant to WQSA are expected to be held in trust by the United States for the Tribe.

Public Comment Solicitation

Comments, including names and home addresses of respondents, will be available for public review at the Bureau of Reclamation office mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or 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. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: October 9, 2001.

Neal A. McCaleb,

Assistant Secretary,—Indian Affairs.

[FR Doc. 01–26950 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–2800–ER–00; AZA–28734]

Notice of Availability of a Draft Environmental Impact Statement for the Diamond Bar Road Improvement Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of a Draft Environmental Impact Statement for the Diamond Bar Road Improvement Project.

SUMMARY: The Bureau of Land Management, Kingman Field Office, Arizona, has prepared a draft environmental impact statement (EIS) to analyze the effect of a proposal to realign and improve 11 miles of the Diamond Bar Road across public lands to access the Hualapai Indian Reservation.

DATES: The comment period for the draft EIS will end 60 days from the date of the notice of filing in the **Federal Register** by the Environmental Protection Agency. Public meetings will be held in Meadview, Arizona, and in Dolan Springs, Arizona. The letter accompanying the draft EIS will give the date, time, and location of these meetings. BLM's Kingman Field Office can also provide this information.

ADDRESSES: Copies of the EIS may be obtained from the Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401. If you wish to comment, please mail or hand deliver comments to the Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401. The public may review the comments, including names and street addresses of respondents, at the above address from 7:30 am to 4:30 pm, Monday through Friday, except holidays. The comments may be published as part of the final EIS or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or disclosure under the Freedom of Information Act, you must state this request prominently at the beginning of your written comment. BLM will honor such requests to the extent allowed by law. The public may inspect in its entirety any submission from organizations or businesses or from representatives or officials of organizations or businesses.

FOR FURTHER INFORMATION CONTACT: Don McClure, phone: (520) 692–4400; e-mail, *don__mcclure@blm.gov.;* address, BLM, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona 86401.

SUPPLEMENTARY INFORMATION: Diamond Bar Road provides access to Grand Canyon West, mainly for commercial and private vehicles originating from Las Vegas. Grand Canyon West is a development on the Hualapai Indian Reservation near the rim of the Grand Canyon. This development now consists of an airport and terminal building, a food service facility, restrooms, and a permits office. Implementing the 1994 Master Plan for Grand Canyon West is expected to increase the number of visitors up to sixfold over a 10-year period. This increase would greatly increase the number of vehicles on Diamond Bar Road. The proposed road improvement would accommodate this increased volume by providing a roadway designed for up to 2,400 vehicles per day.

Management concerns that have been addressed in the draft EIS include impacts on vegetation, visual quality, recreation, cultural resources, socioeconomic conditions, public safety, and the Joshua Tree Forest Area of Critical Environmental Concern. Studies conducted include a native plant inventory, biological evaluation, cultural resource survey, traffic study, and visual impact analysis. Tribal consultation is ongoing under Section 106 of the National Historic Preservation Act of 1966, as amended. The EIS has been prepared by an interdisciplinary team of resource specialists in vegetation (including salvage), wildlife, visual quality, archaeological and traditional cultural resources, soils, range management, realty, and roadway design.

Dated: September 19, 2001.

Willie R. Taylor,

Director, Office of Environmental, Policy and Compliance.

[FR Doc. 01–24943 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1430–EQ; N–36212]

Termination of Airport Lease; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Airport Lease N–36212 in its entirety. The land will be opened to the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: November 26, 2001.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene A. Kolkman, Field Manager, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Doris A. Metcalf, Realty Specialist, at the above address or telephone (775) 289–1852.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by appendix 5 of Bureau of Land Management Manual Supplement 1203 dated November 25, 1998, Private Airport Lease N–36212 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 4 S., R. 63 E.,
Section 24, E½E½;
T. 4 S., R. 64 E.,
Section 7, Lots 3–4, E½SW¼, SE¼, 18, Lots 1–2, NE¼, E½NW¼, E½SW¼, 19, Lot 1.
The area described contains 197acres in Lincoln County.

The classification made pursuant to the Act of May 24, 1928, segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws and the mineral leasing laws. Airport Lease N–36212 is no longer required and has been closed in accordance with BLM and FAA requirements.

Dated: September 26, 2001.

Gene A. Kolkman,

Field Manager.

[FR Doc. 01–26983 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1430–EQ; N–52775]

Termination of Private Airstrip Lease; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Private Airstrip Lease N–52775 in its entirety. The land will be opened to the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: November 26, 2001.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene A. Kolkman, Field Manager, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Doris A. Metcalf, Realty Specialist, at the above address or telephone (775) 289–1852.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by appendix 5 of Bureau of Land Management Manual Supplement 1203 dated November 25, 1998, Private Airstrip Lease N–52775 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 24 N., R. 56 E.,
Section 23, S½, SE¼;
Section 26, NW¼NE¼, E½NW¼, SW¼NW¼, N½SW¼.
The area described contains 38.863 acres in White Pine County.

The classification made pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976, as amended, segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws and the mineral leasing laws. The Airstrip is no longer required and has been closed in accordance with BLM and FAA requirements.

Dated: September 26, 2001.

Gene A. Kolkman,

Field Manager.

[FR Doc. 01–26984 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[DES 01–37]

Notice of availability of the Draft Environmental Impact Statement (EIS) for the Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002 to 2007

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the draft EIS for the proposed OCS Oil and Gas Leasing Program for 2002 to 2007.

SUMMARY: The MMS has prepared a draft EIS on the Proposed OCS 5-Year Oil andGas Leasing Program for 2002 to 2007 pursuant to section 102(2)(C) of the NationalEnvironmental Policy Act of 1969.

DATES: Please submit comments on the draft EIS to the MMS by January 24, 2002. In accordance with 30 CFR 256.2(b), public hearings related to the draft EIS will be held in the Gulf of Mexico and Alaska Regions. The exact dates, times, and locations of the hearings will be announced by **Federal Register** notice in the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wildermann, Minerals Management Service, Branch of Environmental Assessment, at (703) 787–1670.

SUPPLEMENTARY INFORMATION: This draft EIS addresses a proposed Federal action that will establish a schedule of oil and gas lease sales on the OCS for the years 2002 to 2007. The proposed program schedules a total of 20 lease sales in 8 areas. In the Gulf of Mexico Region, 2 sales are scheduled in the Eastern, 5 in the Central, and 5 in the Western Gulf Planning Areas. In the Alaska Region, 3 sales are scheduled in the Beaufort Sea Planning Area, 2 in the Chukchi Sea/Hope Basin Planning Areas, 2 in the Cook Inlet Planning Area, and 1 in the Norton Basin Planning Area. Three alternatives are also analyzed which would slow the pace of leasing by reducing the numbers of sales proposed in some planning areas, exclude some planning areas from the program, or accelerate leasing in some areas by adding sales. Also evaluated is a no action alternative which would consist of no leasing during the 2002 to 2007 period.

ADDRESSES: Comments on the draft EIS and written materials prepared as part of testimony at the public hearings should be mailed to the Minerals Management Service, Attention: Mr. Richard Wildermann, 381 Elden Street,

Mail Stop 4042, Herndon, Virginia 20170–4817. Hand deliveries may be made to the Department of the Interior, Main Interior Building, 1849 C Street, NW., Room 4227, Washington, DC 20240. Envelopes or packages should be marked ''2002–2007 Oil and Gas Program Draft EIS.'' The MMS will also accept comments submitted by e-mail to *MMS5-year.eis@mms.gov.*

Public Comment Procedures: Our practice is to make comments, including the names and home address of respondents, available for public review. An individual commenter may ask that we withhold name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission.

We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

EIS Availability: To learn which libraries in Alaska have copies of the draft EIS contact the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4363, telephone 1–800–764–2627 or (907) 271–6438. On the Pacific coast contact the Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010–6064, telephone (805) 389–7520. For availability of the draft EIS along the Gulf of Mexico and Atlantic coasts contact the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2595. Information on the availability of the draft EIS can also be obtained from the Minerals Management Service, Attention: Mr. Richard Wildermann, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20170–4817, telephone (703) 787–1670.

The list of libraries and their locations is also available on the MMS Homepage on the Internet at *http://www.mms.gov.*

After the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: October 16, 2001.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

Dated: October 17, 2001.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 01–27033 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of the Dates, Times, and Locations of Public Hearings on the Draft Environmental Impact Statement (EIS) for the Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002 to 2007

AGENCY: Minerals Management Service, Interior.

ACTION: Announcing the dates, times, and locations of public hearings on the Draft EIS for the Proposed OCS 5-Year Oil and Gas Leasing Program for 2002 to 2007.

SUMMARY: The MMS has prepared a draft EIS on the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002 to 2007 pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. Public hearings will be held in Alaska, Texas, Louisiana, and Alabama to receive comments from the public on the contents of the EIS.

DATES: Public hearings are scheduled for the following dates and times at the following locations:

December 3, 2001

Anchorage, Alaska from 7 to 10 PM in the Wilda Marston Theater, ZJ Loussac Public Library, phone contact: Robin Cacy at (907) 271–6070.

December 4, 2001

Soldotna, Alaska from 7 to 10 PM in the Kenai Peninsula Borough Conference Room, phone contact: Robin Cacy at (907) 271–6070;

Kotzebue, Alaska from 7 to 10 PM in the North West Arctic Borough Assembly Room, phone contact: Robin Cacy at (907) 271–6070.

December 5, 2001

Homer, Alaska from 7 to 10 PM in the Homer City Council Chamber, 491 E. Pioneer Avenue, phone contact: Robin Cacy at (907) 271–6070;

Nome, Alaska from 7 to 10 PM at the North West Campus, University of Alaska Fairbanks, phone contact: Robin Cacy at (907) 271–6070.

December 7, 2001

Kodiak, Alaska from 7 to 10 PM in the Kodiak Island Borough Assembly Chambers, phone contact: Robin Cacy at (909) 271–6070;

Barrow, Alaska from 7 to 10 PM in the North Slope Borough Assembly Room, phone contact: Robin Cacy at (907) 271–6070.

December 10, 2001

Houston, Texas from 1 to 3 PM at the Houston Airport Marriott, 18700 Kennedy Boulevard, phone contact: Janet Diaz at (504) 736–2540.

December 11, 2001

New Orleans, Louisiana from 1 to 3 PM at the Minerals Management Service, 1201 Elmwood Park Boulevard, phone contact: Janet Diaz at (504) 736–2540.

December 12, 2001

Mobile, Alabama from 1 to 3 PM and 6:30 to 8:30 PM at the Adams Mark Hotel, 64 South Water Street, phone contact; Janet Diaz at (504) 736–2540.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wildermann, Minerals Management Service, Branch of Environmental Assessment, at (703) 787–1670.

SUPPLEMENTARY INFORMATION: Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the person listed as the contact for the hearing at the particular location they wish to attend at least 5 days prior to the hearings. Time limitations may make it necessary to limit the length of each oral presentation to 10 minutes or less. An oral statement may be supplemented, however, by a more complete written statement that should be submitted to the hearing panel at the time of the oral presentation. After the presentation of oral statements by those who have pre-registered, if time is still available other individuals will be given an opportunity to be heard. Each hearing will begin at the specified time and will recess when all speakers have had an opportunity to testify. If there are no additional speakers, the hearing will adjourn immediately after the recess. Written comments on the draft EIS, including comments from individuals unable to present oral statements or to attend the hearings, will be accepted until January 24, 2002.

ADDRESSES: Comments on the draft EIS and written materials prepared as part of testimony at the public hearings should be mailed to the Minerals Management Service, Attention: Mr.

Richard Wildermann, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20170–4817. Hand deliveries may be made to the Department of the Interior, Main Interior Building, 1849 C Street, NW., Room 4227, Washington, DC 20240. Envelopes or packages should be marked ''2002–2007 OCS Oil and Gas Program Draft EIS.'' The MMS will also accept comments submitted by e-mail to MMS5-year.eis@mms.gov.

Public Comment Procedures: Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

After the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared. The comment period for the draft EIS closes January 24, 2002.

Dated: October 18, 2001.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 01–27034 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Eastern Gulf of Mexico, Oil and Gas Lease Sale 181

AGENCY: Minerals Management Service, Interior.

ACTION: Final notice of sale 181.

SUMMARY: On December 5, 2001, the Minerals Management Service will open and publicly announce bids received for blocks offered in Sale 181, Eastern Gulf of Mexico, pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR part 256). Bidders can obtain a ''Final Notice of Sale 181 Package'' containing this Notice of Sale and several supporting and essential documents referenced herein, from the MMS Gulf of Mexico Region's Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Gulf of Mexico Region's Internet site at *http://www.gomr.mms.gov.* The ''Final Notice of Sale 181 Package'' contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the package.

Location and Time

Public bid reading will begin at 9 a.m., Wednesday, December 5, 2001, in the Versailles Ballroom of the Riverside Hilton Hotel, 2 Poydras Street, New Orleans, Louisiana. All times referred to in this document are local New Orleans time.

Filing of Bids

Bidders must submit sealed bids to the Regional Director, MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, prior to the Bid Submission Deadline at 10 a.m., Tuesday, December 4, 2001. If the bids are mailed, mark on the envelope containing all the sealed bids the following:

Attention: Mr. John Rodi, Contains Sealed Bids for Sale 181

If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, December 4, 2001. In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0557 for information about the possible extension of the bid submission deadline due to such an event.

Areas Offered for Leasing

The MMS is offering for leasing all the blocks listed in the document ''List of Blocks Available for Leasing, Sale 181'' included in the Final Sale Notice Package. All of these blocks lie west of 87°30′ West Longitude and are more than 100 miles south of Alabama. See the map in the Final Sale Notice Package: ''Lease Terms, Economic Conditions, Stipulations, and Deferred Blocks, Final''. All of these blocks are shown on the following Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit).

Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each:

NG16–02 Lloyd Ridge (revised November 1, 2000)

NH16–11 De Soto Canyon (revised November 1, 2000)

Note: A CD–ROM (in ARC/INFO and Acrobat (.pdf) formats) containing all of the Gulf of Mexico Leasing Maps and Official Protraction Diagrams, except for those not yet revised to digital format, is available from the MMS Gulf of Mexico Regional Office Public Information Unit for a price of $15.00. The Leasing Maps and Official Protraction Diagrams are also available on our Internet site. See also 66 FR 28002, published on May 21, 2001, for the current status of Central and Western Gulf of Mexico Leasing Maps and Official Protraction Diagrams.

Acreage of all blocks is shown on these Official Protraction Diagrams. The available Federal acreage of all blocks in this sale is shown in the document ''List of Blocks Available for Leasing, Sale 181″ included in the Final Sale Notice Package.

Areas Not Available for Leasing

The following blocks west of 87°30″ West Longitude and more than 100 miles south of Alabama in the Sale 181 area are not available for leasing:

Blocks currently under lease:

De Soto Canyon Blocks 133, 177, 446, 447, 622, 666, 793, 794, 837, 838, 840, 883, 927, 929, 970, 971

Lloyd Ridge Blocks 1, 2, 133, 134, 136, 267, 268

Leasing Terms and Conditions

Primary lease terms, minimum bids, annual rental rates, royalty rates, and royalty suspension areas are shown on the map ''Lease Terms, Economic Conditions, Stipulations, and Deferred Blocks, Final'' for leases resulting from this sale:

Primary lease terms: 10 years;

Minimum bids: $37.50 per acre;

Annual rental rates: $7.50 per acre, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas is made, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty rates: 12½ percent, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month in which the production is obtained;

Minimum royalty: After the start of royalty-bearing production: $7.50 per acre per year, to be paid at the expiration of each lease year;

Royalty Suspension Areas: All leases in this sale are being offered subject to

the regulations in 30 CFR part 260, published in the **Federal Register** at 66 FR 11512 on February 23, 2001. Royalty suspension per lease of 12 million barrels of oil equivalent will apply to all leases in this sale (for oil and gas). Supplemental royalty relief may be available for leases in this area in accordance with 30 CFR part 203. [See the document contained within the Sale 181, Final Sale Notice Package titled ''Royalty Suspension Provisions, Sale 181'' for the specific details regarding royalty suspension eligibility and implementation.]

Stipulations: Four lease stipulations (Military Areas, Evacuation, Coordination, and Marine Protected Species) will apply to all leases resulting from this sale. The texts of the stipulations are contained in the document ''Lease Stipulations for Oil and Gas Lease Sale 181, Final'' included in the Final Sale Notice Package.

Rounding

The following procedure must be used to calculate minimum bid, rental, and minimum royalty. If the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document ''List of Blocks Available for Leasing, Sale 181'' included in the Final Sale Notice Package.

Method of Bidding

For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 181, not to be opened until 9 a.m., Wednesday, December 5, 2001.'' The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the Final Sale Notice Package.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 66 FR 52150, on October 12, 2001. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the 1/5th bonus on all high bids. A statement to this effect must be included on each bid (see the document ''Bid Form and Envelope'' contained in the Final Sale Notice Package).

Bid Deposit

Submitters of high bids must deposit the 1/5th bonus by using electronic funds transfer procedures, following the detailed instructions contained in the document ''Instructions for Making EFT Bonus Payments'' included in the Final Sale Notice Package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Note: Certain bid submitters (i.e., those that do NOT currently own or operate an OCS mineral lease OR those that have ever defaulted on a ⅕th bonus payment (EFT or otherwise)) are required to guarantee (secure) their ⅕th bonus payment. For those who must secure the EFT ⅕th bonus payment, one of the following options may be used: 1. Provide a third-party guaranty; 2. Amend Development Bond Coverage; 3. Provide a Letter of Credit; or 4. Provide a lump sum payment via EFT prior to the submission of bids. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Final Sale Notice Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, ''Modifications to the Bid Adequacy Procedures'' (64 FR 37560 of July 12, 1999), is available from the MMS Gulf of Mexico Regional Office Public Information Unit and is also on our Internet site.

Successful Bidders

As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the cash bonus bid along with the first year's annual rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR part 256, subpart I, as amended. Each bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR part 12, subpart D. A copy of the Debarment Certification Form is contained in the Final Sale Notice Package.

Affirmative Action

The MMS *requests* that the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to bidding. In any event, these forms are *required* to be on file in the MMS Gulf of Mexico Regional Office Adjudication Unit prior to execution of any lease contract. Bidders must also comply with the requirements of 41 CFR part 60.

Information to Lessees

The Final Sale Notice Package contains a document titled ''Information to Lessees.'' These Information to Lessees items provide information on various matters of interest to potential bidders.

Notice of Bidding Systems

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to Congress and published in the **Federal Register**. This Notice of Bidding Systems is for Sale 181, Eastern Gulf of Mexico, scheduled to be held in December 2001.

In Sale 181, all blocks are being offered under a bidding system that uses a cash bonus and a fixed royalty of 12.5 with a royalty suspension volume of 12 million barrels of oil equivalent per lease. This bidding system is authorized under 30 CFR 260.110(a)(7), which allows use of a cash bonus bid with a royalty rate of not less than 12.5 percent and with suspension of royalties for a period, volume, or value of production, and an annual rental. Analysis performed by the MMS indicates that use of this system provides an incentive for development of this area while ensuring that a fair sharing of revenues will result if major discoveries are made and produced.

Specific provisions for Sale 181 are contained in the document ''Royalty Suspension Provisions, Sale 181'' and a map ''Lease Terms, Economic Conditions, Stipulations and Deferred Blocks, Final'' depicting blocks and applicable royalty suspension volumes. Both documents are included in the Sale Notice Package.

Dated: October 23, 2001.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

[FR Doc. 01–27032 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Comments on the Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002–2007

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007.

SUMMARY: The Minerals Management Service requests comments on the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007. This is the second draft of a new program to succeed the current program that expires on June 30, 2002. The first proposal—the draft proposed program—was issued in July for a 60-day comment that closed on September 21, 2001.

DATES: Please submit comments and information to the MMS no later than January 24, 2002.

ADDRESSES: Respondents should mail comments and information to: Ralph V. Ainger, Minerals Management Service (MS–4010), Room 2324, 381 Elden Street, Herndon, Virginia 20170. The MMS will accept hand deliveries at 1849 C Street, NW., Room 4230, Washington, DC. Envelopes or packages should be marked ''Comments on the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007.'' When submitting any privileged or proprietary information, respondents should mark the envelope, ''Contains Proprietary Information.''

The MMS will accept comments submitted by electronic mail. Send email comments to *MMS5-year.document@mms.gov*. The proposed program decision document may be downloaded from the MMS internet website at *www.mms.gov*, and copies of all comments received will be posted at that website after the comment period closes.

FOR FURTHER INFORMATION CONTACT: Ralph V. Ainger at (703) 787–1215.

SUPPLEMENTARY INFORMATION: Section 18 of the OCS Lands Act (43 U.S.C 1344) specifies a multi-step process of consultation and analysis that must be completed before the Secretary of the Interior may approve a new 5-year program. The required steps following this notice include the development of a proposed final program to be submitted to the Congress and the President, with Secretarial approval of a new program no sooner than 60 days afterward. Pursuant to the National Environmental Policy Act, the MMS also is preparing an Environmental Impact Statement (EIS) for the new 5-year program. The draft EIS is being issued with this proposed program, and a final EIS will be issued with the proposed final program.

The MMS requests comments from states, local governments, native groups, tribes, the oil and gas industry, Federal agencies, environmental and other interest organizations, and all other interested parties to assist in the preparation of a 5-Year OCS oil and gas leasing program for 2002–2007 and applicable EIS.

Background

Section 18 of the OCS Lands Act requires the Secretary of the Interior to prepare and maintain a schedule of proposed OCS oil and gas lease sales determined to ''best meet national energy needs for the 5-year period following its approval or reapproval.'' The proposed program carries forward the same schedule of proposed OCS lease sales that was published in the draft proposed program (July 2001).

Summary of the Proposed Program

The proposed program schedules a total of 20 OCS lease sales in 8 areas (5 off Alaska and 3 in the Gulf of Mexico). Maps A and B show the areas proposed for leasing, and Table A lists the location and timing of the proposed lease sales.

Alaska Region

In the Alaska Region, the proposed program schedules multiple lease sales in the Beaufort Sea and Cook Inlet Planning Areas, which are the two areas of most interest to the oil and gas industry. Multiple offerings are consistent with the Governor of Alaska's recommendations and the state's administration of its offshore oil and gas program. Portions of these areas that have been excluded from previous OCS programs and sales are excluded as recommended by the Governor. The proposed program makes a technical correction to the Beaufort Sea area that was proposed for leasing in the draft program, removing 23 blocks in the vicinity of Point Barrow that had been recommended for exclusion but were inadvertently included. The Chukchi Sea and Hope Basin Planning Areas are combined for leasing as they have been in previous programs. Two lease sales are proposed to pursue the high resource potential of the Chukchi Sea area in conjunction with potential natural gas resources extending into the adjacent Hope Basin area.

The Norton Basin Planning Area is included on the schedule as a potential source of natural gas for local residents and businesses, and it would be offered under a new approach to OCS leasing. The Norton Basin sale is proposed for 2003, but before the MMS proceeds, it will issue a request for nominations and comments and will move forward only if environmentally acceptable blocks are nominated by industry. If this does not occur, the sale will be postponed and a request for nominations and comments will be issued again the following year (and so on through the 5-year schedule

until the sale is held or the schedule expires).

Gulf of Mexico Region

In the Central and Western Gulf of Mexico Planning Areas, which are the two areas of highest resource potential and interest, the proposed program would continue the long-running policy of scheduling annual areawide lease sales to which the industry has become accustomed. In the Eastern Planning Area, the program proposes two lease sales in a portion of the area that was identified for Sale 181 in the 5-year program for 1997–2002. The portion of that area proposed for leasing in this proposed program consists of 256 blocks in deeper waters adjacent to the Central Gulf Planning Area. Selection of this area reflects the Secretary's decision in the proposed Notice of Sale for Sale 181 to exclude areas in the original Sale 181 area to address concerns expressed by the State of Florida and to minimize potential conflicts with military operations.

TABLE A.—PROPOSED PROGRAM FOR 2002–2007—LEASE SALE SCHEDULE

Sale No.	Area	Year
184	Western Gulf of Mexico.	2002
185	Central Gulf of Mexico.	2003
186	Beaufort Sea	2003
187	Western Gulf of Mexico.	2003
188	Norton Basin	2003
189	Eastern Gulf of Mexico.	2003
190	Central Gulf of Mexico.	2004
191	Cook Inlet/Shelikof Strait.	2004
192	Western Gulf of Mexico.	2004
193	Chukchi Sea/Hope Basin.	2004
194	Central Gulf of Mexico.	2005
195	Beaufort Sea	2005
196	Western Gulf of Mexico.	2005
197	Eastern Gulf of Mexico.	2005
198	Central Gulf of Mexico.	2006
199	Cook Inlet/Shelikof Strait.	2006
200	Western Gulf of Mexico.	2006
201	Central Gulf of Mexico.	2007
202	Beaufort Sea	2007
203	Chukchi Sea/Hope Basin.	2007

Assurance of Fair Market Value

Section 18 of the OCS Lands Act requires receipt of fair market value for OCS oil and gas leases and the rights they convey. The proposed program carries forward the provisions published in the draft proposed program: setting minimum bid levels by individual lease sale based on market conditions and continuing use of a two-phase bid evaluation process.

Information Requested

We request all interested and affected parties to comment on the size, timing, and location of leasing and the procedures for assuring fair market value that are included in the Proposed 5-Year OCS Oil and Gas Leasing Program for 2002–2007. Respondents who submitted information in response to previous requests for comments on the preparation of this 5-year program may wish to reference that information, as appropriate, rather than repeating it in their comments on the proposed program. We also invite comments and suggestions on how to proceed with the section 18 analysis for the proposed final program.

Section 18(g) authorizes confidential treatment of privileged or proprietary information that is submitted. In order to protect the confidentiality of such information, respondents should include it as an attachment to other comments submitted and mark it appropriately. On request, the MMS will treat such information as confidential from the time of its receipt until 5 years after approval of the new leasing program, subject to the standards of the Freedom of Information Act. MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, and comments not containing such information.

Next Steps in the Process

MMS plans to issue the proposed final program and final EIS in the spring of 2002. Sixty days later, the Secretary may approve the new 5-year program to go into effect as of July 1, 2002.

Public Comment Procedures

Our practice is to make comments, including the names and home addresses of respondents, available for public review. An individual commenter may ask that we withhold name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission.

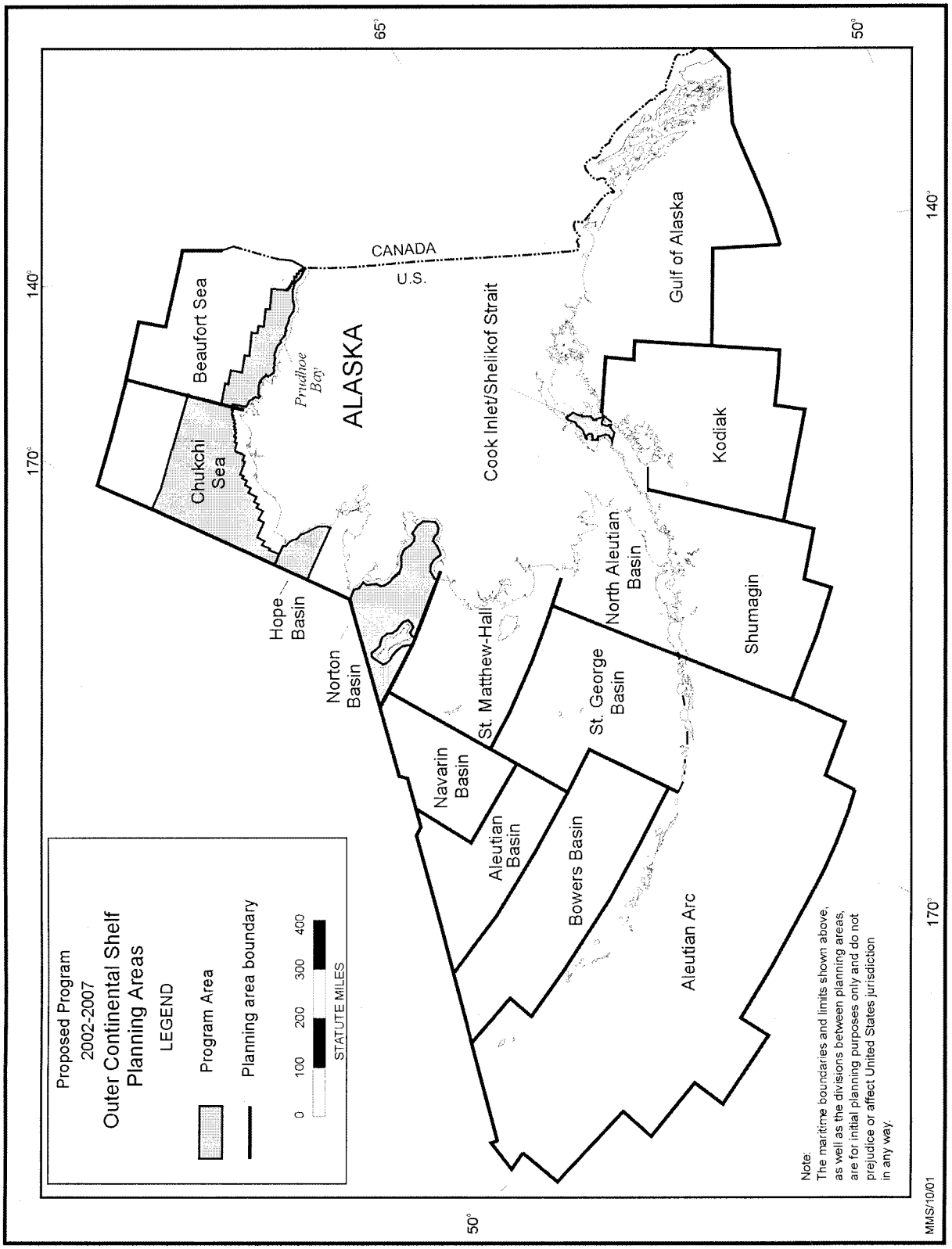
We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses.

Dated: October 19, 2001.

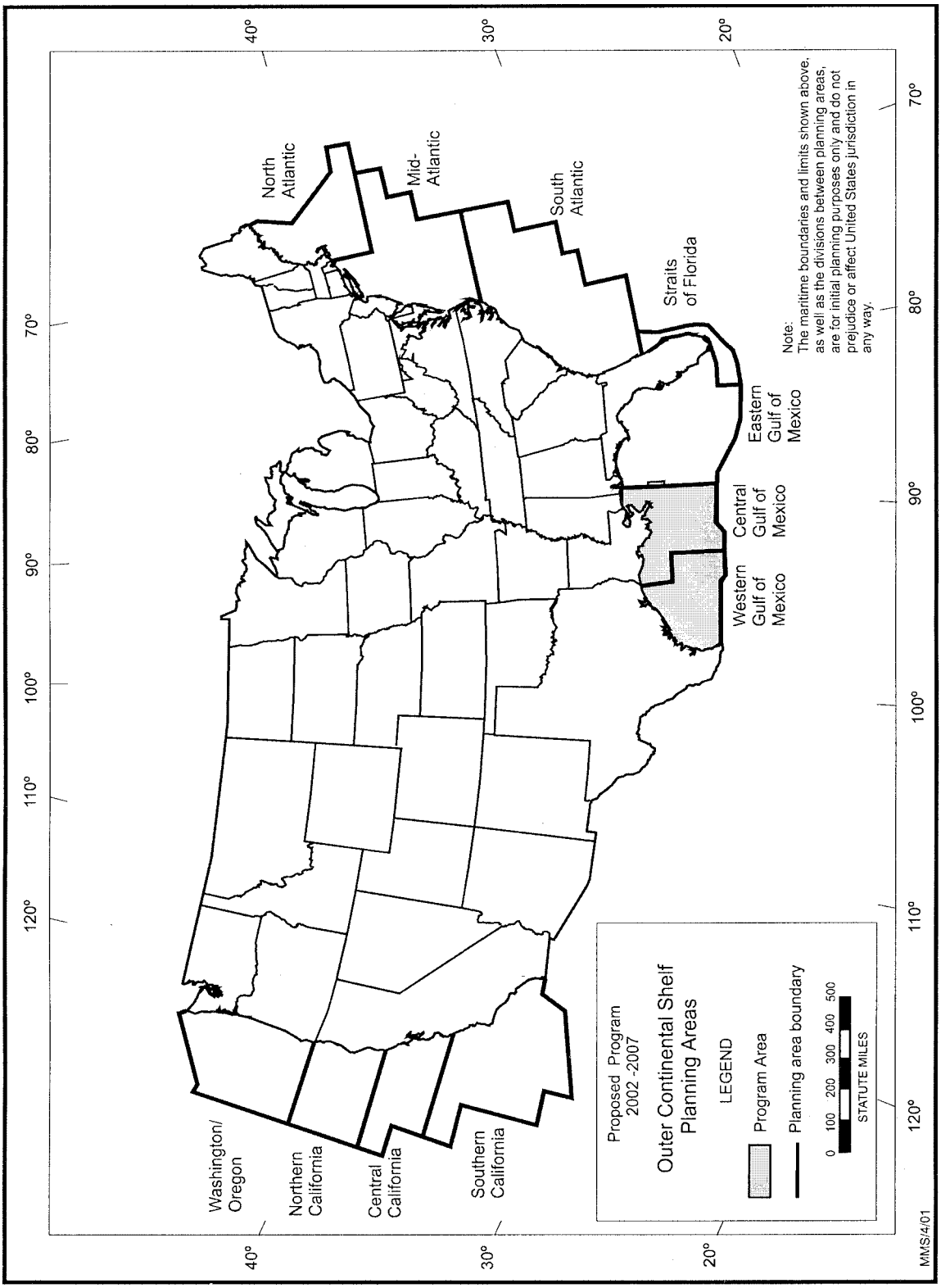
Thomas R. Kitsos,

Acting Director, Minerals Management Service.

BILLING CODE 4310–MP–P


Proposed Program
2002-2007
Outer Continental Shelf
Planning Areas
LEGEND
Program Area
Planning area boundary
0 100 200 300 400
STATUTE MILES
Beaufort Sea
Chukchi Sea
Prudhoe Bay
ALASKA
CANADA
U.S.
Cook Inlet/Shelikof Strait
Gulf of Alaska
Kodiak
Shumagin
North Aleutian Basin
St. George Basin
St. Matthew-Hall
Hope Basin
Norton Basin
Navarin Basin
Aleutian Basin
Bowers Basin
Aleutian Arc
Note:
The maritime boundaries and limits shown above, as well as the divisions between planning areas, are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.
MMS/10/01
65°
50°
140°
170°

Map A. Alaska



Map B. Lower 48 States

[FR Doc. 01–27031 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting: The Christmas Pageant of Peace

The National Park Service is seeking public comments and suggestions on the planning of the 2001 Christmas Pageant of Peace, which opens on December 6, 2001, on the Ellipse (President's Park), south of the White House. The meeting will be held at 11 a.m. on Tuesday, November 6, in room 234 of the National Capital Region Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park).

Persons who would like to comment at the meeting should notify the National Park Service by November 2 by calling the White House Visitor Center weekdays between 9 a.m. and 4 p.m. at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center 1100 Ohio Drive, SW., Washington, DC 20242, and can be accepted until November 1.

Dated: September 21, 2001.

Stan E. Lock,

Deputy Director, White House Liaison.

[FR Doc. 01–27048 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the Control of the California Department of Transportation, Sacramento, CA

AGENCY: National Park Service Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the control of the California Department of Transportation, Sacramento, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.9 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Anthropological Studies Center professional staff in consultation with representatives of the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California.

In 1961, human remains representing 14 individuals were recovered from site CA-LAK-261 in Lake County, CA, during authorized excavations conducted by David A. Fredrickson of Sonoma State University in conjunction with improvements along California Highway 53. No known individuals were identified. The 39 associated funerary objects include ground stone, shell beads, projectile points, polished bone, and blade fragments.

Based on osteological and archeological evidence, these individuals have been identified as Native American. Nine individuals are believed to be associated with the earliest component of the site, dating from 3000-1000 B.C., and five individuals are believed to be associated with a later component of the site, dating from 500 A.D. and ending prior to European contact. Based on geographical and ethnographic evidence, site CA-LAK-261 is believed to have been the village of Tuleyome.

In 1964, human remains representing 23 individuals were recovered from site CA-LAK-271 (Kelseyville/Glebe site) in Lake County, CA, during authorized excavations conducted by the Department of Parks and Recreation as part of a salvage initiative associated with the California Department of Transportation realignment of California Highway 29, between Lakeport and Kelseyville, CA. No known individuals were identified. The 56 associated funerary objects include projectile points, flakes, cobbles, shells, groundstone, cores, charmstones, faunal remains, scrapers, an obsidian knife, and an awl.

Based on osteological and archeological evidence, these human remains have been identified as Native American. Point typologies date the site to between 1500-3000 B.P. Based on geographical and ethnographic accounts, site CA-LAK-271 is believed to have been the ethnographic village of Licuikalixowa.

In 1975, human remains representing one individual were recovered from site CA-LAK-435 in Lake County, CA, by the Anthropological Studies Center during authorized test excavations prior to widening California Highway 20 east of Upper Lake, CA. No known individuals was identified. No associated funerary objects are present.

Based on archeological evidence, these human remains have been identified as Native American dating to between 500 B.C.-A.D. 0. Based on artifact typology, site CA-LAK-435 has been identified as an occupation site dating from 6000 B.C.-A.D. 1800.

In 1982, human remains representing 14 individuals were recovered from site CA-LAK-510 (Allsop/Creager site) in Lake County, CA, during archeological investigations sponsored by the California Department of Transportation to mitigate an eroding cutbank along Dam Road and reconstruct Old Highway 53. No known individuals were identified. The 56 associated funerary objects include Macoma clam disk beads, projectile points, bone tools, pendants, and pestles.

Based on osteological and archeological evidence, these human remains have been identified as Native American. Based on point typologies and obsidian hydration analysis of associated artifacts, the remains are estimated to date between 500 B.C.-A.D. 0.

During 1978-1981, human remains representing four individuals were recovered from site CA-LAK-510 (Allsop/Creager site) in Lake County, CA, during three separate field projects sponsored by the California Department of Transportation in conjunction with improvements to California Highway 53. No known individuals were identified. The 27 associated funerary objects include Macoma clam disk beads, a projectile point, and a slate pendant.

Based on osteological and archeological evidence, these human remains have been identified as Native American. Based on point typologies and obsidian hydration analysis, the remains are estimated to date between 500 B.C.-A.D. 0. Based on geographical and ethnographic evidence, site CA-LAK-510 has been identified as located near the ethnographic village of Bedai or Creek Home.

Geographical, ethnographic, linguistic, and historical evidence indicates that these archeological sites are located within the traditional territories of the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians

of California. Based on archeological evidence, continuity of occupation and material culture, and ethnographic accounts, the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California have been culturally affiliated with these sites.

Based on the above mentioned information, the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University professional staff has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 56 individuals of Native American ancestry. The Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University professional staff also has determined that, pursuant to 43 CFR 10.2 (d)(2), the 173 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University professional staff has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California.

This notice has been sent to officials of the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Tina Biorn, Environmental Program, Department of Transportation, P.O. Box 942874 (M.S. 27), Sacramento, CA 94274-0001, telephone (916) 653–0013, before November 26, 2001. Repatriation of the human remains and associated funerary objects to the Elem Tribal Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Scotts Valley Band of Pomo Indians of California; and Middletown Rancheria of Pomo Indians of California may begin after that date if no additional claimants come forward.

Dated: July 3, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27049 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Between 1972 and 1976, human remains representing eight individuals (catalog numbers 29VA1 4–11, 29VA1 63–2, 29VA1 77–6, 29VA1 77–10, 29VA1 85–2, and 29VA1 85–6) were recovered from the Pettit site, near Ramah, Cibola County, NM, by faculty and students of Wake Forest University, Winston-Salem, NC, during an archeological fieldschool. In 1988, the human remains and associated funerary objects were transferred to the University of Denver Museum of Anthropology for permanent curation, and in 1996, Gordon and Elsa Pettit, the owners of the land, signed a deed of gift transferring all rights to the University of Denver Museum of Anthropology. No known individuals were identified. The 178 associated funerary objects are 94 sherds (including cord-marked, Black-on-Red, and Black-on-White), 42 chipped stones, 3 chipped stone flakes, 3 rocks, 1 ground stone, 22 nonhuman bones, 2 shell fragments, 7 charcoal samples, 2 pollen samples, and 2 soil samples.

The Pettit site, 29VA1 (LA 59484), is in Togeye Canyon, a few kilometers southeast of Ramah, NM, near the Pueblo of Zuni. It is a pueblo of at least 154 rooms and has been dated to A.D. 1190–1250. The Pettit site is generally considered to be a PIII period (circa A.D. 1150–1350) site, or, in some chronologies, a Reorganization period site. Both refer to a time period just prior to the large population aggregations of the PIV and Aggregation periods on the Colorado Plateau. PIII and PIV are Ancestral Puebloan time periods, and in the scientific literature the Ancestral Puebloans are widely accepted as culturally affiliated to modern Puebloan peoples. The Reorganization period is a concept attributed to Cordell and Gumerman's 1989 book ''Dynamics of Southwestern Prehistory.'' This refers to a time period characterized by population displacements and migrations, reconfiguration of trade networks, the beginnings of population aggregation into larger sites, and experimentation with new forms of social organization.

Oral and written testimony from the Hopi Tribe, Pueblo of Acoma, and Navajo Nation supported cultural affiliation between those Indian tribes and these human remains and associated funerary objects. Pueblo of Jemez presented oral testimony supported by maps that suggested that the Pettit site is beyond the Pueblo of Jemez' traditional territory, but the museum believes that Pueblo of Jemez is culturally affiliated with these human

remains and associated funerary objects because the scientific literature supports cultural affiliation of Ancestral Puebloans with all modern Puebloan peoples: Hopi, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Ysleta del Sur, Pueblo of Zia, and Pueblo of Zuni.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 178 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S–146, Denver, CO 80208–2406, e-mail *jbernste@du.edu*, telephone (303) 871–2543, before November 26, 2001. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: August 8, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–27050 Filed 10–25–01; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–73]

Steel

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearings for the remedy phase of the investigation.

SUMMARY: This notice sets forth the schedule for the public hearings to be conducted during the remedy phase of the Commission's investigation. For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Media should contact Peg O'Laughlin (202–205–1819), Office of External Relations. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

Following receipt of a request from the United States Trade Representative on June 22, 2001, the Commission instituted investigation No. TA–201–73 under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) to determine whether certain steel products[1] are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.[2] On October 22, 2001, the

[1] The June 22, 2001, request letter from the United States Trade Representative and the accompanying annexes listing the covered products by HTS categories are on the Commission's website (*http://www.usitc.gov*).

[2] On July 26, 2001, the Commission received a resolution from the Committee on Finance of the United States Senate for an investigation of steel products with the same scope. Pursuant to section 603 of the Trade Act, the Commission consolidated the investigation requested by the Committee with the ongoing investigation.

Commission made an affirmative determination or was equally divided with respect to the products identified below.

Hearings on Remedy

The following tabulation shows the dates and starting times of the hearings to be held in connection with the remedy phase of this investigation, the product(s) or issues to be addressed, the time allotted to parties for their presentations, and the filing deadlines for the list of witnesses to appear at the hearings. Commission rule 201.13(d) will be strictly enforced.

Oral testimony and written materials to be submitted at the hearings are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the dates of the hearings.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Regardless of the product, the deadline for filing prehearing briefs on remedy is October 29, 2001. Parties may also file posthearing briefs. The deadlines for filing posthearing briefs on remedy are as follows: November 13, 2001, for briefs regarding products and issues addressed at the November 6 hearing; November 14, 2001, for briefs regarding products and issues addressed at the November 8 hearing; and November 15, 2001, for briefs regarding products and issues addressed at the November 9 hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of remedy by November 15, 2001. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Date of hearing	Starting time	Product(s)/issues to be addressed and time allocations	Deadline to file list of witnesses
Tuesday, November 6, 2001	9:30 a.m	Opening arguments 5 minutes: Parties in support of relief 5 minutes: Parties in opposition to relief Carbon and alloy steel slabs; plate; hot-rolled sheet, strip, and coils; cold-rolled sheet and strip other than grain-oriented electrical steel; corrosion-resistant and other coated sheet and strip; and tin mill products. 60 minutes: Parties in support of relief 60 minutes: Parties in opposition to relief.	November 1.
Thursday, November 8, 2001	9:30 a.m	Opening arguments 5 minutes: Parties in support of relief 5 minutes: Parties in opposition to relief Carbon and alloy steel hot-rolled bar and light shapes; cold-finished bar; and rebar. 45 minutes: Parties in support of relief 45 minutes: Parties in opposition to relief. Opening arguments 5 minutes: Parties in support of relief 5 minutes: Parties in opposition to relief. Carbon and alloy steel welded tubular products other than oil country tubular goods; and flanges, fittings, and tool joints. 45 minutes: Parties in support of relief 45 minutes: Parties in opposition to relief.	November 5.
Friday, November 9, 2001	9:30 a.m	Opening arguments 5 minutes: Parties in support of relief 5 minutes: Parties in opposition to relief Stainless steel bar and light shapes; stainless steel rod; tool steel; stainless steel wire; and stainless steel flanges and fittings. 60 minutes: Parties in support of relief 60 minutes: Parties in opposition to relief.	November 6.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: October 24, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27133 Filed 10–25–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Reinstatement, with change, of a previously approved collection for which approval has expired; Universal Hiring Program (UHP) and COPS In Schools (CIS) Grant Applications.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to

obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted December 26, 2001. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, 202–305–7780, Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection instrument.

(2) *Title of the Form/Collection:* Universal Hiring Program and COPS In Schools Grant Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* none, Office of Community Oriented Policing Services, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government *Other:* none *Abstract:* The application will be used by state, local and tribal law enforcement agencies to apply for Federal funding which will be used to increase the number of sworn law enforcement positions in their agencies. These grants are meant to enhance law enforcement infrastructures and community policing efforts in both local communities (Universal Hiring Program) and local schools (COPS in Schools).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 2,000 respondents for UHP, and 1,500 for the CIS program. The amount of estimated time required for the average respondent to respond is: 9 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 18,000 burden hours annually for UHP and 13,500 for CIS, for a total of 31,500 hours.

If additional information is required contact: Mrs. Brenda Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: October 23, 2001.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–27036 Filed 10–26–01; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Extension of a currently approved collection; comment request).

The National Judicial Reporting Program, Form NJRP–1

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 26, 2001.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew Durose, 202–307–6119, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection; comment request.

(2) *The title of the form/collection:* National Judicial Reporting Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NJRP–1, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State Court authorities. The National Judicial Reporting Program (NJRP) is the only collection effort that provides an ability to maintain important statistics on felons convicted and sentenced in state courts. The NJRP enables the Bureau, Federal, State, and local correctional administrators; legislators; researchers; and planners to track change in the numbers and types of offenses and sentences felons convicted in state courts receive; as well as track changes in the demographics, conviction type, number of charges, sentence length, and time between arrest and conviction and sentencing of felons convicted in state courts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 344 respondents will take 8.1 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual burden hours are 2,788.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: October 19, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–27037 Filed 10–25–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination 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 to minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work on 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 determination 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 causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, NW., Room S–3104, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determinations Nos. CA010032 and CA010034. See CA010031.

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determination Issued Under and 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

Rhode Island
- RI010001 (Mar. 2, 2001)
- RI010002 (Mar. 2, 2001)
- RI010003 (Mar. 2, 2001)

Volume II

West Virginia
- WV010002 (Mar. 2, 2001)

Volume III

Florida
- FL010001 (Mar. 2, 2001)
- FL010002 (Mar. 2, 2001)
- FL010009 (Mar. 2, 2001)
- FL010011 (Mar. 2, 2001)
- FL010012 (Mar. 2, 2001)
- FL010015 (Mar. 2, 2001)
- FL010017 (Mar. 2, 2001)
- FL010046 (Mar. 2, 2001)
- FL010049 (Mar. 2, 2001)
- FL010053 (Mar. 2, 2001)
- FL010055 (Mar. 2, 2001)
- FL010066 (Mar. 2, 2001)

Georgia
- GA010003 (Mar. 2, 2001)
- GA010022 (Mar. 2, 2001)
- GA010032 (Mar. 2, 2001)
- GA010040 (Mar. 2, 2001)
- GA010053 (Mar. 2, 2001)
- GA010058 (Mar. 2, 2001)
- GA010066 (Mar. 2, 2001)
- GA010073 (Mar. 2, 2001)
- GA010085 (Mar. 2, 2001)
- GA010086 (Mar. 2, 2001)
- GA010087 (Mar. 2, 2001)
- GA010088 (Mar. 2, 2001)

Volume IV

Michigan
- MI010002 (Mar. 2, 2001)
- MI010005 (Mar. 2, 2001)
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Volume V

Kansas
- KS010008 (Mar. 2, 2001)
- KS010009 (Mar. 2, 2001)
- KS010010 (Mar. 2, 2001)

KS010011 (Mar. 2, 2001)
KS010013 (Mar. 2, 2001)
KS010015 (Mar. 2, 2001)
KS010016 (Mar. 2, 2001)
KS010019 (Mar. 2, 2001)
KS010022 (Mar. 2, 2001)
KS010025 (Mar. 2, 2001)
KS010026 (Mar. 2, 2001)
KS010069 (Mar. 2, 2001)
KS010070 (Mar. 2, 2001)

Nebraska
NE010007 (Mar. 2, 2001)
NE010009 (Mar. 2, 2001)
NE010010 (Mar. 2, 2001)
NE010011 (Mar. 2, 2001)

Oklahoma
OK010013 (Mar. 2, 2001)
OK010014 (Mar. 2, 2001)
OK010031 (Mar. 2, 2001)
OK010032 (Mar. 2, 2001)

Texas
TX010003 (Mar. 2, 2001)
TX010005 (Mar. 2, 2001)
TX010007 (Mar. 2, 2001)
TX010010 (Mar. 2, 2001)
TX010014 (Mar. 2, 2001)
TX010019 (Mar. 2, 2001)
TX010033 (Mar. 2, 2001)
TX010034 (Mar. 2, 2001)
TX010037 (Mar. 2, 2001)
TX010053 (Mar. 2, 2001)
TX010054 (Mar. 2, 2001)
TX010059 (Mar. 2, 2001)
TX010060 (Mar. 2, 2001)
TX010061 (Mar. 2, 2001)
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Volume VI

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CO010003 (Mar. 2, 2001)
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CO010022 (Mar. 2, 2001)

Volume VII

Arizona
AZ010002 (Mar. 2, 2001)

California
CA010002 (Mar. 2, 2001)
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CA010029 (Mar. 2, 2001)
CA010030 (Mar. 2, 2001)
CA010031 (Mar. 2, 2001)
CA010033 (Mar. 2, 2001)
CA010035 (Mar. 2, 2001)
CA010036 (Mar. 2, 2001)
CA010037 (Mar. 2, 2001)
CA010038 (Mar. 2, 2001)
CA010039 (Mar. 2, 2001)
CA010040 (Mar. 2, 2001)

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.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers valued-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of Interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 18th day of October 2001.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–26870 Filed 10–25–01; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections: (1) 3095–0016, Researcher Application, NA Forms 14003 and 14003A, used by individuals applying for a research card; and (2) 3095–0027, National Archives Trust Fund (NATF) Order Forms for Genealogical Research in the National Archives. The NATF forms included in this information collection are: NATF 81, National Archives Order for Copies of Ship Passenger Arrival Records; NATF 82, National Archives Order of Copies of Census Schedules; NATF 83, National Archives Order for Copies of Eastern Cherokee Applications; NATF 84, National Archives Order for Copies of Land Entry Files; NATF 85, National Archives Order for Copies of Pension or Bounty Land Warrant Applications; and NATF 86, National Archives Order for Copies of Military Service Records. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before December 26, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, ext. 226, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Researcher Application.
OMB number: 3095–0016.
Agency form number: NA Forms 14003 and 14003A.
Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, state, local or tribal government.

Estimated number of respondents: 22,728.

Estimated time per response: 8 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 3,030 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.6. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

2. *Title:* Order Forms for Genealogical Research in the National Archives.

OMB number: 3095–0027.

Agency form numbers: NATF Forms 81, 82, 83, 84, 85, and 86.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 97,600.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 16,267 (rounded up).

Abstract: Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 12,000 per year for the NATF 81, approximately 600 per year for the NATF 82, approximately 1,000 per year for the NATF 83, approximately 6,000 per year for the NATF 84, approximately 46,000 per year for the NATF 85, and approximately 32,000 per year for the NATF 86) and the need to obtain specific information from the researcher to search for the records sought. The form will be printed on carbonless paper as a multi-part form to allow the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies.

Dated: October 22, 2001.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–26936 Filed 10–25–01; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Allowance for Loan and Lease Losses Methodologies and Documentation for Federally-Insured Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of Proposed Interpretive Ruling and Policy Statement (IRPS) 01–3, with request for comments.

SUMMARY: The National Credit Union Administration (NCUA) is proposing to adopt an Interpretive Ruling and Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Federally-Insured Credit Unions (the proposed IRPS). The federal banking agencies recently issued a final policy statement intended to clarify the banking agencies' expectations regarding methodologies and documentation support for the ALLL. The Securities and Exchange Commission (SEC) issued parallel guidance in a Staff Bulletin. Likewise, it is necessary for the NCUA to issue analogous guidelines for federally-insured credit unions in order clarify the NCUA's expectations regarding methodologies and documentation support for the ALLL. This proposed IRPS is intended to provide the necessary parallel guidance for federally-insured credit unions.

The proposed IRPS provides guidance on the design and implementation of ALLL methodologies and supporting documentation practices. The guidance recognizes that credit unions should adopt methodologies and documentation practices that are appropriate for their size and complexity.

DATES: NCUA welcomes comments on the proposed IRPS. Comments must be received on or before January 24, 2002.

ADDRESSES: Send comments to Becky Baker, Secretary to the NCUA Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also fax comments to (703) 837–2823, or e-mail comments to *regcomments@ncua.gov.* Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6389.

SUPPLEMENTARY INFORMATION:

I. Keypoints

- Credit union management is responsible for establishing an appropriate ALLL and documenting their methodology.
- Credit union methodologies should conform to generally accepted accounting principles (GAAP).
- Credit unions with lending portfolios comprised of homogeneous pools of consumer loans (such as credit card and automobile loans) and mortgage loans will find methodology and documentation requirements discussed herein to be less burdensome than those for credit unions with lending portfolios comprised of larger-balance, non-homogeneous loans. Simply put, credit unions must review all loans (by groups as appropriate) for relevant internal and external factors, loss history, collateral values, and methods to ensure they are applied consistently when estimating probable existing losses but, when appropriate, modify loss estimates for new factors affecting collectibility.
- The FAS 5 discussions throughout this document will be most relevant to the majority of credit unions.
- Independent review of management's methodology and documentation practices by the supervisory committee, internal or external auditors is emphasized.
- Illustrations are provided that may be useful to a credit union in enhancing their own ALLL estimation methodology and documentation practices.

II. Background

On March 10, 1999, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission (the Agencies) issued a joint letter to financial institutions on the allowance for loan and lease losses (the Joint Letter). In the Joint Letter, the Agencies agreed to establish a Joint Working Group to study ALLL issues and to assist financial institutions by providing them with improved guidance on this topic. The Agencies agreed that the Joint Working Group would develop and issue parallel guidance for two key areas regarding the ALLL:

- Appropriate methodologies and supporting documentation, and
- Enhanced disclosures.

As a result, the banking agencies issued a final Policy Statement providing guidance to banks and savings institutions relating to methodologies and supporting documentation for the ALLL. The Securities and Exchange Commission staff has issued parallel guidance on this topic for public companies in Staff

Accounting Bulletin No. 102.[1] This proposed IRPS is intended to provide parallel guidance for federally-insured credit unions.

This proposed IRPS clarifies the NCUA's expectations regarding methodologies and documentation support for the ALLL. For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with generally accepted accounting principles (GAAP). GAAP requires that a credit union maintain written documentation to support the amounts of the ALLL and the provision for loan and lease losses reported in the financial statements.

The proposal does not change existing accounting guidance in, or modify the documentation requirements of, GAAP. It is intended to supplement, not replace, current guidance. The proposed IRPS does not address or change current guidance regarding loan charge-offs; therefore, credit unions should continue to follow existing regulatory guidance that addresses the timing of charge-offs.

The guidance in this proposed IRPS recognizes that credit unions should adopt methodologies and documentation practices that are appropriate for their size and complexity. For credit unions with fewer and less complex loan products, the amount of supporting documentation for the ALLL may be less exhaustive than for credit unions with more complex loan products or portfolios.

Recognizing that a primary mission of the NCUA is to support a safe and sound credit union system, examiners will continue to evaluate the overall adequacy of the ALLL, including the adequacy of supporting documentation, to ensure that it is appropriate. While the proposed IRPS generally does not provide guidance to examiners in conducting safety and soundness examinations, examiners may take exception to credit union practices that fail to document and maintain an adequate ALLL in accordance with this IRPS, and other NCUA guidance. In such cases, credit union management may be cited for engaging in unsafe and unsound practices and may be subject to further supervisory action.

III. The Proposed IRPS

Four of the FFIEC agencies including 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) sought public comment on a proposed policy statement on ALLL Methodologies and Documentation for Banks and Savings Institutions on September 7, 2000 (65 FR 54268). The proposal indicated that the purpose of the policy statement was to provide financial institutions with enhanced guidance on appropriate ALLL methodologies and documentation practices. This IRPS proposes parallel guidance for federally-insured credit unions. The following is a summary of the proposal:

The proposed IRPS explains that the board of directors of each credit union is responsible for ensuring that controls are in place to determine the appropriate level of the ALLL. It also emphasizes the NCUA's long-standing position that credit unions should maintain and support the ALLL with documentation that is consistent with their stated policies and procedures, GAAP, and applicable supervisory guidance.

The proposed IRPS describes significant aspects of ALLL methodologies and documentation practices. Specifically, the proposal provides guidance on maintaining and documenting policies and procedures that are appropriately tailored to the size and complexity of the credit union and its loan portfolio. The proposed IRPS states that a credit union's ALLL methodology must be a thorough, disciplined, and consistently applied process that incorporates management's current judgments about the credit quality of the loan portfolio.

The proposal also discusses the methodology and documentation needed to support ALLL estimates prepared in accordance with GAAP, which requires loss estimates based upon reviews of individual loans and groups of loans. The proposal states that after determining the allowance on individually reviewed loans and groups of loans, management should consolidate those loss estimates and summarize the amount to be reported in the financial statements for the ALLL. To verify that the ALLL methodology is effective and conforms to GAAP and supervisory guidance, the supervisory committee, the internal or external auditors or some other designated party who is independent from the ALLL estimation process should review the methodology and its application in a manner appropriate to the size and complexity of the credit union.

The proposal includes illustrations of implementation practices that credit unions may find useful for enhancing their own ALLL practices; a summary of applicable GAAP guidance; an appendix that provides examples of certain key aspects of ALLL guidance; and a bibliographical list of relevant GAAP guidance, joint interagency statements, and other literature on ALLL issues.

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that NCUA prepare an analysis describing any significant economic impact agency rulemaking may have on a substantial number of small credit unions. 5 U.S.C. 601 et seq. For purposes of this analysis, NCUA considers credit unions under $1 million in assets as small credit unions.

Credit unions over $10 million in assets must follow GAAP in the call reports they file with the NCUA Board. All other credit unions must comply with GAAP in relation to the ALLL in order to meet regulatory requirements of full and fair disclosure. This proposed IRPS describes simplified ALLL requirements for the less complex loan activities that small credit unions engage in. For example, small credit unions may satisfy their ALLL responsibilities with consolidated documentation, the use of standardized checklists and worksheets, and simplified loan categorizations and segmentation. Accordingly, the NCUA has determined and certifies that this proposed IRPS will not have a significant economic impact on a substantial number of small credit unions beyond what is already required of them.

Paperwork Reduction Act

NCUA has determined that this proposed IRPS does not increase paperwork requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

This proposed IRPS applies to all credit unions, but does not have substantial direct effect on the states, on the relationship between the national

[1] In addition, the American Institute of Certified Public Accountants (AICPA) is developing guidance on the accounting for loan losses and the techniques for measuring probable incurred losses in a loan portfolio.

government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

By the National Credit Union Administration Board, on October 18, 2001.

Becky Baker,

Secretary of the Board.

Authority: 12 U.S.C. 1782a; 12 CFR 702.402.

Proposed Interpretive Ruling and Policy Statement No. 01–3

Allowance for Loan and Lease Losses Methodologies and Documentation for Federally-Insured Credit Unions (IRPS 01–3)

Boards of directors of federally-insured credit unions are responsible for ensuring that their credit unions have controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with the credit union's stated policies and procedures, generally accepted accounting principles (GAAP), and ALLL supervisory guidance.[2] To fulfill this responsibility, boards of directors instruct management to develop and maintain an appropriate, systematic, and consistently applied process to determine the amounts of the ALLL and provisions for loan losses. Management should create and implement suitable policies and procedures to communicate the ALLL process internally to all applicable personnel. Regardless of who develops and implements these policies, procedures, and the underlying controls, the board of directors should assure themselves that the policies specifically address the credit union's unique goals, systems, risk profile, personnel, and other resources before approving them. Additionally, by creating an environment that encourages personnel to follow these policies and procedures, management improves procedural discipline and compliance.

The determination of the amounts of the ALLL and provisions for loan and lease losses should be based on management's current judgments about the credit quality of the loan portfolio, and should consider all known relevant internal and external factors that affect loan collectibility as of the reporting date. The amounts to be reported each period for the provision for loan and lease losses and the ALLL should be reviewed and approved by the board of directors. To ensure the methodology remains appropriate for the credit union, the board of directors should have the methodology periodically validated and, if appropriate, revised. Further, the supervisory or audit committee[3] should oversee and monitor the internal controls over the ALLL determination process.[4]

The NCUA has a long-standing examination policy that calls for examiners to review a credit union's lending and loan review functions and recommend improvements, if needed. Agency guidance assists a credit union in estimating and establishing a sufficientALLL supported by adequate documentation. Additionally, guidance requires operational and managerial standards that are appropriate for a credit union's size and the nature and scope of its activities.

For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with GAAP. GAAP requires that allowances be well documented, with clear explanations of the supporting analyses and rationale.[5] This IRPS describes but does not increase the documentation requirements already existing within GAAP. Failure to maintain, analyze, or support an adequate ALLL in accordance with GAAP and supervisory guidance is generally an unsafe and unsound credit union practice.[6]

This guidance applies equally to all credit unions, regardless of the size. However, credit unions with less complex lending activities and products may find it more efficient to combine a number of procedures (*e.g.,* information gathering, documentation, and internal approval processes) while continuing to ensure the credit union has a consistent and appropriate methodology. Thus, much of the supporting documentation required for a credit union with more complex products or portfolios may be combined into fewer supporting documents in a credit union with less complex products or portfolios. For example, simplified documentation can include spreadsheets, check lists, and other summary documents that many credit unions currently use. Illustrations B and D provide specific examples of how less complex credit unions may determine and document portions of their loan loss allowance.

Documentation Standards

Appropriate written supporting documentation facilitates review of the ALLL process and reported amounts, builds discipline and consistency into the ALLL determination process, and improves the process for estimating loan and lease losses by helping to ensure that all relevant factors are appropriately considered in the ALLL analysis. A credit union should document the relationship between the findings of its detailed review of the loan portfolio and the amount of the ALLL and the provision for loan and lease losses reported in each period.

At a minimum, credit unions should maintain written supporting documentation for the following decisions, strategies, and processes:

1. Policies and procedures:
   a. Over the systems and controls that maintain an appropriate ALLL, and
   b. Over the ALLL methodology,
2. Loan grading system or process,
3. Summary or consolidation of the ALLL balance,
4. Validation of the ALLL methodology, and
5. Periodic adjustments to the ALLL process.

The following sections of this IRPS provide guidance on significant aspects of ALLL methodologies and documentation practices. Specifically, this IRPS provides documentation guidance on:

1. Application of GAAP,

[2] A bibliography is attached that lists applicable ALLL GAAP guidance, interagency policy statements, and other reference materials that may assist in understanding and implementing an ALLL in accordance with GAAP. See ''Application of GAAP'' section for additional information on applying GAAP to determine the ALLL.

[3] All credit unions should establish a supervisory or audit committee.

[4] Credit union supervisory or audit committees and their auditors should refer to Statement on Auditing Standards No. 61, Communication With Audit Committees (as amended by Statement on Auditing Standards No. 90, Audit Committee Communications), which requires certain discussions between the auditor and the audit committee. These discussions should include items, such as accounting policies and estimates, judgments, and uncertainties, that have a significant impact on the accounting information included in the financial statements.

[5] The documentation guidance within this IRPS is predominantly based upon the GAAP guidance from Financial Accounting Standards Board Statement Numbers 5 and 114 (FAS 5 and FAS 114, respectively); Emerging Issues Task Force Topic No. D–80 (EITF Topic D–80 and attachments), Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio (which includes the Viewpoints Article—an article issued in 1999 by FASB staff providing guidance on certain issues regarding the ALLL, particularly on the application of FAS 5 and FAS 114 and how these statements interrelate); and Chapter 6—Allowance for Loan Losses, the American Institute of Certified Public Accountants' (AICPA) Audit and Accounting Guide, Audits of Credit Unions 2000 edition (AICPA Audit Guide).

[6] Failure to maintain adequate supporting documentation does not relieve a credit union of its obligation to record an appropriate ALLL.

2. Policies and Procedures,
3. Methodology,
4. ALLL Under FASB Statement of Financial Accounting Standards No. 114,Accounting by Creditors for Impairment of a Loan (FAS 114),
5. ALLL Under FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5),
6. Consolidating the Loss Estimates, and
7. Validating the ALLL Methodology.

Application of GAAP

An ALLL recorded pursuant to GAAP is a credit union's best estimate of the probable amount of loans and lease-financing receivables that it will be unable to collect based on current information and events.[7] A creditor should record an ALLL when the criteria for accrual of a loss contingency as set forth in GAAP have been met. Estimating the amount of an ALLL involves a high degree of management judgment and is inevitably imprecise. Accordingly, a credit union may determine that the amount of loss falls within a range. A credit union should record its best estimate within the range of loan losses.[8]

Under GAAP, Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5), provides the basic guidance for recognition of a loss contingency, such as the collectibility of loans (receivables), when it is probable that a loss has been incurred and the amount can be reasonably estimated. Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan (FAS 114) provides more specific guidance about the measurement and disclosure of impairment for certain types of loans.[9] Specifically, FAS 114 applies to loans that are identified for evaluation on an individual basis. Loans are considered impaired when, based on current information and events, it is probable that the creditor will be unable to collect all interest and principal payments due according to the contractual terms of the loan agreement.

For individually impaired loans, FAS 114 provides guidance on the acceptable methods to measure impairment. Specifically, FAS 114 states that when a loan is impaired, a creditor should measure impairment based on the present value of expected future principal and interest cash flows discounted at the loan's effective interest rate, except that as a practical expedient, a creditor may measure impairment based on a loan's observable market price or the fair value of collateral, if the loan is collateral dependent.

When developing the estimate of expected future cash flows for a loan, a credit union should consider all available information reflecting past events and current conditions, including the effect of existing environmental factors. The Illustration A provides an example of a credit union estimating a loan's impairment when the loan has been partially charged-off.[10]

ILLUSTRATION A

INTERACTION OF FAS 114 WITH AN ADVERSELY CLASSIFIED LOAN, PARTIAL CHARGE-OFF, AND THE OVERALL ALLL

A credit union determined that a collateral dependent loan, which it identified for evaluation, was impaired. In accordance with FAS 114, the credit union established an ALLL for the amount that the recorded investment in the loan exceeded the fair value of the underlying collateral, less costs to sell.

Consistent with relevant regulatory guidance, the credit union classified as "Loss," the portion of the recorded investment deemed to be the confirmed loss, and classified the remaining recorded investment as "Substandard." For this loan, the amount classified "Loss" was less than the impairment amount (as determined under FAS 114). The credit union charged off the "Loss" portion of the loan. After the charge-off, the portion of the ALLL related to this "Substandard" loan (1) reflects an appropriate measure of impairment under FAS 114, and (2) is included in the aggregate FAS 114 ALLL for all loans that were identified for evaluation and individually considered impaired. The aggregate FAS 114 ALLL is included in the credit union's overall ALLL.

[7] This section provides guidance on the ALLL and does not address allowances for credit losses for off-balance sheet instruments (e.g., loan commitments, guarantees, and standby letters of credit). Credit unions should record liabilities for these exposures in accordance with GAAP. Further guidance on this topic is presented in the American Institute of Certified Public Accountants' Audit and Accounting Guide, Audits of Credit Unions, 2000 edition (AICPA Audit Guide). Additionally, this section does not address allowances or accounting for assets or portions of assets sold with recourse, which is described in Statement of Financial Accounting Standards No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities—a Replacement of FASB Statement No. 125 (FAS 140).

[8] Refer to FASB Interpretation No. 14, Reasonable Estimation of the Amount of a Loss, and Emerging Issues Task Force Topic No. D–80, Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio (EITF Topic D–80).

[9] Emerging Issues Taskforce (EITF) Topic D–80 includes additional guidance on the requirements of FAS 5 and FAS 114 and how they relate to each other. The AICPA is currently developing a Statement of Position (SOP) that will provide more specific guidance on accounting for loan losses.

[10] The referenced "gray box" illustrations are presented to assist credit unions in evaluating how to implement the guidance provided in this document. The methods described in the illustrations may not be suitable for all credit unions and are not considered required processes or actions. For additional descriptions of key aspects of ALLL guidance, a series of ALLL Questions and Answers (Q&As) are included in Appendix A of this paper.

Large groups of smaller-balance homogeneous loans that are collectively evaluated for impairment are not included in the scope of FAS 114.[11] Such groups of loans may include, but are not limited to, credit card, residential mortgage, and consumer installment loans. FAS 5 addresses the accounting for impairment of these loans. Also, FAS 5 provides the accounting guidance for impairment of loans that are not identified for evaluation on an individual basis and loans that are individually evaluated but are not individually considered impaired.

Credit unions should ensure that they do not layer their loan loss allowances. Layering is the inappropriate practice of recording in the ALLL more than one amount for the same probable loan loss. Layering can happen when a credit union includes a loan in one segment, determines its best estimate of loss for that loan either individually or on a group basis (after taking into account all appropriate environmental factors, conditions, and events), and then includes the loan in another group, which receives an addition ALLL amount.[12]

While different credit unions may use different methods, there are certain common elements that should be included in any loan loss allowance methodology. Generally, a credit union's methodology should:[13]

1. Include a detailed analysis of the loan portfolio, performed on a regular basis;
2. Consider all loans (whether on an individual or group basis);
3. Identify loans to be evaluated for impairment on an individual basis under FAS 114 and segment the remainder of the portfolio into groups of loans with similar risk characteristics for evaluation and analysis under FAS 5;
4. Consider all known relevant internal and external factors that may affect loan collectibility;
5. Be applied consistently but, when appropriate, be modified for new factors affecting collectibility;
6. Consider the particular risks inherent in different kinds of lending;
7. Consider current collateral values (less costs to sell), where applicable;
8. Require that analyses, estimates, reviews and other ALLL methodology functions be performed by competent and well-trained personnel;
9. Be based on current and reliable data;
10. Be well documented with clear explanations of the supporting analyses and rationale; and
11. Include a systematic and logical method to consolidate the loss estimates and ensure the ALLL balance is recorded in accordance with GAAP.

A systematic methodology that is properly designed and implemented should result in a credit union's best estimate of the ALLL. Accordingly, credit unions should adjust their ALLL balance, either upward or downward, in each period for differences between the results of the systematic determination process and the unadjusted ALLL balance in the general ledger.[14]

Policies and Procedures

Credit unions use a wide range of policies, procedures, and control systems in their ALLL process. Sound policies should be appropriately tailored to the size and complexity of the credit union and its loan portfolio.

In order for a credit union's ALLL methodology to be effective, the credit union's written policies and procedures for the systems and controls that maintain an appropriate ALLL should address but not be limited to:

(1) The roles and responsibilities of the credit union's departments and personnel (including the lending function, credit review, financial reporting, internal audit, senior management, audit committee, board of directors, and others, as applicable) who determine, or review, as applicable, the ALLL to be reported in the financial statements;

(2) The credit union's accounting policies for loans and loan losses, including the policies for charge-offs and recoveries and for estimating the fair value of collateral, where applicable;

(3) The description of the credit union's systematic methodology, which should be consistent with the credit union's accounting policies for determining its ALLL;[15] and

(4) The system of internal controls used to ensure that the ALLL process is maintained in accordance with GAAP and supervisory guidance.

An internal control system for the ALLL estimation process should:

(1) Include measures to ensure the reliability and integrity of information and compliance with laws, regulations, and internal policies and procedures;

(2) Reasonably ensure that the credit union's financial statements (including regulatory reports) are prepared in accordance with GAAP and ALLL supervisory guidance; and

(3) Include a well-defined loan review process containing:

(a) An effective loan grading system that is consistently applied, identifies differing risk characteristics and loan quality problems accurately and in a timely manner, and prompts appropriate administrative actions;

(b) Sufficient internal controls to ensure that all relevant loan review information is appropriately considered in estimating losses. This includes maintaining appropriate reports, details of reviews performed, and identification of personnel involved; and

(c) Clear formal communication and coordination between a credit union's credit administration function, financial reporting group, management, board of directors, and others who are involved in the ALLL determination process or review process, as applicable (e.g., written policies and procedures, management reports, audit programs, and committee minutes).

Methodology

An ALLL methodology is a system that a credit union designs and implements to reasonably estimate loan and lease losses as of the financial statement date. It is critical that ALLL methodologies incorporate management's current judgments about the credit quality of the loan portfolio through a disciplined and consistently applied process.

A credit union's ALLL methodology is influenced by credit union-specific factors, such as a credit union's size, organizational structure, business environment and strategy, management style, loan portfolio characteristics, loan administration procedures, and management information systems. However, there are certain common elements a credit union should incorporate in its ALLL methodology. A summary of common elements was provided in Application of GAAP section of this IRPS.[16]

Documentation of ALLL Methodology in Written Policies and Procedures

A credit union's written policies and procedures should describe the primary

[11] In addition, FAS 114 does not apply to loans measured at fair value or at the lower of cost or fair value, leases, or debt securities.

[12] According to the Federal Financial Institutions Examination Council's Federal Register Notice, Implementation Issues Arising from FASB Statement No. 114, Accounting by Creditors for Impairment of a Loan, published February 10, 1995, institution-specific issues should be reviewed when estimating loan losses under FAS 114. This analysis should be conducted as part of the evaluation of each individual loan reviewed under FAS 114 to avoid potential ALLL layering.

[13] Refer to paragraph 6.04–6.10 of the AICPA Audit Guide.

[14] For informational purposes, credit unions may want to refer to the guidance on materiality provided in SEC Staff Accounting Bulletin No. 99, Materiality.

[15] Further explanation is presented in the Methodology section that appears beow.

[16] Also, refer to paragraph 6.04–6.10 of the AICPA Audit Guide, 2000 edition.

elements of the credit union's ALLL methodology, including portfolio segmentation and impairment measurement. In order for a credit union's ALLL methodology to be effective, the credit union's written policies and procedures should describe the methodology:

(1) For segmenting the portfolio:

(a) How the segmentation process is performed (i.e., by loan type, industry, risk rates, etc.),

(b) When a loan grading system is used to segment the portfolio:

(i) The definitions of each loan grade,

(ii) A reconciliation of the internal loan grades to supervisory loan grades, and

(iii) The delineation of responsibilities for the loan grading system.

(2) For determining and measuring impairment under FAS 114:

(a) The methods used to identify loans to be analyzed individually;

(b) For individually reviewed loans that are impaired, how the amount of any impairment is determined and measured, including:

(i) Procedures describing the impairment measurement techniques available and

(ii) Steps performed to determine which technique is most appropriate in a given situation.

(c) The methods used to determine whether and how loans individually evaluated under FAS 114, but not considered to be individually impaired, should be grouped with other loans that share common characteristics for impairment evaluation under FAS 5.

(3) For determining and measuring impairment under FAS 5:

(a) How loans with similar characteristics are grouped to be evaluated for loan collectibility (such as loan type, past-due status, and risk);

(b) How loss rates are determined (*e.g.,* historical loss rates adjusted for environmental factors or migration analysis) and what factors are considered when establishing appropriate time frames over which to evaluate loss experience; and

(c) Descriptions of qualitative factors (*e.g.,* industry, geographical, economic and political factors) that may affect loss rates or other loss measurements.

The supporting documents for the ALLL may be integrated in a credit union's credit files, loan review reports or worksheets, board of directors' and committee meeting minutes, computer reports, or other appropriate documents and files.

ALLL Under FAS 114

A credit union's ALLL methodology related to FAS 114 loans begins with the use of its normal loan review procedures to identify whether a loan is impaired as defined by the accounting standard. Credit unions should document:

(1) The method and process for identifying loans to be evaluated under FAS 114 and

(2) The analysis that resulted in an impairment decision for each loan and the determination of the impairment measurement method to be used (i.e., present value of expected future cash flows, fair value of collateral less costs to sell, or the loan's observable market price).

Once a credit union has determined which of the three available measurement methods to use for an impaired loan under FAS 114, it should maintain supporting documentation as follows:

(1) When using the present value of expected future cash flows method:

(a) The amount and timing of cash flows,

(b) The effective interest rate used to discount the cash flows, and

(c) The basis for the determination of cash flows, including consideration of current environmental factors and other information reflecting past events and current conditions.

(2) When using the fair value of collateral method:

(a) How fair value was determined, including the use of appraisals, valuation assumptions, and calculations,

(b) The supporting rationale for adjustments to appraised values, if any,

(c) The determination of costs to sell, if applicable, and

(d) Appraisal quality, and the expertise and independence of the appraiser.

(3) When using the observable market price of a loan method:

(a) The amount, source, and date of the observable market price.

Illustration B describes a practice used by a small credit union to document its FAS 114 measurement of impairment using a comprehensive worksheet. Q&A #1 and #2 in Appendix A provide examples of applying and documenting impairment measurement methods under FAS 114.

Some loans that are evaluated individually for impairment under FAS 114 may be fully collateralized and therefore require no ALLL. Q&A #3 in Appendix A presents an example of a credit union whose loan portfolio includes fully collateralized loans and describes the documentation maintained by that credit union to support its conclusion that no ALLL was needed for those loans.

ILLUSTRATION B

DOCUMENTING AN ALLL UNDER FAS 114

Comprehensive worksheet for the impairment measurement process

A small credit union uses a comprehensive worksheet for each loan being reviewed individually under FAS 114. Each worksheet includes a description of why the loan was selected for individual review, the impairment measurement technique used, the measurement calculation, a comparison to the current loan balance, and the amount of the ALLL for that loan. The rationale for the impairment measurement technique used (e.g., present value of expected future cash flows, observable market price of the loan, fair value of the collateral) is also described on the worksheet.

ALLL Under FAS 5

Segmenting the Portfolio

For loans evaluated on a group basis under FAS 5, management should segment the loan portfolio by identifying risk characteristics that are common to groups of loans. Credit unions typically decide how to segment their loan portfolios based on many factors, which vary with their business strategies as well as their information system capabilities. Smaller credit unions that are involved in less complex activities often segment the portfolio into broad loan categories. This method of segmenting the portfolio is likely to be appropriate in only small credit unions offering a narrow range of loan products. Larger credit unions typically offer a more diverse and complex mix of loan products. Such credit unions may start by segmenting the portfolio into major loan types but typically have more detailed information available that allows them to further segregate the portfolio into product line segments based on the risk characteristics of each portfolio segment. Regardless of the segmentation method used, a credit union should maintain documentation to support its conclusion that the loans in each segment have similar attributes or characteristics.

As economic and other business conditions change, credit unions often modify their business strategies, which may result in adjustments to the way in which they segment their loan portfolio for purposes of estimating loan losses. Illustration C presents an example in which a credit union refined its segmentation method to more effectively consider risk factors and maintains documentation to support this change.

Credit unions use a variety of documents to support the segmentation of their portfolios.

ILLUSTRATION C
DOCUMENTING SEGMENTING PRACTICES

Documenting a refinement in a segmentation method

A credit union with a significant portfolio of consumer loans performed a review of its ALLL methodology. The credit union had determined its ALLL based upon historical loss rates in the overall consumer portfolio. The ALLL methodology was validated by comparing actual loss rates (charge-offs) for the past two years to the estimated loss rates. During this process, the credit union decided to evaluate loss rates on an individual product basis (e.g., auto loans, unsecured loans, or home equity loans). This analysis disclosed significant differences in the loss rates on different products. With this additional information, the methodology was amended in the current period to segment the portfolio by product, resulting in a better estimation of the loan losses associated with the portfolio. To support this change in segmentation practice, the credit review committee records contain the analysis that was used as a basis for the change and the written report describing the need for the change.

Some of these documents include:

- Loan trial balances by categories and types of loans,
- Management reports about the mix of loans in the portfolio,
- Delinquency and nonaccrual reports, and
- A summary presentation of the results of an internal or external loan grading review.

Reports generated to assess the profitability of a loan product line may be useful in identifying areas in which to further segment the portfolio.

Estimating Loss on Groups of Loans

Based on the segmentation of the portfolio, a credit union should estimate the FAS 5 portion of the ALLL. For those segments that require an ALLL,[17] the credit union should estimate the loan and lease losses, on at least a quarterly basis, based upon its ongoing loan review process and analysis of loan performance. The credit union should follow a systematic and consistently applied approach to select the most appropriate loss measurement methods and support its conclusions and rationale with written documentation. Regardless of the method used to measure losses, a credit union should demonstrate and document that the loss measurement methods used to estimate the ALLL for each segment are determined in accordance with GAAP as of the financial statement date.[18]

One method of estimating loan losses for groups of loans is through the application of loss rates to the groups' aggregate loan balances. Such loss rates typically reflect historical loan loss experience for each group of loans, adjusted for relevant environmental factors (*e.g.*, industry, geographical, economic, and political factors) over a defined period of time. If a credit union does not have loss experience of its own, it may be appropriate to reference the loss experience of other credit unions, provided that the credit union demonstrates that the attributes of the loans in its portfolio segment are similar to those of the loans included in the portfolio of the credit union providing the loss experience.[19] Credit unions should maintain supporting documentation for the technique used to develop their loss rates, including the period of time over which the losses were incurred. If a range of loss is determined, credit unions should maintain documentation to support the identified range and the rationale used for determining which estimate is the best estimate within the range of loan

[17] An example of a loan segment that does not generally require an ALLL is loans that are fully secured by deposits maintained at the lending credit union.

[18] Refer to paragraph 8(b) of FAS 5. Also, the AICPA is currently developing a Statement of Position that will provide more specific guidance on accounting for loan losses.

[19] Refer to paragraph 23 of FAS 5.

losses. An example of how a small credit union performs a comprehensive historical loss analysis is provided as the first item in Illustration D.

ILLUSTRATION D
DOCUMENTING THE SETTING LOSS RATES

Comprehensive loss analysis in a small credit union

A small credit union determines its loss rates based on loss rates over a three-year historical period. The analysis is conducted by type of loan and is further segmented by originating branch office. The analysis considers charge-offs and recoveries in determining the loss rate. The credit union also considers the loss rates for each loan grade and compares them to historical losses on similarly rated loans in arriving at the historical loss factor. The credit union maintains supporting documentation for its loss factor analysis, including historical losses by type of loan, originating branch office, and loan grade for the three-year period.

Adjustment of loss rates for changes in local economic conditions

A credit union develops a factor to adjust loss rates for its assessment of the impact of changes in the local economy. For example, when analyzing the loss rate on business real estate loans, the assessment identifies changes in recent commercial building occupancy rates. The credit union generally finds the occupancy statistics to be a good indicator of probable losses on these types of loans. The credit union maintains documentation that summarizes the relationship between current occupancy rates and its loss experience.

Before employing a loss estimation model, a credit union should evaluate and modify, as needed, the model's assumptions to ensure that the resulting loss estimate is consistent with GAAP. In order to demonstrate consistency with GAAP, credit unions that use loss estimation models typically document the evaluation, the conclusions regarding the appropriateness of estimating loan losses with a model or other loss estimation tool, and the support for adjustments to the model or its results.

In developing loss measurements, credit unions should consider the impact of current environmental factors and then document which factors were used in the analysis and how those factors affect the loss measurements. Factors that should be considered in developing loss measurements include the following:[20]

(1) Levels of and trends in delinquencies and impaired loans;

(2) Levels of and trends in charge-offs and recoveries;

(3) Trends in volume and terms of loans;

(4) Effects of any changes in risk selection and underwriting standards, and other changes in lending policies, procedures, and practices;

(5) Experience, ability, and depth of lending management and other relevant staff;

(6) National and local economic trends and conditions;

(7) Industry conditions; and

(8) Effects of changes in credit concentrations.

For any adjustment of loss measurements for environmental factors, the credit union should maintain sufficient, objective evidence to support the amount of the adjustment and to explain why the adjustment is necessary to reflect current information, events, circumstances, and conditions in the loss measurements.

The second item in Illustration D provides an example of how a credit union adjusts its business real estate historical loss rates for changes in local economic conditions. Q&A #4 in Appendix A provides an example of maintaining supporting documentation for adjustments to portfolio segment loss rates for an environmental factor related to an economic downturn in the borrower's primary industry. Q&A #5 in Appendix A describes one credit union's process for determining and documenting an ALLL for loans that are not individually impaired but have characteristics indicating there are loan losses on a group basis.

Consolidating the Loss Estimates

To verify that ALLL balances are presented fairly in accordance with GAAP and are auditable, management should prepare a document that summarizes the amount to be reported in the financial statements for the ALLL. The board of directors should review and approve this summary.

Common elements in such summaries include:

(1) An estimate of the probable loss or range of loss incurred for each category evaluated (*e.g.,* individually evaluated impaired loans, homogeneous pools, and other groups of loans that are collectively evaluated for impairment);

(2) The aggregate probable loss estimated using the credit union's methodology;

(3) A summary of the current ALLL balance;

(4) The amount, if any, by which the ALLL is to be adjusted;[21] and

(5) Depending on the level of detail that supports the ALLL analysis, detailed sub-schedules of loss estimates that reconcile to the summary schedule.

Illustration E describes how a credit union documents its estimated ALLL by

[20] Refer to paragraph 6.08 in the AICPA Audit Guide.

[21] Subsequent to adjustments, there should be no material differences between the consolidated loss estimate, as determined by the methodology, and the final ALLL balance reported in the financial statements.

adding comprehensive explanations to its summary schedule.

ILLUSTRATION E
SUMMARIZING LOSS ESTIMATES

Descriptive comments added to the consolidated ALLL summary schedule

To simplify the supporting documentation process and to eliminate redundancy, a credit union adds detailed supporting information to its summary schedule. For example, this credit union's board of directors receives, within the body of the ALLL summary schedule, a brief description of the credit union's policy for selecting loans for evaluation under FAS 114. Additionally, the credit union identifies which FAS 114 impairment measurement method was used for each individually reviewed impaired loan. Other items on the schedule include brief descriptions of loss factors for each segment of the loan portfolio, the basis for adjustments to loss rates, and explanations of changes in ALLL amounts from period to period, including cross-references to more detailed supporting documents.

Generally, a credit union's review and approval process for the ALLL relies upon the data provided in these consolidated summaries. There may be instances in which individuals or committees that review the ALLL methodology and resulting allowance balance identify adjustments that need to be made to the loss estimates to provide a better estimate of loan losses. These changes may be due to information not known at the time of the initial loss estimate (e.g., information that surfaces after determining and adjusting, as necessary, historical loss rates, or a recent decline in the marketability of property after conducting a FAS 114 valuation based upon the fair value of collateral). It is important that these adjustments are consistent with GAAP and are reviewed and approved by appropriate personnel. Additionally, the summary should provide each subsequent reviewer with an understanding of the support behind these adjustments. Therefore, management should document the nature of any adjustments and the underlying rationale for making the changes. This documentation should be provided to those making the final determination of the ALLL amount. Q&A #6 in Appendix A addresses the documentation of the final amount of the ALLL.

Validating the ALLL Methodology

A credit union's ALLL methodology is considered valid when it accurately estimates the amount of loss contained in the portfolio. Thus, the credit union's methodology should include procedures that adjust loss estimation methods to reduce differences between estimated losses and actual subsequent charge-offs, as necessary.

To verify that the ALLL methodology is valid and conforms to GAAP and supervisory guidance, a credit union's directors should establish internal control policies, appropriate for the size of the credit union and the type and complexity of its loan products. These policies should include procedures for a review, by a party who is independent of the ALLL estimation process, of the ALLL methodology and its application in order to confirm its effectiveness.

In practice, credit unions employ numerous procedures when validating the reasonableness of their ALLL methodology and determining whether there may be deficiencies in their overall methodology or loan grading process. Examples are:

(1) A review of trends in loan volume, delinquencies, restructurings, and concentrations.

(2) A review of previous charge-off and recovery history, including an evaluation of the timeliness of the entries to record both the charge-offs and the recoveries.

(3) A review by a party that is independent of the ALLL estimation process. This often involves the independent party reviewing, on a test basis, source documents and underlying assumptions to determine that the established methodology develops reasonable loss estimates.

(4) An evaluation of the appraisal process of the underlying collateral. This may be accomplished by periodically comparing the appraised value to the actual sales price on selected properties sold.

Supporting Documentation for the Validation Process

Management usually supports the validation process with the workpapers from the ALLL review function. Additional documentation often includes the summary findings of the independent reviewer. The credit union's board of directors, or its designee, reviews the findings and acknowledges its review in its meeting minutes. If the methodology is changed based upon the findings of the validation process, documentation that describes and supports the changes should be maintained.

Appendix A—ALLL Questions and Answers

Introduction

The Questions and Answers (Q&As) presented in this appendix serve several purposes, including (1) to illustrate the NCUA's views, as set forth in this IRPS, about the types of decisions, determinations, and processes a credit union should document with respect to itsALLL methodology and amounts; and (2) to illustrate the types of ALLL documentation and processes a credit union might prepare, retain, or use in a particular set of circumstances. The level and types of documentation described in the Q&As should be considered neither the minimum acceptable level of documentation nor an all-inclusive list. Credit unions are expected to apply the guidance in this IRPS to their individual facts, circumstances, and situations. If a credit union's fact pattern differs from the fact patterns incorporated in the following Q&As, the credit union may decide to prepare and maintain different

types of documentation than did the credit unions depicted in these Q&As.

Q&A #1—ALLL Under FAS 114—Measuring and Documenting Impairment

Facts: Approximately one-third of Credit Union A's business loan portfolio consists of large balance, non-homogeneous loans. Due to their large individual balances, these loans meet the criteria under Credit Union A's policies and procedures for individual review for impairment under FAS 114. Upon review of the large balance loans, Credit Union A determines that certain of the loans are impaired as defined by FAS 114.

Question: For the business loans reviewed under FAS 114 that are individually impaired, how should Credit Union A measure and document the impairment on those loans? Can it use an impairment measurement method other than the methods allowed by FAS 114?

Interpretive Response: For those loans that are reviewed individually under FAS 114 and considered individually impaired, Credit Union A must use one of the methods for measuring impairment that is specified by FAS 114 (that is, the present value of expected future cash flows, the loan's observable market price, or the fair value of collateral). Accordingly, in the circumstances described above, for the loans considered individually impaired under FAS 114, it would not be appropriate for Credit Union A to choose a measurement method not prescribed by FAS 114. For example, it would not be appropriate to measure loan impairment by applying a loss rate to each loan based on the average historical loss percentage for all of its business loans for the past five years.

Credit Union A should maintain, as sufficient, objective evidence, written documentation to support its measurement of loan impairment under FAS 114. If Credit Union A uses the present value of expected future cash flows to measure impairment of a loan, it should document the amount and timing of cash flows, the effective interest rate used to discount the cash flows, and the basis for the determination of cash flows, including consideration of current environmental factors[1] and other information reflecting past events and current conditions. When Credit Union A uses the fair value of collateral to measure impairment, Credit Union A should document how it determined the fair value, including the use of appraisals, valuation assumptions and calculations, the supporting rationale for adjustments to appraised values, if any, and the determination of costs to sell, if applicable, appraisal quality, and the expertise and independence of the appraiser. Similarly, Credit Union A should document the amount, source, and date of the observable market price of a loan, if that method of measuring loan impairment is used.

Q&A #2—ALLL Under FAS 114—Measuring Impairment for a Collateral Dependent Loan

Facts: Credit Union B has a $750,000 loan outstanding to Member X that is secured by real estate, which Credit Union B individually evaluates under FAS 114 due to the loan's size. Member X is delinquent in its loan payments under the terms of the loan agreement. Accordingly, Credit Union B determines that its loan to Member X is impaired, as defined by FAS 114. Because the loan is collateral dependent, Credit Union B measures impairment of the loan based on the fair value of the collateral. Credit Union B determines that the most recent valuation of the collateral was performed by an appraiser eighteen months ago and, at that time, the estimated value of the collateral (fair value less costs to sell) was $900,000.

Credit Union B believes that certain of the assumptions that were used to value the collateral eighteen months ago do not reflect current market conditions and, therefore, the appraiser's valuation does not approximate current fair value of the collateral. Several buildings, which are comparable to the real estate collateral, were recently completed in the area, increasing vacancy rates, decreasing lease rates, and attracting several tenants away from the borrower. Accordingly, credit review personnel at Credit Union B adjust certain of the valuation assumptions to better reflect the current market conditions as they relate to the loan's collateral.[2] After adjusting the collateral valuation assumptions, the credit review department determines that the current estimated fair value of the collateral, less costs to sell, is $575,000. Given that the recorded investment in the loan is $750,000, Credit Union B concludes that the loan is impaired by $175,000 and records an allowance for loan losses of $175,000.

Question: What type of documentation should Credit Union B maintain to support its determination of the allowance for loan losses of $175,000 for the loan to Member X?

Interpretive Response: Credit Union B should document that it measured impairment of the loan to Member X by using the fair value of the loan's collateral, less costs to sell, which it estimated to be $575,000. This documentation should include the credit union's rationale and basis for the $575,000 valuation, including the revised valuation assumptions it used, the valuation calculation, and the determination of costs to sell, if applicable.

Because Credit Union B arrived at the valuation of $575,000 by modifying an earlier appraisal, it should document its rationale and basis for the changes it made to the valuation assumptions that resulted in the collateral value declining from $900,000 eighteen months ago to $575,000 in the current period.[3]

Q&A #3—ALLL Under FAS 114—Fully Collateralized Loans

Facts: Credit Union C has $500,000 in business loans that are fully collateralized by purchased business equipment. The loan agreement for each of these loans requires the borrower to provide qualifying collateral sufficient to fully secure each loan. The member borrowers have physical control of the collateral. Credit Union C perfected its security interest in the collateral when the funds were originally distributed. On an annual basis,Credit Union C determines the market value of the collateral for each loan using two independent market quotes and compares the collateral value to the loan carrying value. Semiannually or more frequently as needed, the Credit Union C's credit administration function physically inspects the equipment. If there are any collateral deficiencies, CreditUnion C notifies the borrower and requests that the borrower immediately remedy the deficiency. Due in part to its efficient operation, Credit Union C has historically not incurred any material losses on these loans. Credit Union C believes these loans are fully-collateralized and therefore does not maintain any ALLL balance for these loans.

Question: What documentation does Credit Union C maintain to adequately support its determination that no allowance is needed for this group of loans?

Interpretive Response: Credit Union C's management summary of the ALLL includes documentation indicating that, in accordance with the credit union's ALLL policy, the collateral protection on these loans has been verified by the credit union, no probable loss has been incurred, and no ALLL is necessary. Documentation in Credit Union C's loan files includes the two independent market quotes obtained annually for each loan's collateral amount, the documents evidencing the perfection of the security interest in the collateral, and other relevant supporting documents. Additionally, Credit Union C's ALLL policy includes a discussion of how to determine when a loan is considered ''fully collateralized'' and does not require an ALLL. Credit Union C's policy requires the following factors to be considered and the credit union's findings concerning these factors to be fully documented:

1. Volatility of the market value of the collateral;
2. Recency and reliability of the appraisal or other valuation;
3. Recency of the credit union or other third party inspection of the collateral;
4. Historical losses on similar loans;
5. Confidence in the credit union's lien or security position including appropriate:
   a. Type of security perfection (e.g., physical possession of collateral or secured filing);
   b. Filing of security perfection (i.e., correct documents and with the appropriate officials), and
   c. Relationship to other liens.
6. Other factors as appropriate for the loan type

[1] Question #16 in Exhibit D–80A of EITF Topic D–80 and attachments indicates that environmental factors include existing industry, geographical, economic, and political factors.

[2] When reviewing collateral dependent loans, Credit Uniion B may often find it more appropriate to obtain an updated appraisal to estimate the effect of current market conditions on the appraised value instead of internally estimating an adjustment.

[3] In accordance with the FFIEC's **Federal Register** Notice, Implementation Issues Arising from FASB No. 114, ''Accounting by Creditors for Impairment of a Loan,'' published February 10, 1995 (60 FR 7966, February 10, 1995), impaired, collateral-dependent loans must be reported at the fair value of collateral, less costs to sell, in regulatory reports. This treatment is to be applied to all collateral-dependent loans, regardless of type of collateral.

Q&A #4—ALLL Under FAS 5—Adjusting Loss Rates

Facts: Credit Union D's field of membership (lending area) includes a metropolitan area that is financially dependent upon the profitability of a number of sponsor manufacturing businesses. These businesses use highly specialized equipment and significant quantities of rare metals in the manufacturing process. Due to increased low-cost foreign competition, several of the parts suppliers servicing these sponsor manufacturing firms declared bankruptcy. The foreign suppliers have subsequently increased prices and the sponsor manufacturing firms have suffered from increased equipment maintenance costs and smaller profit margins. Additionally, the cost of the rare metals used in the manufacturing process increased and has now stabilized at double last year's price. Due to these events, the sponsor manufacturing businesses are experiencing financial difficulties and have recently announced downsizing plans.

Although Credit Union D has yet to confirm an increase in its loss experience as a result of these events, management knows that the credit union lends to a significant number of member's for business and individual purposes whose repayment ability depends upon the long-term viability of the sponsor manufacturing businesses. Credit Union D's management has identified particular segments of its business and consumer member bases that include member borrowers highly dependent upon sales or salary from the sponsor manufacturing businesses. Credit Union D's management performs an analysis of the affected portfolio segments to adjust its historical loss rates used to determine the ALLL. In this particular case, Credit Union D has experienced similar business and lending conditions in the past that it can compare to current conditions.

Question: How should Credit Union D document its support for the loss rate adjustments that result from considering these manufacturing firms' financial downturns?

Interpretive Response: Credit Union D should document its identification of the particular segments of its business and consumer loan portfolio for which it is probable that the sponsor manufacturing business' financial downturn has resulted in loan losses. In addition, Credit Union D should document its analysis that resulted in the adjustments to the loss rates for the affected portfolio segments. As part of its documentation, Credit Union D maintains copies of the documents supporting the analysis, including relevant newspaper articles, economic reports, and economic data, and notes from discussions with individual member borrowers.

Because in this case Credit Union D has had similar situations in the past, its supporting documentation also includes an analysis of how the current conditions compare to its previous loss experiences in similar circumstances. As part of its effective ALLL methodology, Credit Union D creates a summary of the amount and rationale for the adjustment factor, which management presents to the audit committee and board for their review and approval prior to the issuance of the financial statements.

Q&A #5—ALLL Under FAS 5—Estimating Losses on Loans Individually Reviewed for Impairment but Not Considered Individually Impaired

Facts: Credit Union E has outstanding loans of $875,000 to Member Y and $725,000 to Member Z, both of which are paying as agreed upon in the loan documents. The credit union's ALLL policy specifies that all loans greater than $700,000 must be individually reviewed for impairment under FAS 114. Member Y's financial statements reflect a strong net worth, good profits, and ongoing ability to meet debt service requirements. In contrast, recent information indicates Member Z's profitability is declining and its cash flow is tight. Accordingly, this loan is rated substandard under the credit union's loan grading system. Despite its concern, management believes Member Z will resolve its problems and determines that neither loan is individually impaired as defined by FAS 114.

Credit Union E segments its loan portfolio to estimate loan losses under FAS 5. Two of its loan portfolio segments are Segment 1 and Segment 2. The loan to Member Y has risk characteristics similar to the loans included in Segment 1 and the loan to Member Z has risk characteristics similar to the loans included in Segment 2.[4]

In its determination of the ALLL under FAS 5, Credit Union E includes its loans to Member Y and Member Z in the groups of loans with similar characteristics (i.e., Segment 1 for Member Y's loan and Segment 2 for Member Z's loan). Management's analyses of Segment 1 and Segment 2 indicate that it is probable that each segment includes some losses, even though the losses cannot be identified to one or more specific loans. Management estimates that the use of its historical loss rates for these two segments, with adjustments for changes in environmental factors provides a reasonable estimate of the credit union's probable loan losses in these segments.

Question: How does Credit Union E adequately support and document an ALLL under FAS 5 for these loans that were individually reviewed for impairment but are not considered individually impaired?

Interpretive Response: As part of Credit Union E's effective ALLL methodology, it documents the decision to include its loans to Member Y and Member Z in its determination of its ALLL under FAS 5. It also documents the specific characteristics of the loans that were the basis for grouping these loans with other loans in Segment 1 and Segment 2, respectively. Credit Union E maintains documentation to support its method of estimating loan losses for Segment 1 and Segment 2, including the average loss rate used, the analysis of historical losses by loan type and by internal risk rating, and support for any adjustments to its historical loss rates. The credit union also maintains copies of the economic and other reports that provided source data.

Q&A #6—Consolidating the Loss Estimates—Documenting the Reported ALLL

Facts: Credit Union F determines its ALLL using an established systematic process. At the end of each period, the accounting department prepares a summary schedule that includes the amount of each of the components of the ALLL, as well as the total ALLL amount, for review by senior management, the Credit Committee, and, ultimately, the board of directors. Members of senior management and the Credit Committee meet to discuss the ALLL. During these discussions, they identify changes to be made to certain of the ALLL estimates. As a result of the adjustments made by senior management, the total amount of the ALLL changes. However, senior management (or its designee) does not update the ALLL summary schedule to reflect the adjustments or reasons for the adjustments. When performing their audit of the financial statements, the independent accountants are provided with the original ALLL summary schedule that was reviewed by management and the Credit Committee, as well as a verbal explanation of the changes made by senior management and the Credit Committee when they met to discuss the loan loss allowance.

Question: Are Credit Union F's documentation practices related to the balance of its loan loss allowance appropriate?

Interpretive Response: No. A credit union must maintain supporting documentation for the loan loss allowance amount reported in its financial statements. As illustrated above, there may be instances in which ALLL reviewers identify adjustments that need to be made to the loan loss estimates. The nature of the adjustments, how they were measured or determined, and the underlying rationale for making the changes to the ALLL balance should be documented. Appropriate documentation of the adjustments should be provided to the board of directors (or its designee) for review of the final ALLL amount to be reported in the financial statements. For credit unions subject to external audit, this documentation should also be made available to the supervisory committee and its independent accountants. If changes frequently occur during management or committee reviews of the ALLL, management may find it appropriate to analyze the reasons for the frequent changes and to reassess the methodology the credit union uses.

Bibliography

GAAP and Auditing Guidance

American Institute of Certified Public Accountants' Audit and Accounting Guide, Audits of Credit Unions, 2000 edition

Auditing Standards Board Statement on Auditing Standards No. 61, Communication With Audit Committees (AICPA, Professional Standards, vol. 1, AU sec. 380)

Emerging Issues Task Force Topic No. D–80, Application of FASB Statements No. 5

[4] These groups of loans do not include any loans that have been individually reviewed for impairment under FAS 114 and determined to be impaired as defined by FAS 114.

and No. 114 to a Loan Portfolio (EITF Topic D–80 and attachments), discussed on May 19–20, 1999

Financial Accounting Standards Board Interpretation No. 14, Reasonable Estimation of the Amount of a Loss (An Interpretation of FASB Statement No. 5)

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 5, Accounting for Contingencies

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of A Loan (An Amendment of FASB Statements No. 5 and 15)

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 118, Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures (An Amendment of FASB Statement No. 114)

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities—a Replacement of FASB Statement No. 125

Regulatory Guidance

Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL), December 21, 1993

United States General Accounting Office Report to Congressional Committees, Depository Institutions: Divergent Loan Loss Methods Undermine Usefulness of Financial Reports, (GAO/AIMD–95–8), October 1994

[FR Doc. 01–26935 Filed 10–25–01; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc. et al.; Notice of Consideration of Issuance of Amendments toFacility Operating License, Proposed No Significant HazardsConsideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NFP–5 issued to Southern Nuclear Operating Company, Inc. et al., (the licensee) for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

The proposed amendments would revise the Technical Specifications to allow the main control room boundary to be opened intermittently under administrative controls and to allow 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve the Main Control Room Environmental (MCREC) system which provides a radiologically controlled environment from which the plant can be operated following a design basis accident (DBA). Therefore, the MCREC system is not assumed to be the initiator of any analyzed accident. The proposed changes allow the main control room boundary to be opened intermittently under administrative control, and allow 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown. The 24 hour Completion Time is reasonable based on the low probability of a DBA occurring during this time period and SNC's commitment to implement, via administrative controls, appropriate compensatory measures consistent with the intent of 10 CFR 50, Appendix A, General Design Critieria (GDC) 19. These compensatory measures minimize the consequences of an open main control room boundary and assure that MCREC system can continue to perform its function. As such, these changes will not affect the function or operation of any other systems, structures, or components.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluted.

The proposed changes allow the main control room boundary to be opened intermittently under administrative control, and allow 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown. The 24 hour Completion Time is reasonable based on the low probability of a DBA occurring during this time period and SNC's commitment to implement, via administrative controls, appropriate compensatory measures consistent with the intent of 10 CFR 50, Appendix A, GDC 19. These compensatory measures minimize the consequences of an open main control room boundary and assure that the MCREC system can continue to perform its function. As such, these changes will not affect the function or operation of any other systems, structures, or components.

3. The propose changes do not involve a significant reduction in a margin of safety.

The proposed changes allow the main control room boundary to be opened intermittently under administrative control, and allow 24 hours to restore the main control room boundary to Operate status before requiring the plant to perform an orderly shutdown. The 24 hour Completion Time is reasonable based on the low probability of a DBA occurring during this time period and SNC's commitment to implement, via administrative controls, appropriate compensatory measures consistent with the intent of 10 CFR 50, Appendix A, GDC 19. These compensatory measures minimize the consequences of an open main control room boundary and assure that the MCREC system can continue to perform its function such that compliance with GDC 19 is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and

Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 26, 2001, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before issuance of the amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw Pittman, Pott and Trowbridge, 2300 N Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 8, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMSor if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of October 2001.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

Final Decision Related to the U.S. Department of Energy's General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories and its Yucca Mountain Site Suitability Guidelines

AGENCY: Nuclear Regulatory Commission.

ACTION: Concurrence on the U.S. Department of Energy's revision of its general guidelines for the recommendation of sites for nuclear waste repositories, and on its guidelines for determining the suitability of the site at Yucca Mountain, Nevada.

SUMMARY: This final decision sets forth the reasons of the U.S. Nuclear Regulatory Commission (''NRC'' or the ''Commission'') for concurring on the revised ''General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories'' and on the ''Yucca Mountain Site Suitability Guidelines,'' designated 10 CFR part 963, proposed by the U.S. Department of Energy (''DOE'' or the ''Department''). These draft final guidelines were submitted by DOE to the Commission for review and concurrence on May 4, 2000.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION, CONTACT: Michael P. Lee, Division of Waste Management, Environmental and Performance Assessment Branch, telephone 301/415–6677, e-mail: mpl@NRC.gov; or C. William Reamer, Division of Waste Management, High-Level Waste Branch, telephone 301/415–6537, e-mail: cbr@NRC.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 112(a) of the Nuclear Waste Policy Act of 1982 (NWPA) directed DOE to develop general siting guidelines for the recommendation of sites for characterization as potential repositories for the disposal of spent nuclear fuel and other high-level radioactive wastes (HLW). Section 112(a) also called for NRC to concur on those guidelines. DOE issued its final guidelines, in the form of 10 CFR part 960, on December 6, 1984 (49 FR 47715). The DOE guidelines defined the technical requirements that candidate sites must meet, and specified how DOE would implement its HLW repository site-selection process. The guidelines also recognized NRC jurisdiction for the resolution of differences between the guidelines and NRC's regulations governing the disposal of HLW in geologic repositories at 10 CFR part 60 and provided that DOE would obtain NRC concurrence on future revisions to the siting guidelines. NRC concurred on DOE's general siting guidelines in July 1984 (49 FR 28130).

In 1987, Congress amended the NWPA and directed DOE to characterize only the Yucca Mountain site, in Nye County, Nevada. In 1992, in the Energy Policy Act (EnPA—Public Law 102–486), Congress directed the National Academy of Sciences (NAS) to conduct a study to provide findings and recommendations on reasonable standards for protection of the public health and safety, from releases of radioactive materials stored or disposed of in a repository at the Yucca Mountain site. The EnPA also required the U.S. Environmental Protection Agency (EPA) to issue public health and safety standards consistent with the findings and recommendations of the NAS, and the NRC to modify its technical requirements and criteria to be consistent with EPA's standards. The NAS published its recommendations in August 1995.

On December 16, 1996, DOE published proposed modifications to its original 1984 guidelines (61 FR 66158). DOE's proposed amendments would have created a new subpart to part 960, addressing only the Yucca Mountain site, and were designed to concentrate the regulatory review on the analyses of overall repository performance. EPA published its final site-specific radiation standards for Yucca Mountain (40 CFR part 197) on June 13, 2001 (66 FR 32073). After publication of proposed site-specific disposal regulations for public comment on February 22, 1999 (64 FR 8640), NRC considered and affirmed NRC's final regulations on September 7, 2001.

II. DOE's Revised Siting Guidelines

In 1999, DOE decided to issue a revised proposal amending its general guidelines, in lieu of finalizing the 1996 proposed revised guidelines. Its revised proposal limited the general guidelines to the preliminary screening of potential sites for a nuclear waste repository, and added a new part 963 for determining the suitability of the Yucca Mountain site for a potential geologic repository (64 FR 67054).

DOE gave three principal reasons for its new proposal: (a) The need to provide more specificity for the criteria and methodology to be used in evaluating the suitability of the Yucca Mountain site and to better explain the legal bases for the proposal; (b) DOE's issuance, in December 1998, of the report entitled, ''Viability Assessment of a Repository at Yucca Mountain,'' which sets forth the bases for the site suitability criteria DOE is proposing to use and the methodology for applying the criteria to a design for a proposed repository at the Yucca Mountain site; and (c) the need for better alignment with EPA's and NRC's site-specific regulations, under development at the time. *See* 64 FR 67054, 67055. The public comment period for the proposed rule ended on February 14, 2000. In addition, DOE conducted two public hearings in Nevada as part of the public comment process. Overall, DOE received about 125 comments, questions, and concerns on its proposal from 45 entities and members of the public, including comments from the NRC staff, dated March 3, 2000.

In the new part 963, DOE proposes two separate determinations for evaluating the suitability of the Yucca Mountain site. Using information and data developed through its site characterization programs to date, DOE would conduct both a preclosure and a postclosure safety evaluation. The two separate, risk-based assessments are consistent with NRC's final site-specific regulation for the proposed Yucca Mountain site, 10 CFR part 63, which calls for an Preclosure Safety Assessment and Total System Performance Assessment for the two respective phases of repository activities. DOE would compare the results from each of the two analyses with the applicable EPA standards and the NRC regulations. 10 CFR part 963 also specifies the evaluation methods and criteria to be used, as well as the specific determinations to be reached by DOE. Although the revised draft final siting guidelines at part 963 are closely linked to certain licensing criteria and requirements in NRC's part 63 regulation, DOE has noted that meeting part 963 would not be the equivalent of a determination that the candidate site and the proposed design will meet all the NRC licensing requirements necessary to receive authorization to construct the proposed repository at Yucca Mountain.

In a letter dated May 4, 2000, DOE sent to the Commission, for its review and concurrence, the revised draft final siting guidelines, in the form of a proposed **Federal Register** notice

amending part 960 and containing the new part 963. Also included as part of the proposed **Federal Register** notice were a DOE analysis and response to the comments.

III. Concurrence Criteria

The Commission considered what criteria were appropriate for its concurrence in its 1984 decision-making on DOE's siting guidelines and believes that these criteria should continue to be used, to the extent that they are still appropriate. The 1984 concurrence criteria were:

1. The siting guidelines must not be in conflict with NRC's geologic disposal regulations.
2. The siting guidelines must not contain provisions that might lead DOE to select sites that would not be reasonable alternatives for an Environmental Impact Statement (EIS).
3. The siting guidelines should not contain provisions that are in conflict with NRC responsibilities embodied in NWPA, as amended.

The Commission finds that the first and the third criteria remain relevant. The second criterion is no longer relevant because the 1987 amendments to the NWPA eliminated the need for consideration of alternative repository sites in an EIS. Moreover, in providing its 1984 concurrence, DOE agreed to meet seven conditions, of which the principal two [1] were:

1. DOE was to amend its siting guidelines to recognize NRC jurisdiction over resolution of differences between the Department's siting guidelines and NRC's geologic disposal regulations.
2. DOE was to commit to obtain NRC concurrence on future siting guideline revisions.

These two conditions remain valid for the present concurrence decision.

IV. Commission Decision

The NRC staff raised three issues in its March 3, 2000, comments on DOE's 1999 proposed revised guidelines. First, the staff pointed out that there appeared to be no discussion addressing the potential matter of a conflict between the proposed revisions and the applicable NRC regulations and recommended that this issue be addressed in the statement of considerations (SOC) for the guidelines. Second, the staff noted that the SOC inappropriately included a reference to NRC's quality assurance (QA) criteria of Appendix B in 10 CFR part 50 as ''considerations'' rather than as ''pass/fail standards'' in DOE's discussion of how it has defined ''criteria.'' Staff underscored that NRC's QA criteria are factors that must be present if DOE's QA program is to be judged adequate and that any implication that NRC's QA criteria are not required should be avoided, lest confusion result as to their standing as regulatory requirements. Third, the staff noted that DOE's proposed definition of ''cladding'' conveyed the inaccurate notion that all cladding is corrosion-resistant, whereas, in reality, some spent nuclear fuels are clad in aluminum, which is not generally considered corrosion-resistant.

DOE has addressed these comments in its draft final revisions to its guidelines. With respect to the first comment, DOE has added material in its SOC explaining that the necessary consistency between the DOE and NRC regulations is obtained through the careful crafting of its regulation to conform to pertinent parts of NRC's part 63, and that any conflicts between the two are resolved through the concurrence process. With respect to the second comment, DOE's SOC now acknowledges that NRC's QA criteria are factors that must be present for anyone's QA program to be judged adequate, and that NRC's QA criteria are mandatory despite their lack of quantitative, pass-fail references. Finally, DOE has revised its definition of ''cladding'' to indicate that it is generally made of corrosion-resistant zirconium alloy or stainless steel, thereby eliminating the implication that it is always made of such material. The Commission finds that DOE acceptably addressed the NRC staff's comments.

Further, the Commission has not identified anything in DOE's revised siting guidelines that conflicts with NRC's 10 CFR part 63 regulation, as modified to be consistent with the final EPA standard for Yucca Mountain, nor has the Commission identified anything in DOE's revised siting guidelines that would conflict with NRC's responsibilities under the NWPA, as amended. With respect to the two conditions, DOE has responded acceptably, as described above, to the concerns that NRC jurisdiction be recognized for the resolution of any potential conflicts between DOE and NRC regulations. Regarding the second condition, DOE continues to commit [see 10 CFR 963.10(b)] to seek NRC concurrence on future revisions, if any, to its siting guidelines.

In summary, the Commission has determined that DOE has acceptably addressed the issues raised by the NRC staff in its March 3, 2000, letter. Further, the Commission finds: (a) that the siting guidelines are not in conflict with NRC's geologic disposal regulations at 10 CFR part 63; and (b) the siting guidelines do not contain provisions that are in conflict with NRC responsibilities embodied in the NWPA, as amended. Therefore, the Commission concurs on DOE's revised general guidelines for the recommendation of sites for nuclear waste repositories (part 960) and on its guidelines for determining the suitability of the Yucca Mountain site (part 963).

The Commission recognizes that DOE could make further changes to its revised draft final siting guidelines submitted to the Commission, for concurrence, prior to the publication of the guidelines. Consequently, the Commission's concurrence is conditional on DOE's agreement to notify NRC of any changes to the draft final guidelines (including changes to the Supplemental Information) and its agreement to retransmit the revised rulemaking package to the Commission, if any substantive changes are made, for a determination as to whether re-concurrence is needed.[2]

V. Commission Concurrence Process

Neither the NWPA nor its amendments specify any particular procedure for NRC concurrence on DOE's siting guidelines. In an earlier ruling on a petition by the Yakima Indian Nation, the Commission found that NRC's concurrence responsibility is not a rulemaking and does not require notice and opportunity for public comment (48 FR 39536). The State of Nevada and Nye County (Nevada), in May 2000, requested that the Commission provide the opportunity for public comment by interested stakeholders.

DOE's siting guidelines at part 963 are similar to, and consistent with, NRC's site-specific disposal regulations for Yucca Mountain at Part 63. Extensive public comment was obtained, on the proposed part 63,[3] through a **Federal Register** notice and the conduct of five public meetings in Nevada. Moreover, the Commission has reviewed the record of public comments on the proposed part 963 as well. Consequently, the Commission has determined that sufficient information is available in the record regarding

[1] The remaining conditions pertained to specific languate in the siting criteria, themselves, as well as clarifications and additional specificity regarding their application.

[2] We also note that DOE needs to modify the reference to ''the quality assurance (QA)criteria of Appendix B in 10 CFR part 50 * * * ''in the Supplenmental Information of its May 4, 2000, proposed **Federal Register** notice. This reference is no longer warranted in light of the incorporation of applicable part 50 QA criteria in the final part 63 rule.

[3] On September 7, 2001, the Commission approved the final rule at part 63.

stakeholder concerns such that further stakeholder involvement before the Commission's concurrence on part 963 is not necessary.

Dated this 19th day of October, 2001, at Rockville, Maryland.

For the Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–26946 Filed 10–25–01; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Board Votes To Close October 22, 2001, Meeting

By telephone vote on October 22, 2001, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that prior public notice was not possible.

ITEM CONSIDERED: 1. Emergency Capital Funding—Hazardous Materials.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, David G. Hunter, at (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 01–27175 Filed 10–24–01; 2:28 am]

BILLING CODE 7710–12–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:30 a.m., Monday, November 5, 2001; 3:30 p.m., Monday, November 5, 2001.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 5—10:30 a.m. (Closed); November 5—3:30 p.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, November 5—10:30 a.m. (Closed).

1. Financial Performance.
2. Strategic Planning.
3. Personnel Matters and Compensation Issues.

Monday, November 5—3:30 p.m. (Open)

1. Minutes of the Previous Meeting, October 1–2, 2001.
2. Remarks of the Postmaster General and CEO.
3. Tentative Agenda for the December 3–4, 2001, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 01–27176 Filed 10–24–01; 2:28 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25217; 812–11592]

Evergreen Select Fixed Income Trust, *et al.*; Notice of Application

October 22, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption 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 transactions.

SUMMARY OF 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: Evergreen Selected Fixed Income Trust; Evergreen Select Equity Trust; Evergreen Select Money Market Trust; Evergreen Municipal Trust; Evergreen Equity Trust; Evergreen Fixed Income Trust; Evergreen International Trust; Evergreen Money Market Trust; Evergreen Variable Annuity Trust (collectively, the ''Evergreen Trusts''); Evergreen Investment Management Company, LLC (''Evergreen''); any person controlling, controlled by or under common control with Evergreen (together with Evergreen, an ''Evergreen Adviser''); any other open-end management investment company and its series registered under the Act for which an Evergreen Adviser serves as investment adviser (''Future Trusts'' and together with the Evergreen Trusts, the ''Trusts'').[1]

FILING DATES: The application was filed on April 22, 1999, and amended on August 1, 2001. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

Notice or Notification 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 16, 2001 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons 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: Catherine Foley, Esq., Wachovia Corporation, c/o Evergreen Funds, 200 Berkeley Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Nadya B. Roytblat, Assistant Director, at (202) 945–0564 (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 (tel. (202) 942–8090).

Applicant's Representations

1. Each Evergreen Trust is registered under the Act as an open-end management investment company and is organized as a Delaware business trust. Currently, there are nine Evergreen Trusts comprised of one hundred and five series (together with the series of the FutureTrusts, the ''Funds''). Evergreen, a subsidiary of Wachovia Corporation (''Wachovia''),

[1] All Trusts that currently intend to rely on the order are named as applicants, and any other Trust that subsequently relies on the order will comply with the terms and conditions of the application.

and each of the Evergreen Advisers, is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). Each Evergreen Trust has entered into an investment advisory agreement with an Evergreen Adviser. Evergreen Investment Services, Inc. serves as administrator for the Funds.

2. The Funds and the Evergreen Advisers have obtained an order under section 17(d) and rule 17d–1 permitting the Funds to deposit uninvested cash balances that remain at the end of a trading day in one or more joint trading accounts (each a ''Joint Account'') to be used to enter into short-term investments.[2] The Funds and their advisers have also obtained an order permitting the Funds to invest their cash balance in one or more of the Funds that are money market funds that comply with rule 2a–7 of the Act (the ''Money Market Funds'').[3]

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments, either directly or through the Joint Account. Other Funds may borrow money from the same or similar 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 security sold by a Fund has been delayed. Currently, the Funds have credit arrangements with their custodians (*i.e.,* overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs.

4. If the Funds were to borrow money from their custodians under their current arrangements or under other credit facility arrangements with a bank, the Funds would pay interested 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.

5. Applicants request an order that would permit the Trusts, on behalf of the Funds, to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend money 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 lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their customers.

6. 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 could arise when redemptions exceed anticipated volumes and the 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.

7. Applications 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 experience a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft changes. 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 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.

8. 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 through the Joint Account in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

9. 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 from investments in overnight repurchase agreements through the Joint Account. The Bank Loan Rate for any day would be calculated by an Evergreen Adviser each day an Interfund Loan is made according to a formula established by the Board of Trustees for each Trust (the ''Trustees'') 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 25 basic points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Trustees 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 Trustees.

10. The credit facility would be administered by an Evergreen Adviser's money market investment professionals (including the portfolio manager for the Money Market Funds) and fund accounting department (collectively, the ''Cash Management Team''). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Evergreen Adviser on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further

[2] Investment Company Act Release Nos. 19827 (Nov. 1, 1993) (notice) and 19908 (Nov. 29, 1993) (order).

[3] Investment Company Act Release Nos. 24213 (Dec. 21, 1999) (notice) and 24260 (Jan. 24, 2000) (order).

communication from portfolio managers (other than the Money Market Fund portfolio managers on the Cash Management Team). Applicants expect far more available uninvested cash each day than borrowing demand. All allocations will require the approval of at least one member of the Cash Management Team who is not a Money Market Fund portfolio manager. After allocating cash for Interfund Loans, the Evergreen Adviser will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the Money Market Funds. The Money Market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Cash Management Team will allocate borrowing demand and cash available for lending among the Funds on what the Cash Management 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. The method of allocation and related administrative procedures would be approved by the Trustees on behalf of each Fund, including a majority of Trustees who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. The Evergreen Adviser would (a) monitor the Interfund Loan Rate and the other terms and conditions of the loans, (b) ensure compliance with each Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Trustees concerning any transactions by the Funds under the credit facility and the Interfund Loan Rate charged in the transactions.

13. The Evergreen Adviser would administer the credit facility as part of its duties under its existing investment advisory agreement with each Fund and would receive no additional fee as compensation for its services. Wachovia or companies affiliated with it may collect standard pricing and bookkeeping 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 loan transactions.

14. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. The prospectus of each Fund discloses that the Fund may borrow money and lend portfolio securities. The Statement of Additional Information (''SAI'') of each Fund discloses that the Fund may borrow money in the amount of 33⅓% of its total assets, and that the Fund may also borrow up to an additional 5% of its assets from banks or others. Each Fund, including the Money Market Funds, may also mortgage or pledge their securities with the same restrictions as the borrowing policy. As a fundamental policy, each Fund may lend securities or other assets if, as a result, no more than 33⅓% of its total assets would be lent to other parties.

15. Prior to establishing the credit facility, the Trustees will solicit a shareholder vote allowing certain approved Funds to lend money, within the lending limitations set forth in the application. The SAI of each Fund participating in the interfund lending arrangements will disclose all material facts about the Fund's intended participation in the credit facility.

16. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) 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 ''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 an Evergreen Adviser as their common investment adviser.

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 Commission 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 for the reasons discussed below.

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 (a) an Evergreen Adviser would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Joint Account or in the Money Market Funds; (c) the Interfund Loans would not involve a greater risk than other similar investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (e) 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 Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent 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)(J) 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 the Evergreen Adviser would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of 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; provided that, immediately after the borrowing, there is an asset coverage of at least 300 per centum 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 the 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 persons 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 Commission. Rule 17d–1 provides that in passing upon applications for exemptive relief, the Commission 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 if 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 the order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Evergreen Adviser 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; (b) more favorable to the lending Fund than the yield on the Money Market Funds (''MMF Yield'') (for those Funds that invest in the Money Market Funds); and (c) 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, the event of that 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 a 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 exceed the limits imposed by section 18 of the Act.

5. Before any Fund that has outstanding interfund borrowing 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 exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all of 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 will 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 collateral to market each day and will pledge such additional collateral as is necessary to maintain 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 equity, taxable bond or Money Market 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 5%, 7.5% or 10% respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund will 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. 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.

10. 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.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management 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 (except any portfolio manager of the Money Market Funds acting in her or his capacity as a member of the Cash Management Team). All allocations will require the approval of at least one member of the Cash Management Team who is not a Money Market Fund portfolio manager. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio manager of the Money Market Funds has access to loan demand data). The Evergreen Adviser will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio manager of the Money Market Funds.

13. An Evergreen Adviser will monitor the Interfund Loan Rates charged and the other terms and conditions of the Interfund Loans and will make quarterly reports to the Trustees concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. The Trustees, on behalf of each Fund, including a majority of the Independent Trustees will: (a) 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 such transactions; (b) establish the Bank Loan Rate formula used to determine the Interfund Loan Rate and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such 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, the Evergreen Adviser will promptly refer such a loan for arbitration to an independent arbitrator selected by the Trustees on behalf of any Fund involved in the loan who will also serve as arbitrator of disputes concerning Interfund Loans. 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 Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. 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 and maturity of the loan, the Interfund Loan Rate, the rate of interest available at the time on short-term repurchase agreements, commercial bank borrowings, the MMF Yield and such other information presented to the Trustees in connection with the review required by conditions 13 and 14.

17. The Evergreen Adviser will prepare and submit to the Trustees for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all the Funds are treated fairly. After the commencement of the operations of the credit facility, Evergreen will report on the operations of the credit facility at the Trustees' quarterly meetings.

In addition, for two years following the commencement of the use of the credit facility, the independent public accountant for each Fund will prepare an annual report that evaluates Evergreen's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report will be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it will be filed pursuant to item 77Q3 of Form N–SAR. In particular, the report will address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, and the MMF Yield, 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 the procedures established by the Trustees; and (e) that the Interfund Loan Rate 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.

18. No Fund will participate in the credit facility unless it has fully disclosed in its SAJ all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26961 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25219; File No. 812–12252]

Great American Life Insurance Company of New York, et al.

October 22, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder for the recapture of certain bonus credits.

APPLICANTS: Great American Life Insurance Company of New York (''GALIC NY''), Annuity Investors Life Insurance Company (''Annuity Investors,'' and together with GALIC NY, the ''Insurance Companies''), GALIC of New York Separate Account I (''Separate Account I''), Annuity Investors Variable Account A (''Variable Account A''), Annuity Investors Variable Account B (''Variable Account B,'' and together with Separate Account I and Variable Account A, the ''Current Accounts''), and Great American Advisors, Inc. (together with Insurance Companies and Current Accounts, the ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order to permit, under specified circumstances, the recapture of certain bonuses applied to purchase payments made under: (1) Certain deferred variable annuity contracts and certificates, described herein, that the Insurance Companies issue through any of their Current Accounts (the contracts and certificates, including certain data pages and endorsements, are collectively referred to herein as the ''Bonus Contracts''); and (2) contracts and certificates, including certain data pages and endorsements, that the Insurance Companies may issue in the future (''Future Bonus Contracts,'' and together with the Bonus Contracts, ''Contracts'') through any of their Current Accounts or through any future separate account of the Insurance Companies (''Future Accounts,'' and together with the Current Accounts, the ''Accounts''). Such Future Bonus Contracts will be substantially similar to the Bonus Contracts in all material respects. Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered through the Accounts (collectively, ''Future Underwriters'').

FILING DATE: The application was filed on September 13, 2000, and amended and restated on October 15, 2001.

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 Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 16, 2001, 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 requester'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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Carol Edwards Dunn, Esq., Great American Life Insurance Company of New York, Annuity Investors Life Insurance Company, P.O. Box 5420, Cincinnati, Ohio 45201–5420.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney at (202) 942–0685, or Keith E. Carpenter, Branch Chief, at (202) 942–0679, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

Applicants

1. GALIC NY is a stock life insurance company organized under the laws of the State of New York. GALIC NY is a wholly-owned subsidiary of Great American Life Insurance Company, a life insurance company domiciled in the State of Ohio, that is a wholly-owned subsidiary of Great American Financial Resources, Inc. (formerly known as American Annuity Group, Inc.), a publicly-traded insurance holding company. Great American Financial Resources, Inc. is indirectly controlled by American Financial Group, Inc., a publicly-traded holding company. GALIC NY serves as depositor of Separate Account I, which was established in May 1999. GALIC NY may establish one or more Future Accounts for which it will serve as depositor.

2. Annuity Investors is a stock life insurance company organized under the laws of the State of Ohio. Annuity Investors also is a wholly-owned subsidiary of Great American Life Insurance Company. Annuity Investors serves as depositor of both Variable Account A and Variable Account B, which were established in May 1995 and December 1996, respectively. Annuity Investors may establish one or more Future Accounts for which it will serve as depositor.

3. Great American Advisors, Inc. (''GAA'') (formerly known as, ''AAG Securities, Inc.'') is the principal underwriter of the Current Accounts and is the distributor of the variable annuity contracts funded through those Current Accounts. GAA is a wholly-owned subsidiary of Great American Financial Resources, Inc. GAA is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'') and is a member of the NASD. The variable annuity contracts issued by the Current Accounts are offered or will be offered through registered representatives of GAA or others who are registered broker-dealers under the Exchange Act and NASD members and who have entered into selling agreements with GAA or any Future Underwriter. GAA or any Future Underwriter may act as principal underwriter for any Future Account and distributor for any Future Bonus Contracts. A Future Underwriter also may act as principal underwriter for any of the Accounts and distributor for any of the Contracts.

4. Separate Account I is a segregated asset account of GALIC NY, and Variable Account A and Variable Account B are each segregated asset accounts of Annuity Investors. Each Account is or will be registered with the Commission as a unit investment trust under the Act. Each Account funds or will fund the variable benefits available under the Contracts issued through that Account. Units of interest in each

Account are registered or will be registered under the Securities Act of (''1933 Act'').

5. GALIC NY and/or Annuity Investors may issue Future Bonus Contracts through their respective Current Accounts or Future Accounts. That portion of the respective assets of the Current Accounts that is equal to the reserves and other contract liabilities with respect to the Current Accounts is not chargeable with liabilities arising out of any other business of GALIC NY or Annuity Investors, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to any Current Account are, in accordance with the Bonus Contracts, credited to or charged against the Current Account, without regard to other income, gains or losses of GALIC NY or Annuity Investors, as the case may be. The same will be true of any Future Accounts of either Insurance Company.

The Bonus Contracts

6. The Bonus Contracts are individual or group flexible premium deferred annuity contracts that may be issued on a tax-qualified or non-tax-qualified basis. Currently, the Bonus Contracts may be purchased: (1) With a minimum initial payment of $2,000 for tax-qualified Bonus Contracts and $5,000 for non-tax-qualified Bonus Contracts, or (2) under a periodic payment program in minimum installments of $50 per month for tax-qualified Bonus Contracts and $100 per month for non-tax-qualified Bonus Contracts. A Bonus Contract owner may make additional payments, which require a $50 minimum for either tax-qualified or non-tax-qualified Bonus Contracts, subsequent to the initial payment. The maximum single purchase payment on either a tax-qualified or non-tax-qualified Bonus Contract is $500,000 without prior approval from the respective Insurance Companies. These maximums and minimums may be different for Future Bonus Contracts, and may be prospectively changed by rider or endorsement for Bonus Contracts. Any such changes would be disclosed in the applicable prospectus(es). Future Bonus Contracts will be substantially similar in all material respects to the Bonus Contracts.

7. Each time one of the Insurance Companies receives a purchase payment from an owner of a Bonus Contract, it will credit to the owner's account value a bonus (''Bonus'') equal to 4% of each purchase payment. The Bonus will be allocated according to the allocation instructions in effect for purchase payments under the particular Bonus Contract and will generally be deemed to be a purchase payment under a Bonus Contract. This means that a contingent deferred sales charge (''CDSC''), to the extent applicable to the purchase payment, will be deducted from the Bonus amount if the Bonus is returned to the Bonus Contract owner (rather than being recaptured) on a full or partial surrender after the first Contract year. A CDSC would not be imposed with respect to any Bonus amounts that are recaptured upon cancellation during the free-look period. A CDSC is also not imposed with respect to any Bonus amounts upon full or partial surrender during the first Contract year. The CDSC is calculated separately for each purchase payment surrendered, based on the number of full years elapsed between the date of receipt of the purchase payment and the date that the request for surrender was received. No portion of the Bonus will be recaptured on a partial surrender.

8. The Insurance Companies will fund Bonus amounts from their respective general account assets. The Insurance Companies will recapture from a Bonus Contract owner: (1) Any Bonus previously credited if the owner returns the Bonus Contract for a refund during the free-look period; and (2) any Bonus previously credited to any purchase payment made during the First Contract year, if the Bonus Contract is surrendered in full during the first Contract year.

9. The owner of an individual Bonus Contract may cancel the Bonus Contract before midnight of the 20th day following the date the owner receives the Bonus Contract unless a longer period is required by state law. If the owner cancels the Bonus Contract during the applicable time period, the Bonus Contract will be void, and the Insurance Companies will refund the purchase payment(s) in full, less the Bonus amounts credited to the purchase payment(s) and plus or minus any investment gains or losses under the Bonus Contract as of the end of the valuation period during which the returned Bonus Contract or the cancellation request is received by the Insurance Company (unless a full return of purchase payments is required under state law).

10. Owners of the Bonus Contracts may allocate their purchase payments to any of the available sub-accounts or fixed account options. Each sub-account invests in shares of a corresponding registered investment company or series thereof (each, a ''Portfolio'').

11. The Bonus Contracts provide for various surrender options, annuity benefits, and annuity payout options, as well as transfer privileges among the Portfolios, dollar cost averaging, and other features. The Bonus Contracts contain the following charges: (1) a CDSC based on the number of full years elapsed between the date of receipt of the purchase payment and the date that the request for surrender was received equal to a maximum of 8% of purchase payments surrendered (including, after the first contract year, any Bonuses credited thereto), declining to 0% after seven years, which may be waived in certain circumstances as disclosed in the prospectus for the Bonus Contract; (2) a $30 annual Bonus Contract maintenance fee, which may be waived in certain circumstances as disclosed in the prospectus for the Bonus Contract; (3) a mortality and expense risk fee at an effective annual rate of 1.25%; (4) an administration charge at an effective annual rate of 0.15%, which may be waived where the Insurance Company incurs reduced sales and servicing expenses; (5) a transfer fee of $25 for each transfer in excess of twelve in any Bonus Contract year; and (6) any applicable state and local government premium taxes. In addition, assets invested in the Portfolios are charged with annual operating expenses of those Portfolios. All such fees and charges, and circumstances under which such fees and charges may be reduced or waived, are described in greater detail in the ''CHARGES AND DEDUCTIONS'' section of the prospectus contained in the Form N–4 Registration Statements of the Insurance Companies and the Current Accounts.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the policy and provisions of the Act.

2. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the Bonus Contracts and any Future Bonus Contracts funded by the Current Accounts or Future Accounts, which are issued by GALIC NY or Annuity Investors and underwritten or distributed by GAA or Future Underwriters. Applicants state that Future Bonus Contracts funded by the Current Accounts or Future Accounts will be substantially similar in all material respects to the Bonus

Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that it is not administratively feasible to track the Bonus amount in any of the Accounts after the Bonus is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the respective Accounts, including the Bonus amount, including during the period when the Bonus is not completely vested (i.e., upon cancellation during the free-look period or upon full surrender during the first contract year). As a result, during such periods, the aggregate asset-based charges assessed against a Contract owner's account value will be higher than those that would be charged if the Contract owner's account value did not include the Bonus.

4. Section 27(i) of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a ''redeemable security.'' Section 2(a)(32) of the Act defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants submit that the Bonus recapture provisions described herein would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. Applicants state that a Contract owner's interest in the amount of the Bonus allocated to his or her annuity account value upon receipt of an initial purchase payment is not vested if the Contract is returned during the applicable free-look period. Similarly, Applicants submit that a Contract owner's interest in the amount of any Bonuses allocated upon receipt of any purchase payments made during the first contract year is not vested if the Contract is surrendered in full during the first Contract year. Until or unless the amount of any Bonus is vested, Applicants argue that the applicable Insurance Company retains the right and interest in the Bonus amount, although not in the earnings attributable to that amount. Thus, when any Bonus amounts are recaptured, the Insurance Companies are simply retrieving their own assets. Because the Contract owner's interest in the Bonus is not vested, Applicants contend that the Contract owner has not been deprived of a proportionate share of the applicable Account's assets.

6. Applicants state that, with respect to the Bonus recapture upon the exercise of the free-look privilege, it would be patently unfair to allow a Contract owner to exercise that privilege and retain a Bonus amount under a Contract that has been returned for a refund after a period of a few weeks or days. If the Insurance Company could not recapture the Bonus, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

7. Applicants also state that the recapture of Bonuses relating to all purchase payments made within the first Contract year if the Contract is surrendered in full during that year is designed to afford the Insurance Companies with a measure of protection from anti-selection. The risk here is that the Contract owner could make very large purchase payments throughout the first year of the Contract and then fully surrender the Contract, thereby leaving GALIC NY or Annuity Investors less time to recover the cost of the Bonuses, to its financial detriment.

8. For the foregoing reasons, Applicants submit that the provisions for recapture of any applicable Bonus under the Bonus Contracts do not, and any provisions in Future Bonus Contracts will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Indeed, Applicants believe that a contrary conclusion would be inconsistent with a stated purpose of the National Securities Markets Improvement Act of 1996 (''NSMIA''), which is ''to amend the [act] to * * * provide more effective and less burdensome regulation.'' Sections 26(e) and 27(i), of course, were added to the Act pursuant to Section 205 of NSMIA to implement the purposes of NSMIA and the Congressional intent. Thus, the recapture of a Bonus credited to purchase payments made under the Contracts should not raise any questions as to the Insurance Companies' compliance with the provisions of Section 27(i). Nevertheless, to avoid any uncertainties as to full compliance with the Act, Applicants request exemptions from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Bonus under the circumstances described herein with respect to the Bonus Contracts and any Future Bonus Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Applicants state that the Insurance Companies' recapture of the Bonus might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that recapture of the Bonus does not violate Section 22(c) and Rule 22c–1.

11. Applicants maintain that the recapture does not involve either of the problems that Rule 22c–1 was designed to prevent, namely (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair practices such as speculative trading practices. These problems were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases in net asset value that were not yet reflected in the price, thereby diluting the value of outstanding mutual fund shares.

12. Applicants also maintain that the proposed recapture of the Bonus poses no such threat of dilution. To effect a recapture of a Bonus, the Insurance Companies will redeem interests in the Contract owner's annuity account at a price determined on the basis of current net asset value of the respective Accounts. The amount recaptured will

equal the amount of the Bonus that the applicable Insurance Company paid or will pay out of its general account assets. Although Contract owners will be entitled to retain any investment gain attributable to the Bonus, the amount of such gain will be determined on the basis of the current net asset value of the respective Accounts. Thus, no dilution will result from the recapture of the Bonus. The second problem that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, also will not occur as a result of the recapture of the Bonus.

13. Applicants argue that, because neither of the problems that Rule 22c–1 was designed to address is found in the recapture of the Bonus, Rule 22c–1 and Section 22(c) should have no application to any Bonus under the Bonus Contracts or Future Bonus Contracts. However, to avoid any uncertainty as to full compliance with the Act, Applicants request exemptions from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Bonus under the Bonus Contracts and Future Bonus Contracts.

Conclusion

For the reasons summarized above, Applicants submit that their request for exemptions from Section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-thereunder meets the standards set out in Section 6(c) of the Act. Applicants submit that the requested order should therefore be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27019 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25218; 812–12604]

Putnam American Government Income Fund, et al.; Notice of Application

October 22, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(d) of the Investment Company Act of 1940 (the ''Act'' and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit certain registered management investment companies to pay to an affiliated lending agent, and the lending agent to accept, fees based on a share of the revenues generated from securities lending transactions.

Applicants: Putnam American Government Income Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asia Pacific Growth Fund, Putnam Asset Allocation Funds, Putnam Balanced Retirement Fund, Putnam California Investment Grade Municipal Trust, Putnam California Tax Exempt Income Fund, Putnam California Tax Exempt Money Market Fund, Putnam Capital Appreciation Fund, Putnam Classic Equity Fund, Putnam Convertible Income-Growth Trust, Putnam Convertible Opportunities And Income Trust, Putnam Diversified Income Trust, Putnam Equity Income Fund, Putnam Europe Growth Fund, Putnam Florida Tax Exempt Fund. The Putnam Fund For Growth And Income Putnam Funds Trust, The George Putnam Fund Of Boston, Putnam Global Equity Fund, Putnam Global Government Income Trust, Putnam Global Growth Fund, Putnam Global Natural Resources Fund, The Putnam Fund For Growth And Income, Putnam Health Sciences Trust, Putnam High Income Convertible And Bond Fund, Putnam High Yield Advantage Fund, Putnam High Yield Municipal Trust, Putnam High Yield Trust, Putnam Income Fund, Putnam Intermediate U.S. Government Income Trust, Putnam International Growth Fund, Putnam Investment Funds, Putnam Investment Grade Municipal Trust, Putnam Investors Fund, Putnam Managed High Yield Trust, Putnam Managed Municipal Income Trust, Putnam Massachusetts Tax Exempt Income Fund, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund, Putnam Money Market Fund, Putnam Municipal Bond Fund, Putnam Municipal Income Fund, Putnam Municipal Opportunities Trust, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Investment Grade Municipal Trust, Putnam New York Tax Exempt Income Fund, Putnam New York Tax Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam OTC & Emerging Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Preferred Income Fund, Putnam Premier Income Trust, Putnam Strategic Income Fund, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Health Care Fund, Putnam Tax-Free Income Trust, Putnam Tax Smart Funds Trust, Putnam U.S. Government Income Fund, Putnam Utilities Growth And Income Fund, Putnam Variable Trust, Putnam Vista Fund, Putnam Voyager Fund, and Putnam Voyager Fund II (each a ''Fund,'' collectively the ''Funds''), Putnam Investment Management, LLC (the ''Adviser'') and Putnam Fiduciary Trust Company (''PFTC'').

FILING DATES: The application was filed on August 16, 2001, and amended on September 18, 2001.

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 applicant 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 15, 2001, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Applicants, c/o John W. Gerstmayr, Esq., Ropes & Gray, One International Place, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Royblat, Assistant Director, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Funds, each a Massachusetts business trust, are registered under the Act as management investment companies. Some of the Funds consist of multiple investment portfolios. The Adviser serves as investment adviser to each Fund. PFTC is the custodian and the shareholder servicing and distribution agent for each Fund.

Applicants also request relief for any other registered management investment companies and series thereof that in the future are advised by the Adviser, or an entity controlling, controlled by, or under common control with, the Adviser (''Future Funds''). The Funds and the Future Funds are collectively referred to as the ''Funds''.[1]

2. Each Fund is authorized to lend its portfolio securities. The Funds currently participate in a securities lending program using unaffiliated third-party lending agents. The Funds seek to participate from time to time as a lender in a securities lending program administered by PFTC as lending agent (the ''Program''). Under the Program, PFTC enters into securities lending agreements on behalf of a Fund with certain unaffiliated borrowers that wish to borrow securities owned by the Fund and that have been pre-approved by that Fund or the Adviser (each a ''Borrower''). Applicants represent that the duties performed by PFTC as lending agent will not exceed those set forth in *Norwest Bank, N.A.* (pub. avail. May 25, 1995).

3. Securities lending collateral will take different forms. With respect to loans that are collateralized by cash, the Borrower will be entitled to receive a fee based on the amount of cash collateral. The Fund is compensated on the spread between the net amount earned on the investment of cash collateral and the Borrower's fee. In the case of collateral other than cash, the Fund will receive a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities specified in the loan program. Applicants seek relief to permit Funds to pay, and PFTC to accept, fees based on a share of the revenues generated from securities lending transactions pursuant to the Program.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or an affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participant of the investment companies is on a basis different from or less advantageous than that of the other participants.

2. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person and, if the other person is an investment company, its investment adviser. The Adviser is an affiliated person of each Fund. Because PFTC and the Adviser are under the common control of Putnam Investments, LLC, PFTC is an affiliated person of an affiliated person of each Fund. Accordingly, applicants request an order under section 17(d) and rule 17d–1 under the act to the extent necessary to permit each Fund to pay, and PFTC to accept, fees based on a share of the revenues generated from securities lending transactions.

3. Applicants propose that each Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with PFTC, as lending agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of PFTC as lending agent for a Fund and implementation of the proposed fee arrangement, a majority of the board of trustees of the Fund (''Board'') (including a majority of the trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Disinterested Trustees'') will determine that (i) the contract with PFTC is in the best interests of the Fund and its shareholders; (ii) the services to be performed by PFTC are required for the Fund; (iii) the nature and quality of the services provided by PFTC are at least equal to those provided by other offering the same or similar services; and (iv) the fees charged by PFTC are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Fund's contract with PFTC for lending agent services will be reviewed at least annually and will be approved for continuation only if a majority of the Board of the Fund (including a majority of the Disinterested Trustees) make the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby PFTC will be compensated as lending agent based on a percentage of the revenue generated by a Fund's participation in the Program, the Board of the Fund will obtain competing quotes with respect to lending agencies fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board of each Fund, including a majority of the Disinterested Trustees, will (i) determine quarterly the loan transactions during the prior quarter were affected in compliance with the conditions and procedures set forth in the application; and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and any modifications) described in the application; and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the Borrower, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The securities lending program of each Fund will comply with all present and future applicable guidelines of the Commission and staff regarding securities lending arrangements.

2. The approval of a Fund's Board, including a majority of Disinterested Trustees, shall be required for the initial and subsequent approvals of PFTC's service as lending agent for the Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to the Fund, and for any periodic review of loan transactions for which PFTC acted as lending agent pursuant to the Program.

[1] All existing entities that currently intend to rely on the requested relief have been named as applicants. Any existing or future entity that will rely on the relief in the future will comply with the terms and conditions contained in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 01–27018 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 29, 2001: closed meetings will be held on Monday, October 29, 2001 and Tuesday, October 30, 2001, at 10:00 a.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i) 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meetings scheduled for Monday, October 29, 2001 and Tuesday, October 30, 2001, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 23, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27106 Filed 10–24–01; 12:20 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44958; File No. SR-Amex-2001–71]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to Priority on Multiple Price Transactions

October 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 6, 2001, 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 Amex proposes to amend Exchange Rule 950 to add Commentary .05 relating to priority on multiple price transactions. The following is the text of proposed Commentary .05 (all new language):

.05 Purchase Priority. If a member purchases one or more option contracts of a particular series at a particular price or prices such member shall, at the next lower price at which a member other than an Exchange Broker or specialist representing a customer agency order entitled to priority pursuant to Rule 950(c), have priority in purchasing up to the equivalent number (or a reasonably large number) of option contracts of the same series that he purchased at the higher price or prices, but only if his bid is made promptly and the purchase so effected represents the opposite side of a transaction with the same order or offer as the earlier purchase or purchases. Sale Priority. If a member sells one or more option contracts of a particular series at a particular price or prices, he shall, at the next higher price at which a member other than a Exchange Broker or specialist representing a customer agency order entitled to priority pursuant to Rule 950(c), have priority in selling up to the equivalent number (or a reasonably larger number) of option contracts of the same series that he sold at the lower price or prices, but only if his offer is made promptly and the sale so effected represents the opposite side of a transaction with the same order or bid as the earlier sale or sales.

Two or more members entitled to priority. If the bids or offers of two or more members are both entitled to priority in accordance with paragraph (a) or paragraph (b), it shall be afforded them insofar as practicable, on a pro-rate basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 950 by adding Commentary .05 to provide for multiple price priority in the execution of equity option transactions. The Exchange believes that the proposal is designed to promote price improvement in the execution of equity option orders and provide incentives to registered options traders (''ROTs'') and specialists in the execution of such orders by providing ROTs and specialists with priority in the execution of those orders in which a ROT or specialist improves upon the displayed quotation.

In particular, proposed Commentary .05 provides for member price priority with respect to purchases (sales) up to an equivalent number of options contracts of the same series purchased at the higher price or prices (or sold at the lower price or prices for sales) if the bid (offer) is made promptly and the purchase (sale) effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchases (sale). A floor broker or specialist representing a public customer order entitled to priority pursuant to Amex Rule 950(c) will continue to retain such priority under proposed Commentary .05.

For example, application of the proposal would operate as follows: If the displayed quotation is 6 (bid), 6.50

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(asked), and a market or marketable limit order to sell 100 contracts is received, a ROT or specialist that executes part of the 100 contract order at the improved price of 6.20 would be granted priority in executing additional contracts in a quantity up to the number of contracts executed at the improved price. Therefore, in this example, because the ROT stepped up to bid 20 contracts at a price of 6.20, he would be granted priority in the execution of up to 20 contracts at 6. In each instance, the specialist or ROT that betters the market would be able to receive a fill at the next lower or inferior price. Moreover, if two (2) or more members were entitled to priority for certain multiple price transactions, such priority would be provided on a pro rata basis to the extent practicable.

The Exchange believes the proposal will provide incentive for both ROTs and specialists to improve upon displayed quotations. As a result, the Exchange believes the proposal will enhance competitive market making on the Exchange and offer additional price improvement for customer orders. The Exchange believes that the proposed rule is similar to rules that are currently in place at other options exchanges.[3]

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, to promote just and equitable principles of trade. to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Amex has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from September 6, 2001, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–2001–71 and should be submitted by November 16, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26957 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44961; File No. SR–NYSE–2001–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 103A To Delete an Unused Measure of Specialist Performance

October 19, 2001.

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 August 29, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which items have been prepared by the NYSE. 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 NYSE proposes to delete one of the performance measures for specialists under Exchange Rule 103A. The test of the proposal is below. Deletions are in brackets. Specialist Stock Reallocation and Member Education and Performance Rule 103A(a)(1) In order to ensure that a high level of market quality and performance in Exchange listed securities is achieved and maintained, the Market Performance Committee, under the authority granted in its Charter, shall develop and administer systems and procedures, including the determination of specific kinds of data to be reviewed and the establishment of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not all or particular specialist units need to take actions to improve their performance. Based on such determinations, the Market Performance

[3] *See* CBOE Rule 6.47 and PCX Rule 6.76.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Committee shall take steps as described in this rule, to encourage performance improvement and to improve or sustain market quality in appropriate cases.

* * * * *

Supplementary Material

.10 Performance Improvement Action Criteria.—The Market Performance Committee shall initiate a Performance Improvement Action as described in paragraph (b) above whenever a specialist unit does not meet any standard of acceptable performance as specified below.

(A) No change.

(B) No change.

(C) No change.

(D) Market Share

(i) in any case where the Market Performance Committee finds that a specialist unit's overall percentage of the total share volume as reported on the Consolidated Transaction Reporting System in any of its registered securities has declined significantly within two consecutive quarters and further determines that the reason(s) for the decline can be attributed to factors within the control of the specialist unit.]

* * * * *

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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 103A to delete an unused measure of specialist performance.

Currently, NYSE Rule 103A provides authority for the Market Performance Committee (''MPC'') to establish and administer measures of specialist performance, conduct performance improvement actions where a specialist unit does not meet the performance standards in the Rule, and reallocate stocks if a unit does not achieve its specified goals when subject to a performance improvement action. The performance standards in the Rule include the Specialist Performance Evaluation Questionnaire, timeliness of stock openings, SuperDot order turnaround, administrative message responses and market share. This latter provision refers to a significant decline in market share, as measured by share volume, in two consecutive quarters where the decline is determined to be attributable to factors within the control of the specialist unit.

At the time the Exchange adopted the market share measure, it was intended that the Exchange would develop criteria as to what constitutes a ''significant decline'' before the market share performance standard could be enforced. However, criteria were never developed, and the MPC has never used the market share standard as a performance measure. The Exchange, therefore, is proposing to eliminate the provision from NYSE Rule 103A.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5),[4] in particular, because it should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received 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 NYSE consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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 the Commission's Pubic 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 No. SR–NYSE–2001–34 and should be submitted by November 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 01–26958 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44963; File No. SR–PHLX–2001–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Fee for Installing and Maintaining Tethers on the Options Trading Floor

October 19, 2001.

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 August 31, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Phlx amended the proposed rule change on October 15, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to adopt a Tether[4] Initial Connectivity Fee of $1,100 and a Tether Monthly Service Fee of $150 for installing and thereafter maintaining tethers that allow a hardwire connection to an existing communication network (local area network) on the Exchange's options trading floor.

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 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. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of dues, fees and charges to adopt a Tether Initial Connectivity Fee of $1,100 and a Tether Monthly Service Fee of $150 for installing and thereafter maintaining tethers that allow a hardwire connection to an existing communication network (local area network) on the Exchange's options trading floor. Each tethering device will incur one initial connectivity fee, and thereafter may be transferred to another user as well as to another location on the floor without incurring any additional connectivity fee. The connectivity and monthly fees will be imposed on the users of such tethers and communication network, namely registered options traders and floor brokers (but not specialists) on the options trading floor.

The Exchange has had a wireless communication network on its options and other trading floors. Due to increases in bandwidth demands and the use of applications by traders, namely on the options floor, that are not designated to effectively operate on a shared wireless network, the Exchange has determined to augment its wireless network with hardwire access to an existing local area network that would allow users on the options trading floor to connect with communications networks of Exchange member firms. The Exchange is installing hardwire tethers at trading posts across the options trading floor and will maintain an existing communication network at considerable cost to the Exchange.[5] The Exchange believes that the proposed fees are equitable and reasonable in that they are based on actual and estimated expenses incurred in installing and maintaining the tethered connections.[6]

In the case of a newly installed tether, the initial connectivity fee commences upon installation and the monthly fee commences in the first full calendar month after installation is completed.[7] For instance, installation on September 1 would trigger a connectivity fee on September 1 and a monthly fee beginning October 1 (but not September 1).

2. Statutory Basis

The Exchange believes that is proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(4),[9] in particular, in that it is an equitable allocation of reasonable fees among the Exchange's members because the members who pay the additional amount for the tethers incur the benefit of their use and access to a communication network.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder.[11] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of Amendment No. 1 to 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, as amended, 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 Room. Copies of such filing will also be available for inspection and copying it the principal office of the Phlx. All submissions should refer to the File No.

[3] The Phlx submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety (''Amendment No. 1'').

[4] A tether is a hardwire connection to an existing Exchange communication network. It would augment the current wireless network on the options floor and allow users to connect their handheld devices to the existing Exchange communication network and thereby interface with member firm communication networks.

[5] The decision to install tethers and augment a network on a trading floor is solely within the Exchange's discretion.

[6] The restrictions of Exchange Rule 606 and any other rules applicable to communications would apply to all communications via the tethers. The Exchange intends in the near future to propose amendments to Rule 606 and any other relevant rules to clarify their applicability to tethers.

[7] This fee is eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owned to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

SR–Phlx–2001–84 and should be submitted by November 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26959 Filed 10–25–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

AGENCY: Small Business Administration.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before December 26, 2001.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW, Suite 8300, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, (202) 205–7528 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: 7(a) Loan Closing Forms.

Form No's: 159, 160, and 160A.

Description of Respondents: 7(a) Participants.

Annual Responses: 45,000.

Annual Burden: 135,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–27045 Filed 10–25–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Announcement of the Extension of the LowDoc and SBAExpress Pilot Loan Programs

AGENCY: Small Business Administration.

ACTION: Notice of pilot extension.

SUMMARY: The U.S. Small Business Administration (SBA) announces extension of the LowDoc and SBAExpress pilot loan programs until July 1, 2002. This will allow time for the Agency to fully examine possible modifications and enhancements and to further consult with regulatory and lending institutions and with the small business community about desirable changes to the program.

The LowDoc and SBAExpress pilot loan programs were established in 1993 and 1995, respectively, to increase the number of smaller SBA loans by streamlining the application process for those loans, and to test the portfolio impact of transferring additional authority to SBA lenders.

FOR FURTHER INFORMATION CONTACT: LeAnn Oliver, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416; telephone (202) 205–6490.

Dated: October 22, 2001.

Jane Palsgrove Butler,

Associate Administrator for Financial Assistance.

[FR Doc. 01–27046 Filed 10–25–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that SBA will publish the indexed maximum Leverage amounts each year in a notice in the **Federal Register**.

Accordingly, effective the date of publication of this Notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

If your leverageable capital is:	Then your maximum leverage is:
(1) Not over $18,600,000	300 percent of Leverageable Capital.
(2) Over $18,600,000 but not over $37,200,000	$55,800,000 + [2 x (Leverageable Capital – $18,600,000)].
(3) Over $37,200,000 but not over $55,900,000	$93,000,000 + (Leverageable Capital – $37,200,000).
(4) Over $55,900,000	$111,700,000.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: October 22, 2001.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 01–27047 Filed 10–25–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3800]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, 6 December, 2001, in Room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593. The purpose of this meeting will be to report the results of the International Conference on the Control of Harmful Anti-fouling Systems for Ships (AFS Conference) held at the International Maritime Organization headquarters in London, October 2001. In addition, the Subcommittee will discuss plans to prepare a ratification package for transmittal to the Senate supporting the Convention resulting from the AFS Conference.

Documents associated with the AFS Conference may be requested by writing to the address below or via the Internet at:*http://www.uscg.mil/hq/g-m/mso/mso4/mepc.html*.

Members of the public are invited to attend this meeting up to the seating capacity of the room. For further

[11] 17 CFR 240.19b–4(f)(2).

information, or to submit views in advance of the meeting, please contact Lieutenant Beck, U.S. Coast Guard, Environmental Standards Division (G–MSO–4), 2100 Second Street, SW., Washington, DC 20593–0001; telephone: (202) 267–0713; fax: (202) 267-4690; or e-mail: *dbeck@comdt.uscg.mil*.

Dated: October 18, 2001.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 01–27011 Filed 10–25–01; 8:45 am]

BILLING CODE 4710–70–P

DEPARTMENT OF STATE

[Public Notice 3801]

Shipping Coordinating Committee Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, December 20, 2001, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting will be to review the U.S. positions on the thirty-third session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) to be held at IMO headquarters in London, January 21–25, 2002.

The primary matters to be considered include:

1. Training and certification of maritime pilots;
2. Unlawful practices associated with certificates of competency (*i.e.,* forged certificates);
3. Follow-up Action to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW 95) Conference;
4. Training of crew in Launching/Recovering Operations of Fast Rescue Boats and Means of Rescue in Adverse Weather Conditions;
5. Large Passenger Vessels;
6. Validation of an IMO model course on assessment of competence; and
7. Follow-up Action to the 1995 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (1995 STCW F) Conference.

Documents associated with this Conference may be requested by writing to the address below. Please note that hard copies of documents associated with this Conference will not be available at this meeting.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Lieutenant Commander Harden, U.S. Coast Guard, Maritime Personnel Qualifications Division (G–MSO–1), 2100 Second Street, SW., Washington, DC 20593–0001; telephone: (202) 267–0229; fax: (202) 267–4570; or e-mail: *lharden@comdt.uscg.mil*.

Dated: October 18, 2001.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 01–27012 Filed 10–25–01; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 3824]

Privacy Act of 1974, as Amended; Creation of a New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, STATE–03, pursuant to the provisions of the Privacy Act of 1974, as amended [5 U.S.C. 552a(r)], and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on October 16, 2001.

STATE–03 is being implemented by the Department of State to facilitate its responsibility for advising the domestic and foreign communities about United States international economic policy.

Any persons interested in commenting on this new system of records may do so by submitting comments in writing to Margaret Peppe, Chief; Programs and Policies Division; Office of IRM Programs and Services; A/RPS/IPS/PP; U.S. Department of State, SA–2; Washington, DC 20522–6001.

This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

This new system description, ''Bureau of Economic and Business Affairs Contact List, STATE–03'' will read as set forth below.

Dated: October 16, 2001.

William A. Eaton,

Assistant Secretary for the Bureau of Administration, Department of State.

STATE–03

SYSTEM NAME:

Bureau of Economic and Business Affairs Contact List.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State; 2201 C Street, NW.; Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Bureau of Economic and Business Affairs' contacts from business, labor, agricultural and non-government organizations, and others working in the international economic arena as well as individuals who are interested in or request information about economic issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may include identifying information, such as, but not limited to name, mailing address, e-mail address, telephone number, fax number and the profession of the individuals covered by the system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of service).

PURPOSE(S):

The information contained in this system of records is collected and maintained by the Bureau of Economic and Business Affairs, Office of Policy Analysis and Public Diplomacy in the administration of its responsibility for disseminating information regarding U.S. international economic policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Bureau of Economic and Business Affairs Contact List is used for:

- Inviting individuals to Department briefings on international economic issues;
- Disseminating speeches and articles on economic issues by Department officials; and
- Providing U.S. government fact sheets on major international economic issues.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its

annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW.; Washington, DC 20522–6001.

SYSTEM MANAGER(S) AND ADDRESS:

Director; Systems Administration; Bureau of Economic and Business Affairs; Department of State; 2201 C Street, NW.; Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of Policy Analysis and Public Diplomacy might have records pertaining to themselves should write to the Director; Office of IRM Programs and Services; Department of State; SA–2; 515 22nd Street NW.; Washington, DC 20522–6001. The individual must specify that he/she wishes the Bureau of Economic and Business Affairs Contact List to be checked. At a minimum, the individual should include: name, date and place of birth, current mailing address and zip code, signature, and preferably his/her social security number.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records. The records may also include information obtained from the Bureau of Economic and Business Affairs officials who have an association or working relationship with the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–27014 Filed 10–25–01; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of an opened Meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold an opened meeting on November 13, 2001, from 9 a.m. to 3 p.m.

DATES: The meeting is scheduled for November 13, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held in Conference Room 3720, of the Minority Business Development Agency (MBDA), located at 26 Federal Plaza, New York, NY, 10278.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg, Pam Wilbur or Kelly Parsons (principal contacts), at (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the agenda topics to be addressed will be:

- Presentation by officials from the Small Business Administration (SBA), MBDA, U.S. Customs, Federal Emergency Management Agency (FEMA), the New York City Mayor's office, the New York City Comptroller, the New York City public advocate, the New York City Fire Department, and a Wall Street Journal journalist; and
- Presentation by a New York City USFCS officer.

Elizabeth A. Gianini,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01–27007 Filed 10–25–01; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for comments on what action the President should take under section 203 of the Trade Act of 1974, as amended, (19 U.S.C. 2253) to facilitate efforts by the domestic industries producing certain steel products to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

SUMMARY: This publication gives notice that the Trade Policy Staff Committee (TPSC) is requesting comments from interested persons related to the recommendation that the interagency group established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) (interagency group) makes as to what action the President should take under section 203(a) of the Trade Act of 1974, as amended, (19 U.S.C. 2253(a)) (Trade Act) to facilitate efforts by the domestic industries producing certain steel products to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

The steel products covered by this notice are: (1) Carbon and alloy steel slabs, plate (including cut-to-length plate and clad plate), hot-rolled sheet and strip (including plate in coils), cold-rolled sheet and strip (other than grain-oriented electrical steel), and corrosion-resistant and other coated sheet and strip; (2) carbon and alloy hot-rolled bar and light shapes; (3) carbon and alloy cold-finished bar; (4) rebar; (5) carbon and alloy welded tubular products (other than oil country tubular goods); (6) carbon and alloy flanges, fittings, and tool joints; (7) stainless steel bar and light shapes; (8) stainless steel rod; (9) carbon and alloy tin mill products; (10) tool steel, all forms; (11) stainless steel wire; and (12) stainless steel flanges and fittings. On October 22, the U.S. International Trade Commission (ITC) found that increased imports of the products listed in (1) through (8) are a substantial cause of serious injury or the threat of serious injury to the domestic industries producing those products. The Commissioners voting were equally divided with respect to the determination whether increased imports of products listed in (9) through (12) are a substantial cause of serious

injury or the threat of serious injury to the domestic industry producing those products.

The TPSC is requesting comments on actions that the commenting person or entity intends to take to facilitate the positive adjustment to import competition; requests for exclusions of products from any increased duty, tariff-rate quota, or quantitative restriction that the President may impose under section 203(a) of the Trade Act; and comments on what action, if any, the President should take under section 203(a) of the Trade Act in response to each affirmative finding of serious injury or threat thereof to a domestic industry announced by the ITC.

DATES: Written proposals on adjustment actions should be submitted no later than November 5, 2001; responses to proposals should be submitted no later than November 19, 2001. Requests for the exclusion of specific products from any action under section 203(a) should be submitted by noon on November 13, 2001; responses to requests should be submitted no later than November 27, 2001. Written comments on what action, if any, the President should take under section 203(a) of the Trade Act should be submitted no later than noon on December 28, 2001; responses to written comments should be submitted no later than noon on January 8, 2002.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 17th Street, NW., Washington, DC 20508 (202) 395–3475. All other questions should be addressed to Andrew Stephens, Director for Steel Trade Policy, Office of the USTR (202) 395–6160.

SUPPLEMENTARY INFORMATION: On October 22, 2001, the ITC issued affirmative determinations under section 202(b) of the Trade Act (22 U.S.C. 2252(b)) that (1) carbon and alloy steel slabs, plate (including cut-to-length plate and clad plate), hot-rolled sheet and strip (including plate in coils), cold-rolled sheet and strip (other than grain-oriented electrical steel), and corrosion-resistant and other coated sheet and strip; (2) carbon and alloy hot-rolled bar and light shapes; (3) carbon and alloy cold-finished bar; (4) rebar; (5) carbon and alloy welded tubular products (other than oil country tubular goods); (6) carbon and alloy flanges, fittings, and tool joints; (7) stainless steel bar and light shapes; and (8) stainless steel rod are being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing those products. The Commissioners voting were equally divided with respect to the determination under section 202(b) of the Trade Act as to whether increased imports of (9) carbon and alloy tin mill products; (10) tool steel, all forms; (11) stainless steel wire; and (12) stainless steel flanges and fittings are being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing those products. The ITC is in the process of deciding what action under section 202(e) of the Trade Act to recommend that would address the serious injury, or threat thereof, to the domestic industries and most effectively facilitate the efforts of the domestic industries to make positive adjustments to import competition. The ITC must issue a report on its determinations and recommendations to the President no later than December 19, 2001.

Pursuant to section 203(a)(1)(C) of the Trade Act, the interagency group will subsequently make a recommendation to the President as to what action, if any, to take under section 203(a)(1)(A) of the Trade Act. In making its recommendation, the interagency group will take into account the factors listed in Section 203(a)(2), including the objectives and actions specified in any adjustment plans submitted under section 202(a)(4) of the Trade Act and any individual commitments under section 202(a)(6) of the Trade Act. The interagency group will also consider and make a recommendation with regard to any request for exclusion of a product from any import relief provided under section 203.

In light of the number of articles subject to the ITC's determination, the number of persons who may wish to comment on the action that the President may take under section 203, and the complexity of the issues involved, the TPSC has decided to adopt special guidelines for the submission of comments and the conduct of meetings with interested persons.

Written Proposals on Adjustment Actions

The TPSC invites written proposals from any

- Firm in the domestic industries;
- Certified or recognized union or group of workers in the domestic industries;
- State or local community;
- Trade association representing the domestic industries; or
- Any other interested person or group of interested persons

regarding the actions that the commenting person or entity intends to take to facilitate the positive adjustment to import competition.

Written proposals on adjustment actions should be as specific as possible and should:

(a) Assess current problems affecting the industries' ability to compete with imports;

(b) Indicate the types of actions that workers and firms will undertake during a period of import relief to improve the ability of the industries to compete after relief terminates or to facilitate adjustment to increased import competition;

(c) Recommend types of actions that may be taken by Federal agencies or departments to assist the domestic industries' efforts either to enhance their competitiveness or to adjust to import competition; and

(d) Explain how import relief will assist in achieving these objectives.

Written proposals on adjustment actions should be submitted no later than noon on November 5, 2001.

The TPSC also invites any person or entity listed above to submit a written comment on any written proposal on positive adjustment actions. Written comments should be as specific as possible, including recommendations, and should be submitted no later than noon on November 19, 2001.

Requests To Exclude Products From Import Relief Under Section 203

The TPSC will consider requests by a producer, importer, or purchaser of certain steel products for the exclusion of a particular product, defined in terms of its unique physical characteristics, from any increased duty, tariff-rate quota, or quantitative restriction that the President may impose under section 203(a) of the Trade Act. Any such request must be made in writing, and contain the following information:

(a) The designation of the product under a recognized standard or certification (*e.g.,* ASTM, DIN), or the commercial name for the product and the HTS number under which the product enters the United States;

(b) A description of the product based on physical characteristics (*e.g.,* chemical composition, metallurgical properties, dimensions, surface quality) so as to distinguish the product from products for which exclusion is not sought;

(c) The basis for requesting an exclusion;

(d) The names and locations of any producers, in the United States and foreign countries, of the product;

(e) Total U.S. consumption of the product, if any, by quantity and value for each year from 1996 to 2000, and projected annual consumption for each year from 2001 to 2005, with an explanation of the basis for the projection;

(f) Total U.S. production of the product for each year from 1996 to 2000, if any; and

(g) The identity of any U.S.-produced substitute for the product, total U.S. production of the substitute for each year from 1996 to 2000, and the names of any U.S. producers of the substitute.

Requests should be as specific as possible. If precise data are not available, the request should include estimates, and describe in detail the basis for making the estimate. All requests should be submitted by noon on November 13, 2001.

The TPSC invites responses to any request for exclusion submitted in accordance with this notice. Responses should provide, with as much specificity as possible, any data, views or recommendations relevant to the TPSC's consideration of the request. All responses should be submitted by noon on November 27, 2001.

The TPSC may disregard any request for exclusion or response to a request for exclusion submitted after the specified time and date.

TPSC Evaluation of Options for Action Under Section 203

The TPSC will begin its evaluation of options for action by the President under section 203 after the ITC issues its report on serious injury and recommended remedy. As part of that process, the TPSC invites written comments from interested persons on what action, if any, the President should take under section 203(a) of the Trade Act in response to each affirmative determination of injury or threat thereof to a domestic industry made by the ITC. Written comments should be as specific as possible, including data, views and recommendations, and may address the following options authorized under section 203(a)(3):

(a) Whether to take an action in the form of an increase in duties, a tariff-rate quota, a quantitative restriction, or some combination of such actions on an imported article covered by an affirmative determination by the ITC and, if so, the rate of any duty, rate and affected quantity of any tariff-rate quota, or level of any quantitative restriction;

(b) The duration of any action;

(c) Whether to provide trade adjustment assistance under chapter 2 of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*), or any other form of adjustment assistance, to the domestic industries and, if so, the nature of the assistance;

(d) Whether to proclaim procedures to allocate among importers by the auction of import licenses quantities of any product that are permitted to be imported into the United States;

(e) Whether to negotiate agreements with foreign countries limiting the export from those countries and import into the United States of an article subject to the ITC's affirmative determination;

(f) Whether to initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;

(g) Whether to submit to Congress legislative proposals to facilitate the efforts of the domestic industries to make positive adjustments to import competition; and

(h) Whether the President should take any other action under the authority of law.

Written comments should be submitted no later than noon on December 28, 2001.

The TPSC invites responses to any written comments submitted in accordance with this notice. Responses should provide, with as much specificity as possible, any data, views or recommendations relevant to the TPSC's consideration of the comments. All responses should be submitted no later than noon on January 8, 2002.

Written Comments

Persons submitting written comments, requests, or other information in accordance with this notice should, no later than the date and time listed above, either send twenty (20) copies by U.S. mail, first class, postage prepaid, to Gloria Blue at the address listed above or transmit a single copy electronically to *FR0001@ustr.gov.* A document sent by U.S. mail will be considered timely only if it is postmarked on or before the relevant date and time. A document transmitted electronically will be considered timely if received on or before the relevant date and time. The TPSC will not accept submissions delivered by messenger or commercial overnight delivery service. Any submission more than five (5) pages long should be accompanied by a table of contents and a concise executive summary. The TPSC also suggests that requests for exclusion and responses to requests for exclusion be no more than ten (10) pages in length, and that all other submissions be no more than twenty-five (25) pages in length.

Written comments, requests, or other information submitted by U.S. mail should be accompanied by a computer disk containing an electronic copy of the public or non-confidential version of the submission in a commercial word processing or spreadsheet format. The disk should have a label identifying the software used, the submitter, and the title of the submission. In addition, submitters should take steps to ensure that they delete *all* business confidential information from the electronic copy of any public or non-confidential document.

Written comments, requests, or other information submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 3, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10:00 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday. These submissions will also be available on the USTR web site, *www.ustr.gov.*

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof, in the form specified above. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. The TPSC requests interested persons to summarize any deleted business confidential information by (1) providing a written characterization of any business confidential information in narrative form; and (2) aggregating, ranging, or indexing any numerical business confidential information.

If a document containing business confidential information is submitted by U.S. mail, twenty (20) copies of the business confidential submission and twenty (20) copies of a public version that does not contain business confidential information must be submitted. Any submissions containing business confidential information must be clearly marked ''Business Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain business confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.'' If a document containing business confidential information is

submitted by electronic transmission, one copy of the business confidential version and one copy of a public version must be submitted. The name of the business confidential version should begin with the characters ''BC-'', and the name of the public version should begin with the characters ''P-.'' The electronic copy of each document should have a header and footer on each page indicating whether it is ''Business Confidential'' or ''public version'' or ''non-confidential.''

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–27134 Filed 10–24–01; 3:03 pm]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–01–038]

Proposed Faciane Canal Bridge Project; Faciane Canal Near Slidell, St. Tammany Parish, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Coast Guard will hold a public hearing to receive comments on an application by Waterfront Developers L.L.C. for Coast Guard approval of the location and plans for a proposed bridge. The proposed location of the bridge is across the Faciane Canal, mile 0.1, near Slidell, St. Tammany Parish, Louisiana. The hearing will allow interested persons to present comments and information concerning the impact of the proposed bridge project on navigation and the human environment.

DATES: This hearing will be held on November 28, 2001, commencing at 7 p.m. Comments must be received by December 13, 2001. Requests to speak and requests for services must be received in the office of Bridge Administration at the address given under **ADDRESSES** by November 21, 2001.

ADDRESSES: The hearing will be held at the cafetorium of Salmen High School, 4040 Berkley Drive, Slidell, Louisiana 70458.

Written comments may be submitted to, and will be available for examination between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana 70130–3396. Please submit all comments in an unbound format, no larger than 8 x 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Project Officer, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Background

The proposed project consists of constructing a movable bridge from Carr Drive to Paradise Island across the Faciane Canal. The proposed bridge will be 135 feet long and will have a clear roadway width of 12 feet. The applicant, based upon comments from interested persons, has moved the location of the draw of the bridge to the approximate center of the channel and has increased the horizontal clearance to 30 feet between the fender system. The vertical clearance of the proposed bridge in the closed-to-navigation position is 5.7 feet above mean high water, elevation 1.3 feet above Mean Sea Level (MSL) and unlimited in the open-to-navigation position.

The proposed bridge, if approved, will be operated and lighted in accordance with the requirements of Title 33, Code of Federal Regulations, Parts 117 and 118. The bridge will be maintained in the open-to-navigation position and close for vehicular traffic by code control panels accessible only to authorized personnel.

The Coast Guard, as lead federal agency for the proposed project, has reviewed the applicant-prepared Environmental Assessment (EA). Based upon the EA, the Coast Guard has tentatively determined that the proposed action will not have a significant impact on the environment for purposes of the National Environmental Policy Act (NEPA). A Coast Guard Finding of No Significant Impact (FONSI) will be prepared as the final environmental document for the proposed project unless significant impacts are identified as a result of this public notification process to warrant the preparation of an Environmental Impact Statement (EIS).

Only two alternatives are currently being considered for this project. These alternatives are defined as the ''build'' and ''no-build'' alternatives.

Procedural

Individuals and representatives of organizations that wish to present testimony at the hearing or who want to be placed on the project mailing list, may submit a request to this office at the address listed under **ADDRESSES** clearly indicating name and organization represented, if applicable. Requests to speak should be received no later than November 21, 2001 in order to ensure proper scheduling for the hearing. Attendees at the hearing who wish to present testimony and have not previously made a request to do so, will follow those attendees who have made a request as time permits. Speakers will be called in the order of receipt of their request. Depending upon the number of scheduled statements, the Coast Guard may limit the amount of time allowed for each speaker. Written statements and other exhibits in lieu of, or in addition to, oral statements made at the hearing may be submitted to this office at the address listed under **ADDRESSES** until December 13, 2001, for inclusion in the public hearing transcript.

Information on Services for Individuals With Disabilities

For information about facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Commander, Eighth Coast Guard District (obc). Please request these services by contacting this office at the phone number under **FOR FURTHER INFORMATION CONTACT** or in writing at the address listed under **ADDRESSES**. Any requests for an oral or sign language interpreter must be received by November 21, 2001.

Authority: 33 U.S.C. 513, 49 CFR 1.46.

Dated: October 17, 2001.

J.R. Whitehead,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 01–26995 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–8229]

Notice of Availability, Draft Programmatic Environmental Impact Statement for the Integrated Deepwater System Project

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Draft Programmatic Environmental Impact Statement (PEIS) on the Integrated Deepwater System Project. This PEIS covers general issues in a broad program-oriented analysis encompassing the replacement systems

proposed by industry and the No-action alternative. The Coast Guard seeks public and agency input on the Draft PEIS.

DATES: The PEIS will be available on October 26, 2001. Comments must reach the Coast Guard on or before December 10, 2001.

ADDRESSES: Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–8229), US Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available along with the Draft Programmatic Environmental Impact Statement for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated statement, call LCDR Eric Johnson, Deepwater Environmental & Facilities Planner by telephone at 202–267–1665, or by email at *ejohnson@comdt.uscg.mil* or at the Coast Guard's Deepwater EIS Web page at *http://www.deepwaterEIS.com.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request For Comments

We encourage you to submit comments on this Draft PEIS. Persons submitting comments should include their names and addresses, identify this notice (USCG–2000–8229), and the reason for each comment. You may submit your comments by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address given under **ADDRESSES;** but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail, and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period. For additional information about this notice or the Programmatic Environmental Impact Statement, contact Joan Lang, Deepwater Project NEPA Coordinator (under contract to the Coast Guard), 202–267–0284 or via e-mail at *jlang@comdt.uscg.mil.*

Public Hearings

Based on the minimal number of comments received during the scoping period, public hearings for this stage of the PEIS development will be held only if there is sufficient interest shown. Because this is a programmatic document, meetings, if held, will be at a district or national level. If public hearings are held, the time and place of the hearings will be announced in the **Federal Register** and other media. Please contact LCDR Eric Johnson as described in the **FURTHER INFORMATION** section of this notice regarding possible public hearings.

Proposed Action

In accordance with section 102[2][c] of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), Department of Transportation (DOT) Order 5610.1C (Procedures for Considering Environmental Impacts), and Coast Guard Policy (NEPA: Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D), the Coast Guard has prepared a Draft PEIS on the Deepwater Project. The purpose of a PEIS is to develop a high-level approach and direction for implementing a broad policy or program. The Deepwater Project meets those criteria. As a first tier EIS, this PEIS covers general issues in a broader program-oriented analysis encompassing the replacement systems proposed by industry and the No-action alternative. Subsequent NEPA documentation will concentrate on specific implementing actions, such as home basing of new ships and aircraft, as required.

The Coast Guard published a Notice of Intent and Request for Public Comments on November 9, 2000 (65 FR 67441). That same Notice included the dates and locations of several meetings that were held around the country to accept comments on what the Coast Guard should consider in its PEIS. During this scoping process, and based on Federal Agency comments, it was determined that the PEIS should address two alternatives: Action and No-action. The Action Alternative includes the proposed system replacements discussed in the NOI. The Coast Guard determined that the best way to describe the impacts of the Action Alternative in the programmatic EIS was by combining all of the proposals into ranges of asset quantities and types and ranges of environmental impacts. This approach protects the procurement-sensitive information regarding the specific number and types of assets proposed by each industry team. However, to more accurately identify potential environmental impacts, the actual numbers and types of each teams' assets were used in the impact models.

The Coast Guard's ability to predict future environmental impacts of this multi-decade acquisition with 100% accuracy is drastically reduced by uncertainties with regard to funding, technology, political, social and logistics changes. When viewed from a programmatic level, these uncertainties more than outweigh any differences that may exist among the various proposed system replacements. Therefore, the use of ranges to show possible impacts from the two alternatives provides an analysis commensurate with the level of detail of the decision being made, protects procurement-sensitive information, and provides the public with sufficient information to submit informed comments.

The specific industry team proposal information will be maintained in the administrative record for Coast Guard agency use only, as described in the NOI.

The public comment period will provide the public with an opportunity to review the PEIS and to offer appropriate comments. Comments received during the Draft PEIS review period will be published in the Final PEIS. A Notice of Availability of the Final PEIS will be published in the **Federal Register**. NEPA provides for a 30-day comment period after publication of the Final PEIS, during which the public may comment on the adequacy of responses to comments and the Final PEIS. After that time, a Record of Decision (ROD) detailing the Coast

Guards' decision of the selected alternative will be prepared and published in the **Federal Register** and other public notices. The entire ROD will be made available for public review at that time.

Dated: October 16, 2001.

P.M. Stillman,

Rear Admiral, USCG, Deepwater Program Executive Officer.

[FR Doc. 01–26813 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. FRA–1999–6689, Notice No. 2]

Reflectorization of Rail Rolling Stock

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of availability.

SUMMARY: FRA announces that a preliminary analysis evaluating the costs and benefits of placing retro-reflective material on certain rail rolling stock in order to reduce collisions at highway-rail crossings has been placed in the public docket established to receive information on this topic. Public comment is invited.

ADDRESSES: The public is invited to submit both relevant information and relevant comments to the docket. Written comments should refer to the docket number of this notice and be submitted in duplicate to: DOT Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. All docket material will be available for inspection at the Central Docket Management Facility during regular business hours and on the Internet at *http://dms.dot.gov.* Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

SUPPLEMENTARY INFORMATION: In 1982, FRA conducted a study to determine whether reflective materials would enhance railcar conspicuity and thereby reduce the number of accidents involving railcars. That study demonstrated that, although the use of reflective material enhanced railcar conspicuity, the reflective material was not durable enough to withstand the harsh railroad environment.

Beginning in 1990, FRA initiated additional research in response to improvements in the retroreflective qualities and durability of reflective materials. Subsequently, under the Federal Railroad Safety Authorization Act of 1994 (''the Act''), Pub. L. No. 103–440, 108 Stat. 4622–23 (November 2, 1994), Congress required FRA to revisit the issue of railcar conspicuity. The statute, codified at 49 U.S.C. 20148, provides that if the review establishes that enhanced railroad car visibility would likely improve safety in a cost-effective manner, the Secretary of Transportation shall initiate a rulemaking to prescribe regulations requiring enhanced visibility standards for railroad cars. FRA has completed its review of costs and benefits and is now placing it in the docket.

After extensive analysis, FRA has concluded that, because of technological advances developed since 1982, the reflectorization of railroad freight equipment appears to be a viable and cost-effective method of reducing the number of collisions at highway-rail grade crossings and the casualties and property damages which result from those collisions. FRA's analysis supports the conclusion that declines in the cost of reflective material, in combination with better performance and lower maintenance costs, have created a situation in which the benefits of reflectorization now appear to exceed its costs.

FRA invites all interested parties to review the cost-benefit analysis and to comment on the information contained therein and conclusions drawn from that information. FRA will review information that is submitted prior to the date on which FRA determines whether to institute rulemaking. Any responses can be sent to the docket. Instructions for doing so are described above under **ADDRESSES.**

FOR FURTHER INFORMATION CONTACT: Mary Plache, Industry Economist, Office of Safety, FRA, 1120 Vermont Ave., NW., Mailstop 17, Washington, DC 20590 (telephone 202–493–6297) or John A. Winkle, Esq., Office of Chief Counsel, FRA, 1120 Vermont Ave., NW., Mailstop 10, Washington, DC 20590 (telephone 202–493–6067).

Issued in Washington, DC on October 22, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–26991 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Seventh Quarterly Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the Seventh Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at nine Level 1 Trauma Centers linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 5 p.m. on Thursday, December 6, 2001.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation headquarters, 400 Seventh Street, SW., Room 2230, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. CIREN cases may be viewed from the NHTSA/CIREN Web site at: *http://www-nrd.nhtsa.dot.gov/include/bio_and_trauma/ciren-final.htm.* NHTSA has held three Annual Conferences where CIREN research results were presented. Further information about the three previous CIREN conferences is also available through the NHTSA Web site. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes; the second quarterly meeting on July 21, 2000, with a topic of side impact crashes; the third quarterly meeting on November 30, 2000, with a topic of thoracic injuries in crashes; the fourth quarterly meeting on March 16, 2001, with a topic of offset frontal collisions; the fifth quarterly meeting on June 21, 2001, on CIREN outreach efforts; and the sixth quarterly meeting (held in Ann Arbor, Michigan) with a topic of injuries involving sport utility vehicles. Presentations from these meetings are available through the NHTSA Web site.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the seventh such meeting. The topic for this meeting is Age-Related Injuries. Subsequent

meetings have tentatively been scheduled for April 2002 and August 2002. These quarterly meetings are in lieu of an annual CIREN conference.

Please be aware that this is a closed building. Attendees to this meeting must present photo identification, pass through the xray and magnetometer, and be escorted to the meeting room so please allow sufficient time to complete this process.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/*. If you do not have access to the Web site, you may call the contact listed below and leave your telephone or fax number. You will be called only if the meeting is postponed or canceled.

FOR FURTHER INFORMATION CONTACT: Mrs. Donna Stemski, Office of Human-Centered Research, 400 Seventh Street, SW, Room 6220, Washington, DC 20590, telephone: (202) 366–5662.

Issued on: October 19, 2001.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 01–27054 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34075]

Six County Association of Governments—Construction and Operation Exemption—Rail Line Between Levan and Salina, UT

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by the Six County Association of Governments of a 43-mile line of railroad between Salina, UT, and a connection with a line of the Union Pacific Railroad Company in the vicinity of Levan, UT.

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental impacts and, if appropriate, will make the exemption effective at that time, thereby allowing construction to begin. Petitions to reopen must be filed by November 15, 2001.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 34075, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Sandra L. Brown and D. Michael Hurst, Jr., Troutman Sanders LLP, 401 9th Street, NW., Suite 1000, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [TDD for the hearing impaired: 1–800–877–8339.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 18, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26774 Filed 10–25–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00–18]

Privacy Act of 1974, as Amended; System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed new Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Office of the Comptroller of the Currency (OCC) gives notice of five proposed new Privacy Act systems of records.

DATES: The proposed new systems of records will become effective November 26, 2001 unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to the Office of the Comptroller of the Currency, Public Information Room, Docket No. 00–18, 250 E Street, SW, Washington, DC 20219. You may inspect comments received at the same location. You may send your comments by facsimile transmission to FAX number 202–874–4448 or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Frank Vance, Jr., Disclosure Officer, Communications Division, (202) 874–4700 or Harold J. Hansen, Assistant Director, Administrative and Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the OCC is proposing to establish the following new systems of records:

(1) Treasury/Comptroller .100—Enforcement Action Report System

Records relating to enforcement actions taken by the OCC against individuals that will be maintained in this proposed new system are currently maintained in an existing Privacy Act system of records, Treasury/Comptroller .013-Enforcement Compliance Information System. Records maintained in the Enforcement and Compliance Information System have been exempted by rule from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Information in the Enforcement Action Report System will be used by the OCC for supervisory and licensing purposes, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operation of OCC-regulated entities. The system will contain records of enforcement actions taken by the OCC and other federal financial regulatory agencies against individuals and pending OCC enforcement actions. It will also contain information about individuals who require the Federal Deposit Insurance Corporation's approval to participate in the affairs of an insured depository institution pursuant to 12 U.S.C. 1829, including information about criminal convictions involving dishonesty or breach of trust.

The OCC proposes to exempt records maintained in the Enforcement Action Report System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2).

(2) Treasury/Comptroller .120—Bank Fraud Information System

To assist the OCC in its supervisory function, this system will track complaints and inquiries concerning fraudulent or suspicious financial instruments and transactions. The

information maintained in this system of records will serve the OCC's mission of ensuring safety and soundness of the banking system by assisting the OCC in its efforts to protect banks and their customers from fraudulent or suspicious banking activities.

The OCC proposes to exempt records maintained in the Bank Fraud Information System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(3) Treasury/Comptroller .220—Section 914 Tracking System

Pursuant to rulemaking authority under 12 U.S.C. 93a and 1831i, certain categories of national banks, District of Columbia banks operating under the OCC's regulatory authority, and federal branches of foreign banks are required by 5 CFR 5.51 to file notices for the OCC's review when they propose to add individuals to their boards of directors or propose to employ senior executive officers. The OCC is establishing the Section 914 Tracking System as a system of records to track the processing of these notices.

The information in this system also will be used in carrying out OCC's other regulatory and licensing responsibilities, including other reviews of the qualifications and fitness of individuals who propose to become responsible for the business operations of OCC-regulated entities.

The OCC proposes to exempt records maintained in the Section 914 Tracking System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2).

(4) Treasury/Comptroller .340—Access Control System

The records maintained in this system will assist the OCC in maintaining the security of its premises and permit it to identify those individuals who are on OCC premises at particular times.

Access Control System records are currently part of an existing Privacy Act system of records, Treasury/Comptroller .300-Administrative Personnel System. The notice for the Administrative Personnel System was last published in the **Federal Register** at 63 FR 69761, dated December 17, 1998.

(5) Treasury/Comptroller .700—Correspondence Tracking System

These records assist offices within the OCC to receive and respond to correspondence. Correspondence information will be maintained within the proposed new system of records for the purpose of tracking the Comptroller of the Currency's or the Chief Counsel's correspondence. The system will contain information about individuals whose correspondence is submitted to the Comptroller of the Currency or the Chief Counsel.

In the notice of proposed rulemaking, which is published separately in the **Federal Register**, the OCC has proposed to exempt records maintained in the Treasury/Comptroller .100-Enforcement Action Report System; Treasury/Comptroller .120-Bank Fraud Information System, and Treasury/Comptroller .220-Section 914 Tracking System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and/or (k)(2). Comments relating to this proposed action should be directed to the OCC as provided in the notice of proposed rulemaking to amend 31 CFR part 1.

The new system of records reports, required by the Privacy Act, 5 U.S.C. 552a(r), have been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

The five proposed new systems of records, described above, are published in their entirety below.

Dated: September 10, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

TREASURY/COMPTROLLER .100

SYSTEM NAME:

Enforcement Action Report System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Enforcement and Compliance Division, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are: (1) Current and former directors, officers, employees, shareholders, and independent contractors of financial institutions who have had enforcement actions taken against them by the OCC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration;

(2) Current and former directors, officers, employees, shareholders, and independent contractors of financial institutions who are the subjects of pending enforcement actions initiated by the OCC; and

(3) Individuals who must obtain the consent of the Federal Deposit Insurance Corporation pursuant to 12 U.S.C. 1829 to become or continue as an institution-affiliated party within the meaning of 12 U.S.C. 1813(u) of a federally-insured depository institution, a direct or indirect owner or controlling person of such an entity, or a direct or indirect participant in the conduct of the affairs of such an entity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of individuals, their positions or titles with financial institutions, descriptions of offenses and enforcement actions, and descriptions of offenses requiring Federal Deposit Insurance Corporation approval under 12 U.S.C. 1829.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i.

PURPOSES:

This system of records is used by the OCC to monitor enforcement actions and to assist it in its regulatory responsibilities, including review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity when the information is relevant to the entity's operations;

(2) Third parties to the extent necessary to obtain information that is relevant to an examination or investigation;

(3) The news media in accordance with guidelines contained in 28 CFR 50.2;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding

in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Enforcement and Compliance Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from OCC personnel, OCC-regulated entities, other federal financial regulatory agencies, and criminal law enforcement authorities.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .120

SYSTEM NAME:

Bank Fraud Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Bank Supervision Operations, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who submit complaints or inquiries about fraudulent or suspicious financial instruments or transactions or who are the subjects of complaints or inquiries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain: the name, address, or telephone number of the individual who submitted a complaint or inquiry; the name, address, or telephone number of the individual or entity who is the subject of a complaint or inquiry; the types of activity involved; the date of a complaint or inquiry; and numeric codes identifying a complaint or inquiry's nature or source. Supporting records may contain correspondence between the OCC and the individual or entity submitting a complaint or inquiry, correspondence between the OCC and an OCC-regulated entity, or correspondence between the OCC and other law enforcement or regulatory bodies. Other records maintained in this system may contain arrest, indictment and conviction information, and information relating to administrative actions taken or initiated in connection with complaints or inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i; 31 U.S.C. 5318.

PURPOSES:

This system of records tracks complaints or inquiries concerning fraudulent or suspicious financial instruments and transactions. These records assist the OCC in its efforts to protect banks and their customers from fraudulent or suspicious banking activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to.

(1) An OCC-regulate entity to the extent that such entity is the subject of a complaint, inquiry, or fraudulent activity;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of a complaint or inquiry, an examination, or an investigation;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, international, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically, in card files, and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Special Supervision/Fraud, Bank Supervision Operations, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals and entities who submit complaints or inquiries, OCC personnel, OCC-regulated entities, criminal law enforcement authorities, and governmental or self-regulatory bodies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .220

SYSTEM NAME:

Section 914 Tracking System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Special Supervision, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who are named in notices filed under 12 CFR 5.51 as proposed directors or senior executive officers of national banks, District of Columbia banks operating under the OCC's regulatory authority, or federal branches of foreign banks (OCC-regulated entities). OCC-regulated entities file notices if they:

(1) Have a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System;

(2) Are subject to cease and desist orders, consent orders, or formal written agreements;

(3) Have been determined by the OCC to be in ''troubled condition;''

(4) Are not in compliance with minimum capital requirements prescribed under 12 CFR Part 3; or

(5) Have been advised by the OCC, in connection with its review of an entity's capital restoration plan, that such filings are appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this electronic database may contain: the names, charter numbers, and locations of the OCC-regulated entities that have submitted notices pursuant to 5 CFR 5.51; the names, addresses, dates of birth, and social security numbers of individuals proposed as either directors or senior executive officers; and the actions taken by the OCC in connection with these notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 93a, 481, 1817(j), 1818, 1820, and 1831i.

PURPOSE(S):

Information maintained in this system is used by the OCC to carry out its statutory and other regulatory responsibilities, including other reviews of the qualifications and fitness of individuals who propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity in connection with review and action on a notice filed by that entity pursuant to 12 CFR 5.51;

(2) Third parties to the extent necessary to obtain information that is pertinent to the OCC's review and action on a notice received under 12 CFR 5.51;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is

relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Director, Special Supervision/Fraud, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC-regulated entities, individuals named in notices filed pursuant to 5 CFR 5.51, federal or state financial regulatory agencies, criminal law enforcement authorities, credit bureaus, and OCC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .340

SYSTEM NAME:

Access Control System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Security Office, Administrative Services Division, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are OCC employees, contractors, agents, and volunteers who have been issued an OCC identification card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain an individual's name, social security number, picture, and authorizations to use the OCC's fitness facility or its headquarters parking garage, if applicable. This system of records also may contain time records of entrances and exits and attempted entrances and exits of OCC premises.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, and 482; 5 U.S.C. 301.

PURPOSES:

The OCC has an electronic security system linked to identification cards which limits access to its premises to authorized individuals and records the time that individuals are on the premises. This system of records is used to assist the OCC in maintaining the security of its premises and to permit the OCC to identify individuals on its premises at particular times.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) Third parties to the extent necessary to obtain information that is relevant to an investigation concerning access to or the security of the OCC's premises;

(2) An appropriate governmental authority if the information is relevant to a known or suspected violation of a law within that organization's jurisdiction;

(3) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(4) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(5) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(6) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Security Officer, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals and the OCC's official personnel records. Information concerning entry and exit of OCC premises is obtained from identification card scanners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/COMPTROLLER .700

SYSTEM NAME:

Correspondence Tracking System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, 250 E Street, SW, Washington, DC 20219–0001. Components of this record system are maintained in the Comptroller of the Currency's Office and the Chief Counsel's Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those whose correspondence is submitted to the Comptroller of the Currency or the Chief Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of individuals who correspond with the OCC, information concerning the subject matter of the correspondence, correspondence disposition information, correspondence tracking dates, and internal office assignment information. Supporting records may contain correspondence between the OCC and the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1; 5 U.S.C. 301.

PURPOSES:

This system of records is used by the OCC to track the Comptroller of the Currency's or the Chief Counsel's correspondence, including the progress and disposition of the OCC's response.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) The OCC-regulated entity involved in correspondence;

(2) Third parties to the extent necessary to obtain information that is relevant to the response;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Electronic and other records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESSES:

Deputy to the Chief of Staff, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

Special Assistant to the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an

address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature (such as credit cards).

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who submit correspondence and OCC personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–27001 Filed 10–25–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00–17]

Privacy Act of 1974, as amended; System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed alterations to six Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Office of the Comptroller of the Currency (OCC) gives notice of proposed alterations to six Privacy Act systems of records.

DATES: The proposed altered systems of records will become effective November 26, 2001 unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to the Office of the Comptroller of the Currency, Public Information Room, Docket No. 00–17, 250 E Street, SW, Washington, DC 20219. You may inspect comments received at the same location. You may send your comments by facsimile transmission to FAX number 202–874–4448 or by electronic mail to *regs.comments@occ.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Vance, Jr., Disclosure Officer, Communications Division, (202) 874–4700 or Ellen M. Warwick, Special Counsel, Administrative and Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: The OCC has conducted a review of its Privacy Act systems of records for compliance with the Privacy Act (5 U.S.C. 552a) and with Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated November 30, 2000, and is proposing to alter six of its current systems of records. In addition to the changes noted below, the proposed alterations also update the notices by restating many of the other data elements, such as ''notification procedure,'' for each of the notices. More specific alterations to the six current systems of records are as follows:

(1) Treasury/Comptroller .013—Enforcement and Compliance Information System

The proposed alterations to this system of records include:

(a) To change the title and number of the system to ''Treasury/Comptroller .110—Reports of Suspicious Activities;''

(b) To add witnesses to the categories of individuals covered by the system;

(c) To consolidate and restate existing routine uses and add two routine uses.

Records maintained in the Enforcement and Compliance Information System have been exempted by rule, and the records maintained in the altered Treasury/Comptroller .110—Reports of Suspicious Activities system will continue to be exempted by rule from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). The notice for this system of records was last published in the **Federal Register** at 63 FR 69757 dated December 17, 1998.

(2) Treasury/Comptroller .015—Chain Banking Organizations System

The OCC is proposing to alter this system of records covering chain banking organization records for the following reasons:

(a) To renumber the system as ''Treasury/Comptroller .200;''

(b) To more fully describe, by addition of a definition for chain banking, the categories of individuals covered by the system; and

(c) To consolidate and restate existing routine uses and add three routine uses.

The notice for this system of records was last published in the **Federal Register** at 63 FR 69758 dated December 17, 1998.

(3) Treasury/ Comptroller .221—Registration Records for Municipal and United States Government Securities Dealers

The OCC proposes to alter this system of records covering bank securities dealer records:

(a) To change the title and number of the system to ''Treasury/Comptroller .210—Bank Securities Dealers System;'' and

(b) To consolidate and restate existing routine uses and add five routine uses.

The notice for this system of records was last published in the **Federal Register** at 63 FR 69760 dated December 17, 1998.

(4) Treasury/Comptroller .500—Chief Counsel's Management Information System

The OCC proposes to alter this system of records covering the Chief Counsel's management information records to restate existing routine uses and add six routine uses.

Records maintained in the Chief Counsel's Management Information System have been, and will continue to be, exempted by rule from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). The notice for this system of records was last published in the **Federal Register** at 63 FR 69763 dated December 17, 1998.

(5) Treasury/Comptroller .016—Litigation Information System

The OCC is proposing to alter its current system of records covering litigation records to consolidate and restate existing routine uses and add four routine uses. This system of records is to be renumbered Treasury/Comptroller .510.

The OCC proposes to exempt records maintained in the Litigation Information System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). The notice for this system was last published in the **Federal Register** at 63 FR 69759 dated December 17, 1998.

(6) Treasury/Comptroller .004—Consumer Complaint and Inquiry Information System

The proposed alterations to this system of records include:

(a) To renumber the system as ''Treasury/Comptroller .600;''

(b) To add individuals who submit inquiries to the categories of individuals covered by the system; and

(c) To restate an existing routine use and add seven routine uses.

The OCC proposes to exempt records maintained in the Consumer Complaint and Inquiry Information System from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2). The notice for this system was last published in the **Federal Register** at 63 FR 69956 dated December 17, 1998.

In the notice of proposed rulemaking, which is published separately in the **Federal Register**, the Department and the OCC are giving public notice of a proposed rule to add exemptions to two existing systems of records (Treasury/Comptroller .016—Litigation Information System, and Treasury/Comptroller .004—Consumer Complaint and Inquiry Information System) from certain provisions of 5 U.S.C. 552a pursuant to subsection (j)(2) and/or (k)(2). Comments relating to this proposed rulemaking may be directed to the OCC as provided in the notice for that proposed action.

The altered system of records reports, required by the Privacy Act, 5 U.S.C. 552a(r), have been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

The six proposed altered systems of records, described above, are published in their entirety below.

Dated: September 10, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

TREASURY/COMPTROLLER .110

SYSTEM NAME:

Reports of Suspicious Activities—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Enforcement and Compliance Division, 250 E Street, SW., Washington, DC 20219–0001.

Suspicious Activity Reports (SARs) are managed by the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, and stored at the IRS Computing Center in Detroit, Michigan. Information extracted from or relating to SARs or reports of crimes and suspected crimes filed by OCC personnel or by national banks, District of Columbia banks operating under the OCC's regulatory authority, or federal branches or agencies of foreign banks (OCC-regulated entities) is maintained in an OCC electronic database. This database, as well as the database managed by FinCEN, is accessible to designated OCC headquarters and district office personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who have been designated as suspects or witnesses in SARs or reports of crimes and suspected crimes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the name of the entity to which a report pertains, the names of individual suspects and witnesses, the types of suspicious activity involved, and the amounts of known losses. Other records maintained in this system may contain arrest, indictment and conviction information, and information relating to administrative actions taken or initiated in connection with activities reported in a SAR or a report of crime and suspected crime.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 27, 481, 1817(j), 1818, 1820, and 1831i; 31 U.S.C. 5318.

PURPOSE:

This system of records is used by the OCC to monitor criminal law enforcement actions taken with respect to known or suspected criminal activities affecting OCC-regulated entities. System information is used to determine whether matters reported in SARs warrant the OCC's supervisory action. Information in this system also may be used for other supervisory and licensing purposes, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of OCC-regulated entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) The Department of Justice through periodic reports containing the identities of individuals suspected of having committed violations of criminal law;

(2) An OCC-regulated entity if the SAR relates to that institution;

(3) Third parties to the extent necessary to obtain information that is relevant to an examination or investigation;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation and supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such providers;

(5) An appropriate governmental, international, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Director, Enforcement and Compliance Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from OCC personnel, OCC-regulated entities, other financial regulatory agencies, criminal law enforcement authorities, and FinCEN.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), and (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/COMPTROLLER .200

SYSTEM NAME:

Chain Banking Organizations System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Core Policy Development, 250 E Street, SW, Washington, DC 20219–0001, and the OCC's district offices, as follows:

(1) Northeastern District Office, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036–7780;

(2) Southeastern District Office, Marquis One Tower, Suite 600, 245 Peachtree Center Ave., NE, Atlanta, GA 30303–1223;

(3) Central District Office, One Financial Plaza, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605–1073;

(4) Midwestern District Office, 2345 Grand Boulevard, Suite 700, Kansas City, MO 64108–2683;

(5) Southwestern District Office, 500 North Akard Street, Suite 1600, Dallas, TX 75201–3394; and

(6) Western District Office, 50 Fremont Street, Suite 3900, San Francisco, CA 94105–2292.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who directly, indirectly, or acting through or in concert with one or more other individuals, own or control a chain banking organization. A chain banking organization exists when two or more independently chartered financial institutions, including at least one OCC-regulated entity, are controlled either directly or indirectly by the same individual, family, or group of individuals closely associated in their business dealings. Control generally exists when the common ownership has the ability or power, directly or indirectly, to:

(1) Control the vote of 25 percent or more of any class of an organization's voting securities;

(2) Control in any manner the election of a majority of the directors of an organization; or

(3) Exercise a controlling influence over the management or policies of an organization. A registered multibank holding company and its subsidiary banks are not ordinarily considered a chain banking group unless the holding company is linked to other banking organizations through common control.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system contain the names of individuals who, either alone or in concert with others, own or control a chain banking organization. Other information may contain: the name, location, charter number, charter type, and date of last examination of each organization comprising a chain; the percentage of outstanding stock owned or controlled by controlling individuals or groups; and the name of any intermediate holding entity and the percentage of such entity owned or controlled by the individual or group.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, 1817(j), and 1820.

PURPOSE:

Information maintained in this system is used by the OCC to carry out its supervisory responsibilities with respect to national banks and District of Columbia banks operating under the OCC's regulatory authority, including the coordination of examinations, supervisory evaluations and analyses, and administrative enforcement actions with other financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity when information is relevant to the entity's operation;

(2) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(3) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within the organization's jurisdiction;

(4) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(5) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(6) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(7) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Director, Core Policy Development, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC personnel, other Federal financial regulatory agencies, and individuals who file notices of their intention to acquire control over an OCC-regulated financial institution.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/COMPTROLLER .210

SYSTEM NAME:

Bank Securities Dealers System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Treasury and Market Risk Division, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who are or seek to be associated with a municipal securities dealer or a government securities broker/dealer that is a national bank, a District of Columbia bank operating under the OCC's regulatory authority, or a department or division of any such bank in the capacity of a municipal securities principal, municipal securities representative, or government securities associated person.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain an individual's name, address history, date and place of birth, social security number, educational and occupational history, certain professional qualifications and testing information, disciplinary history, or information about employment termination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, 1818, and 1820; 15 U.S.C. 78o–4, 78o–5, 78q, and 78w.

PURPOSES:

This system of records will be used by the OCC to carry out its responsibilities under the Federal securities laws relating to the professional qualifications and fitness of individuals who engage or propose to engage in securities activities on behalf of national banks and District of Columbia banks operating under the OCC's regulatory authority.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH SYSTEMS:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity in connection with its filing relating to the qualifications and fitness of an individual serving or proposing to serve the entity in a securities-related capacity;

(2) Third parties to the extent needed to obtain additional information concerning the professional qualifications and fitness of an individual covered by the system;

(3) Third parties inquiring about the subject of an OCC enforcement action;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become involved in the provider's securities business;

(5) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(9) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to the electronic database is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Treasury and Market Risk Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC-regulated entities that are: municipal securities dealers and/or government securities brokers/dealers; individuals who are or propose to become municipal securities principals, municipal securities representatives, or government securities associated persons; or governmental and self-regulatory organizations that regulate the securities industry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/COMPTROLLER .500

SYSTEM NAME:

Chief Counsel's Management Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, 250 E Street, SW, Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are: individuals who have requested information or action from the OCC; parties or witnesses in civil proceedings or administrative actions; individuals who have submitted requests for testimony and/or production of documents pursuant to 12 CFR Part 4, Subpart C; individuals who have been the subjects of administrative actions or investigations initiated by the OCC, including current or former shareholders, directors, officers, employees and agents of OCC-regulated entities, current, former, or potential bank customers, and OCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain the names of: banks; requestors; parties; witnesses; current or former shareholders; directors, officers, employees and agents of OCC-regulated entities; current, former or potential bank customers; and current or former OCC employees. These records contain summarized information concerning the description and status of Law Department work assignments. Supporting records may include pleadings and discovery materials generated in connection with civil proceedings or administrative actions, and correspondence or memoranda related to work assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 93(d)(second), 481, 1818, and 1820.

PURPOSE(S):

This system of records is used to track the progress and disposition of OCC Law Department work assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity involved in an assigned matter;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of an assigned matter;

(3) The news media in accordance with guidelines contained in 28 CFR 50.2;

(4) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(5) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(6) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(7) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(8) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(9) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable

access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant to the Chief Counsel, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals who request information or action from the OCC, individuals who are involved in legal proceedings in which the OCC is a party or has an interest, OCC personnel, and OCC-regulated entities and other entities, including governmental, tribal, self-regulatory, and professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .510

SYSTEM NAME:

Litigation Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Office of Chief Counsel, Litigation Division, 250 E Street, SW., Washington, DC 20219–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are parties or witnesses in civil proceedings or administrative actions, and individuals who have submitted requests for testimony or the production of documents pursuant to 12 CFR part 4, subpart C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system are those generated in connection with civil proceedings or administrative actions, such as discovery materials, evidentiary materials, transcripts of testimony, pleadings, memoranda, correspondence, and requests for information pursuant to 12 CFR part 4, subpart C.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 93(d)(second), 481, 1818, and 1820.

PURPOSE:

This system of records is used by the OCC in representing its interests in legal actions and proceedings in which the OCC, its employees, or the United States is a party or has an interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) Third parties to the extent necessary to obtain information that is relevant to the subject matter of civil proceedings or administrative actions involving the OCC;

(2) The news media in accordance with guidelines contained in 28 CFR 50.2;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

System records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGERS AND ADDRESS:

Director, Litigation Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the

Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from: individuals or entities involved in legal proceedings in which the OCC is a party or has an interest; OCC-regulated entities; and governmental, tribal, self-regulatory or professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/COMPTROLLER .600

SYSTEM NAME:

Consumer Complaint and Inquiry Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency (OCC), Customer Assistance Group, 1301 McKinney Street, Suite 3725, Houston, Texas 77010–3034.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who submit complaints or inquiries about national banks, District of Columbia banks operating under OCC's regulatory authority, federal branches and agencies of foreign banks, or subsidiaries of any such entity (OCC-regulated entities), and other entities that the OCC does not regulate. This includes individuals who file complaints and inquiries directly with the OCC or through other parties, such as attorneys, members of Congress, or other governmental organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain: the name and address of the individual who submitted the complaint or inquiry; when applicable, the name of the individual or organization referring a matter; the name of the entity that is the subject of the complaint or inquiry; the date of the incoming correspondence and its receipt; numeric codes identifying the complaint or inquiry's nature, source, and resolution; the OCC office and personnel assigned to review the correspondence; the status of the review; the resolution date; and, when applicable, the amount of reimbursement. Supporting records may contain correspondence between the OCC and the individual submitting the complaint or inquiry, correspondence between the OCC and the regulated entity, and correspondence between the OCC and other law enforcement or regulatory bodies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 481, and 1820; 15 U.S.C. 41 *et seq.*

PURPOSE(S)

This system of records is used to administer the OCC's Customer Assistance Program and to track the processing and resolution of complaints and inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) An OCC-regulated entity that is the subject of a complaint or inquiry;

(2) Third parties to the extent necessary to obtain information that is relevant to the resolution of a complaint or inquiry;

(3) The appropriate governmental, tribal, self-regulatory or professional organization if that organization has jurisdiction over the subject matter of the complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A Congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity; or

(8) Third parties when mandated or authorized by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders.

RETRIEVABILITY:

Records maintained in this system may be retrieved by the name of an individual covered by the system.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms.

RETENTION AND DISPOSAL:

Records are retained in accordance with the OCC's records management policies and National Archives and Records Administration regulations.

SYSTEM MANAGER AND ADDRESS:

Ombudsman, Office of the Comptroller of the Currency, 1301 McKinney Street, Suite 3725, Houston, Texas 77010–3034.

NOTIFICATION PROCEDURE:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer, Communications

Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001. *See* 31 CFR part 1, subpart C, appendix J.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Non-exempt information maintained in this system is obtained from individuals and entities filing complaints and inquiries, other governmental authorities, and OCC-regulated entities that are the subjects of complaints and inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

[FR Doc. 01–27002 Filed 10–25–01; 8:45 am]

BILLING CODE 4810–33–P

INSTITUTE OF PEACE

Announcement of the Spring 2002 Solicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Upcoming Spring 2002 Solicited Grant Competition. The Solicited Grant competition is restricted to projects that fit specific themes and topics identified in advance by the Institute of Peace.

The themes and topics for the Spring 2002 Solicited competition are:

- Solicitation A: Strategic Nonviolent Conflict
- Solicitation B: The Middle East and South Asia
- Solicitation C: Training

Deadline for Receipt of Applications: March 1, 2002.

Notification of Awards: Late September 2002.

Applications Material: Available upon request.

ADDRESSES: For more information and an application package: United States Institute of Peace Grant Program, Solicited Grants, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–6063 (fax), (202) 457–1719 (TTY), E-mail: *grant_program@usip.org.*

Application material available on-line starting October 31: *www.usip.org/grant.html.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842.

Dated: October 23, 2001.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 01–27030 Filed 10–25–01; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the regulation that allows veterans, veterans representatives and health care providers to submit data to request reimbursement from the Federal Government for emergency services at a private institution.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 2001.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0620'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Emergency Care Authorization Regulations.

OMB Control Number: 2900–0620.

Type of Review: Extension of a currently approved collection.

Abstract: This information would be needed for VA to decide claims for reimbursement or payment from a veterans, a hospital or other entity that furnished non-VA emergency treatment or transportation to the veteran or a person or organization that paid for such treatment or transportation on behalf of the veterans. VA would use the information and certifications submitted to process claims for such reimbursement or payment.

Affected Public: Individuals or households, business or other for-profit and not-for-profit institutions.

Estimated Total Annual Burden: 120,729 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 241,457.

Dated: October 11, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–26996 Filed 10–25–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0601]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments to determine the reasons for delinquency on the original loan no longer exits and that the veteran is a satisfactory credit risk.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0601'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans.

OMB Control Number: 2900–0601.

Type of Review: Extension of a currently approved collection.

Abstract: VA is authorized to guarantee loans to veterans to refinance existing mortgage loans previously guaranteed by VA provided the veteran still owns the property used as security for the loan. Lenders must collect certain information concerning the veteran and the veteran's credit history (and spouse or other co-borrow, as applicable) in order to properly underwrite delinquent Interest Rate Reduction Refinancing Loan (IRRRLs). Under these proposed requirements, VA proposes to require that the lender provide VA with the credit information to assure itself that IRRRLs to refinance delinquent loans are underwritten in reasonable and prudent manner.

Affected Public: Business or other for profit.

Estimated Annual Burden: 85 hours.

Estimated Annual Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 170.

Dated: October 11, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–26997 Filed 10–25–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0179]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to establish eligibility to change insurance plans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0179'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Change of Permanent Plan (Medical) (Change to a policy with a lower reserve value), VA Form 29–1549.

OMB Control Number: 2900–0179.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to establish his/her eligibility to change insurance plans from a higher reserve to a lower reserve value.

Affected Public: Individuals or households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28.

Dated: October 11, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–26998 Filed 10–25–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Materiel Management (OA&MM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each reinstatement, with change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information to administer construction contracts.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 2001.

ADDRESSES: Submit written comments on the collection of information to Donald E. Kaliher, Office of Acquisition and Materiel Management (95A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *donald.kaliher@mail.va.gov.* Please refer to ''OMB Control No. 2900–0422'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Donald E. Kaliher at (202) 273–8819.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–72, Performance of Work by the Contractor.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–81, Work Coordination. (This Clause will be renumbered as ''Alternate 1'' to VAAR Clause 852.236–80.)

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Supplement 1 (which will be renamed as ''Alternate 1'').

d. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Supplement 1 (which will be renamed as ''Alternate 1'').

e. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–84, Schedule of Work Progress.

f. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes.

OMB Control Number: 2900–0422.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The information is necessary for VA to administer construction contracts and to carry out its responsibility to construct, maintain and repair real property for VA.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 4,802 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,311.

Estimated Number of Total Respondents: 3,534.

Dated: October 16, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27000 Filed 10–25–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0252]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 26, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0252.''

SUPPLEMENTARY INFORMATION:

Title: Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736.

OMB Control Number: 2900–0252.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8736 is used by nonsupervised lenders requesting approval to close loans on an automatic basis. Automatic lending privileges eliminate the requirement for submission of loans to VA for prior approval. Lending institutions with automatic loan privileges may process and disburse such loans and subsequently report the loan to VA for issuance of guaranty. The form requests information considered crucial for VA to make acceptability determinations as to lenders who shall be approved for this privilege.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001 at page 35701.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0252'' in any correspondence.

Dated: October 11, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–26999 Filed 10–25–01; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
October 26, 2001

Part II

Federal Reserve System

12 CFR Parts 211 and 265

International Banking Operations; Rules Regarding Delegation of Authority and International Lending Supervision; Final Rule and Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 211 and 265

[Regulation K; Docket No. R–0994]

International Banking Operations; Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Regulatory Improvement Act), the Federal Reserve Act, and the International Banking Act of 1978 (the IBA), the Board has reviewed Regulation K, which governs international banking operations, and is amending subparts A, B, and C. A proposed rule to amend subpart D of Regulation K is being published in this same issue of the **Federal Register**.

Subpart A of Regulation K governs the foreign investments and activities of all member banks (national banks as well as state member banks), Edge and agreement corporations, and bank holding companies. The amendments streamline foreign branching procedures for U.S. banking organizations, authorize expanded activities in foreign branches of U.S. banks, and implement recent statutory changes authorizing a bank to invest up to 20 percent of capital and surplus in Edge corporations. Changes also have been made to the provisions governing permissible foreign activities of U.S. banking organizations, including securities activities, and investments by U.S. banking organizations under the general consent procedures.

Subpart B of Regulation K (Foreign Banking Organizations) governs the U.S. activities of foreign banking organizations. The amendments include revisions aimed at streamlining the applications procedures applicable to foreign banks seeking to expand operations in the United States, changes to provisions regarding the qualification of foreign banking organizations for exemption from the nonbanking prohibitions of section 4 of the Bank Holding Company Act (the BHC Act), and implementation of provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the Interstate Act) that affect foreign banks.

In addition, there are a number of technical and clarifying amendments to subparts A and B, as well as subpart C, which deals with export trading companies. There are also certain amendments to the Board's Rules Regarding Delegation of Authority.

EFFECTIVE DATE: November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), regarding all subparts: Jon Stoloff, Senior Counsel (202/452–3269), or Alison MacDonald, Counsel (202/452–3236), regarding Subpart A; Ann Misback, Assistant General Counsel (202/452–3788), Janet Crossen, Senior Counsel (202/452–3281), or Melinda Milenkovich, Counsel (202/452–3274), regarding Subparts B and C; Legal Division; or Michael G. Martinson, Associate Director (202/452–2798), or Betsy Cross, Deputy Associate Director (202/452–2574), regarding all subparts; Division of Banking Supervision and Regulation. For users of Telecommunications Device for the Deaf (TDD) only, please contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Subpart A: International Operations of U.S. Banking Organizations

Statutory Framework

The Board is issuing amendments to Regulation K that will eliminate unnecessary regulatory burden, increase transparency, and streamline the approval process for U.S. banking organizations seeking to expand their operations abroad. The Federal Reserve Act, as amended by the IBA, requires the Board to review its regulations issued under section 25A of the Federal Reserve Act (the Edge Act) at least once every five years and make any changes necessary to ensure that the purposes of the Edge Act are being served in light of prevailing economic conditions and banking practices.[1] The Board has reviewed the provisions of Subpart A, which govern the operations of Edge corporations, with this statutory mandate in mind.

Edge corporations are international banking and financial vehicles through which U.S. banking organizations offer international banking or other foreign financial services and through which they compete with similar foreign-owned institutions in the United States and abroad. The purposes of the Edge Act, which amended the Federal Reserve Act in 1919, include enabling U.S. banking organizations to compete effectively with foreign-owned institutions; providing the means to finance international trade, especially U.S. exports; fostering the participation of regional and smaller U.S. banks in providing international banking and financing services to U.S. business and agriculture; and stimulating competition in the provision of international banking and financing services throughout the United States.

Congress, in enacting this legislation, recognized that U.S. banks needed vehicles that could exercise wider financial powers abroad than were permitted domestically in order to be competitive internationally and to serve the international needs of U.S. firms. At the same time, the Edge Act places limits on U.S. banks' exposure to these broader foreign activities, by limiting the amount that U.S. banks may invest in Edge corporations, establishing a number of statutory safety and soundness constraints, and granting the Board wide discretion in determining what activities should be permissible for such entities. In exercising its authority in this area, the Board is required by the IBA to implement the objectives of the Edge Act consistent with supervisory standards relating to the safety and soundness of U.S. banking organizations.

In December 1997, following a comprehensive review of the regulation, the Board requested public comment on proposed revisions to Regulation K (62 FR 68423) (the '97 Proposal). The Board received 28 comments from outside the Federal Reserve System on the proposed Subpart A revisions. Comments were received from twelve U.S. banks or bank holding companies; one Edge corporation; one bank-owned insurance agency; and thirteen trade associations. The Board also received comments from one state bank supervisory agency.

Subsequent to the Board issuing the '97 Proposal, financial modernization legislation was enacted. The Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338 (1999) (GLB or the GLB Act) was enacted on November 12, 1999. Many of the activities the Board had proposed to liberalize in the '97 Proposal are covered under the expanded authority available to financial holding companies (FHCs) under GLB. More specifically, under GLB, a bank holding company (BHC) that elects to become an FHC may engage in a broad range of financial activities, including securities underwriting and dealing, insurance sales and underwriting, and merchant banking.

Final action on the '97 Proposal was deferred pending implementation of the expanded authority available under GLB. The Board has issued a number of rules implementing GLB authority, including, for example, those governing

[1] The Board last issued final revisions to Subpart A of Regulation K in December 1995, at which time the investment authority for strongly capitalized and well-managed U.S. banking organizations was expanded significantly.

FHC elections and activities (66 FR 400, Jan. 3, 2001), real estate brokerage activities by FHCs (66 FR 307, Jan. 3, 2001), merchant banking activities (66 FR 8466, Jan. 31, 2001), the capital treatment of nonfinancial equity investments (66 FR 10212, Feb. 14, 2001), transactions between banks and their affiliates (66 FR 24186, May 11, 2001), and financial subsidiaries of state member banks (66 FR 42929, Aug. 16, 2001).

The Board has now reviewed its '97 Proposal in light of the significantly changed landscape in relation to provision of financial services post-GLB, as well as all comments filed on the '97 Proposal. The Board has concluded that a few of the changes proposed in 1997 that would have allowed expansion of activities now authorized under GLB no longer are appropriate, primarily those relating to equity dealing, portfolio investment, and insurance activities. However, consistent with the '97 Proposal, the Board has concluded that a number of provisions relating to foreign activities of U.S. banking organizations should be amended, including changes that would: (1) Expand permissible government bond trading by foreign branches of member banks; (2) streamline procedures for establishment of foreign branches by U.S. banking organizations; (3) expand permissible equity underwriting activities abroad for well-capitalized and well-managed U.S. banking organizations; (4) expand general consent authority for well-capitalized and well-managed U.S. banking organizations; (5) amend the debt/equity swaps authority to reflect changes in circumstances of eligible countries; and (6) implement the statutory provision allowing member banks to invest, with the Board's approval, up to 20 percent of capital and surplus in the stock of Edge and agreement corporations. Additional technical and clarifying amendments were also made. These changes to Regulation K, and the comments received on the '97 Proposal, are discussed below.

The Board also indicated in the '97 Proposal that it had not identified any changes to the permissible U.S. activities of Edge corporations that appeared necessary or appropriate to fulfill the purposes of the Edge Act, but sought comment on whether there was a need for any such changes. One commenter urged the Board to permit Edge corporations to provide incidental services generating insignificant revenues in the United States to U.S. persons affiliated with a foreign person or a foreign organization that is principally engaged in foreign business. The Board does not believe this change is necessary or appropriate or otherwise consistent with the purposes of the Edge Act.

Expansion of Government Bond Trading by Foreign Branches

Section 25 of the Federal Reserve Act permits the Board to authorize foreign branches of member banks to conduct abroad activities that are not permitted domestically. However, the statute states that the Board shall not ''except to such limited extent as the Board may deem necessary with respect to securities issued by any 'foreign state' * * * authorize a foreign branch to engage or participate, directly or indirectly, in the business of underwriting, selling, or distributing securities.''

Given the statutory language, the Board, to date, has only permitted foreign branches to underwrite and sell obligations of (i) the national government of the country in which the branch is located, (ii) an agency or instrumentality of the national government where supported by the taxing authority, guarantee, or full faith and credit of the national government, and (iii) a political subdivision of the country. This was determined to be appropriate on the basis that it is often necessary in the ordinary course of banking business for a branch to participate in the selling of the bonds of the host country.

In recent years, U.S. banking organizations have become more active in trading and underwriting foreign government securities. Increasingly, such business, where possible, is being conducted in the foreign branches of U.S. banks. Centralizing trading for all or for certain groups of countries in a single branch can be desirable to facilitate management and funding of this business. For example, a banking organization might wish to centralize government securities trading for all countries in the European Union in one European branch.

For these reasons, the Board proposed that banks be permitted to underwrite and deal through their foreign branches in obligations of governments other than the host government, provided that the obligations are of investment grade and the business is otherwise subject to sound banking practices and prudential regulations. The Board considered the requirement that the obligations must be investment grade would limit cross-border transfer risk to the bank because trading of government securities giving rise to such risk would be required to be conducted either directly through a local branch that is funded locally or through a subsidiary, instead of through the bank. The Board also proposed to retain the existing authority of foreign branches of member banks to underwrite and deal in host government bonds regardless of whether they are investment grade. The Board sought comment on these proposals, as well as on what ratings should be considered to be investment grade for these purposes.

Commenters expressed general support for the Board's proposal. Some commenters suggested that the Board treat any government obligation, investment grade or otherwise, of any country or, alternatively, any country in which a bank has a foreign branch, as eligible to be underwritten and traded in branches located outside of that country. Other commenters argued that safety and soundness is enhanced by having centralized underwriting and dealing of *all* government securities, since the local branch which has authority to engage in non-investment grade underwriting and dealing may not have the appropriate experience to manage such operations.

The Board continues to believe the investment grade requirement for obligations of governments other than the host government is appropriate for the reason set out in the proposal, namely, limitation of cross-border transfer risk to the bank. Non-investment grade government securities issued by foreign governments other than the host government are more likely to give rise to such risks. For this reason, the Board continues to be of the view that trading of non-investment grade securities should be conducted either directly through a local branch that is funded locally or through a subsidiary, instead of through the bank. Accordingly, in the final rule, the Board has retained the investment grade requirement for obligations of governments other than the host government.

A few commenters recommended that the Board permit foreign branches of U.S. banks to underwrite and deal in investment grade obligations of all political subdivisions, and of agencies and instrumentalities whether or not backed by the national government. After further consideration, the Board has determined that it is appropriate to adopt this suggestion at least in part, so long as all such obligations are investment grade. As at present, obligations of agencies and instrumentalities will be required to be supported by the taxing authority, guarantee, or full faith and credit of the national government.

Commenters also requested that foreign branches be permitted to

underwrite and deal in all securities guaranteed by a foreign government. The Board notes that the authority granted in section 25 of the Federal Reserve Act in relation to this activity is with respect to securities ''issued by 'foreign state','' and declines to adopt this change.

With respect to the Board's request for comment on which ratings should be considered to be investment grade for these purposes, commenters urged the Board to adopt the definition of ''investment grade'' set out in the Office of the Comptroller of the Currency's (OCC) investment securities regulation. 12 CFR 1.2(d). The OCC defines the term to mean a security that is rated in one of the four highest rating categories by two or more ''nationally recognized statistical rating organizations'' (NRSROs) as designated by the Securities and Exchange Commission (SEC), or one such agency if the security has been rated by only one NRSRO. The Board considers this definition to be appropriate for purposes of this activity of foreign branches of U.S. banks; accordingly, that definition is incorporated into the final rule.

A few commenters also urged the Board to adopt a procedure that would permit the addition of agencies to the list of permissible rating agencies beyond those that have been approved by the SEC because of concern that a rating by a NRSRO may not be available for some foreign government securities. The Board is not inclined to adopt such a procedure at this time in view of the number of NRSROs that rate foreign government securities. Board staff should be consulted if any issues arise in relation to application of the ''investment grade'' requirement. If it appears that additional guidance is warranted, the Board will consider the matter further.

Comments also suggested that securities that are not speculative in nature and are deemed by the investor to be the credit equivalent of a security that is rated investment grade should be considered ''investment grade'' under this provision of Regulation K. The Board believes that such an approach would essentially mean that there would be no requirement that the obligations be investment grade and rejects it for this reason. Finally, commenters sought clarification as to whether the limits applicable to government obligations, whether as a percentage of capital or of local deposits, may be calculated on a net basis rather than a gross basis. The limits applicable to government obligations under this section may be calculated on a net basis, provided that the banking organization otherwise has received no objection to its internal models being employed for purposes of compliance with these limits.

Foreign Branching

The Board's responsibilities as home country supervisor under the *Minimum Standards for the Supervision of International Banking Groups and their Cross-border Establishments* issued by the Basle Committee on Banking Supervision (the Minimum Standards) call for its specific authorization of a U.S. banking organization's outward expansion. Outward expansion for these purposes means the initial establishment of a banking presence in a country by the bank or any affiliate.

Regulation K currently requires the specific consent of the Board for the establishment of branches by a member bank, an Edge or agreement corporation, or a foreign bank subsidiary in its first two foreign countries. The Board proposed to amend Regulation K to require only 30 days' prior notice to the Board before establishment of branches in the first two countries, on the basis that such a requirement also would fulfill the Board's responsibilities under the Minimum Standards. The Board also proposed that 30 days' prior notice would be required, consistent with the Minimum Standards, if the initial banking presence abroad would be in the form of a subsidiary bank; such notice would be required even if the amount to be invested were below the general consent limits.

Under Regulation K at present, no prior Board approval is required for a banking entity to establish additional branches in any foreign country where it already operates one or more branches. However, a banking entity must give the Board prior notice before establishing a branch in a foreign country where it has no branches even though a banking affiliate operates a branch in that country.

The Board proposed to liberalize Regulation K such that if any of the member banks, their Edge or agreement corporation subsidiaries, or a foreign bank subsidiary (whether a subsidiary of the bank or of the bank holding company) already has a branch in a particular foreign country, a banking affiliate would be authorized to branch there without prior notice to the board. After-the-fact notice, however, would still be required.

The Board also proposed that the 45 days' prior notice currently required in order to branch into additional countries where there is no affiliated banking presence (after the organization has branches engaged in banking in two foreign countries) should be reduced to 12 business days. In taking this approach, the foreign branching establishments of the entire banking organization would be taken into account in determining whether the banking entity would be subject to the 30 day or 12 day prior notice procedure. Where a U.S. banking organization as a whole already operates foreign branches of banking entities in two countries, any banking affiliate would be able to open a branch in a country where such organization has no banking presence, pursuant to the 12 days' prior notice procedure.

Finally, currently under Regulation K, nonbanking subsidiaries may branch into any country in which any affiliate has a branch without prior notice, but a 45-day prior notice must be submitted to establish a branch in a country where no affiliate has a presence. The Board proposed permitting nonbanking subsidiaries held pursuant to Regulation K to establish foreign branches without prior review, subject only to an after-the-fact notice requirement.

The Board sought comment on these proposed changes, including in particular whether the proposed modified notice periods would sufficiently accommodate foreign expansion plans. Commenters supported the Board's proposed changes. Accordingly, the Board is adopting the foreign branching provisions as proposed. The Board wishes to clarify that filing Form FR 2058 fulfills the after-the-fact notice requirements of the foreign branching provisions. Additionally, the Board notes that the streamlined procedures for establishment of foreign branches are not limited to well-capitalized, well-managed institutions. However, the Board retains the authority to suspend general consent authority in whole or in part should circumstances warrant.

Permissible Activities of Foreign Subsidiaries of U.S. Banking Organizations

One aspect of bank regulation to which the Federal Reserve subscribes is the fostering of a level competitive playing field for financial intermediaries. Thus, in the United States, the Board has advocated that expansion by banking organizations into nonbanking activities should generally occur through the bank holding company and not the bank. Banks in the United States benefit from the implicit support of the national government and its sovereign credit rating through federal deposit insurance, Federal Reserve discount window access, and final riskless settlement of payment

system transactions. Extension of this system would make the existing playing field in the United States unlevel for nonbank competitors and create unnecessary distortions in competition.

The same principle applies to U.S. banking organizations abroad. Other nations have chosen to allow their banks to engage in a broad array of financial activities, especially investment banking activities, thereby extending to these activities the implicit support of their governments. In those markets, U.S. banking organizations would be at a disadvantage if unable to offer their customers an equivalent range of key services with the convenience and efficiency of their local bank competitors. In many of these markets, banks are the only significant providers of capital markets services. Independent securities firms are not generally substantial competitors in these markets, both for historical reasons and because they may be unable to compete effectively with banks that have the explicit and implicit support of their governments.

Congress has recognized the existence of conflicting policy objectives and competitive pressures faced by U.S. banking organizations operating abroad and through legislation has struck a balance. In relation to the United States, Congress in enacting GLB demonstrated a strong preference that expanded nonbanking financial activities be conducted in a structure that does not involve the federal bank subsidy. Expanded activities authorized by GLB are required to be conducted either in nonbank subsidiaries of a financial holding company or in a financial subsidiary of a bank, which would be subject to the restrictions on funding by a parent bank set out in sections 23A and 23B of the Federal Reserve Act. In relation to competitive pressures arising from abroad, Congress preserved the Board's authority under the Edge Act to permit Edge corporations, which may be owned by U.S. banks, to engage in a wider range of activities outside the United States than permitted to U.S. banks domestically, where such powers are considered necessary to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad and liberalization otherwise is consistent with safety and soundness considerations. Congress, in enacting the Edge Act, recognized that U.S. banks in some circumstances may need vehicles that could exercise broader financial powers abroad in order to remain competitive internationally and to serve the needs of U.S. firms. Congress granted the Board similar broad discretion to allow bank holding companies to engage in activities outside the United States.

In exercising its statutory authority under the Edge Act, the Board has sought to balance the need for U.S. banking organizations to be competitive abroad with the public interest in assuring the safety and soundness of the banks, protecting the deposit insurance fund, and limiting the extension of the federal safety net. In adopting final revisions to Regulation K, the Board has sought to grant expanded authority only in relation to those activities where: (i) The existing restrictions of Regulation K appear to result in a competitive harm to the ability of an Edge corporation to provide financial services necessary to attract and retain customers; and (ii) requiring the activities to be conducted outside the bank chain of ownership appears to compromise significantly the competitive position of U.S. banking organizations. The Board has concluded that equity underwriting is one such activity, and the expansion of authority proposed in 1997 with regard to this activity has been adopted, as discussed further below. The Board has concluded, however, that liberalization set out in the '97 Proposal in relation to other activities, such as equity dealing, venture capital investments and insurance activities, should not be adopted at this time in light of the passage of GLB. These latter activities appear to be able to be conducted competitively outside the bank chain of ownership under authority granted in GLB.

Two-Tier Capital Test for Edge Corporations

As the Board noted in the '97 Proposal, tying applicable limits to the capital of the parent bank is particularly important for subsidiaries of Edge corporations. Congress has limited a member bank's investment in Edge and agreement corporations to 20 percent of the bank's capital.[2] However, for various reasons, Edge corporations historically have tended to retain their earnings rather than dividending them to the parent bank. In some cases due to such retained earnings, the capital of a bank's Edge and agreement corporations may be in excess of 20 percent of the parent bank's consolidated capital, even though its *investment* in the Edge subject to the above-referenced statutory limit is below 20 percent.

In these circumstances, the Board considered that the capital of an Edge corporation that is in excess of 20 percent of the parent bank's consolidated capital, when retained earnings are counted, generally should be excluded for purposes of determining applicable limits for activities of the Edge and its subsidiaries. Accordingly, the Board proposed that Edge and agreement corporations, as well as foreign bank subsidiaries of member banks (which are treated as Edge corporations for purposes of their limits), would be subject to two limits, one tied to a percentage of the Edge corporation's tier 1 capital and the other tied to a percentage of the parent bank's tier 1 capital. Limits tied to the parent bank's capital would be 20 percent of the limits otherwise applicable to Edge corporations, and the lower limit would be binding. For example, if a limit proposed for a given activity of an Edge corporation is 10 percent of the Edge corporation's capital but the Edge corporation's capital is in excess of 20 percent of the bank's total capital, the binding limit for the Edge corporation would be two percent of the parent bank's tier 1 capital. For those U.S. banks that do not have significant levels of retained earnings at the Edge, the binding limit more than likely would be the separate limit tied to the Edge corporation's capital.

The Board considered that this approach would be consistent with the intent underlying the provisions of the Edge Act limiting the total amount of capital a bank may invest in Edge corporations. This approach effectively would place a cap on the percentage of total *bank* capital that could be placed at risk through activities or investments not otherwise permitted to the bank directly, regardless of the capital level of the Edge corporation. This approach also would reduce any regulatory incentive to retain earnings at the Edge because any regulatory benefit from such retained earnings, in terms of expanded limits on activities abroad, would be denied.

The Board proposed that all limits applicable to Edge corporations under the '97 Proposal would proceed on this basis. Comment was requested on these proposals and whether any other approach might achieve similar objectives.

One commenter opposed the Board's proposal to impose a two-tier capital test on Edge corporations, arguing that the proposal penalized organizations that achieve strong earnings in a

[2] The Edge Act prohibited member banks from investing more than 10 percent of their capital and surplus in the capital stock of Edge and agreement corporations. In September 1996, congress amended this limit to permit investments in excess of 10 percent of capital and surplus with the specific approval of the Board, provided the amount invested shall not exceed 20 percent of capital and surplus of the bank. *See* The Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA), Pub. L. 104–208, sec. 2307 (12 U.S.C. 618).

subsidiary of a bank rather than a subsidiary of the holding company. It further maintained that the limitation on the amount a bank can invest in an Edge corporation creates a practical limit on the risk to the bank's own capital. Therefore, it argued the Board should look only at the capital of the Edge corporation in setting limits as a percentage of capital. The Board continues to believe this two-tier approach is consistent with the intent underlying provisions of the Edge Act that limit the total amount of capital a bank may invest in Edge corporations. The Board notes that, due to the accumulation of large amounts of retained earnings in Edge corporations, the limitation on the amount a bank can invest in an Edge corporation may not limit the overall risk to the bank's consolidated capital.

Two other commenters argued the Board should look only at the capital of the parent bank in setting limits under the Edge corporation. The Board believes, however, that activity limits for Edge corporations should be tied to the capital of both the Edge corporation and the parent member bank, in order to ensure that Edge corporations are not a source of potential weakness to the U.S. parent bank.

Securities Activities

Current Restrictions on Securities Activities

Foreign subsidiaries of U.S. banking organizations have been permitted broad authority to underwrite and deal in debt securities for over 25 years, subject to the provision that the securities must be included with loans for purposes of compliance with the parent bank's lending limit. No separate dollar limits have been placed on underwriting and dealing in debt securities.

Since 1979, Regulation K also has specifically authorized foreign subsidiaries of both U.S. banks and bank holding companies to underwrite and deal in equity securities outside the United States, subject to certain limitations and restrictions. These activities were determined to be permissible, within the applicable limits, on two bases. First, it became clear that it was necessary for U.S. banking organizations to be able to engage in these activities abroad, if they were to compete successfully with foreign banks in the provision of services to foreign customers. Indeed, for some time, virtually all the major foreign competitors of U.S. banking organizations have been foreign banks that conduct equity securities activities either directly in the bank or in a subsidiary of the bank. Thus, consistent with the purposes underlying the Edge Act and the BHC Act, there is clear statutory authority for U.S. banking organizations to engage in these activities through subsidiaries abroad. Second, in any event, the provisions of the Glass-Steagall Act did not apply extra-territorially to the operations of foreign subsidiaries of U.S. banking organizations.

While equity underwriting and dealing have been permissible activities for U.S. banking organizations' foreign subsidiaries for some time, as noted above, the level of such activity is subject to limits under Regulation K. Restrictions *currently* applied to equity securities underwriting and dealing activities under Regulation K include the following.

Underwriting limits—Through a foreign subsidiary, an investor [3] may underwrite equity securities in amounts up to the lesser of $60 million or 25 percent of its tier 1 capital. These limits do not include amounts covered by binding commitments from sub-underwriters or other purchasers. If the underwriting is done in a subsidiary of the member bank, the amount of the uncovered underwriting must be included in computing the bank's single borrower lending limit with respect to the issuer.

Dealing limits—Through a foreign subsidiary, an investor may hold a dealing position in the equity securities of any one issuer in amounts up to the lesser of $30 million or 10 percent of its tier 1 capital. An investor must include any shares of a company held in an affiliate's dealing account in determining compliance with any percentage limits placed on ownership of that company.

Aggregate limit—There is an aggregate limit on the total amount of equity securities that may be held in investment and dealing accounts, aggregating all shares held by subsidiaries: for a bank holding company, the limit is 25 percent of tier 1 capital; for an Edge corporation,[4] the limit is 100 percent of the Edge's tier 1 capital.[5]

Prior review—Banking organizations must submit to a review of their foreign securities operations prior to engaging in foreign equity securities activities to the extent of these limits. They may also seek Board approval for higher underwriting limits, subject to certain conditions.

Revisions of Equity Securities Authority

Equity Underwriting

'97 Proposal

Although, as discussed above, the existing limits on underwriting equity securities in Regulation K are expressed both in terms of percentages of tier 1 capital of the investor and absolute dollar limits, as a practical matter it has been the dollar limits that have constrained the extent to which U.S. banking organizations may engage in these activities through their foreign subsidiaries. In the '97 Proposal, the Board noted the $60 million limit on underwriting equity securities significantly impedes the ability of U.S. banking organizations to compete for this business in foreign markets, where securities underwriting is a service routinely offered by local banks. At the same time, the risks associated with the activity suggest that such a stringent limit is not required for safety and soundness purposes for well-capitalized and well-managed banking organizations. While initial underwriting commitments may involve large sums, in most cases by the time the underwriting goes to market, large portions of the exposure have been passed on to sub-underwriters or presold. Thus, in most cases, the initial underwriting commitment substantially overstates the risk being assumed.

In order to reduce further these constraints, the Board proposed in 1997 to replace the dollar limits for underwriting activity with limits based solely on percentages of the investor's tier 1 capital for well-capitalized and well-managed organizations. The Board considered that, if a banking organization is well-capitalized and well-managed, tying the underwriting limits solely to capital levels would have the benefit of more closely linking the limits to the ability of the company to support the activity. It would also provide U.S. banking organizations with greater flexibility in responding to changing market conditions, because the amount of capital devoted to an activity is, after meeting regulatory constraints, determined by the firm.

Accordingly, the Board proposed to amend Regulation K in relation to those banking organizations that are well-capitalized and well-managed by removing the existing dollar limits applicable to equity underwriting

[3] An investor for these purposes means an Edge corporation, agreement corporation, bank holding company, member bank and any foreign bank owned directly by a member bank.

[4] Any foreign bank directly owned by a U.S. bank is treated as an Edge corporation for purposes of its limits.

[5] Investments in companies must be added to any shares of such companies held in the dealing account for purposes of this limit.

activities, and instead providing that such activities would be limited to percentages of the investor's tier 1 capital. For well-capitalized and well-managed organizations, the Board proposed applicable limits to be determined as follows.[6] In relation to securities activities of subsidiaries of bank holding companies, their limits would be determined by reference to percentages of the tier 1 capital of the holding company. The Board proposed that limits applicable to such activities undertaken by subsidiaries of Edge and agreement corporations, as well as foreign banks that may be direct subsidiaries of member banks, would be determined by reference to the tier 1 capital of the parent bank as well as to the tier 1 capital of the bank subsidiary. More specifically, limits for underwriting exposure to a single company would be established at 15 percent of the bank holding company's tier 1 capital for its subsidiaries and, for subsidiaries of Edge corporations, the lesser of three percent of tier 1 capital of the bank or 15 percent of the tier 1 capital of the Edge.

Under the '97 Proposal, these limits on underwriting exposure to a single company would be applied on an aggregate basis. A bank holding company's limit would include all underwriting exposure to one issuer by all of the holding company's direct and indirect subsidiaries, including exposures held through its bank subsidiaries. The bank's and Edge's limits would include all exposures held by their respective subsidiaries. The Board proposed, however, that this expanded underwriting authority would be available to U.S. banking organizations only if each of the bank holding company, bank, and Edge or agreement corporation qualify as well-capitalized and well-managed.[7]

For organizations that fail to meet the well-capitalized and well-managed criteria, the Board proposed that the existing dollar limits (*i.e.*, $60 million) on commitments by an investor and its affiliates for the shares of an organization would be retained.

The Board proposed that, in order to engage in such activities, all banking organizations would be required to implement internal systems and controls adequate to ensure proper risk management. Controls would have to be in place to assure that underwriting positions do not result in violations of limits on securities held in the trading account or exceed the parent bank's lending limits when the underwriting positions are combined with other credit exposures. Sanctions (such as temporary suspension of underwriting authority) may be imposed for violations of such limits.

Final Rule on Equity Underwriting Limits.

The Board continues to believe that there is a strong competitive need for liberalization of the $60 million Regulation K limit on equity underwriting. Subsidiaries of Edge corporations have been able to gain some underwriting business through obtaining commitments in advance from subunderwriters in order to reduce their own exposure to $60 million, but the limit clearly is a material constraint. Underwriting abroad continues to be a business that is conducted by local banking firms and does not lend itself readily to cross-border activity, thus requiring foreign subsidiaries of U.S. banks to compete with much larger local competitors.

Further, as noted above, the risks associated with equity underwriting activities suggest that stringent limits are not required for safety and soundness purposes for well-capitalized and well-managed banking organizations. Although the percentage limits proposed in the '97 Proposal would significantly increase the amount of underwriting authorized under Regulation K, underwriting is a shorter term activity than, *e.g.*, dealing. Moreover, under Regulation K, positions undertaken in connection with an underwriting and unplaced after 90 days must be moved to the dealing account and counted against the dealing limit. Consequently, the exposure of the banking organization to the activity is minimized.

Commenters strongly supported the Board's proposed liberalization of the equity underwriting limits, and made a few additional suggestions. One commenter recommended that the proposed underwriting limits be doubled. Another expressed concern that the proposed limits might result in some Edge corporations having less underwriting authority than the existing $60 million limit. Some commenters also objected to the disparity between the limits proposed for BHC and bank subsidiaries.

The Board does not believe further expansion of the underwriting limits beyond those proposed is warranted, particularly given that portions of an underwriting that are covered by binding commitments obtained from subunderwriters or other purchasers are not counted in determining compliance with the limits. U.S. banking organizations wishing to engage in underwriting equity securities in amounts larger than those permitted under Regulation K may do so by qualifying for GLB authority. The Board also continues to believe it is appropriate to tie the expanded limits to the investor's capital. If the underwriting limit resulting from an Edge's capital is considered to be too low, it is of course open to the organization to increase its capital and thereby increase its limit.[8]

Commenters also suggested that the existing additional Regulation K underwriting authority, whereby an organization may request the Board's approval to exceed the $60 million underwriting limit so long as the excess amount is deducted from capital and the organization would remain strongly capitalized after such deduction, also should be extended to the expanded limits. The Board does not believe it is appropriate to retain this authority in view of the significant increase in the underwriting limits that would be otherwise authorized under the expanded limits. Moreover, because the limits are determined by reference to capital, banking organizations seeking greater underwriting authority may expand their limits by increasing their capital.

For these reasons, the Board is adopting the expanded underwriting limits for well-capitalized and well-managed banking organizations set out in the '97 Proposal essentially without change. As proposed, the limits would apply to all underwriting exposures held under authority of Regulation K by the relevant entity and all of its subsidiaries (*e.g.*, a BHC's limit would include all underwriting exposures to one issuer by all of the holding company's direct and indirect subsidiaries, including exposures held through its bank subsidiaries, and a

[6] The Board proposed that existing dollar limits would be retained for companies that are not well-capitalized and well-managed.

[7] The Board proposed that what, if any, action should be taken in relation to banking organizations' limits if they ceased to be well-capitalized and well-managed would be addressed on a case-by-case basis through supervisory action.

[8] Commenters recommended that banking organizations also should be able to net underwriting exposures for purposes of determining compliance with the limits. As a practical matter, Regulation K presently essentially authorizes netting for these purposes given that, where the underwriter is covered by binding commitments from subunderwriters or other purchasers, such commitments are excluded in determining compliance with the limits. Compliance with the limits will continue to proceed on this basis. The Board does not believe a persuasive case has been made for any additional netting authority in relation to equity underwriting at this time.

bank subsidiary's limits would include all exposures held by its subsidiaries).[9]

Equity Dealing

'97 Proposal

The Board also proposed for comment liberalization of dealing activities for well-capitalized and well-managed banking organizations. As with underwriting limits, the proposed expansion of dealing limits would have been based on percentages of capital of the organization and, thus, on the ability of the organization to accommodate risk. The Board also noted its belief that dealing activities presented somewhat greater risk of loss than underwriting, which resulted in somewhat more restrictive limits being proposed for dealing activities relative to underwriting activities.

For well-capitalized and well-managed organizations, the Board proposed to remove the current dollar limits and revise the existing percentage of capital limits as follows. First, in order to provide diversification in the trading account, the Board proposed a limit on holdings of any one stock in the trading account of 10 percent of the tier 1 capital of the bank holding company for its subsidiaries and, for subsidiaries of an Edge corporation, the lesser of two percent of the bank's tier 1 capital or 10 percent of the Edge corporation's tier 1 capital.

Second, the Board proposed an aggregate limit applicable to all holdings of equities in the trading accounts of all direct and indirect subsidiaries authorized pursuant to Subpart A.[10] Without such an aggregate ceiling, the Board was concerned that a banking organization could have excessive exposure to movements in equity markets. The Board proposed aggregate limits of 50 percent of the bank holding company's tier 1 capital for its subsidiaries and, in the case of an Edge's subsidiaries, the lesser of 10 percent of the tier 1 capital of the bank or 50 percent of the Edge's tier 1 capital.

The Board proposed that the limits on equity dealing would apply to net positions across legal vehicles held, directly or indirectly, by the regulated entity to which the limit applied (that is, the bank holding company, the bank or the Edge corporation). Long equity positions in a single stock could be netted against short positions in the same stock and against derivatives referenced to the same stock.[11] For purposes of the aggregate limits, all physical and derivative long positions could be netted against physical and derivative short positions. It was further proposed that, for purposes of measuring compliance with these limits, banks would be permitted to use internal models to calculate the value of derivative positions used to offset exposures and net dealing positions in individual stocks, as well as the value of total net equity holdings in the trading account.[12] The Board considered that the adequacy of such models is subject to review during the exam process, and proposed that no special review would be required for their use in connection with the proposed limits on dealing activities.

For organizations that failed to satisfy the well-capitalized and well-managed criteria, the Board proposed to retain the existing dollar limit on individual shares held in the trading account (*i.e.*, $30 million), which would be calculated in the same manner as at present. As noted, it is generally the dollar limits that currently constrain organizations in their ability to conduct these activities. This is because, at present, only the largest banking organizations are engaged in these activities. The Board noted, however, that in the future a relatively small organization may seek to enter these lines of business and, for it, exposures of $30 or $60 million may be large relative to its capital. The Board therefore also sought comment on whether, in addition to dollar limits, limits based on percentage of capital also should be adopted for organizations that are not well-capitalized and well-managed in order to address the relative exposure of such organizations to these activities.

In addition, for organizations that are not well-capitalized and well-managed, the Board also proposed an aggregate limit on shares held in the trading account, including all dealing positions and investments held pursuant to Regulation K authority, of 25 percent of the holding company's capital for its subsidiaries and, for subsidiaries of Edges and any foreign bank held directly by a member bank, the lesser of 5 percent of the bank's tier 1 capital or 25 percent of the Edge's tier 1 capital. These limits were proposed on the basis that they would be half of those applicable to organizations that were well-capitalized and well-managed.

The Board also sought comment on whether, instead of imposing the limits discussed above in relation to equity underwriting and dealing activities by subsidiaries of well-capitalized and well-managed bank holding companies, it would be appropriate to lift all limits on these activities for such entities except for the limits on individual stocks held in the trading account discussed above (*i.e.*, 10 percent of the holding company's tier 1 capital). The Board considered that, at a minimum, this limit should be imposed on holding companies in order to assure diversification in individual stock holdings. Under this alternative, banking organizations also would be required to implement internal systems and controls adequate to ensure proper risk management and that underwriting positions do not result in violations of limits on investments in any one company.

Developments Since the '97 Proposal

Since the time the Board issued the '97 Proposal for public comment, the statutory and regulatory environment governing the equity dealing activities of U.S. banking organizations, as well as the market demand for such services, have changed significantly. One significant change noted above was the enactment and implementation of GLB. Under GLB, FHCs may engage in unlimited equity dealing activities. While the GLB Act did not make any revisions to the Edge Act, the Board believes that it demonstrates a Congressional intent that significant equity dealing activities should be conducted through FHC powers, absent a competitive need for U.S. banking organizations to engage in such activities through bank subsidiaries.

A second important change since the '97 Proposal has been the dramatic growth in the equity markets over the past few years. The growth in demand in the U.S. market for equity securities since the early 1990s, growing acceptance of equity investments by European investors since the establishment of the Euro, and the global equity market volatility of the past several years have combined with advances in financial engineering to create significant customer demand for

[9] Additional comments relevant to the Board's final action on equity underwriting authority also were submitted with regard to the Board's proposed criteria for determining whether banking organizations would be considered to be well-capitalized and well-managed for purposes of the expanded authority, as well as with regard to the two-tiered capital test for Edge corporations for purposes of determining eligibility. Each of these issues is discussed separately.

[10] As at present, shares held as an investment pursuant to Subpart A also would be included in determining compliance with the applicable aggregate limits.

[11] The Board also proposed that a basket of stocks, specifically segregated by the banking organization as an offset to a position in a stock index derivative product, as computed by the bank's internal model, may be netted as a whole against the stock index.

[12] Currently, the use of internal models in computing net positions in stocks is subject to prior Board review and the limitation that no net long position in a security shall be deemed to have been reduced through netting by more than 75 percent.

equity derivative instruments. In particular, the wide variety of sophisticated investment strategies employed by institutional investors and hedge funds, as well as the increasing focus of financial institutions on providing high net worth private banking clients with sophisticated portfolio diversification, hedging, and stock option monetization services, have translated into increasing volumes of equity derivatives at global banking organizations. For example, from December 31, 1996 to December 31, 2000, the notional value of equity derivatives held by U.S. banking organizations has more than tripled to roughly $940 billion. In meeting this demand, institutions generally avoid taking significant net open equity positions and hedge their customer equity derivative transactions either with other equity derivatives or with physical securities.

Finally, although, as noted above, GLB did not expand the authority of banks to acquire equity securities, the Office of the Comptroller of the Currency (OCC) determined last year that several national banks could take positions in equity securities solely to hedge bank permissible, customer-driven equity derivative transactions, as an activity incidental to the business of banking. The OCC imposed no quantitative limit on such equity positions, but rendered the banks' authority to take such positions subject to the following constraints:

(a) The banks committed that they will use equities solely for hedging and not for speculative purposes;

(b) The banks will not take anticipatory or maintain residual positions in equities except as necessary to the orderly establishment or unwinding of a hedging position;

(c) The banks may not acquire equities for hedging purposes that constitute more than 5 percent of a class of stock of any issuer; and

(d) Banks must obtain OCC supervisory approval prior to engaging in this activity in order to demonstrate that they have an appropriate risk management process in place.

These developments, along with all comments received on the '97 Proposal, have been taken into account by the Board in taking action on the final rule.

Final Rule on Equity Dealing Limits

Equity Securities Acquired To Hedge Equity Derivatives

Existing Regulation K and the '97 Proposal both proceed generally on the basis that acquisition of shares of a company by a subsidiary of a U.S. bank must be authorized by and conform to limits established for dealing in shares of a single issuer and limits applicable to portfolio investments. In other words, both presume that all such acquisitions of equity securities must conform to Regulation K limits because, absent the authority of the Federal Reserve Act and Regulation K, such acquisitions of shares of nonfinancial companies would be impermissible for the bank and its subsidiaries. The OCC's recent determinations, however, render the Regulation K limits largely irrelevant for national banks with respect to their equity derivatives business.

Regulation K, however, also presently authorizes for both subsidiaries of bank holding companies and subsidiaries of member banks abroad ''commercial and other banking activities'', which encompass all activities in which banks are permitted to engage in the United States. 12 CFR 211.5(d)(1). Accordingly, the Board takes this opportunity to clarify that the effect of the determination that banks may take positions in equity securities solely to hedge bank permissible, customer-driven equity derivative transactions as an activity incidental to the business of banking is to render this activity ''commercial or other banking activity'' for purposes of Regulation K. The consequence of this change is that, as an otherwise permissible banking activity, positions taken in equity securities for this purpose may be excluded in determining compliance with the separate Regulation K dealing limits, so long as taking such positions continues to be bank permissible and all constraints placed upon the conduct of this activity in determining its permissibility are observed, namely:

(a) The equities are used solely for hedging and not for speculative purposes;

(b) no anticipatory or residual positions in equities will be acquired or maintained, except as necessary to the orderly establishment or unwinding of a hedging position;

(c) no equities may be acquired for hedging purposes that constitute more than 5 percent of a class of stock of any issuer; and

(d) the banking organization has obtained approval from its primary federal regulator prior to engaging in such hedging practices in order to demonstrate that they have appropriate risk management processes in place.

The Board is concerned, however, that the first two constraints imposed by the OCC on the conduct of this activity (specifically, requiring the equities to be used solely for hedging and not for speculative purposes, and limiting residual positions to those necessary to the orderly establishment or unwinding of a hedging position) are ambiguous and potentially difficult to apply, particularly in light of the generally integrated nature of equity derivatives business. Indeed, the Board notes that it is usually the case that, even where a bank seeks to fully hedge equity derivatives with physical securities, residual positions will arise. It also is not unusual for traders in this line of business to seek to maximize returns by taking a view on price movements of the underlying security at the same time as putting in place the hedges necessary to cover the unwanted portion of derivative exposures. For this reason, the Board has concluded that, where after full netting and offset of equity securities against derivatives any residual positions in a single issuer remain, the value of all such residual positions as calculated by the organization's internal models must be included in determining the organization's compliance with the dealing limit, as discussed further below.

The Board notes that the effect of this clarification is to place the constraints of the Regulation K dealing limits on those activities involving the acquisition of equity securities that are not bank permissible. Any subsequent regulatory or legislative determination that acquiring equity securities to hedge bank permissible equity derivatives is not a bank permissible activity would have the effect of rendering all such positions subject again to the dealing limits.

Equity Dealing Limits

Comments on the '97 Proposal generally supported the Board's proposed expansion of the equity dealing limits for well-capitalized, well-managed organizations.[13] As noted above, however, in light of the enactment of the GLB Act expanding authority to engage in this activity, the

[13] Some commenters argued that banking organizations should be able to exceed individual and aggregate dealing limits, provided the amount in excess of the limits was deducted from capital and, after deduction, the organization remained well-capitalized. Other commenters were concerned that the proposed limits tied to capital might actually result in a decrease in dealing authority, and recommended higher limits. Another commenter noted that the terms ''shares'' and ''equity'' are both used in the '97 Proposal and recommended using ''shares'' to ensure that convertible debt and participating loans are not included in the limits. In view of its conclusions regarding the absence of justification for any significant expansion of dealing authority under Regulation K, the Board rejects these suggestions. The Board does wish to clarify that convertible debt prior to conversion and participating loans are not encompassed within the dealing limit.

Board no longer believes it is appropriate to increase the equity dealing limits under Regulation K. Instead, the Board considers that GLB authority should be the vehicle for any significant increase in equity dealing authority for subsidiaries of bank holding companies and of banks, unless concerns regarding the ability of U.S. banking organizations to compete in the provision of financial services abroad otherwise support additional liberalization under Regulation K. The Board is of the view that no such concerns appear to be raised in relation to dealing activities such as market-making and proprietary trading.

To the contrary, with respect to market-making, a limit of $30–40 million per single issuer appears generally consistent with being able to make a market in a stock, which is necessary to being competitive in foreign securities markets. With respect to proprietary or speculative positions, the Board considers that this is not an area that should be the subject of liberalization under Regulation K. Any banking organization that wishes to take larger speculative positions than Regulation K allows can do so without limit in an FHC subsidiary or a financial subsidiary of the bank.

Accordingly, the Board does not consider that there is sufficient justification at this time for any significant increase in the single issuer dealing limit. However, the Board believes it would be appropriate to make a small incremental increase in the equity dealing limit, raising it from $30 million to $40 million, in recognition of the increased experience of organizations engaged in this activity and the fact that the $30 million limit was adopted 10 years ago. This approach is consistent with the Board's action in the past.

As noted above, all residual positions in equity securities of a single issuer resulting from bank-permissible equity derivatives business must be included in calculating compliance with the $40 million limit. Additionally, while underwriting commitments and shares held for up to 90 days in connection with an underwriting would be excluded from these limits, positions unplaced after 90 days must be moved to the dealing account and counted against the dealing limit.

Otherwise, the Board has determined that the existing dealing authority should remain essentially unchanged.[14] This would include the existing 25 percent constraint on the availability of derivative hedges as a means of reducing net long positions in physical securities for purposes of compliance with the single issuer limit. More specifically, under existing Regulation K, even if an organization has full netting authority and its net long positions in physical securities of a single company are fully hedged by derivative instruments referenced to the same security, $.25 of each $1 in net long physical securities nevertheless continues to count toward the $30 million single issuer limit. As at present, this additional limit or constraint will only apply to net long positions in physical securities after longs and shorts are netted, and additional derivative hedges may reduce net long positions in physical securities by up to 75 percent. The increase in dealing limit to $40 million will result in an overall cap on net long positions in physical securities of $160 million even where the positions are fully hedged. The Board has determined that, going forward, this additional constraint on dealing activity will only apply to net long positions in physical securities held under Regulation K dealing authority, not to physical securities acquired in connection with bank permissible hedging transactions.

Netting and Otherwise Determining Compliance With Dealing Limits

The Board has determined that it should adopt one additional aspect of the '97 Proposal as it would apply to equity securities activities, namely, allowing netting based on internal models for purposes of determining compliance with the single issuer dealing limit. Comments submitted were overwhelmingly in support of the use of internal models for this purpose.

Thus, consistent with the '97 Proposal, the equity dealing limit will apply to net positions across legal vehicles held, directly or indirectly, by the regulated entity to which the limit is applicable (that is, the bank holding company or the bank subsidiary). Long equity positions in a single stock may be netted against short positions in the same stock and against derivatives referenced to the same stock. Also consistent with the '97 Proposal, a basket of stocks, specifically segregated by the banking organization as an offset to a position in a stock index derivative product, as computed by the bank's internal model, may be netted as a whole against the stock index. For purposes of the aggregate equity limits, all physical and derivative long positions may be netted against physical and derivative short positions. Organizations may use their internal models to calculate the value of derivative positions used to offset exposures and net dealing positions in individual stocks, as well as the value of total net equity holdings in the trading account.

For those banking organizations that wish to rely on netting based on their internal models for purposes of determining compliance with the dealing limits, the valuations generated by those models based upon current market values of the organization's residual positions in a single issuer will count toward the single issuer dealing limit. The Board considers it only appropriate that, if a banking organization uses its internal models for purposes of netting and valuing residual exposures in its equity derivatives line of business, it must use current market values (and not historical cost) for calculating compliance with the dealing limits under Regulation K for all of its equities lines of business. The organization may not ''mix and match'' the use of historical cost and mark-to-market valuations where internal models are used for these purposes.

However, the Board notes that netting based on internal models is not the mandatory method of compliance with the dealing limit. In this regard, Regulation K dealing limits presently encompass only net long positions in physical securities, after netting long and short positions in the same security. As is presently the case, organizations not wishing to determine compliance with the dealing limits by netting and offsetting positions in physical securities against positions in derivatives referenced to the same security may continue to determine compliance with the $40 million dealing limit solely by reference to the historical cost of its net long physical positions.

Commenters requested clarification of one aspect of the '97 Proposal regarding netting, namely, whether positions in a single stock would qualify for netting so long as the hedge for the position is held directly or indirectly by the entity to which the limit applies (*i.e.*, somewhere within the investor chain, but not necessarily in the same legal entity holding the related investment.) The Board confirms that netting of positions on this basis will be permissible. This approach reflects the market or economic risk of positions held by the entity on a consolidated basis.

Finally, the '97 Proposal would have allowed netting based on a banking organization's internal models without prior Board approval. The Board continues to believe that prior approval

[14] As discussed further below, however, the Board has adopted the expanded netting authority proposed in 1997 with a few minor changes.

should not be required to engage in netting through the use of internal models for this purpose. After further consideration, however, the Board believes prior notice of an organization's intention to use its internal models for this purpose is appropriate so that the Board may object if it considers the models inadequate for any reason. Banking organizations that have previously received approval under Regulation K to engage in netting through the use of their internal models may continue to do so without additional notice to the Board.[15]

Authority To Engage in Equity Underwriting and Dealing Activities

In the '97 Proposal, the Board noted that its approval currently is required to engage in underwriting and dealing in equity securities pursuant to Regulation K and sought comment on whether banking organizations that are well-capitalized and well-managed should be allowed to engage in equity securities activities at the proposed expanded levels without seeking prior Board approval. In response to this request, commenters urged allowing U.S. banking organizations meeting the well-capitalized, well-managed criteria to engage in the expanded activities without Board approval, particularly if the organization already has experience in such activities under Regulation Y or K.

As discussed above, the Board has adopted the '97 Proposal with regard to expanded equity underwriting authority for organizations that are well-capitalized and well-managed, but has only increased the equity dealing authority from $30 to $40 million. The latter increase in authority will be available to all organizations regardless of whether they meet the well-capitalized, well-managed criteria. The Board has concluded that, in view of the significant liberalization in underwriting authority under Regulation K, all organizations that wish to engage in the expanded underwriting activities must first provide 30 days' prior notice to the Board. With regard to the increased dealing authority, all organizations that wish to engage in dealing activities under the $40 million limit also must provide 30 days' prior notice to the Board, unless the organization already has received the Board's consent to engage in dealing activities under the $30 million limit. Organizations presently engaging in dealing activities under the $30 million limit may avail themselves of the additional $10 million in dealing authority without prior notice to the Board.

Venture Capital Activities Through Portfolio Investments

Current Restrictions

Regulation K currently allows U.S. banking organizations to make portfolio investments, that is, limited, noncontrolling investments in foreign commercial and industrial companies. This authority was adopted to enhance the competitiveness of U.S. banking organizations by increasing the range of financial services they may provide abroad. Many foreign financial institutions, including foreign banks, engage in venture capital activities, at times in connection with the provision of other financial services to the company.

'97 Proposal

The Board proposed in the '97 Proposal that existing dollar limits on portfolio investments made by well-capitalized, well-managed bank holding companies under the Board's general consent authority would be replaced by limits tied solely to a percentage of the holding company's tier 1 capital. More specifically, such bank holding companies (and their nonbanking subsidiaries) would be permitted to invest up to 2 percent of the holding company's tier 1 capital in any individual investment and would be subject to an aggregate limit of 25 percent of the holding company's tier 1 capital for all such investments. In determining compliance with the individual limit, shares in such companies held in the trading account by the investor and its affiliates under Regulation K would be included.

For all other investors (*i.e.*, Edge corporations, foreign bank subsidiaries of member banks, and bank holding companies that are adequately capitalized but fail to meet the well-capitalized and well-managed standards), the Board proposed retaining limits of $25 million on investments in any one organization under general consent authority, although larger investments would continue to be eligible for prior notice or specific approval treatment on a case-by-case basis. An aggregate limit on such investments would be imposed. For bank holding company investors, that limit would be 25 percent of tier 1 capital, and for Edge or foreign bank investors, it would be the lesser of 5 percent of the parent bank's tier 1 capital or 25 percent of the Edge's tier 1 capital.

With respect to the limit on voting shares in the target company, the Board proposed that investors would be permitted to make noncontrolling investments in up to 24.9 percent of a company's voting shares. These investments would only be permissible if, as at present, the investor does not control the company in which the investment is made. Accordingly, the Board noted an investor may not: (i) Control a majority of the board of directors or have disproportionate representation on the board; (ii) have a management contract with the company or exercise veto power over its actions; or (iii) use any other means to control the operations of the company.

The Board requested comment on all of the foregoing revisions to the portfolio investment authority. It specifically requested comment on the relative risk of portfolio investments and whether there is a competitive need for foreign subsidiaries of banks also to have expanded authority in relation to such investments.

Final Rule on Portfolio Investment Authority

Comments submitted on this aspect of the Board's '97 Proposal strongly supported the liberalization proposed in relation to limits applicable to portfolio investments made by bank holding companies, as well as in relation to the proposed increase in permissible individual investments up to 24.9 percent of voting shares. Certain of the comments argued that the proposed liberalization for bank holding companies also should be extended to bank subsidiaries, and various clarifications were requested on the interaction between the proposed changes and the existing rule. Clarification of these matters is provided below.

As discussed above, however, the major development in this area since the Board issued the '97 Proposal was enactment of the GLB Act, which authorizes FHCs to make merchant banking investments without regard to dollar limits or geographic restrictions. The Board notes that expanded merchant banking authority under GLB is only available to holding company subsidiaries; such authority may not be exercised in the bank chain.

The Board has therefore reconsidered the '97 Proposal in the light of passage of GLB and has determined not to adopt

[15] In response to comments, the Board notes that organizations would not be required to create a new model separate from existing internal models used for purposes of market risk assessment in order to engage in netting under Regulation K. Indeed, the Board would expect that organizations would use for this purpose the same internal models otherwise currently employed for purposes of risk management.

the proposal to increase the general consent limit and the permissible percentage of shares for portfolio investments. The Board considers that the GLB Act established the framework for engaging in merchant banking activities generally, and Regulation K should not establish an alternative framework for expansion of this activity absent a compelling competitive need. The Board does not believe that any such compelling competitive need has been demonstrated. Bank holding companies wishing to engage in merchant banking activities other than under the existing constraints of Regulation K should seek FHC status.

Investment Limits

A number of additional comments were submitted that are also relevant to the operation of existing provisions of Regulation K in relation to portfolio investments. In particular, certain commenters suggested that investors should be permitted to make portfolio investment under Regulation K in excess of the $25 million general consent limit, so long as the amount in excess were deducted from capital. Other commenters suggested that organizations should be permitted to use netting for purposes of calculating compliance with portfolio investment limits. The Board considers that neither of these changes would be appropriate in view of the nature of portfolio investments and the availability of other authority for making such investments.

A few commenters also requested clarification regarding whether the calculation of limits on portfolio investments will continue to be on an historical cost basis. One expressed the concern that an increase in the aggregate portfolio limit would be necessary if these investments would be valued at current market value, not historical cost. The Board considers that limits on portfolio investments should be calculated consistent with their treatment for capital purposes. More specifically, the amount of the investment subject to the Regulation K limit will equal the carrying value of the investment, or the value of the investment on the balance sheet, reduced by any unrealized gains on the investment that are reflected in the carrying value but are excluded from the organizations' tier 1 capital.

Commenters also opposed combining portfolio investments with dealing positions, either for purposes of a single company limit or aggregate limit, noting that these activities have important differences and are managed through separate lines of business. They argued that portfolio investments generally are made with longer time horizons and tend to involve privately held companies, whereas dealing positions generally are taken for short periods of time and involve public companies. The Board considers these points to be well-founded. In view of these comments and the Board's determination not to adopt any significant liberalization either in relation to portfolio investments or dealing authority, the Board believes it is appropriate to amend the single company limits for purposes of portfolio investments and for equity dealing such that the limits will apply to each activity separately. However, the Board notes that *all* equity shares held in a single company, including those held in connection with dealing activity (but excluding underwriting commitments and shares held for up to 90 days pursuant to an underwriting), must be combined for purposes of determining compliance with the control limitations of: (i) section 4(c)(6) of the BHC Act (with respect to U.S. companies); and (ii) the voting and total equity limits for portfolio investments under Regulation K (with respect to foreign companies).

Additionally, the Board is retaining an overall aggregate equity limit that will apply to all shares held under Regulation K portfolio investment and dealing authority, for the reasons discussed in the section below entitled ''Aggregate Equity Limits for Dealing and Portfolio Investments.''

Finally, commenters recommended that the Board specifically grandfather any investments that might be rendered impermissible by revision to Regulation K, or include a phase-in period for divestiture of such investments. The Board notes that, in view of the fact that it is not diminishing in any way existing authority in relation to these investments, no issues relating to the need for grandfathering arise.

Percentage of Permissible Voting Shares

Commenters expressed support for the '97 Proposal which would have increased the percentage of voting shares permissible for portfolio investments from 19.9 percent to 24.9 percent. A few commenters recommended higher levels of permissible voting shares, as well as increasing the 40 percent nonvoting equity limit, arguing that such increases would better enable U.S. banking organizations to compete with foreign financial institutions.

As noted above, FHCs may now make investments in nonfinancial companies under merchant banking authority without limitation as to the percentage of voting or nonvoting shares held and without restriction geographically. Consequently, the Board believes it is no longer appropriate to alter in any way the existing Regulation K limits on voting and nonvoting shares of portfolio investment companies. U.S. banking organizations wishing to invest in nonfinancial companies outside the United States beyond the existing limits of Regulation K should do so through obtaining FHC status. In these circumstances, the existing Regulation K voting and nonvoting equity limits on qualifying portfolio investments do not appear to affect the ability of U.S. banking organizations to compete abroad.

As noted above, portfolio investments are only permissible within these limits if the investor otherwise also does not control the company in which the investment is made. In this regard, several commenters urged the Board to clarify that restrictive and negative covenants, such as are commonly found in senior debt, also are permissible in connection with portfolio investments on the basis that they would not give the investor control over the company. The Board believes that such covenants may be permissible so long as their purpose is to protect the minority rights of the investor. However, such covenants may not be used as a means to obtain control over a portfolio investment by preventing the company from making normal business decisions. For example, the Board considers that it would be inconsistent with the mandatory noncontrolling nature of portfolio investments for investors to have the right to veto a company's choices for senior management positions. Should questions of this nature arise in connection with a proposed portfolio investment, banking organizations should seek the views of Board staff as to whether the proposed investment would qualify as a portfolio investment.

In this regard, commenters suggested that the Board should adopt for Regulation K a process similar to that adopted in Regulation Y in relation to advisory opinions regarding the scope of financial activities. The Board has adopted this suggestion and will seek to respond to requests for advisory opinions under Regulation K within 45 days of receipt of a complete written request, unless the request raises significant policy issues.

Finally, another commenter sought clarification as to whether the proportionality test for directors should be measured against the investor's voting interest or economic interest, favoring the latter measure. The Board believes that an investor in a portfolio investment should have representation on the board proportionate to its voting

interest, and not economic interest, in the company. More specifically, in view of the restriction on voting shares held to 19.9 percent, the Board would expect that an investor would have no more than one director for every five seats on the board. In addition, an investor may not have a disproportionate participation on a board's executive committee.

"Incidental" Activities in the United States

'97 Proposal

In the '97 Proposal, the Board proposed one additional change related to portfolio investments, primarily to provide some relief to U.S. banking organizations with regard to the U.S. activities of their foreign portfolio investments. As a result of limitations in the Federal Reserve Act and the BHC Act, U.S. banking organizations are prohibited from investing in more than 5 percent of the voting shares of foreign companies that engage in impermissible activities in the United States other than those activities that are an incident to their international or foreign business.[16] The Board previously has taken the view that such permissible incidental activities in the United States are limited to those activities that the Board has determined are permissible for Edge corporations to conduct in the United States.[17]

However, as discussed above, companies in which portfolio investments are made generally are engaged in industrial or commercial activities, which are not permissible activities for Edge corporations. Consequently, under Regulation K at present, if a portfolio investment company decides to engage in activities in the United States, the U.S. banking organization is forced to sell its interest in the portfolio investment, even if market considerations are inconsistent with selling the shares at that time. This divestiture would be required despite the fact that the U.S. banking organization, by reason of the mandatory noncontrolling nature of portfolio investments, is unlikely to be in a position to influence the decision to enter the U.S. market. In the '97 Proposal, the Board expressed the concern that, with the increasing globalization of economies around the world, this situation may become more common in the future.

In order to address these changes in circumstances and in view of the minority nature of portfolio investments, the Board proposed that, consistent with the Federal Reserve Act and the BHC Act, investors may retain portfolio investment companies that derive no more than 10 percent of their total revenue from activities in the United States that are not permissible for Edge corporations to conduct in the United States.

In proposing this change, the Board noted the nature of portfolio investments. In particular, most portfolio investments are venture capital investments that are not intended to be permanent holdings of the banking organization and instead are intended to be sold after a period of time. In addition, the preponderance of the value of portfolio investments is derived from their foreign business.

The Board invited comment on this proposed change. It also sought comment on what might be regarded as an appropriate period for divestiture of non-conforming investments, as well as on whether a time limit should be placed on the period for holding these types of investments in view of their supposedly medium-term nature.

Final Action

Commenters strongly endorsed the Board's proposed change in interpretation of U.S. activities considered "incidental" to international or foreign activities for this purpose, although some comments recommended that Regulation K should allow portfolio companies to derive a larger percentage of their total revenues (*e.g.*, 20 or 25 percent) from activities in the United States. Some commenters recommended that the Board employ a percentage of total tangible assets test either in lieu of or as an alternative to the revenues test, suggesting that tangible assets are a more stable indicator of the extent of a company's business in the United States and are easier to measure.

The Board adopts the change as set forth in the '97 Proposal. Thus, for purposes of determining whether a portfolio investment may continue to be held or must be divested, portfolio investment companies that derive no more than 10 percent of their total revenue in the United States may be considered to be engaged only in business that is an incident to their international or foreign business and therefore may continue to be held under portfolio investment authority. The Board continues to believe that the 10 percent revenue limit is appropriate to address globalization concerns and is consistent with the provisions of the Federal Reserve Act and the BHC Act. The Board further considers that the revenue test is a better indicator of the level of U.S. activity, rather than the amount of tangible assets in the United States which may be more susceptible to manipulation.

A few commenters requested clarification of the operation of this limit. In response to these requests, the Board notes that revenue derived from activities in the United States in its view would include all revenue derived from activities performed in U.S. offices, but not business that may originate from the United States but is performed offshore. It is, of course, also the case that this revenue test would only be applied to U.S. activities of portfolio investments that are *not* otherwise permissible for Edge corporations to conduct in the United States.

In response to the Board's request for comment on an appropriate divestiture period for investments that exceed the 10 percent revenue limit, a number of suggestions were made, including allowing U.S. revenues of up to 40 percent for up to five years. Other commenters variously suggested that the Board should adopt existing debts previously contracted ("DPC") time periods for divestiture; allow some other specified period to divest (*e.g.*, a six month period, with an opportunity for extensions of up to a total of two years); or establish divestiture deadlines on a case-by-case basis. The Board is retaining the current Regulation K requirement of a "prompt" divestiture of all nonqualifying portfolio investments, which allows for a case-by-case determination as to the appropriate period of time within which an impermissible investment must be divested.

Aggregate Equity Limits for Dealing and Portfolio Investments

In the '97 Proposal, in view of the significant liberalization in authority proposed for bank holding companies in relation to portfolio investments, an aggregate limit on all portfolio investments was proposed. The Board also proposed an additional aggregate equity limit that would apply to all shares held as portfolio investments and in connection with dealing activities. The proposed aggregate limit for all such investments for banking organizations meeting the well-capitalized and well-managed tests was:

BHC Subsidiaries: 50 percent of tier 1 capital.

[16] In particular, the Federal Reserve Act prohibits investments in companies engaging in "the general business of buying or selling goods, wares, merchandise or commodities in the United States." 12 U.S.C. 615. Section 4(c)(13) investments under the BHC Act are limited only by a requirement that the company do "no business in the United States except as incident to its international or foreign business."

[17] *See* 12 CFR 211.4(e).

Bank Subsidiaries: The lesser of 10 percent of tier 1 capital of the bank, or 50 percent of the bank subsidiary's tier 1 capital.

Underwriting commitments and shares acquired pursuant to an underwriting commitment and held for less than 90 days were excluded from the proposed aggregate equity limit.[18]

Commenters opposed the aggregation of shares held as portfolio investments with those held in connection with dealing activity in determining compliance with this limit, again arguing that these are two separate lines of business that should not be aggregated. Commenters also opposed the proposed reduction in the combined aggregate limit for Edge corporation investors, from the current 100 percent of tier 1 capital to 50 percent of tier 1 capital, notwithstanding the ability to net dealing positions and the exclusion of underwriting commitments and shares held for up to 90 days pursuant to an underwriting.

In view of the fact that the Board has determined that it will not adopt the liberalization proposed in relation to portfolio investments, it has also decided not to adopt the separate limit on total portfolio investments for any given banking organization. In the absence of expanded authority in this area, no need arises for such a limit.

However, consistent with the provisions of current Regulation K, the Board continues to believe that an aggregate equity limit is necessary with respect to all shares held under Regulation K (whether held under portfolio investment authority or in connection with dealing activity) in companies engaged in activities that would be impermissible for a subsidiary or a joint venture under Regulation K. Accordingly, the Board generally is adopting the aggregate limits on equity securities held under Regulation K previously proposed. Consistent with the '97 Proposal, underwriting commitments and shares held pursuant to an underwriting commitment for up to 90 days would be excluded from the aggregate equity limit.

However, in light of comments received, the Board is not adopting the proposed reduction in the aggregate limit for investors that are subsidiaries of a member bank. Nevertheless, the Board continues to believe it is important to tie the aggregate limit for bank subsidiaries to the capital levels of both the member bank and the bank subsidiary investor. Accordingly, the aggregate equity limit for subsidiaries of banks will be the lesser of 20 percent of the tier 1 capital of the member bank or 100 percent of the tier 1 capital of the bank subsidiary.[19]

Commenters also requested clarification on whether the aggregate equity limits include: (i) only equity securities held by the investor and its downstream subsidiaries or securities held by all its affiliates; and (ii) only shares held under the authority of Regulation K . The Board notes that, with respect to a particular investor, these limits will include all equity securities held by the investor and its downstream subsidiaries under Regulation K authority, whether arising in connection with portfolio investments or dealing activity.[20] Thus, the aggregate equity limit will not include investments in joint ventures or subsidiaries under Regulation K, or merchant banking or any other investments made under authority other than Regulation K.

One commenter recommended that the Board permit aggregate dealing positions to be calculated on a quarterly average and suggested a ''preclearance'' program for additional authority beyond the regulatory limits. The Board considers that determining compliance with these limits on the basis of a quarterly average would be inappropriate and potentially be subject to considerable manipulation. As noted above, should an organization wish to engage in equity securities activities without limit it should do so under FHC status subject to the FHC qualifying criteria. For these reasons, the Board declines to adopt these proposals.

Insurance Activities

Reinsurance Proposal

Section 211.5(d)(16) of Regulation K presently authorizes bank holding companies to own foreign companies that underwrite and reinsure life, annuity, pension-fund related, and other types of insurance, where the associated risks have been previously determined by the Board to be actuarially predictable. Prompted by the Board's consideration in 1997 of a bank holding company's request, the Board requested comment on whether the reinsurance (via a retrocession agreement with an unaffiliated offshore reinsurer) by a foreign subsidiary of U.S. bank holding company of all or a portion of the risk of policies or annuities sold in the United States by U.S. affiliates of the bank holding company or unrelated parties could be considered to fall within this authority. It queried whether the fact that the risk to be reinsured is in the United States could cause the activity to be considered located in the United States, particularly given the potentially significant involvement of the bank holding company's U.S. affiliates.

Several insurance trade associations opposed any expansion of authority in this area. They argued that the reinsurance activity necessarily would be domestic because of its complete dependence on U.S. insurance sales. In addition, they suggested the reinsurance activity would expose U.S. banks to unnecessary risk and conflicts of interests, be contrary to Board precedent, transfer regulatory scrutiny of domestically-originated risks from the state regulators to less rigorous and untested international regimes, and set the stage for U.S. banking organizations to underwrite and reinsure all types of insurance through foreign subsidiaries. Ultimately, they argued, any liberalization in this area should come from Congress, not the Board.

Several U.S. banking trade associations and banking organizations expressed support for expanded authority as described in the '97 Proposal. They emphasized that the proposal would only modestly extend an activity (i.e., underwriting and reinsuring life insurance abroad) long regarded as permissible by the Board. In addition, they maintained that the permissible U.S. insurance sales would be only an incidental, and not a primary, feature of an activity—reinsurance—having an essentially foreign character. They noted that many activities in which U.S. banking organizations are permitted to engage abroad are related to their U.S. activities (*e.g.*, securities activities) and asserted that the relation in this instance between the reinsurance activity and the U.S. insurance sales similarly should not result in rejection of the proposed activity. These commenters also argued that the proposal would further the Edge Act's stated purpose of enhancing U.S.

[18] The Board also proposed aggregate limits for investors that do not meet the well-capitalized and well-managed standards of half that applicable to well-capitalized and well-managed organizations (*i.e.*, 25 percent of tier 1 capital for bank holding company subsidiaries, and, for bank subsidiaries, the lesser of 5 percent of the parent bank's tier 1 capital or 25 percent of the bank subsidiary's tier 1 capital.

[19] An additional comment recommended that the aggregate equity limit should be expressed as a percentage of assets, rather than as a percentage of tier 1 capital. The Board believes that tying the equity limit to tier 1 capital is a more appropriate restriction on the level of aggregate equity activities under Regulation K and therefore is not adopting this recommendation.

[20] The Board also notes that application of the dealing limit on shares held in a single issuer will also proceed on this same basis, except that shares held as a portfolio investment will not be included in determining compliance with the single company dealing limit as discussed above.

banking organizations' competitiveness abroad.

As noted above, the GLB Act was enacted subsequent to the issuance of the Board's reinsurance proposal. The GLB Act allows FHCs to conduct insurance activities on a worldwide basis and demonstrates a Congressional preference for conducting such activities through subsidiaries of FHCs. The Board does not believe, and the comments on the Board's proposal have not shown, that competitive concerns require U.S. banking organizations to proceed under Regulation K in the conduct of this activity rather than GLB authority. Accordingly, the Board declines to adopt the reinsurance proposal. As at present, however, a banking organization may seek the Board's specific consent to engage in insurance activities more expansive than those expressly authorized under the regulation.

Other Comments

Supporters of the Board's reinsurance proposal urged the Board to liberalize Regulation K's insurance provisions further in several respects. First, they recommended that the Board eliminate the requirement that U.S. banks obtain Board approval before engaging in insurance activity through foreign subsidiaries, asserting that banking organizations should be given maximum flexibility to determine how to structure these activities. One commenter suggested that the Board replace the proposed prior approval requirement with a 30-day prior notice requirement. On balance, the Board believes it is appropriate to continue to require prior Board approval for such activities. Further, absent demonstration of a compelling need for competitive reasons, the Board expects insurance underwriting (other than credit life insurance and credit accident and health insurance) to be conducted through subsidiaries of the holding company, or otherwise under the expanded authority provided in GLB.

The commenters also argued that U.S. banking organizations should not be required to deconsolidate and deduct investments in foreign insurance companies from the holding company's capital for capital adequacy purposes, arguing that such a requirement is inappropriate and disproportionate to the risks involved. The Board disagrees and declines to eliminate this requirement. The consolidation of insurance activities may result in overstated capital ratios because the risk-based capital adequacy framework does not take into account traditional insurance risks. Although FHCs currently may consolidate their insurance companies for purposes of their capital ratios, for supervisory purposes their capital ratios also are analyzed after deconsolidation and deduction of such companies. Retaining the deconsolidation and deduction requirement in Regulation K also would be consistent with proposed revisions to the Basel Capital Accord.

In addition, the commenters urged the Board to expand the types of insurance foreign subsidiaries of bank holding companies may underwrite and reinsure, to encompass all credit-related insurance (including insurance incidental to leasing activities or mortgage transactions, and motor vehicle comprehensive insurance in connection with car loans). In the Board's view, in light of passage of GLB, there should be no general expansion of permissible types of insurance underwriting under Regulation K. As at present, however, application may be made on a case-by-case basis for the Board's approval to engage in additional types of insurance activities usual in connection with the business of banking abroad.

Debt/Equity Swaps

Regulation K currently permits banking organizations to swap certain developing country debt for equity interests in companies of any type. Established in 1987 to assist banking organizations in managing large amounts of nonperforming, illiquid sovereign debt, these foreign investment provisions are more liberal than Regulation K's other investment provisions. Under certain conditions set out in Regulation K, investors may invest under general consent authority up to one percent of their tier 1 capital in up to 40 percent of the shares, including voting shares, of private sector companies in eligible countries. Such an investment must be held through the bank holding company, unless the Board specifically permits it to be held through the bank or a bank subsidiary. Eligible countries are defined as those that have rescheduled their debt since 1980, or any country the Board deems to be eligible.

Since the debt/equity swap provisions were introduced, a well developed secondary market in developing country debt has emerged. The vast bulk of developing country problem debt has been repackaged in the form of long-term Brady bonds, mostly denominated in U.S. dollars and fully collateralized as to principal by U.S. government bonds. Many banking organizations actively trade these instruments in the secondary market.

Due to the development of the secondary markets for emerging market debt, U.S. banks now have the same options with regard to many of these assets as they have with other bank assets—namely, they can hold the asset with a view toward collecting at maturity or sell the asset for cash to invest in other bank eligible assets. Indeed, the sovereign debt of most of the historically ''eligible countries'' is no longer illiquid, and those eligible countries that account for the vast share of rescheduled debt have largely regularized their relations with commercial banks.

In light of these changed circumstances and to redirect this special authority to the asset quality problem it was originally intended to help resolve, in the '97 Proposal the Board proposed to redefine the term ''eligible country.'' Under the proposed definition, only countries with currently impaired sovereign debt (*i.e.*, debt for which an allocated transfer risk reserve would be required under the International Lending Supervision Act and for which there is no liquid market) would be eligible for investments through debt/equity swaps under Regulation K. Existing holdings of such investments would be grandfathered, subject to the existing divestiture periods applicable to such investments (*i.e.*, generally, 10 years from the date of acquisition).

The Board solicited comment on these proposed changes. It also sought comment on whether, alternatively, the debt/equity swap authority should be eliminated as obsolete.

Several commenters supported the proposed changes. Only one comment opposed the change to the definition of an ''eligible country''. Another commenter urged the Board to extend the general consent authority for debt/equity swaps to such investments made by banks and bank subsidiaries. The Board continues to believe the additional authority granted under the debt/equity swap provisions should be limited to countries with currently impaired debt, in light of the developments described above and, accordingly, adopts the proposed change to the definition of an ''eligible country.'' The Board also considers that general consent authority for engaging in debt/equity swaps under the bank continues to be inappropriate. As at present, a bank or bank subsidiary may seek authority from the Board to hold such an investment on a case-by-case basis.

Streamlining Application Procedures

General Consent Limits

The Board noted in the '97 Proposal that, although existing Regulation K procedures have proved effective in maintaining the safety and soundness of U.S. banks' international operations, they have become increasingly complex over the years. For example, under prior notice procedures, the Board has reviewed all foreign investments made by banking organizations above a *de minimis* level as a principal mechanism for overseeing the safety and soundness of the investing organization. In view of the shift in emphasis to supervision based upon risk management capabilities, the Board believes that prior review of relatively small investments is no longer useful as a fundamental supervisory tool, especially where the investor is well-capitalized and well-managed. Accordingly, the Board proposed that only significant investments, as determined solely on the basis of the investor's capital, would be subject to prior review by the Board, provided that the investors are well-capitalized and well-managed.[21] The proposed changes to the general consent procedures attempt to balance safety and soundness considerations with the objective of enhancing the ability of U.S. banking organizations to compete with foreign banks overseas.

Limits on Investments in One Company

Historically, all general consent investments under Regulation K were subject to absolute dollar limits. Currently, the general consent limit for most investments is $25 million. However, as a result of amendments to Regulation K implemented in December 1995, certain investments by strongly capitalized and well-managed banks are subject to Board review only to the extent they exceed a percentage of the investor's capital.

In the '97 Proposal, the Board proposed expanding upon this approach by eliminating the absolute dollar limits on foreign investments permissible under general consent authority for well-capitalized and well-managed investors (with the exception of those applicable to portfolio investments made under the bank). Under the proposal, general consent limits for all investors (bank holding companies, banks, and Edge corporations) would be based solely on a percentage of their tier 1 capital.[22]

The limits on individual investments made under general consent authority would vary according to the investor (bank holding company, bank, or Edge corporation) and the type of entity in which the investment is made. For well-capitalized and well-managed investors, the Board proposed the following percentage limits.

General consent limits on investment in a subsidiary

Bank holding company: 10 percent of tier 1 capital of the bank holding company.

Bank: 2 percent of tier 1 capital of the bank.

Bank subsidiaries: the lesser of 2 percent of tier 1 capital of the bank or 10 percent of tier 1 capital of the bank subsidiary.

General consent limits on investment in a joint venture

Bank holding company: 5 percent of tier 1 capital of the bank holding company.

Bank: 1 percent of tier 1 capital of the bank.

Bank subsidiaries: the lesser of 1 percent of tier 1 capital of the bank or 5 percent of tier 1 capital of the bank subsidiary.

These limits were proposed on the basis that they reflected the risk involved in the type of investment. A higher percentage of capital would be permitted in the case of an investment in a subsidiary as opposed to an investment in a joint venture because the latter is considered to carry a greater risk of loss. Thus, with joint ventures, investors acquire less than full control, and the record on such investments has shown that they experience a higher rate of loss. As a result, most U.S. banks do not now make sizeable joint venture investments. In light of these considerations, the Board believed that lower general consent limits may be appropriate for joint venture investments.

For investors that fail to meet the well-capitalized or well-managed standards, the Board proposed the following limits. Individual investments under general consent authority would be limited to the lesser of $25 million or 5 percent of tier 1 capital in the case of an investor that is a bank holding company, and the lesser of $25 million or 1 percent of tier 1 capital if the investor is a member bank. Limits on individual investments for an Edge corporation would be $25 million or the lesser of 1 percent of the parent bank's tier 1 capital or 5 percent of the Edge's tier 1 capital. The Board also proposed, however, that authority would be delegated to the Director of Banking Supervision and Regulation to approve higher investment limits on a case-by-case basis or as part of an investment program as described further below.

The Board sought comment on these proposed limits, noting that these limits would only cover investments made under general consent authority; larger investments may continue to be made with 30 days' prior notice. Noting that an argument could be made that, in cases involving investments by an Edge corporation, the well-capitalized and well-managed tests should be based on a review of the parent bank, not the Edge corporation, the Board also sought comment on the Board's proposal to impose limits tied to the condition of the Edge.

Commenters expressed general support for the Board's percentage-of-capital limits approach and proposal to reserve the greatest liberalization to well-capitalized and well-managed investors. Several, however, objected to the proposed general consent limits for bank subsidiaries, arguing that they will have the effect of reducing the general consent investment authority of some investors. Comments advanced a number of rationales for either retaining the existing limits, at least for well-capitalized and well-managed bank subsidiaries, or for increasing the proposed limits.

The Board believes the proposed general consent limits for investments by bank subsidiaries are sufficient. The Board therefore is adopting the limits as proposed. Should investors desire increased general consent authority, they may increase capital levels at the bank and/or bank subsidiary level, as warranted. Additionally, as noted above, an investment in excess of the general consent limits may still be made following prior notice procedures or with the specific consent of the Board. In any event, the Board notes that, in most instances, the binding constraint is the member bank's capital.

Two commenters, however, noted that the proposed general consent limits might be especially constraining for organizations whose Edge corporations are minimally capitalized. They recommended that the Board allow a well-capitalized, well-managed parent

[21] The proposed definitions of well-managed and well-capitalized for these purposes are discussed *infra* under the heading ''Well-capitalized/Well-managed Standards.''

[22] Under the proposal, if the Edge corporation were making the investment, then the Edge corporation, the member bank, and the bank holding company would be required to meet the well-capitalized and well-managed tests. If the member bank were making the investment, then the bank and the bank holding company would be required to meet the tests.

bank to make *de minimis* general consent investments through its Edge corporation, even if that investment would be greater than otherwise would be allowed under the limits applicable to the Edge. The Board disagrees and continues to be of the view that it is important to retain the well-capitalized and well-managed tests for the Edge corporation itself as one of the bases for determining limits applicable to general consent investments. This approach will help to ensure the safety and soundness of Edge corporations in their own right and is consistent with the statutory (and supervisory) rationale underlying Edge corporations. As discussed above, Congress limited the amount of capital that banks could invest in Edge corporations, which in turn could invest in activities otherwise prohibited to banks that were perceived to be higher risk. Congress also subjected Edge corporations to regulation and examination by the Federal Reserve. For these reasons, the Board considers that Edge corporations should themselves be operating satisfactorily and not be a source of potential weakness to its parent bank. The Board therefore is adopting in final the proposed general consent limits that are tied to the condition of the Edge.

In response to the Board's request for comment on the imposition of different general consent limits on investments in subsidiaries and joint ventures, two commenters maintained that imposing different limits on these investments is unjustified, arguing that the activities present similar risks. The Board disagrees and continues to be of the view stated in the '97 Proposal that investments in joint ventures involve greater risks than investments in subsidiaries. Consequently, the Board adopts the limits on investments in subsidiaries and joint ventures as proposed.

Two commenters noted the lack of a general consent mechanism for incremental investments in a subsidiary or joint venture once the individual company investment limit is reached. They recommended the inclusion of such a provision to allow investors to make additional small investments quickly, without encumbering both the investor and the Board with a case-by-case regulatory review. They further suggested that such investments be excluded from the 12-month rolling aggregate general consent limits. The Board does not believe that these changes should be made to the proposal. As noted above, an investor may increase its investment limit by increasing its capital. Moreover, an investor that has reached its individual company investment limit may apply to the Director of the Division of Banking Supervision and Regulation for appropriate relief or may submit a long-range investment plan for preclearance, as discussed further below. Accordingly, the Board is retaining the requirement that investments beyond those permissible under general consent authority must be made under the prior notice procedures unless relief is otherwise granted.

One commenter proposed allowing investors to carry forward and accumulate for five years unused investments of cash dividends, as is presently authorized under Regulation K. The Board believes that this provision is no longer necessary in light of the expansion of the general consent limits and the ability of investors to seek waivers or obtain preclearance of an investment program.

Another commenter noted that the Board's proposal would render investments in general partnerships and unlimited liability companies in amounts of less than $25 million ineligible for the general consent provisions and recommended that the Board preserve the general consent status quo for such investments by well-capitalized, well-managed banking institutions. The final rule adopts this recommendation.

Commenters also urged the Board to clarify that investments in single-purpose subsidiaries formed solely for the purpose of facilitating a specific financing transaction (*e.g.,* special purpose corporations formed by Edge corporations engaged in specific leasing transactions with a single customer) would not be subject to the individual or aggregate general consent limits. The Board will continue to exclude such investments from the application or prior notice procedures provided the investment serves solely to finance a leasing transaction.

Aggregate Limits

The limits on general consent investments in any one company are intended to address the fact that individual foreign investments above a certain size may be a source of potential concern, and therefore prior review of such investments should be required. In addition, the Board is also concerned with any rapid increase in an organization's foreign investments overall, made without prior review. Accordingly, in the '97 Proposal, the Board proposed that when the cumulative investments made under general consent reach a certain amount over a given period, new or additional investments would become subject to prior review. Investments by all affiliates of a bank holding company would be taken into account in determining compliance of the holding company with the aggregate limits; investments of subsidiaries of a bank or of an Edge, respectively, would be aggregated in determining compliance with their limits. Under the proposed liberalized general consent procedures, the new aggregate limit for all investments during any 12-month period for investors meeting the well-capitalized and well-managed tests would be:

Bank holding companies: 20 percent of tier 1 capital.

Bank: 10 percent of tier 1 capital of the bank.

Bank subsidiaries: the lesser of 10 percent of tier 1 capital of the bank or 50 percent of the bank subsidiary's tier 1 capital.

The Board considered that, because the bank would have the exposure on a consolidated basis for investments by either the bank or the Edge, these investments should have a combined aggregate limit. However, the Board proposed that this limit could be waived, in whole or in part, by the Director of the Division of Banking Supervision and Regulation under delegated authority, based upon a review of the financial strength of the investor and its investment strategy and business plans.

For bank holding companies, banks or Edge corporations that are adequately capitalized but do not meet the well-capitalized and well-managed standards, the Board proposed that the aggregate limits on all investments made under authority of general consent in any 12-month period would be half that applicable to well-capitalized and well-managed organizations (*i.e.,* 10 percent of tier 1 capital for bank holding companies, 5 percent of tier 1 capital for banks, and, for Edge corporations, the lesser of 5 percent of the parent bank's tier 1 capital or 10 percent of the Edge's tier 1 capital). In determining compliance with the aggregate limits, investments under Regulation K by all subsidiaries of the investor would be taken into account.

A number of comments were submitted regarding these provisions. Some argued that there should be separate rolling 12-month aggregate limits for portfolio investments and investments in subsidiaries and joint ventures. Other commenters objected to the inclusion of dealing positions in the rolling 12-month limits, and one argued that the percentage limits should be increased if portfolio investments and dealing activities are both included in

determining compliance with the limits. A few commenters also requested clarification of whether additional investments in a company equal to cash dividends from the company, investments acquired from an affiliate, and investments made under the prior notice and specific consent provisions would be included within the proposed rolling 12-month aggregate limits. They recommended that the final regulation explicitly exclude these investments from the aggregate limits.

As discussed above, the aggregate limits are designed to address concerns that a banking organization may use expanded general consent investment authority, including that available in relation to portfolio investments, to expand excessively within a short time period. The Board notes that these limits are set at fairly high levels as a percentage of tier 1 capital. In order to provide a meaningful constraint on excessively rapid growth, in the Board's view all amounts invested during the rolling 12-month period should be included in the aggregate limit. The Board does not consider that any action should be taken to exclude portfolio investments from other investments in subsidiaries and joint ventures for purposes of the aggregate general consent limit. After further consideration, however, the Board considers that shares acquired in connection with Regulation K dealing activity should be excluded from the rolling 12-month aggregate limit, in view of the important differences in the nature of dealing activity. Aside from this change, in view of the ability of a banking organization to increase its general consent limits by increasing capital, and the availability of other procedures for securing authority to make investments should the limits prove constraining (such as seeking a waiver of limits on a case-by-case basis or obtaining preclearance for an investment program), the Board adopts the proposed aggregate general consent limits.

Preclearance of Investment Program

In connection with the foregoing, the Board also in 1997 proposed establishing a procedure that would allow U.S. banking organizations to obtain preclearance of an investment program, even though one or more of the investments would be in excess of the individual or aggregate general consent investment limits and would be made over a time period longer than one year. Preclearance authority would be delegated to the Director of Banking Supervision and Regulation, with the consent of the General Counsel. The Board solicited comment on whether such a program would be useful to U.S. banking organizations and whether it should be available to all banking organizations, including those organizations that are not well-capitalized and well-managed.

In response to the Board's request for comment, several commenters recommended that the Board adopt the proposed preclearance investment program as enhancing U.S. banking organizations' international competitiveness. Commenters believed that the preclearance process should focus on the merits of the applicant, rather than the specifics of the investment program. They argued that, for the preclearance option to be effective, the regulatory review process must be rapid and must not impose excessively narrow parameters on the types of investments permitted.

The Board is adopting the proposed preclearance program that would allow investors to seek authority to exceed the individual or rolling 12-month aggregate general consent investment limits. Because of the differing foreign investment needs of U.S. banking organizations, the Board is not at this time placing specific limitations on the scope of the preclearance process, but rather will assess each proposal on a case-by-case basis. The Board believes this approach provides maximum flexibility and will increase the utility of the process to all investors. Any preclearance request should be in writing and should indicate: (i) The amount of preclearance authority sought; (ii) the period of time for which such authority is sought; (iii) the strategic plan detailing the reasons for seeking preclearance authority; (iv) whether the applicant satisfies the well-capitalized and well-managed criteria; and (v) capital projections based upon anticipated investments made under the preclearance authority.

Commenters also recommended that investors be permitted to present their investment programs as prior notices, rather than as applications for specific consent. One commenter recommended that such authority be delegated to individual Reserve Banks, rather than to the Director of Banking Supervision and Regulation. In light of the fact that the preclearance process under Regulation K is new, the Board believes that it is important, at least initially, for these requests to be processed at the Board under specific consent. The procedures for obtaining preclearance authority will be reviewed after the Board gains experience with the process.

Authorization To Invest More Than Ten Percent of a Bank's Capital in Its Edge and Agreement Corporation Subsidiaries

Under a September 1996 amendment to section 25A of the Federal Reserve Act, member banks may invest more than 10 percent and up to 20 percent of capital and surplus in the stock of Edge and agreement corporation subsidiaries with the Board's prior approval. The Board may not approve such investments unless it determines that the investment of an additional amount by the bank would not be unsafe or unsound.

The Board proposed to implement this provision by adding an application requirement to Regulation K for banks to obtain the Board's approval to invest in excess of 10 percent of a bank's capital in the stock of Edge and agreement corporations. The Board noted that it would take the following criteria into account in reaching a decision on such an application: (i) The composition of the assets of the bank's Edge and agreement corporations; (ii) the total capital invested by the bank in its Edge and agreement corporations when combined with retained earnings of the Edge and agreement corporations (including retained earnings of any foreign bank subsidiaries) as a percentage of the bank's capital; (iii) whether the bank, bank holding company, and Edge and agreement corporations are well-capitalized and well-managed; and (iv) whether the bank is adequately capitalized after deconsolidating and deducting the aggregate investment in and assets of all Edge or agreement corporations and all foreign bank subsidiaries.

The Board invited comment on whether the enumerated criteria are appropriate for determining whether these investments are unsafe or unsound. Additionally, the Board sought comment on whether only the well-capitalized and well-managed criteria should apply in those instances in which the total Edge and agreement corporation capital (including retained earnings) on a pro forma basis would not exceed 20 percent of the bank's capital. As discussed above, due to the accumulation of retained earnings in Edge corporations, some member banks now have over 20 percent of their consolidated capital in Edge corporations.

Comments submitted generally supported this proposal. One commenter urged the Board to state that the evaluative criteria are not all-inclusive, to permit the Board to consider other issues as they may arise

on a case-by-case basis. Another commenter recommended that the Board include among the criteria an evaluation of the reasons for the proposed capital increase. The Board believes these suggestions are implicit in the enumerated criteria. The Board therefore adopts the regulation as proposed, including applying only the well-capitalized and well-managed criteria in those instances in which the total Edge and agreement corporation capital (including retained earnings) on a pro forma basis would not exceed 20 percent of the bank's capital. While the Board expects the enumerated criteria will be sufficient in most circumstances, the Board may take into account additional criteria if necessary to fully evaluate a proposal and ensure safety and soundness of member banks.

Finally, commenters recommended that a well-capitalized, well-managed bank should not be required to obtain prior approval for these investments but, instead, should be subject only to a prior notice requirement in order to make such an investment. The Board considers, however, that the prior approval requirement should be maintained even for well-capitalized, well-managed banks in light of the significant amounts of retained earnings that may be held through Edge or agreement corporations.

Well-Capitalized/Well-Managed Standards

As discussed above, the Board's '97 Proposal generally allowed well-capitalized and well-managed banking organizations to engage in expanded securities activities and to make larger general consent investments. The Board proposed criteria for determining whether banking organizations would be considered well-capitalized [23] and well-managed.[24] Whether an institution is well-capitalized and well-managed also was proposed as a factor in the Board's determination regarding whether investments in Edge corporations greater than 10 percent of a member bank's capital and surplus should be permitted.

Commenters expressed widespread support for additional flexibility for well-capitalized, well-managed investors. However, they noted that the well-managed test under Regulation K differs from that for expedited action under Regulation Y by including a requirement that an institution not be subject to any supervisory enforcement action. They expressed concern that this provision would not provide the Board with sufficient flexibility to determine when an institution is not well-managed, as some enforcement actions may involve matters that would not be considered material. Commenters also noted that the existence of supervisory enforcement actions could be reflected in either the management rating or the composite rating of an institution, and that such ratings may be changed at any time during an examination cycle. In response to these concerns, the Board is amending the proposed definition of well-managed to delete the reference to supervisory enforcement actions and, instead, to require that the organization's management rating must be at least satisfactory. Accordingly, a U.S. banking organization meets the well-managed definition if its composite and management ratings are at least satisfactory.

Some commenters suggested that the Board should provide transitional periods and arrangements for institutions disqualified from well-capitalized and/or well-managed status to conform to the lower limits. Since the circumstances of disqualification may vary, the Board believes transitional periods and arrangements should be addressed on a case-by-case basis. Other commenters suggested that grandfathering should be available for institutions that no longer qualify as well-capitalized or well-managed, particularly where activities at issue are being conducted prudently and profitably and are not a factor in the failure to meet the eligibility tests. The Board does not believe grandfathering is appropriate in this context, as the well-capitalized, well-managed status of an institution is designed to mitigate the additional risks created by the expanded authority granted to such institutions. Moreover, the ability to conduct expanded activities should also be an incentive for achieving and maintaining well-capitalized, well-managed status.

Several commenters objected to application of the well-capitalized test to Edge corporations. They argued that, since the capital of an Edge corporation is consolidated with that of the parent bank, an independent well-capitalized test for Edge corporations would not add to safety and soundness within the bank chain. They also maintained that an independent capital test for Edge corporations may encourage uneconomic booking decisions between the bank and the Edge corporation. The Board, however, continues to believe it is important to retain these tests with reference to both the Edge corporation and the member bank in order to be eligible for the expanded authority granted to well-capitalized institutions. As noted above, this approach would help to ensure the safety and soundness of the Edge corporation in its own right and is consistent with the statutory (and supervisory) rationale underlying Edge corporations. The Board considers that Edge corporations should themselves be operating satisfactorily and not be a source of potential weakness to the U.S. parent bank.

Other Revisions to Subpart A

Harmonization of Regulation K With Other Regulatory Changes

The '97 Proposal noted that, as a result of liberalizations of other Board regulations, authority under Regulation K is now more restrictive than the authority available to engage in certain activities domestically. The Board proposed changes to address these disparities and has determined to adopt all such harmonizing changes.

Leasing Activities

The Board proposed to interpret Regulation K's leasing provision consistent with a revision to Regulation Y's authority for BHCs, eliminating the requirement that leasing activities conducted under authority of Regulation K serve as the functional equivalent of an extension of credit to the lessee with respect to high residual value leasing. Commenters expressed support for this proposal and recommended that the change be made explicit in the text of the final rule. The Board is adopting this proposal, and a conforming change has been made to Regulation K. As required under Regulation Y, however, the estimated residual value of real property must be limited to 25 percent of the value of the property at the time of the initial lease,

[23] Under the proposal, a bank holding company would be considered well-capitalized if, on a consolidated basis, it maintains total and tier 1 risk-based capital ratios of at least 10 percent and 6 percent, respectively. In the case of an insured depository institution, well-capitalized means that the institution maintains at least the capital levels required to be well-capitalized under the capital adequacy regulations or guidelines applicable to the institution that have been adopted under section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o. The Board proposed that an Edge or agreement corporation would be considered well-capitalized if it maintains total and tier 1 capital ratios of 10 and 6 percent, respectively.

[24] Under the proposal, a bank holding company or insured depository institution would be considered well-managed if, at its most recent inspection or examination or subsequent review, the holding company or institution received at least a satisfactory composite rating. The Board noted that, under standards adopted by the Board in connection with the December 1995 expansion of Regulation K's general consent authority, an Edge or agreement corporation would be considered to be well-managed for these purposes if it received a composite rating of 1 or 2 at its most recent examination or review and it is not subject to any supervisory enforcement action.

to distinguish real property leasing from real estate development and investment activities.

Commodities Swaps Activities

In light of changes to Regulation Y, the Board proposed to eliminate the requirement that commodity-related swaps must provide an option for cash settlement that must be exercised upon settlement. Comments generally supported this proposed revision, and the Board has adopted the change in final.

Other commenters recommended that the commodities swaps provision be expanded to include activities relating to the trading, sale, or investment in commodities and underlying physical properties (and, hence, to make it fully consistent with the corresponding provision of Regulation Y). The Board rejects these additional changes at this time as inconsistent with section 25A of the Federal Reserve Act, 12 U.S.C. 617, which prohibits Edge corporations from engaging in commerce or trade in commodities except as specifically provided therein.

Loans to Officers at Foreign Branches

In the '97 Proposal, the Board noted that existing Regulation K imposes limits on mortgage loans to executive officers of foreign branches of member banks that are more restrictive than limits imposed under analogous provisions in Regulation O. The Board proposed to eliminate the Regulation K provision to address this disparity. None of the public commenters addressed this proposed change, and it is adopted as proposed. Accordingly, the limits in Regulation O apply with respect to such loans.

Data Processing Activities

The Board expressly declined to alter or expand Regulation K's data processing provision. It noted, however, that this authority extends only to the processing of information and does not authorize the general manufacture of hardware for such services. Some commenters presumed that the activity of data processing pursuant to Regulation K is unrestricted rather than limited to banking, financial, or economic data to the extent such data processing is limited in Regulation Y.[25] Moreover, some commenters read the language in the preamble to the proposed revisions to Regulation K to preclude the offering of hardware in connection with software that is designed and marketed for the processing of financial, banking, or economic data where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering. The Board notes that an interpretation issued in 1999 clarified that the scope of the data processing authority of Regulation K is coextensive with the data processing authority of Regulation Y, absent Board authorization for additional activities. 64 FR 58780, Nov. 1, 1999.

Additional Areas of Liberalization

Authorizing Foreign Branches of Operating Subsidiaries of Member Banks

The Board proposed to codify prior Board determinations permitting member banks to establish foreign branches of domestic operating subsidiaries with the Board's approval (under the prior notice or general consent procedures, as appropriate), provided that those branches would engage only in activities directly permissible for the member bank parents. Commenters expressed support for this proposal, and the Board is adopting the revision as proposed.

FCM Activities

The Board proposed to eliminate the requirement that an investor seek Board approval before acting as a futures commission merchant (FCM) for financial instruments, and on exchanges, not previously approved by the Board. The Board also proposed to eliminate the requirement that investors obtain prior Board approval for FCM activities conducted on any exchange or clearing house that requires members to guarantee or otherwise to contract to cover losses suffered by other members (*i.e.*, a mutual exchange).[26] The Board sought comment on whether the prior notice requirement should be eliminated where: (i) the activity is conducted through a separately incorporated subsidiary; and (ii) the parent bank does not provide a guarantee or otherwise become liable to the exchange or clearing house for an amount in excess of the applicable general consent limits. One commenter agreed that a prior notice requirement should not be imposed in these circumstances. The Board is adopting the revisions to the FCM authority under Regulation K as proposed.

Changes With Respect to Edge and Agreement Corporations: Voluntary Liquidation Procedures

The Board proposed changes relating to the liquidation and receivership of Edge and agreement corporations, including adding provisions: (i) Providing for 45 days' prior notice to the Board of an Edge or agreement corporation's intent to dissolve; (ii) specifying the grounds for determining that an Edge corporation is insolvent; and (iii) specifying the powers of a receiver of an Edge corporation. One commenter expressed general support for the voluntary liquidation proposal, and this provision is adopted as proposed. In light of the recent amendment of the Edge Act's receivership provision, 12 U.S.C. 624, the Board is not adopting the regulatory proposal with respect to receivership.

Additional Commenter Recommendations Under Subpart A

Commenters urged the Board to revise Subpart A of Regulation K in the following respects not addressed by the Board's proposals.

Advisory Opinions Under Regulation K

A commenter suggested that the Board harmonize Regulations Y and K further by establishing a procedure in Regulation K whereby questions arising under the regulation could be submitted by any person and the Board would issue an advisory opinion within 45 days. The Board agrees that this procedure would enhance regulatory transparency and facilitate regulatory compliance. As noted above in the section on portfolio investment authority, the Board is adopting the recommendation and including a procedure in the final rule under which advisory opinions may be requested on the scope of activities permissible under Regulation K. Board staff will endeavor to respond to any such requests within 45 days of receipt of all relevant information, provided the request does not raise significant supervisory issues.

Divestiture Period for Debts Previously Contracted (''DPC'') Assets

Commenters recommended that the Board adopt the OCC's DPC divestiture rules, which provide for an initial holding period of up to five years, with an opportunity to extend for up to an additional 5 years. Existing Regulation K, which the Board did not propose to amend, requires divestiture within two years after acquisition, unless the Board authorizes retention for a longer period. The Board believes the existing DPC divestiture period is adequate given that investors may request extensions of time

[25] Regulation Y allows up to 30 percent of data processing revenues to be derived from data processing that is not financial, banking, or economic in nature.

[26] In this regard, Regulation Y has been revised to allow subsidiaries of BHCs to act as FCMs for futures contracts traded on an exchange provided the parent BHC does not provide a guarantee or otherwise become liable to the exchange or clearing association other than for proprietary trades.

and therefore declines to adopt this proposal.

Changes to Capitalization Requirements for Edge Corporations

Commenters recommended that the Board revise the provisions regarding the capitalization of Edge corporations to facilitate their clearing activities by either exempting sales of Fed funds to parent banks from the 10 percent capital adequacy guideline applicable to Edge corporations or eliminating the 10 percent capital limitation applicable to Edges. The Board does not believe this proposal is consistent with the safety and soundness concerns the capital adequacy guidelines for Edge corporations are designed to address. Accordingly, it declines to adopt this proposal.

Subpart B: Foreign Banking Organizations

Subpart B of Regulation K governs the U.S. activities of foreign banking organizations. It implements the IBA and provisions of the BHC Act that affect foreign banks.

This final rule for Subpart B seeks to eliminate unnecessary regulatory burden, increase transparency, and streamline the application/notice process for foreign banks operating in the United States based on the Board's recent experience with foreign bank applications. The final rule also would liberalize the standards under which certain foreign banking organizations qualify for exemptions from the nonbanking prohibitions of section 4 of the BHC Act.

The rule also implements a number of statutory changes including certain application-related provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (the 1996 Act) and several provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the Interstate Act) and the Gramm Leach Bliley Act (the GLB Act) that affect foreign banks. The Board is also requesting comment on issues that arise in connection with the change in the definition of representative office made in the GLB Act. Finally, several technical changes to various other provisions in Subpart B are being adopted.

Streamlining the Regulatory Process

The Board is required to approve the establishment by foreign banks of branches, agencies, commercial lending companies, and representative offices in the United States. This authority is contained in the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA), which amended the IBA, and was intended to close perceived gaps in the supervision and regulation of foreign banks. Prior to FBSEA, there was no federal approval required for the establishment of most types of direct U.S. offices of foreign banks, nor were uniform standards applicable to these offices.

In the ten years since the enactment of FBSEA, the Board has gained substantial experience with the issues presented by applications by foreign banks to establish direct offices. The revisions streamline the applications process based on experience gained over this period. In addition, the final rule implements new discretionary authority and time limits contained in the 1996 Act.

Adoption of a Single Standard for Representative Offices

Under FBSEA, in order to approve an application by a foreign bank to establish a branch, agency or commercial lending company, the Board generally is required to determine, among other things, that the applicant bank, and any parent bank, are subject to comprehensive supervision on a consolidated basis by its home country authorities (the CCS determination).[27] A lesser standard, however, applies under FBSEA to representative office applications. While the Board is required to ''take into account'' home country supervision in evaluating an application by a foreign bank to establish a representative office, a CCS determination is not required to approve such an application. The law simply requires the Board to consider the extent to which the applicant bank is subject to CCS. A lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers and markets than do branches or agencies.

Regulation K currently restates the statutory ''take into account'' standard and does not define a minimum supervision standard that a foreign bank must meet in order to establish a representative office. Instead, the Board has developed standards in the context of specific cases. To date, the Board has used two different supervision standards in approving applications by foreign banks to establish representative offices.[28]

Under one, the Board has permitted a foreign bank to establish a representative office able to exercise all powers available under applicable law and regulation on the basis of a finding that the home country supervisors exercise a significant degree of supervision over the bank.[29] Under the second, the Board has approved the establishment of the office on the basis of a finding that the foreign bank is subject to a supervisory framework that is consistent with approval of the application, taking into account any limits placed on the activities of the proposed office and the operating record of the bank.[30]

Based on experience in dealing with representative office applications, the Board believes that the existence of two standards can be confusing and is unnecessary, particularly in light of the generally minimal risk presented to U.S. customers or markets by representative offices. Consequently, the Board proposed Regulation K be amended to establish only one flexible standard. Under the proposal, assuming all other factors were consistent with approval, the Board could approve an application to establish a representative office if it were able to make a finding that the applicant bank was subject to a supervisory framework that is consistent with the activities of the proposed office, taking into account the nature of such activities and the operating record of the applicant.

The record necessary to support the required finding would depend on the nature of the activities the applicant proposed to conduct in the representative office and the level of home country supervision. The Board expects that most applicants would be able to conduct all permissible activities. In those instances in which the Board had particular concerns regarding the consistency of the applicant's home country supervision with the proposed activities of the office, the applicant could commit to restrict the activities. A less comprehensive record on home country supervision would be required where the applicant committed to limit the activities of the office to those posing minimal risk to the U.S. customers.

[27] As discussed later, the law was amended in 1996 to allow the Board to approve an application if the bank is not subject to CCS under certain conditions.

[28] Wherever the record submitted by an applicant in a representative office case is sufficient to support a CCS finding, the Board generally has done so. *See, e.g., Caisse Nationale de Credit Agricole,* 81 Fed. Res. Bull. 1055 (1995). The two representative office standards have been applied in those cases where the record is not sufficient to support a CCS finding.

[29] *See, e.g., Citizens National Bank,* 79 Fed. Res. Bull. 805 (1993).

[30] *See. e.g., Promstroybank of Russia,* 82 Fed. Res. Bull. 599 (1966).

Commenters generally supported this proposal and the Board is adopting the proposal as set forth above.

Reduced Filing Requirements for the Establishment of U.S. Offices

A major thrust of the proposed revisions was reduction of burden in the application process by streamlining existing application procedures for the establishment of new U.S. offices of foreign banks. Under the current Subpart B, the establishment by a foreign bank of a U.S. branch, agency, commercial lending company subsidiary, or representative office generally requires the Board's specific approval. Once the Board has approved the establishment of a foreign bank's first office under the standards set out in FBSEA, additional offices with the same or lesser powers may be approved by the Reserve Banks under delegated authority. Prior notice and general consent procedures are currently available for the establishment of certain kinds of representative offices. The Board's proposed revisions would allow additional types of applications to be processed under prior notice and general consent procedures. The Board has determined to adopt the revisions as proposed. The specific instances in which additional prior notice and general consent authority will be available are discussed below.

Prior Notice Available for Additional Offices After First CCS Determination

The Board proposed that any foreign bank which the Board has determined to be subject to CCS in a prior application or determination under FBSEA or the BHC Act may establish additional branches (other than interstate branches), agencies, commercial lending company subsidiaries, and representative offices pursuant to a 45 day prior notice procedure.[31] This time frame would allow for review of whether any material changes had occurred with respect to home country supervision, a determination of whether the bank continues to meet capital requirements, and a review of any other relevant factors. The current delegation to the Reserve Banks for such applications would be deleted as no longer necessary.

Four commenters expressed support for the Board's proposal. In response to the comments submitted, the Board is adopting the proposal with language clarifying that the prior notice procedure ordinarily would be available for foreign banks with a CCS determination that seek to establish additional branches (other than interstate branches under section 5(a)(3) of the IBA (12 U.S.C. 3103(a)(3))), limited branches, agencies, commercial lending company subsidiaries, and representative offices.[32]

Prior Notice Available for Certain Representative Offices

Many foreign banks have a U.S. banking presence and therefore are subject to the provisions of the BHC Act, but have not received a CCS determination. If a foreign bank is subject to the provisions of the BHC Act through ownership of a bank or commercial lending company or operation of a branch or agency, it is also subject to supervision and oversight through the Board's Foreign Banking Organization (FBO) program. Through the FBO program, the Board gains knowledge of the bank, its policies and procedures, and forms a general view on home country supervision. In these instances, the Board believes that an expedited procedure may be adopted for the establishment of representative offices by these banks, even where the foreign bank had not previously been reviewed under the standards of FBSEA.

The Board proposed that these foreign banks be permitted to establish representative offices using a 45-day prior notice procedure. In addition, the Board also proposed to permit the establishment by prior notice of additional representative offices by any foreign bank not subject to the BHC Act but previously approved by the Board to establish a representative office, regardless of the type of supervision finding made by the Board in the prior case. Such applications are currently delegated to the Reserve Banks. The Board sees no reason to continue to require full applications from such banks. The Board proposed that banks in these two categories be permitted to use the 45-day prior notice procedure for opening a representative office, rather than requiring them to use the application procedure.

Commenters generally supported this proposal. One commenter additionally requested that foreign banks that have been approved to establish branches and agencies under the limited exception to the CCS standard—which permits the Board to approve applications to establish branches and agencies if it is able to find, among other things, that the home country supervisor of the applicant bank is ''actively working'' toward achieving CCS—be permitted to use a 45 day prior notice procedure for additional offices with the same or lesser powers.

The Board is adopting the proposed revisions. In addition, the Board is adopting the commenter's proposal to permit establishment by prior notice of representative offices, but not additional branches, agencies or commercial lending companies, by foreign banks previously approved under the ''actively working'' standard. This would be consistent with the Board's proposal.

New General Consent Authority

The Board proposed to permit the establishment by general consent of a representative office by a foreign bank that is both subject to the BHC Act and has been previously determined by the Board to be subject to CCS. Establishment of a representative office by such a foreign bank is currently subject to the prior notice procedure. The proposal was based on an assessment that a foreign bank that is subject to supervision under the FBO program and has been judged subject to CCS should generally qualify to establish a representative office. The Board also proposed that a foreign bank that is subject to the BHC Act could establish a regional administrative office by general consent, whether or not the Board had determined the bank to be subject to CCS. Regional administrative offices currently can be established using the prior notice procedure. Commenters generally supported this proposal and the Board is adopting the revisions as proposed.

One commenter requested that the general consent procedure also be available for additional offices with the same or lesser powers in a state in which the foreign bank already operates an office where the foreign bank is subject to the BHC Act and has a CCS determination. The Board does not believe it would be appropriate to adopt the commenter's proposal because the proposal implicitly assumes that a CCS determination would never need to be reconsidered. In addition, in connection with each branch and agency case, the

[31] An editing error in the draft regulatory language unintentionally limited the types of offices eligible for the prior notice procedure. Commenters requested that the proposed 45-day prior notice provision be extended to the establishment of limited branches outside the foreign bank's home state. This was the intent of the proposal.

[32] As described further in the preamble, upgrades of limited branches and agencies outside the foreign bank's home state would be eligible for prior notice if other requirements were met. In response to a comment, the Board considered whether it might be possible to process under the 45-day notice procedure proposals to establish full interstate branches. Approval of full interstate branches requires consideration of factors in addition to those required to be considered in a normal FBSEA application, as well as consultation with the Department of the Treasury. For this reason, an application requirement is being retained for the establishment of full interstate branches under section 5(a)(3) of the IBA.

Board also must confirm that the foreign bank's capital meets the statutory requirements.

Suspension of Prior Notice and General Consent Procedures

The proposed revisions also provided that the Board, upon notice, may modify or suspend the prior notice and general consent procedures described above for any foreign bank. For example, modification or suspension of these procedures might be appropriate if the composite rating of the foreign bank's combined U.S. operations was less than satisfactory,[33] if the foreign bank were subject to supervisory action, or if questions were raised about the foreign bank's home country supervision or anti-money laundering policy and procedures. The proposal would ensure that any streamlining of the applications process would not compromise the Board's ability to make the determinations necessary in connection with the establishment of offices.

The proposed revision did not elicit specific comment and it is adopted as proposed.

After-the-Fact Approvals

In implementing FBSEA in 1993, the Board recognized that it would be impractical to require prior approval for the establishment of foreign bank offices acquired in certain types of overseas transactions, such as a merger of two foreign banks, and provided for an after-the-fact approval in such cases. The regulation currently requires the foreign banks involved to commit to file an application to retain acquired U.S. offices as soon as possible after the occurrence of such transactions.

Since the enactment of FBSEA, a number of applicants using the after-the-fact procedure have chosen to wind down and close acquired offices or consolidate them with existing offices, in each case within a reasonable time frame. In most instances, no regulatory purpose was served by requiring the filing of an application. The regulation currently does not address this possibility. The Board proposed to amend the rule to address both after-the-fact applications to retain, as well as decisions to wind-down and close, U.S. offices acquired in a transaction eligible for the after-the-fact approval process. Where the foreign bank chooses to close the acquired U.S. office, the Board generally would not require the filing of an application but could impose appropriate conditions on the U.S. operations until the winding-down is completed.

The proposed revision did not elicit specific comment and it is adopted as proposed.

Implementation of the 1996 Act

As noted above, FBSEA generally requires the Board to determine that a foreign bank applicant is subject to CCS in order to approve the establishment of a branch, agency, or commercial lending company. The 1996 Act gave the Board discretion to approve the establishment of such offices by a foreign bank where the application record is insufficient to support a finding that the bank is subject to CCS, provided the Board finds that the home country supervisor is actively working to establish arrangements for the consolidated supervision of the bank, and all other factors are consistent with approval. This discretion gives the Board flexibility to approve applications on an exceptional basis where the home country authorities are making progress in upgrading the bank supervisory regime but the record may not yet be sufficient to support a full CCS finding. The Board has stated that this authority should be viewed as a limited exception to the general requirement relating to CCS.[34] The statutory standards are being included in the final rule.

Two commenters expressed support for the Board's proposed revision.

The Board has proposed to incorporate into Regulation K the statutory time limits in the 1996 Act for Board action on applications for branches, agencies, and commercial lending companies. The 1996 Act provided that the Board must act on such an application within 180 days of its receipt. The time period may be extended once for an additional 180 days, provided notice of the extension and the reasons for it are provided to the applicant and the licensing authority; the applicant may also waive the time periods. Although the regulation will reflect these statutory time periods, the Board will maintain existing internal time schedules that would require faster processing where possible.

New Standard

In light of the increasing attention being paid to the problem of money laundering, the Board currently requests that a foreign bank applying to establish U.S. offices provide information on the measures taken to prevent the bank from being used to launder money, the legal regime to prevent money laundering in the home country, and the extent of the home country's participation in multilateral efforts to combat money laundering. The Board considers this information in reaching its decision on applications. In light of this practice, the proposed revision included as a standard for the establishment of U.S. offices by foreign banks that the Board may consider the adequacy of measures for the prevention of money laundering.

One commenter expressed support for this proposal and it is adopted as proposed.

Qualifications of Foreign Banks for Nonbank Exemptions

Changes to the QFBO Test

Regulation K implements statutory exemptions from the BHC Act for certain activities of foreign banks. These exemptions are available to qualifying foreign banking organizations (QFBOs) and are found in sections 2(h) and 4(c)(9) of the BHC Act. Section 2(h) allows a foreign company principally engaged in banking business outside the United States to own foreign affiliates that engage in impermissible nonfinancial activities in the United States, subject to certain requirements. These include that the foreign affiliate must derive most of its business from outside the United States and it may engage in the United States only in the same lines of business it conducts outside the United States. Section 4(c)(9) allows the Board to grant foreign companies an exemption from the nonbank activity restrictions of the BHC Act where the exemption would not be substantially at variance with the BHC Act and would be in the public interest. Under this authority, the Board has exempted, among other things, all foreign activities of QFBOs from the nonbanking prohibitions of the BHC Act.

In order to qualify as a QFBO, a foreign banking organization must demonstrate that more than half of its business is banking and more than half of its banking business is outside the United States. Banking business is defined to include the activities permissible for a U.S. banking organization to conduct, directly or indirectly, outside of the United States.[35] Under the current regulations

[33] *See* 12 CFR 225.2(s) (definition of ''well-managed'' foreign banking of such transactions organization).

[34] *See Housing & Commercial Bank,* 83 Fed. Res. Bull. 935 (1997); *National Bank of Egypt,* 86 Fed. Res. Bull. 344 (2000); *Banco de Bogota,* 87 Fed. Res. Bull. 552 (2001).

[35] These activities include, in addition to traditional banking activities, underwriting various types of insurance (credit life, life, annuity, pension fund-related, and other types of insurance where the associated risks are actuarially predictable); underwriting, distributing, and dealing in debt and equity securities outside the United States; providing data processing, investment advisory,

Continued

such activities can be counted as banking business for the purposes of the QFBO test only if they are conducted in the foreign bank ownership chain; that is, by the foreign bank or a subsidiary of the foreign bank. Activities conducted by a parent holding company or sister affiliate do not count toward qualification.

Modification of Proposal To Remove the Banking Chain Requirement from One Prong of the QFBO Test

The Board proposed liberalizing the QFBO test by removing the banking chain requirement from the prong of the QFBO test that measures whether more than half of a foreign banking organization's business is banking. By eliminating the banking chain requirement from that prong of the test, a foreign banking organization that has, for example, substantial life insurance activities outside of the banking chain would be able to count such activities toward meeting the QFBO test. The commenters supported this liberalization.

When this proposal was made in 1997, the Board was aware of relatively few foreign banking organizations, primarily those engaged in insurance, that would have benefitted from such liberalization. Significantly, at that time, the BHC Act would have prevented such a foreign insurance company from conducting insurance activities in the United States. Accordingly, the proposed change was expected to have limited application and not to provide any significant competitive advantage for foreign banking organizations.

The enactment of the Gramm-Leach-Bliley Act has changed the regulatory landscape and the consequences of the proposed QFBO test. The BHC Act is no longer a legal bar to companies that wish to engage in insurance and merchant banking activities in the United States, and a broader range of foreign companies may acquire foreign banks with U.S. activities than was possible in 1997. If the proposed test were adopted, a foreign insurance group that qualified as a financial holding company would be able to make commercial and industrial investments in the United States beyond those permissible under insurance or merchant banking authority even though a domestic insurance company with financial holding company status could not. In light of these changes, the Board has reconsidered its proposed change to the QFBO test and determined to adopt a modified form of the 1997 proposal.

The existing QFBO test has been retained and foreign banking organizations that are able to qualify under that test will continue to be eligible for all of the exemptions. A new provision will permit those foreign banking organizations that meet only the test proposed by the Board in 1997 nevertheless to be eligible for all of the exemptions other than the exemption for limited commercial and industrial activities provided under § 211.23(f)(5)(iii).[36] Such a foreign banking organization will, however, be eligible for the limited exemptions only if the foreign banking organization includes a foreign bank that could itself meet the current QFBO test.

Although the foreign banking organization that is able to meet only the modified test generally would be limited in its ability to make investments under the exemption in section 2(h)(2) of the BHC Act, the Board considers that a foreign bank within the group should not be so limited. In this regard, the Board notes that, in enacting section 2(h)(2), Congress recognized that banks in other countries have traditionally been permitted to make commercial and industrial investments. Accordingly, any foreign bank within such a group that itself is able to meet the current QFBO test by reference to its and its subsidiaries' assets, revenues and net income, will be eligible for all of the exemptions.

Limiting the eligibility for exemptions in this way is consistent with the statutory language in section 2(h)(2) of the BHC Act, which provides that it applies to shares held by a foreign company that is ''principally engaged in the banking business outside the United States.'' At the same time, modifying the test in this manner would limit the extraterritorial effect of the BHC Act on foreign firms, and would not penalize a consolidated group that engages mostly in activities permissible for a U.S. banking organization.

Applications for Special Determination of Eligibility for QFBO Treatment

The Board recognizes that there may be types of ownership structures above foreign banks that would not meet even the modified QFBO test. It also is possible that foreign banking organizations that meet only the modified test might need limited relief for commercial and industrial activities in the United States. In addition, there may be foreign financial organizations that do not include a foreign bank and wish to acquire a U.S. bank. Such financial organizations would fail the QFBO test, and it is not possible to know the extent to which requiring such an organization to conform its worldwide operations to those permissible for a U.S. financial holding company would interfere, in particular, with its foreign business. The Board is prepared to consider requests beyond the current QFBO authority on a case-by-case basis. In considering such cases, the Board will take into account the principles of national treatment and equality of competitive opportunity and may grant exemptions that are not substantially at variance with the purposes of the BHC Act and are in the public interest.

Regulation K currently permits a foreign banking organization that ceases to qualify as a QFBO to request a special determination of eligibility. That provision has been modified to give the Board greater flexibility to grant special determinations that will permit foreign banking organizations and foreign organizations that do not include foreign banks to be eligible for some or all of the exemptions in appropriate cases.

The Board has also adopted the proposal made in 1997 that would permit a former QFBO that has applied for a specific determination of eligibility to continue to conduct its business as if it were a QFBO, except with respect to making investments in U.S. companies under section 2(h)(2) of the BHC Act for which Board consent would be required. The proposal reflects the approach taken in a prior case considered by the Board, and no comments were received on the proposal.

Other Comments on the QFBO Test

The QFBO test in Regulation K permits foreign banking organizations to count in the measurement of ''banking'' only those assets, revenues, or net income related to activities that are permissible for a U.S. banking organization to conduct outside of the United States. The Board requested comment with respect to a possible expansion of the list of activities that would be considered banking for purposes of the QFBO test. Three commenters suggested some expansion in the list. Two proposed that the QFBO

and management consulting services; and organizing, sponsoring, and managing a mutual fund.

[36] The exemption in § 211.23(f)(5)(iii) implements section 3(h)(2) of the BHC Act. Any foreign banking organization that qualifies as a financial holding company would be able to make merchant banking investments, and investments in connection with its insurance business, in the United States to the extent permitted for a financial holding company. The lack of eligibility for the exemption provided in § 211.23(f)(5)(iii) would not negate or otherwise affect such authority.

test be expanded to include all financial activities which are usual in connection with the banking business in those countries in which the foreign banking organization is active. One proposed that the Board consider other activities on a case-by-case basis to reflect changes in foreign financial markets.

To date, there have been very few cases in which a foreign banking organization failed the QFBO test because certain types of financial activities were not included on the list. In light of this, and in view of the modified QFBO test and the ability of the Board to make special determinations of eligibility for some or all of the QFBO exemptions, the Board has determined not to make any changes at this time to the list of activities that would be considered banking for purposes of the QFBO test.

Two commenters suggested that the requirement that a QFBO conduct more banking than nonbanking activities is not required by the statute. These same commenters also proposed that even if that requirement is retained, the QFBO test should be revised to allow U.S. banking business to be included when calculating the extent of an organization's banking business. The Board has not adopted these proposals because they would be inconsistent with section 2(h)(2) of the BHC Act, which provides exemptions for foreign companies principally engaged in banking business outside the United States. Moreover, a U.S. nonfinancial company is not permitted to own a U.S. bank, and altering the test to permit a predominantly nonfinancial foreign group to engage in banking in the United States would be inconsistent with the principle of national treatment.

U.S. Activities of QFBOs

Securities Activities. Subpart B currently provides that a foreign banking organization may not own or control shares of a foreign company that directly underwrites, sells or distributes, or that owns or controls more than 5 percent of the shares of a company that underwrites, sells or distributes, securities in the United States, except to the extent permitted bank holding companies. The Board proposed that the 5 percent limit be raised to 10 percent. Two commenters suggested that the limit be raised to 24.9 percent and one proposed that no change be made. The Board has determined to adopt the 10 percent limit as proposed. The Board continues to hold the view expressed in the 1997 proposal that a foreign bank should not be able to exert a significant influence over such a securities firm. Investments above the 10 percent level would be permitted if the foreign bank met the requirements to be treated as a financial holding company under the GLB Act.

Change in meaning of ''incidental''. Two commenters requested that the Board apply an expanded definition of ''incidental'' U.S. activities in Subpart B. Under the current rule in Regulation K, a QFBO is permitted to own up to 100 percent of a foreign company that conducts activities in the United States that are ''incidental'' to the foreign company's international or foreign business. The Board's longstanding interpretation, for purposes of both Subparts A and B of Regulation K, has been that such incidental activities in the United States are limited to those activities that the Board has determined are permissible for Edge corporations to conduct in the United States. The Board proposed changes to Subpart A governing foreign portfolio investments by U.S. banking organizations to expand the interpretation of ''incidental'' for such investments to permit U.S. banking organizations to hold foreign portfolio investments (maximum of 19.9 percent of voting and 40 percent of total equity) that derive no more than 10 percent of their total consolidated revenue in the United States. The commenters proposed that the Board apply the same expanded definition of ''incidental'' U.S. activities to permit a QFBO to hold up to 100 percent of a foreign company with U.S. activities so long as those activities account for no more than 10 percent of the total consolidated revenue of the company.[37] The change to Subpart A, which has been adopted, is intended to deal with investments in companies over which the U.S. banking organization has no control. The commenters are proposing liberalized treatment for investments by foreign banks where the foreign bank is in a position to prevent the company from entering the United States. There does not appear to be any public interest justification for the request and the Board has not adopted the commenters' proposal.

[37] Foreign banking organizations already have greater leeway than U.S. banking organizations with respect to their noncontrolling investments in foreign companies engaged in U.S. activities that are not ''incidental''. The U.S. assets of such foreign companies can account for up to 49.9 percent of total consolidated assets, and the foreign companies can derive up to 49.9 percent of their consolidated revenues from the United States. Accordingly, the commenters' proposal would only affect the foreign banking organization's ability to make controlling investments in foreign companies with U.S. activities.

Determining Extent of Non-U.S. operations

Under Regulation K, a foreign bank may own or control voting shares of a foreign company that is engaged in business in the United States, subject to a number of restrictions. The first of these restrictions is that more than 50 percent of the foreign company's consolidated assets must be located, and consolidated revenues derived from, outside the United States. One commenter proposed that this assets plus revenues test be replaced with a requirement that more than 50 percent of the organization's business be outside the United States as measured by two out of three indicia: location of assets, derivation of revenues, and derivation of net income. There have been very few cases of an investment failing to comply with the assets/revenue test as currently applied, and the commenter gave no indication that any foreign bank has been harmed by it. The Board did not propose such a revision and, in the absence of an actual problem, has determined not to adopt it.

Increasing Amount of Equity in Noncontrolling Investments

One commenter suggested increasing the equity interest limit on non-controlling portfolio investments made by QFBOs from 24.9 percent of voting stock and total equity to 24.9 percent of voting stock and 40 percent of total equity to comport with limits applicable to U.S. banking organizations. Foreign banking organizations already are able to conduct a greater range of activities both in and outside the United States than are U.S. banking organizations. The analogy to portfolio investments of U.S. banking organizations is not valid; the new authority for U.S. organizations in this area is more limited than the existing authority for QFBOs. The Board does not consider that the additional authority proposed by this commenter for investments by foreign banking organizations is warranted.

Exception for Line-of-Business Requirement

Section 2(h)(2) requires that the U.S. commercial and industrial holdings of a foreign banking organization be in the same general line of business as the foreign investor company, or in a business related to the business conducted outside the United States. Consistent with the intent of Congress when it adopted this provision, Regulation K uses the Standard Industrial Classification (SIC) system for determining the comparability of U.S. and foreign nonbanking activities. One

commenter noted that the provision does not permit any exceptions and suggested that the Board establish a procedure to permit a QFBO, when SIC establishment categories are not matching, to demonstrate on a case-by-case basis that the U.S. activities of a foreign subsidiary are nonetheless the same kind of activities, or related to the activities, engaged in directly or indirectly by the foreign subsidiary outside the United States.

The Board is not aware of a significant number of cases where U.S. and foreign investments of QFBOs have not met the requirements of this provision and sees no reason to modify it at this time. However, in view of the fact that the SIC classification system is being replaced by the North American Industry Classification System, the Board will be reviewing the provision and may consider if a procedure to exempt investments that do not comply with the relevant classification system would be appropriate.

This same commenter suggested that the Board review its reporting requirements to seek ways to address the difficulty of monitoring compliance with the requirements of section 211.23(f) of Regulation K within a complex, multi-tiered global organization. In the aftermath of the Gramm-Leach-Bliley Act, the Board is undertaking a review of reporting requirements for foreign banking organizations and is seeking to reduce burden where appropriate.

The Conduct of Unregulated Activities Abroad through U.S. Companies

Pursuant to section 4(c)(9) of the BHC Act, Regulation K currently exempts from the BHC Act any activity conducted by a QFBO outside the United States. In 1997, the Board noted the growing trend by foreign banks to use this exemption to conduct unregulated activities abroad through foreign subsidiaries of U.S. companies operating under section 4(c)(8) of the BHC Act. U.S. bank holding companies, in contrast, are not able to conduct unrestricted activities abroad through foreign subsidiaries of their section 4(c)(8) companies. Under the BHC Act, a U.S. bank holding company may own foreign subsidiaries only under the authority of Subpart A of Regulation K which set limits on the activities that can be conducted in such subsidiaries. The Board requested comment on whether it is consistent with the policy of national treatment to permit QFBOs to continue to use the exemption to conduct unrestricted activities abroad in foreign subsidiaries of companies regulation by the Board under section 4(c)(8).

The commenters generally favored permitting foreign banks to have unrestricted 4(c)(9) foreign subsidiaries of 4(c)(8) companies. A number of commenters stated that a foreign banking organization should be permitted to organize its non-U.S. activities in the manner that best suits its business, and that the home country supervisor and not the Federal Reserve is regarded by the market as the supervisor of the activities of such foreign companies. None of the commenters expressed any views as to whether such practice may provide foreign banks with a competitive advantage over U.S. banking organizations in using and marketing the name and operations of the regulated U.S. company, but they did state that foreign banks could achieve the same benefits by establishing a foreign affiliate of the 4(c)(8) company with a similar or identical name.

The Board has determined to take no action at this time to prevent the practice from continuing, but reserves the right to review any of these situations as the facts warrant and require a change in the relationship if the structure in fact results in competitive inequality.[38]

Implementation of New Interstate Rules

In addition to application procedures and rules on nonbanking activities, Regulation K implements the restrictions on interstate operations of foreign banks provided in the IBA and the BHC Act. The Interstate Act amended the IBA and the BHC Act to remove geographic restrictions on interstate acquisitions of banks by foreign banks, permitted foreign banks to branch interstate by merger and *de novo* on the same basis as domestic banks with the same home state as the foreign bank, and modified the definition of a foreign bank's home state for purposes of interstate branching. The Interstate Act became fully effective in June 1997.

In May 1996, the Board published a final rule to implement certain of the changes made by the Interstate Act. The rule required certain foreign banks to select a home state for the first time, or have a home state designated by the Board, removed obsolete provisions of Regulation K that restricted the ability of a foreign bank to effect major bank mergers through U.S. subsidiary banks located outside the foreign bank's home state, and deleted certain other obsolete rules governing home state selection.

The Board's 1997 proposal sought to implement and interpret certain other changes made by the Interstate Act. The proposal would permit foreign banks to make additional changes in home state under certain circumstances and clarified the extent to which a foreign bank changing its home state would be required to conform its existing network of bank subsidiaries and banking offices.

In addition, the proposal set forth the additional standards for approval of applications by foreign banks to establish interstate branches. It also clarified that the ''upgrade'' of agencies and limited branches to full branches required Board approval and that the Board would approve such upgrades (absent a merger transaction) only if the host state had enacted laws permitting *de novo* interstate branching. Finally, the proposal deleted the Board's home state attribution rule, which provides that a foreign bank (or other company) and all other foreign banks which it controls must have the same home state.

The commenters were generally supportive of the Board's proposals in the interstate area. With the exception of the ''upgrades'' proposal which, as described below, has been mooted by subsequent legislation, the Board has adopted the changes as proposed.

Changes of Home State

In 1980, the Board allowed foreign banks a single change of home state as a compromise between the need for comparable treatment with domestic banks and Congress' intent, in adopting the IBA, that foreign banks be allowed some flexibility to change home state. The basic framework for interstate banking, however, has changed substantially since 1980, when domestic banks generally could not branch interstate and rarely, if ever, could change home states. Domestic and foreign banks may now branch into other states either *de novo* or by merger in certain circumstances; interstate branching by merger between banks is now possible in all but one state (all states will allow interstate branching by merger as of year end 2001), and *de novo* interstate branching is permitted in 17 states. As a result, many domestic banks with interstate branches now have significant opportunities to change home state, although these opportunities are not available to all banks under all circumstances.

In light of these changes, the Board proposed giving foreign banks additional opportunities to change home state in a way that affords

[38] The Board notes that material alterations in nonbanking activities carried on by a particular section 4(c)(8) company may require notice to the Board. 12 CFR 225.25(c)(3).

comparable treatment to foreign and domestic banks. The proposal retained the ability of foreign banks under current rules to change their home state once by filing a notice with the Board. Changes made by foreign banks prior to the entry into effect of the final rule would count toward this one-time limit. The proposal also established a new procedure for foreign banks to change home state an unlimited number of times, by applying for the prior approval of the Board for each such change. A foreign bank applying to change its home state under the new procedure would be required to show that a domestic bank with the same home state would be able to make the same change.

The Board has adopted the change in home state provision as proposed. The commenters supported the provision but questioned the need for prior Board approval; instead they recommended a 45 day notice requirement. The Board has considered whether the issues presented by a request for an additional change of home state could be dealt with adequately during a 45 day prior notice period. The Board expects such changes to be comparatively rare. In addition, each such request presents unique facts. For these reasons, the Board has elected to retain the prior approval requirement set forth in the proposal. As the Board gains experience processing such requests, it may consider replacing the prior approval with a prior notice requirement.

One of the commenters sought assurance that the Board would be flexible in interpreting the requirement that a foreign bank seeking to make an additional change of home state demonstrate that a domestic bank with the same home state would be able to make the same change. The Board believes the new procedure advances the policies of national treatment and equality of competitive opportunity underlying the IBA by allowing foreign banks to take advantage of changes in laws concerning interstate branching in order to change home state, when and to the extent those laws make it possible for similarly situated domestic banks to change home state. Although the Interstate Act made it possible for domestic banks to change home state in some cases, there are other cases where such a change in home state may be difficult or impossible. The new procedure also seeks to prevent foreign banks from gaining an unfair competitive advantage over domestic banks. Accordingly, the new procedure would allow foreign banks to change home state only in cases where a domestic bank could effect a comparable change.

Changes in home state would generally have no impact on which Reserve Bank will supervise the operations of a foreign bank nor on which Reserve Bank will receive a foreign bank's reports and applications.

Conforming U.S. Operations Upon Change in Home State

Regulation K currently requires a foreign bank that changes its home state to conform its banking operations outside the new home state to what would have been permissible at the time of the bank's original home state selection. The requirement, adopted in 1980, implemented section 5 of the IBA which sought to prevent foreign banks from using a home state change to acquire and maintain subsidiary banks or branches in more than one state in circumstances where a domestic bank or bank holding company would be unable to do so.

The Interstate Act liberalized the rules on interstate branches and eliminated the geographic restrictions on the purchases of banks by domestic bank holding companies and foreign banks under the BHC Act and the IBA. Consequently, the Board proposed that the provisions on conforming operations upon a foreign bank's change of home state be revised to reflect changes made by the Interstate Act. For example, with respect to subsidiary banks, a foreign bank would no longer be required to divest a subsidiary bank outside its new home state; the Interstate Act authorizes interstate acquisitions of bank subsidiaries.

With respect to conforming branches outside the foreign bank's new home state, the proposal reflected the liberalized interstate branching rules applicable to foreign and domestic banks as a result of the Interstate Act. A foreign bank changing its home state would be permitted to retain all branches which the foreign bank could establish (under current law) if it already had its new home state. This relaxation is appropriate given that domestic, as well as foreign banks, now have significant opportunities to establish and retain interstate branches.

The commenters supported this proposal and the Board adopted it as proposed. One commenter was concerned, however, that a rigid interpretation of the limitation on retention of existing branch operations outside the new home state to only those branches that the foreign bank could establish under current law if it already had its new home state would severely limit changes of home state by banks with established, nongrandfathered operations in the old home state. The Board intends to apply the rule consistent with the scope of the changes to the interstate rules. The Board also notes that the GLB Act provides opportunities for banks to upgrade existing operations outside the home state. These opportunities should reduce the need for foreign banks to change home states.

Additional Standards for Interstate Offices

The proposal also contained the additional standards required by the Interstate Act for approval by the Board of the establishment by a foreign bank of branches located outside of the bank's home state. These standards were designed to insure that foreign banks seeking to establish interstate branches meet requirements comparable to those imposed on domestic banks seeking to operate interstate. The Board received no comments on this aspect of the interstate proposal and has adopted it as proposed.

Upgrading of Agencies and Limited Branches to Full Branches

Section 5 of the IBA, as amended by the Interstate Act, generally allows a foreign bank to establish full branches outside its home state only if a domestic bank with the same home state could establish branches in the same host state under the Interstate Act. The GLB Act contained a new exception to this general limitation. The new provision allows a foreign bank, with the Board's approval, to upgrade an existing agency or limited branch outside the bank's home state to a full service branch provided the state would permit the upgrade and the office has been is existence the minimum amount of time that the state requires for the acquisition of an interstate bank.

In response to inquiries and requests from trade groups, the Board, in its 1997 proposal, stated its view that upgrades of existing agencies and limited branches outside of a foreign bank's home state constituted a ''change in status'' of an office requiring Board approval under FBSEA. In addition, the Board stated that such upgrades would be approved only in situations where the state in which the upgraded office was located permitted *de novo* branching.

The Board's proposal elicited responses from three commenters, each of which urged liberalization and/or flexibility to some degree. The proposal and the comments received have been superseded to a significant degree by the GLB Act provision permitting upgrades. The new statutory provision confirmed that upgrades require Board approval

but made such upgrades more widely available than the Board had proposed. Upgrades may now be approved provided the state permits the upgrade and the office to be upgraded has been in existence in that state for the minimum amount of time (no more than 5 years) required for the acquisition of an interstate bank. The Board is amending its interstate rules to implement the GLB provision. Upgrades, like other branch proposals under FBSEA, generally require full applications. Prior notice may be available, as provided elsewhere in this final rule, if the foreign bank has previously received a CCS determination from the Board.

Home State Attribution Rule Deleted

Regulation K currently provides that a foreign banking organization and all its affiliates are entitled to only one home state. This would be true even if the foreign banking organization owned several different foreign banks with operations in the United States.

At the time the rule was adopted, domestic banks generally could not branch into states other than the ones in which they were located, nor could bank holding companies generally acquire banks outside their home state. In that context, the Regulation K provision was structured to prevent affiliated groups of foreign banks from gaining an unfair advantage over domestic banks by having each of the affiliated foreign banks select a different home state. Having done so, the foreign banks would be able to open and operate branches in more than one state. The rule sought to prevent this by stating that a foreign banking organization and any foreign bank that it controls would be entitled to only one home state.

The Interstate Act has substantially changed the rules on interstate expansion since this provision was originally adopted. Under current law, a bank holding company may own many banks in different states; each of these banks is entitled to its own home state regardless of the home states of its affiliates. Consequently, in 1997 the Board proposed that Regulation K be amended to eliminate the requirement that a foreign bank and all its affiliates are entitled to only one home state. The proposal would preserve national treatment for foreign banks and would not put U.S. banking organizations at any competitive disadvantage. The commenters supported the proposal, and the Board has adopted it.

Representative Offices

Definition of Representative Office

The GLB Act amended the definition of representative office such that a subsidiary of a foreign bank may now be considered a representative office. The definition of representative office in Regulation K has been modified to conform with the change in law. The statutory amendment closed a potential ''loophole'' that made it possible for foreign banks to set up subsidiaries to engage in representative activities, thus avoiding both the FBSEA application process and ongoing supervision of such subsidiary as a representative office. However, the fact that subsidiaries can now be deemed to be representative offices raises new issues.

The Board is aware of only a few cases in which banks sought to make use of this loophole and does not believe that there are significant current issues with respect to representative functions being conducted out of subsidiaries. It is possible that a foreign bank could attempt to evade the IBA's requirements by using a nonbank subsidiary; it would be difficult, however, to anticipate and try to prohibit all potential schemes. The Board thus is not proposing to amend Regulation K to clarify all situations in which a nonbank subsidiary or affiliate would be considered a representative office. Rather the Board is providing general guidance and seeks views on whether more explicit guidance is warranted.

As a general matter, any subsidiary established for the purpose of acting as a representative office clearly would be a representative office. Similarly, a subsidiary would be considered to be a representative office when it holds itself out to the public as a representative of the foreign bank, acting on behalf of the foreign bank, even if the subsidiary engages in other nonbank business. In addition, an individual or a unit of a subsidiary that acts as a representative of a foreign bank from the location of the nonbank subsidiary would be treated as a representative office. An important limitation on this general approach is that a subsidiary generally would *not* be considered a representative office if it makes customer referrals or cross-markets the foreign bank's services in a manner that would be permissible for a nonbank affiliate of a U.S. bank.

The Board is also interested in receiving views on whether a money transmitter subsidiary of a foreign bank should be prohibited from also engaging in representative functions or employing individuals who act as bank representatives. A money transmitter is a nonbank company that for a fee will send funds to persons outside the United States. Often, the funds are first transmitted to the affiliated foreign bank for the benefit of the ultimate recipient. A foreign bank is not entitled to use the money transmitter to engage in deposit-taking. If a representative office were combined with a money transmitter, it would be extremely difficult if not impossible to monitor or enforce compliance with this restriction. Customers could also be confused about the status of funds given to the money transmitter.

Registration of Existing Incorporated Representative Offices

There may be some subsidiaries of foreign banks that will fall within the definition of ''representative office'' for the first time, and these subsidiaries will need to be identified. The Board has determined to impose a registration requirement similar to that imposed following the enactment of FBSEA, which subjected representative offices of foreign banks to Board approval requirements and supervision for the first time. All subsidiaries that are acting as representative offices will be required to complete a brief informational report. The form will be issued separately. Subsidiaries and affiliates of foreign banks that have been conducting representative functions on behalf of the foreign bank will be ''grandfathered'' and not required to apply to ''re-establish'' a representative office.[39]

Approval of Loans at a Representative Office

Regulation K currently includes as permissible activities for a representative office those in which a ''loan production office'' of a state member bank may engage as set forth in a 1978 Board interpretation. The portion of the interpretation restricting loan approvals at such offices has been superceded, and loan origination facilities of state member banks may approve loans in certain circumstances. The Board considers that representative offices of foreign banks that are subject to the BHC Act, and thus subject to supervision in the United States, should be permitted to engage in the same activities as such facilities. The Board is

[39] The grandfathering would be effective as of the date of the proposal but only for those affiliates engaged in activities clearly permissible to conduct in combination with representative office functions. Thus, should the Board determine that representative functions may not be conducted in a money transmitter subsidiary, such activities would have to be discontinued.

therefore amending Regulation K to remove the reference to the interpretation and clarify that representative offices may make credit decisions if (i) the foreign bank also operates one or more branches or agencies in the United States, (ii) the loans approved at the representative office are made by a U.S. branch or agency of the bank, and (iii) the loan proceeds are not disbursed in the representative office.

Additional Matters

Temporary Additional Office Location

From time to time, the Board has received requests from foreign banks that desire to have an additional temporary location, usually as an interim measure before moving into new office space that can accommodate the entire staff of the branch or agency. The earliest inquiries were prompted by space constraints at the existing office and the need to relocate some employees until renovations could be completed at a new larger location. To accommodate such situations, the Board proposed a new provision in Regulation K permitting the Board, in its discretion, to determine that a well-managed foreign bank would not be considered to have established an office if certain conditions were met. Since the proposal was made, staff has received additional inquiries where the proposed relocation of employees would not fit within the provision as proposed. These more recent requests have involved mergers or consolidations of bank and nonbank entities within a banking group. The Board therefore, has adopted a broadened form of the provision to cover these additional types of temporary relocation situations. Any foreign bank taking advantage of this authority would be required to advise the Board prior to the relocation, make certain commitments,[40] and provide periodic information, as requested. The Board generally would not make such determinations if the reason for the request is the bank's failure to file on a timely basis a notice or application for the additional office, and the bank could not maintain the temporary location for more than twelve months.

Changes to Definition Section

The revision makes certain technical changes in the definition section of Subpart B, including in the definitions of ''appropriate Federal Reserve Bank,'' ''change in status,'' ''foreign banking organization,'' ''regional administrative office,'' and ''representative office.''

Conforming Changes To Termination Provisions

The Board proposed to amend the provisions of Subpart B dealing with termination of a U.S. office of a foreign bank to add as a grounds for termination a finding that the home country supervisor of a foreign bank is not making demonstrable progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis. This change has been adopted.

Reduction of Reporting Requirements

The Board proposed reducing the periodicity of reporting of all acquisitions of shares in companies engaged in business in the United States from quarterly to annually. Since the issuance of the proposal, the Board has reconsidered this issue in connection with the development and issuance of a new Form FR Y–10F. On this form, foreign banking organizations are required to report some of the investments covered by the old quarterly report on an event-generated basis. Remaining U.S. investments will be reportable only annually in connection with the FR Y–7. The final rule reflects the decisions on reporting made in connection with the issuance of the FR Y–10F.

Subpart C: Export Trading Companies

Subpart C of Regulation K sets out the rules governing investments and participation in export trading companies (ETCs) by bank holding companies and other eligible investors. ETCs are companies in which bank holding companies and certain other eligible investors may invest for the purpose of promoting U.S. exports.

Currently, an eligible investor must give the Board 60 days prior written notice of an investment of any amount in an ETC. The Board proposed adding a general consent provision under which an eligible investor that is well-capitalized and well-managed may invest in an ETC without prior notice. Such an investor would have to provide certain information to the Board in a post-investment notice. The terms well-capitalized and well-managed, as used for this purpose, would have the same meanings as in the Board's Regulation Y.

The Board further proposed allowing an eligible investor, also under general consent authority, to reinvest an amount equal to dividends received from the ETC in the prior year and to acquire an ETC from an affiliate at net asset value. Other proposed revisions included moving all defined terms into a new definitions section; removing an obsolete provision relating to the calculation of an ETC's revenues; and making certain minor, technical amendments.

One commenter expressed general support for the Board's proposal. The Board is adopting the revisions as proposed.

Delegations of Authority

The Board proposed additional and modified delegations of authority with respect to certain matters arising under Regulation K. Foremost, the Board proposed to delegate additional authority to the Director of the Division of Banking Supervision and Regulation with respect to foreign branching by member banks, general consent investments under Subpart A, and the general consent procedures of Subpart C. The Board also proposed to delegate to the Director and to the Reserve Banks additional authority with respect to prior notice investments and the establishment of prior notice U.S. offices by foreign banks. In addition, the Board proposed to delete as no longer necessary the delegation to the Reserve Banks to approve an application by a foreign bank to establish an additional U.S. office or a commercial lending company under certain circumstances. These proposals did not elicit negative comment, and they are adopted as proposed.

The Board also is authorizing several additional delegations of authority, relating generally to the processing and approval of applications under all Subparts of Regulation K; investments in Edge and agreement corporation subsidiaries; amendments to Edge corporation charters; the establishment of agreement corporations; ''special-purpose foreign government-owned bank'' determinations under section 211.24(d)(3); the approval of requests arising under section 4(c)(9) of the BHC Act; and FHC elections by foreign banks. The delegations of authority and modifications to existing delegations authorized by this final rulemaking will be variously codified in Regulation K and the Board's Rules Regarding Delegation of Authority (12 CFR part 265).

Regulatory Flexibility Act

The Board has reviewed the final rule in accordance with the Regulatory Flexibility Act. This final rule makes amendments to subparts A, B and C of Regulation K based upon a review of the regulation consistent with section 303 of

[40] As a general rule, the Board would require that there be no signs at any temporary location identifying it as an office of the bank, and that no client meetings take place at a temporary location.

the Riegle Community Development and Regulatory Improvement Act of 1994 (the Regulatory Improvement Act) and the International Banking Act of 1978 (the IBA). The rule streamlines procedures for U.S. and foreign banking organizations, implements portions of the Interstate Act, EGRPRA and GLB, and authorizes expanded activities for U.S. banking organizations abroad. The overall effect of the final rule will be to reduce regulatory burden. Pursuant to the Regulatory Flexibility Act, the Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the Board displays a currently valid OMB control number. The Board's OMB control numbers for the collections revised by this rule are 7100–0107 (the International Applications and Prior Notifications under Subparts A and C of Regulation K; FR K–1), 7100–0110 (the Notification Required Pursuant to Section 211.23(h) of Regulation K on Acquisitions by Foreign Banking Organizations; FR 4002), and 7100–0284 (the International Applications and Prior Notifications under Subpart B of Regulation K; FR K–2).

The collections of information that are revised by this rulemaking are found in 12 CFR 211.3, 211.5, 211.7, 211.9 through 211.11, 211.13, 211.22 through 211.24, and 211.34. These information collections are required to evidence compliance with the requirements of Regulation K. The respondents are for-profit financial institutions, including small businesses.

No comments specifically addressing the burden estimate were received. The current estimated annual burden for the 7100–0107 is 636 hours. The final rule would result in an estimated 25 percent reduction in the number of applications filed. The final rule would permit strongly capitalized and well-managed U.S. banking organizations making investments pursuant to general consent authority to file an abbreviated post-investment notice with the Board. This notice would take the place of certain requirements for prior notices or applications to the Board before any such investment could be made. The current estimated annual burden for the 7100–0284 is 600 hours. It is estimated that the final rule would reduce the burden by 10 percent due to a decrease in the average number of hours required to complete an application. The Board expects to publish a separate notice to revise these two applications to comply with the final rule's reporting requirements. In the interim, institutions may submit any new information requested in this rule in a letter format. The current estimated annual burden for the 7100–0110 is 80 hours. The final rule eliminates the need for this separate information collection. Similar information is collected on the Annual Report of Foreign Banking Organizations (FR Y–7; OMB No. 7100–0125) and the Report of Changes in FBO Organizational Structure (FR Y–10F; OMB No. 7100–0297). The Board estimates there would be no cost burden in addition to the annual hour burden.

For the 7100–0107 and the 7100–0284, the applying organization has the opportunity to request confidentiality for information that it believes will qualify for an FOIA exemption.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0107 or 7100–0284), Washington, DC 20503.

List of Subjects

12 CFR Part 211

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

12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, the Board of Governors amends 12 CFR parts 211 and 265 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

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.*, 3109 *et seq.*

2. Subparts A, B, and C (consisting of §§ 211.1 through 211.34) are revised to read as follows:

Subpart A—International Operations of U.S. Banking Organizations

Sec.
211.1 Authority, purpose, and scope.
211.2 Definitions.
211.3 Foreign branches of U.S. banking organizations.
211.4 Permissible investments and activities of foreign branches of member banks.
211.5 Edge and agreement corporations.
211.6 Permissible activities of Edge and agreement corporations in the United States.
211.7 Voluntary liquidation of Edge and agreement corporations.
211.8 Investments and activities abroad.
211.9 Investment procedures.
211.10 Permissible activities abroad.
211.11 Advisory opinions under Regulation K.
211.12 Lending limits and capital requirements.
211.13 Supervision and reporting.

Subpart B—Foreign Banking Organizations

211.20 Authority, purpose, and scope.
211.21 Definitions.
211.22 Interstate banking operations of foreign banking organizations.
211.23 Nonbanking activities of foreign banking organizations.
211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.
211.25 Termination of offices of foreign banks.
211.26 Examination of offices and affiliates of foreign banks.
211.27 Disclosure of supervisory information to foreign supervisors.
211.28 Provisions applicable to branches and agencies: limitation on loans to one borrower.
211.29 Applications by state branches and state agencies to conduct activities not permissible for federal branches.
211.30 Criteria for evaluating U.S. operations of foreign banks not subject to consolidated supervision.

Subpart C—Export Trading Companies

211.31 Authority, purpose, and scope.
211.32 Definitions.
211.33 Investments and extensions of credit.
211.34 Procedures for filing and processing notices.

Subpart A—International Operations of U.S. Banking Organizations

§ 211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the Federal Reserve Act (FRA) (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 (IBA) (12 U.S.C. 3101 *et seq.*).

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge and agreement corporations to engage in international banking, and for investments in foreign organizations.

(c) *Scope.* This subpart applies to:

(1) Member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601–604a);[1] and

(2) Corporations organized under section 25A of the FRA (12 U.S.C. 611–631) (Edge corporations);

(3) Corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601–604a) (agreement corporations); and

(4) Bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of that act (12 U.S.C. 1843(c)(13)).

§ 211.2 Definitions.

Unless otherwise specified, for purposes of this subpart:

(a) An *affiliate* of an organization means:

(1) Any entity of which the organization is a direct or indirect subsidiary; or

(2) Any direct or indirect subsidiary of the organization or such entity.

(b) *Capital Adequacy Guidelines* means the ''Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure'' (12 CFR part 208, app. A) or the ''Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure'' (12 CFR part 225, app. A).

(c) *Capital and surplus* means, unless otherwise provided in this part:

(1) For organizations subject to the Capital Adequacy Guidelines:

(i) Tier 1 and tier 2 capital included in an organization's risk-based capital (under the Capital Adequacy Guidelines); and

(ii) The balance of allowance for loan and lease losses not included in an organization's tier 2 capital for calculation of risk-based capital, based on the organization's most recent consolidated Report of Condition and Income.

(2) For all other organizations, paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(d) *Directly* or *indirectly,* when used in reference to activities or investments of an organization, means activities or investments of the organization or of any subsidiary of the organization.

(e) *Eligible country* means any country:

(1) For which an allocated transfer risk reserve is required pursuant to § 211.43 of this part and that has restructured its sovereign debt held by foreign creditors; and

(2) Any other country that the Board deems to be eligible.

(f) An Edge corporation is *engaged in banking* if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(g) *Engaged in business* or *engaged in activities* in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(h) *Equity* means an ownership interest in an organization, whether through:

(1) Voting or nonvoting shares;

(2) General or limited partnership interests;

(3) Any other form of interest conferring ownership rights, including warrants, debt, or any other interests that are convertible into shares or other ownership rights in the organization; or

(4) Loans that provide rights to participate in the profits of an organization, unless the investor receives a determination that such loans should not be considered equity in the circumstances of the particular investment.

(i) *Foreign* or *foreign country* refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(j) *Foreign bank* means an organization that:

(1) Is organized under the laws of a foreign country;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;

(4) Receives deposits to a substantial extent in the regular course of its business; and

(5) Has the power to accept demand deposits.

(k) *Foreign branch* means an office of an organization (other than a representative office) that is located outside the country in which the organization is legally established and at which a banking or financing business is conducted.

(l) *Foreign person* means an office or establishment located outside the United States, or an individual residing outside the United States.

(m) *Investment* means:

(1) The ownership or control of equity;

(2) Binding commitments to acquire equity;

(3) Contributions to the capital and surplus of an organization; or

(4) The holding of an organization's subordinated debt when the investor and the investor's affiliates hold more than 5 percent of the equity of the organization.

(n) *Investment grade* means a security that is rated in one of the four highest rating categories by:

(1) Two or more NRSROs; or

(2) One NRSRO if the security has been rated by only one NRSRO.

(o) *Investor* means an Edge corporation, agreement corporation, bank holding company, or member bank.

(p) *Joint venture* means an organization that has 20 percent or more of its voting shares held directly or indirectly by the investor or by an affiliate of the investor under any authority, but which is not a subsidiary of the investor or of an affiliate of the investor.

(q) *Loans and extensions of credit* means all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds.

(r) *NRSRO* means a nationally recognized statistical rating organization as designated by the Securities and Exchange Commission.

(s) *Organization* means a corporation, government, partnership, association, or any other entity.

(t) *Person* means an individual or an organization.

(u) *Portfolio investment* means an investment in an organization other than a subsidiary or joint venture.

(v) *Representative office* means an office that:

(1) Engages solely in representational and administrative functions (such as

[1] Section 25 of the FRA (12 U.S.C. 601–604a), which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321)

soliciting new business or acting as liaison between the organization's head office and customers in the United States); and

(2) Does not have authority to make any business decision (other than decisions relating to its premises or personnel) for the account of the organization it represents, including contracting for any deposit or deposit-like liability on behalf of the organization.

(w) *Subsidiary* means an organization that has more than 50 percent of its voting shares held directly or indirectly, or that otherwise is controlled or capable of being controlled, by the investor or an affiliate of the investor under any authority. Among other circumstances, an investor is considered to control an organization if:

(1) The investor or an affiliate is a general partner of the organization; or

(2) The investor and its affiliates directly or indirectly own or control more than 50 percent of the equity of the organization.

(x) *Tier 1 capital* has the same meaning as provided under the Capital Adequacy Guidelines.

(y) *Well capitalized* means:

(1) In relation to a parent member or insured bank, that the standards set out in § 208.43(b)(1) of Regulation H (12 CFR 208.43(b)(1)) are satisfied;

(2) In relation to a bank holding company, that the standards set out in § 225.2(r)(1) of Regulation Y (12 CFR 225.2(r)(1)) are satisfied; and

(3) In relation to an Edge or agreement corporation, that it has tier 1 and total risk-based capital ratios of 6.0 and 10.0 percent, respectively, or greater.

(z) *Well managed* means that the Edge or agreement corporation, any parent insured bank, and the bank holding company received a composite rating of 1 or 2, and at least a satisfactory rating for management if such a rating is given, at their most recent examination or review.

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *General*—(1) *Definition of banking organization.* For purposes of this section, a *banking organization* is defined as a member bank and its affiliates.

(2) A banking organization is considered to be operating a branch in a foreign country if it has an affiliate that is a member bank, Edge or agreement corporation, or foreign bank that operates an office (other than a representative office) in that country.

(3) For purposes of this subpart, a foreign office of an operating subsidiary of a member bank shall be treated as a foreign branch of the member bank and may engage only in activities permissible for a branch of a member bank.

(4) At any time upon notice, the Board may modify or suspend branching authority conferred by this section with respect to any banking organization.

(b) (1) *Establishment of foreign branches.* (i) Foreign branches may be established by any member bank having capital and surplus of $1,000,000 or more, an Edge corporation, an agreement corporation, any subsidiary the shares of which are held directly by the member bank, or any other subsidiary held pursuant to this subpart.

(ii) The Board grants its general consent under section 25 of the FRA (12 U.S.C. 601–604a) for a member bank to establish a branch in the Commonwealth of Puerto Rico and the overseas territories, dependencies, and insular possessions of the United States.

(2) *Prior notice.* Unless otherwise provided in this section, the establishment of a foreign branch requires 30 days' prior written notice to the Board.

(3) *Branching into additional foreign countries.* After giving the Board 12 business days prior written notice, a banking organization that operates branches in two or more foreign countries may establish a branch in an additional foreign country.

(4) *Additional branches within a foreign country.* No prior notice is required to establish additional branches in any foreign country where the banking organization operates one or more branches.

(5) *Branching by nonbanking affiliates.* No prior notice is required for a nonbanking affiliate of a banking organization (*i.e.,* an organization that is not a member bank, an Edge or agreement corporation, or foreign bank) to establish branches within a foreign country or in additional foreign countries.

(6) *Expiration of branching authority.* Authority to establish branches, when granted following prior written notice to the Board, shall expire one year from the earliest date on which the authority could have been exercised, unless extended by the Board.

(c) *Reporting.* Any banking organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(d) *Reserves of foreign branches of member banks.* Member banks shall maintain reserves against foreign branch deposits when required by Regulation D (12 CFR part 204).

(e) *Conditional approval; access to information.* The Board may impose such conditions on authority granted by it under this section as it deems necessary, and may require termination of any activities conducted under authority of this section if a member bank is unable to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.

§ 211.4 Permissible activities and investments of foreign branches of member banks.

(a) *Permissible activities and investments.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities and make the following investments, so far as is usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events (including, but not limited to, nonpayment of taxes, rentals, customs duties, or costs of transport, and loss or nonconformance of shipping documents) if the guarantee or agreement specifies a maximum monetary liability; however, except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which, when aggregated with other unsecured obligations of the same person, exceed the limit contained in section 5200(a)(1) of the Revised Statutes (12 U.S.C. 84) for loans and extensions of credit;

(2) *Government obligations.* (i) Underwrite, distribute, buy, sell, and hold obligations of:

(A) The national government of the country where the branch is located and any political subdivision of that country;

(B) An agency or instrumentality of the national government of the country where the branch is located where such obligations are supported by the taxing authority, guarantee, or full faith and credit of that government;

(C) The national government or political subdivision of any country, where such obligations are rated investment grade; and

(D) An agency or instrumentality of any national government where such obligations are rated investment grade and are supported by the taxing authority, guarantee or full faith and credit of that government.

(ii) No member bank, under authority of this paragraph (a)(2), may hold, or be under commitment with respect to, such obligations for its own account in relation to any one country in an amount exceeding the greater of:

(A) 10 percent of its tier 1 capital; or

(B) 10 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or the date of acquisition of the branch, in the case of a branch that has not been so reported);

(3) *Other investments.* (i) Invest in:

(A) The securities of the central bank, clearinghouses, governmental entities other than those authorized under paragraph (a)(2) of this section, and government-sponsored development banks of the country where the foreign branch is located;

(B) Other debt securities eligible to meet local reserve or similar requirements; and

(C) Shares of automated electronic-payments networks, professional societies, schools, and the like necessary to the business of the branch;

(ii) The total investments of a bank's branches in a country under this paragraph (a)(3) (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh)) may not exceed 1 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition of the branch, in the case of a branch that has not been so reported);

(4) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved;

(5) *Insurance.* Act as insurance agent or broker;

(6) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(7) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit;

(8) *Investment in subsidiaries.* With the Board's prior approval, acquire all of the shares of a company (except where local law requires other investors to hold directors' qualifying shares or similar types of instruments) that engages solely in activities:

(i) In which the member bank is permitted to engage; or

(ii) That are incidental to the activities of the foreign branch.

(b) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

§ 211.5 Edge and agreement corporations.

(a) *Board Authority.* The Board shall have the authority to approve:

(1) The establishment of Edge corporations;

(2) Investments in agreement corporations; and

(3) A member bank's proposal to invest more than 10 percent of its capital and surplus in the aggregate amount of stock held in all Edge and agreement corporations.

(b) *Organization of an Edge corporation*—(1) *Permit.* A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(2) *Name.* The name of the Edge corporation shall include *international, foreign, overseas,* or a similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(3) *Federal Register notice.* The Board shall publish in the **Federal Register** notice of any proposal to organize an Edge corporation and shall give interested persons an opportunity to express their views on the proposal.

(4) *Factors considered by Board.* The factors considered by the Board in acting on a proposal to organize an Edge corporation include:

(i) The financial condition and history of the applicant;

(ii) The general character of its management;

(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) The effects of the proposal on competition.

(5) *Authority to commence business.* After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the U.S. government, and maintain deposits with depository institutions, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription.

(6) *Expiration of unexercised authority.* Unexercised authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(c) *Other provisions regarding Edge corporations*—(1) *Amendments to articles of association.* No amendment to the articles of association shall become effective until approved by the Board.

(2) *Shareholders' meeting.* An Edge corporation shall provide in its bylaws that:

(i) A shareholders' meeting shall be convened at the request of the Board within five business days after the Board gives notice of the request to the Edge corporation;

(ii) Any shareholder or group of shareholders that owns or controls 25 percent or more of the shares of the Edge corporation shall attend such a meeting in person or by proxy; and

(iii) Failure by a shareholder or authorized representative to attend such meeting in person or by proxy may result in removal or barring of the shareholder or representative from further participation in the management or affairs of the Edge corporation.

(3) *Nature and ownership of shares*—(i) *Shares.* Shares of stock in an Edge corporation may not include no-par-value shares and shall be issued and transferred only on its books and in compliance with section 25A of the FRA (12 U.S.C. 611 *et seq.*) and this subpart.

(ii) *Contents of share certificates.* The share certificates of an Edge corporation shall:

(A) Name and describe each class of shares, indicating its character and any unusual attributes, such as preferred status or lack of voting rights; and

(B) Conspicuously set forth the substance of:

(*1*) Any limitations on the rights of ownership and transfer of shares imposed by section 25A of the FRA (12 U.S.C. 611 *et seq.*); and

(*2*) Any rules that the Edge corporation prescribes in its bylaws to ensure compliance with this paragraph (c).

(4) *Change in status of shareholder.* Any change in status of a shareholder that causes a violation of section 25A of the FRA (12 U.S.C. 611 *et seq.*) shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(d) *Ownership of Edge corporations by foreign institutions*—(1) *Prior Board approval.* One or more foreign or foreign-controlled domestic institutions referred to in section 25A(11) of the

FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire, directly or indirectly, a majority of the shares of the capital stock of an Edge corporation.

(2) *Conditions and requirements.* Such an institution shall:

(i) Provide the Board with information related to its financial condition and activities and such other information as the Board may require;

(ii) Ensure that any transaction by an Edge corporation with an affiliate[2] is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

(iii) Ensure that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized; and

(iv) Comply with the limitation on aggregate investments in all Edge and agreement corporations set forth in paragraph (h) of this section.

(3) *Foreign institutions not subject to the BHC Act.* In the case of a foreign institution not subject to section 4 of the BHC Act (12 U.S.C. 1843), that institution shall:

(i) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and

(ii) Give the Board 30 days' prior written notice before engaging in any nonbanking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act (12 U.S.C. 1843); in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment.

(e) *Change in control of an Edge corporation*—(1) *Prior notice.* (i) Any person shall give the Board 60 days' prior written notice before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation.

(ii) The Board may extend the 60-day period for an additional 30 days by notifying the acquiring party.

(iii) A notice under this paragraph (e) need not be filed where a change in control is effected through a transaction requiring the Board's approval under section 3 of the BHC Act (12 U.S.C. 1842).

(2) *Board review.* In reviewing a notice filed under this paragraph (e), the Board shall consider the factors set forth in paragraph (b)(4) of this section, and may disapprove a notice or impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects, such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(f) *Domestic branching by Edge corporations*—(1) *Prior notice.* (i) An Edge corporation may establish branches in the United States 30 days after the Edge corporation has given written notice of its intention to do so to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time.

(ii) The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch.

(iii) The newspaper notice may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice shall provide an opportunity for the public to give written comment on the proposal to the appropriate Federal Reserve Bank for at least 30 days after the date of publication.

(2) *Factors considered.* The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (b)(4) of this section.

(3) *Expiration of authority.* Authority to establish a branch under prior notice shall expire one year from the earliest date on which that authority could have been exercised, unless the Board extends the period.

(g) *Agreement corporations*—(1) *General.* With the prior approval of the Board, a member bank or bank holding company may invest in a federally or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

(2) *Factors considered by Board.* The factors considered in acting upon a proposal to establish an agreement corporation are enumerated in paragraph (b)(4) of this section.

(h) (1) *Limitation on investment in Edge and agreement corporations.* A member bank may invest up to 10 percent of its capital and surplus in the capital stock of Edge and agreement corporations or, with the prior approval of the Board, up to 20 percent of its capital and surplus in such stock.

(2) *Factors considered by Board.* The factors considered by the Board in acting on a proposal under paragraph (h)(1) of this section shall include:

(i) The composition of the assets of the bank's Edge and agreement corporations;

(ii) The total capital invested by the bank in its Edge and agreement corporations when combined with retained earnings of the Edge and agreement corporations (including retained earnings of any foreign bank subsidiaries) as a percentage of the bank's capital;

(iii) Whether the bank, bank holding company, and Edge and agreement corporations are well-capitalized and well-managed;

(iv) Whether the bank is adequately capitalized after deconsolidating and deducting the aggregate investment in and assets of all Edge or agreement corporations and all foreign bank subsidiaries; and

(v) Any other factor the Board deems relevant to the safety and soundness of the member bank.

(i) *Reserve requirements and interest rate limitations.* The deposits of an Edge or agreement corporation are subject to Regulations D and Q (12 CFR parts 204 and 217) in the same manner and to the same extent as if the Edge or agreement corporation were a member bank.

(j) *Liquid funds.* Funds of an Edge or agreement corporation that are not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of:

(1) Cash;

(2) Deposits with depository institutions, as described in Regulation D (12 CFR part 204), and other Edge and agreement corporations;

(3) Money-market instruments (including repurchase agreements with respect to such instruments), such as bankers' acceptances, federal funds sold, and commercial paper; and

(4) Short- or long-term obligations of, or fully guaranteed by, federal, state, and local governments and their instrumentalities.

[2] For purposes of this paragraph (d)(2), *affiliate* means any organization that would be an affiliate under section 23A of the FRA (12 U.S.C. 371c) if the Edge corporation were a member bank.

(k) *Reports by Edge and agreement corporations of crimes and suspected crimes.* An Edge or agreement corporation, or any branch or subsidiary thereof, shall file a suspicious-activity report in accordance with the provisions of § 208.62 of Regulation H (12 CFR 208.62).

§ 211.6 Permissible activities of Edge and agreement corporations in the United States.

(a) *Activities incidental to international or foreign business.* An Edge or agreement corporation may engage, directly or indirectly, in activities in the United States that are permitted by section 25A(6) of the FRA (12 U.S.C. 615) and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge or agreement corporation's international or foreign business:

(1) *Deposit-taking activities*—(i) *Deposits from foreign governments and foreign persons.* An Edge or agreement corporation may receive in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities, and from foreign persons.

(ii) *Deposits from other persons.* An Edge or agreement corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposit) if such deposits:

(A) Are to be transmitted abroad;

(B) Consist of funds to be used for payment of obligations to the Edge or agreement corporation or collateral securing such obligations;

(C) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(D) Consist of the proceeds of extensions of credit by the Edge or agreement corporation;

(E) Represent compensation to the Edge or agreement corporation for extensions of credit or services to the customer;

(F) Are received from Edge or agreement corporations, foreign banks, and other depository institutions (as described in Regulation D (12 CFR part 204)); or

(G) Are received from an organization that by its charter, license, or enabling law is limited to business that is of an international character, including foreign sales corporations, as defined in 26 U.S.C. 922; transportation organizations engaged exclusively in the international transportation of passengers or in the movement of goods, wares, commodities, or merchandise in international or foreign commerce; and export trading companies established under subpart C of this part.

(2) *Borrowings.* An Edge or agreement corporation may:

(i) Borrow from offices of other Edge and agreement corporations, foreign banks, and depository institutions (as described in Regulation D (12 CFR part 204));

(ii) Issue obligations to the United States or any of its agencies or instrumentalities;

(iii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof that the Edge or agreement corporation is obligated to repurchase; and

(iv) Issue long-term subordinated debt that does not qualify as a *deposit* under Regulation D (12 CFR part 204).

(3) *Credit activities.* An Edge or agreement corporation may:

(i) Finance the following:

(A) Contracts, projects, or activities performed substantially abroad;

(B) The importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries;

(C) The domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and

(D) The assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge or agreement corporation could have financed, including acquisition of obligations of foreign governments;

(iv) Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events (including, but not limited to, nonpayment of taxes, rentals, customs duties, or cost of transport, and loss or nonconformance of shipping documents), so long as the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (a)(3)(i) and (ii) of this section; and

(v) Provide credit and other banking services for domestic and foreign purposes to foreign governments and their agencies and instrumentalities, foreign persons, and organizations of the type described in paragraph (a)(1)(ii)(G) of this section.

(4) *Payments and collections.* An Edge or agreement corporation may receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad; and may transmit and receive wire transfers of funds and securities for depositors.

(5) *Foreign exchange.* An Edge or agreement corporation may engage in foreign exchange activities.

(6) *Fiduciary and investment advisory activities.* An Edge or agreement corporation may:

(i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of, a person, provided such services for U.S. persons are with respect to foreign securities only;

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24(Seventh)), no Edge or agreement corporation otherwise may engage in the business of underwriting, distributing, or buying or selling securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real-property interests, and other investment assets,[3] and by providing advice on mergers and acquisitions, provided such services for U.S. persons are with respect to foreign assets only; and

(vi) Provide general economic information and advice, general economic statistical forecasting services, and industry studies, provided such

[1] For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.

services for U.S. persons shall be with respect to foreign economies and industries only.

(7) *Banking services for employees.* Provide banking services, including deposit services, to the officers and employees of the Edge or agreement corporation and its affiliates; however, extensions of credit to such persons shall be subject to the restrictions of Regulation O (12 CFR part 215) as if the Edge or agreement corporation were a member bank.

(b) *Other activities.* With the Board's prior approval, an Edge or agreement corporation may engage, directly or indirectly, in other activities in the United States that the Board determines are incidental to their international or foreign business.

§ 211.7 Voluntary liquidation of Edge and agreement corporations.

(a) *Prior notice.* An Edge or agreement corporation desiring voluntarily to discontinue normal business and dissolve, shall provide the Board with 45 days' prior written notice of its intent to do so.

(b) *Waiver of notice period.* The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented.

§ 211.8 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to activities of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors [4] shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Direct investments by member banks.* A member bank's direct investments under section 25 of the FRA (12 U.S.C. 601 *et seq.*) shall be limited to:

(1) Foreign banks;

(2) Domestic or foreign organizations formed for the sole purpose of holding shares of a foreign bank;

(3) Foreign organizations formed for the sole purpose of performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank; and

(4) Subsidiaries established pursuant to § 211.4(a)(8) of this part.

(c) *Eligible investments.* Subject to the limitations set out in paragraphs (b) and (d) of this section, an investor may, directly or indirectly:

(1) *Investment in subsidiary.* Invest in a subsidiary that engages solely in activities listed in § 211.10 of this part, or in such other activities as the Board has determined in the circumstances of a particular case are permissible; provided that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than 5 percent of either the consolidated assets or consolidated revenues of the acquired organization;

(2) *Investment in joint venture.* Invest in a joint venture; provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or consolidated revenues are attributable to activities not listed in § 211.10 of this part; and

(3) *Portfolio investments.* Make portfolio investments in an organization, provided that:

(i) *Individual investment limits.* The total direct and indirect portfolio investments by the investor and its affiliates in an organization engaged in activities that are not permissible for joint ventures, when combined with all other shares in the organization held under any other authority, do not exceed:

(A) 40 percent of the total equity of the organization; or

(B) 19.9 percent of the organization's voting shares.

(ii) *Loans and extensions of credit.* Any loans and extensions of credit made by an investor or its affiliates to the organization are on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the investor or its affiliates and nonaffiliated persons; and

(iii) *Protecting shareholder rights.* Nothing in this paragraph (c)(3) shall prohibit an investor from otherwise exercising rights it may have as shareholder to protect the value of its investment, so long as the exercise of such rights does not result in the investor's direct or indirect control of the organization.

(d) *Investment limit.* In calculating the amount that may be invested in any organization under this section and §§ 211.9 and 211.10 of this part, there shall be included any unpaid amount for which the investor is liable and any investments in the same organization held by affiliates under any authority.

(e) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(1) The organization invested in:

(i) Engages in impermissible activities to an extent not permitted under paragraph (c) of this section; or

(ii) Engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States; provided that an investor may:

(A) Retain portfolio investments in companies that derive no more than 10 percent of their total revenue from activities in the United States; and

(B) Hold up to 5 percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(2) After notice and opportunity for hearing, the investor is advised by the Board that such investment is inappropriate under the FRA, the BHC Act, or this subpart.

(f) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this section; provided that such interests shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

(g) *Investments made through debt-for-equity conversions.*

(1) *Permissible investments.* A bank holding company may make investments through the conversion of sovereign-or private-debt obligations of an eligible country, either through direct exchange of the debt obligations for the investment, or by a payment for the debt in local currency, the proceeds of which, including an additional cash investment not exceeding in the aggregate more than 10 percent of the fair value of the debt obligations being converted as part of such investment, are used to purchase the following investments:

(i) *Public-sector companies.* A bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interests in) any foreign company located in an eligible country, if the shares are acquired from the government of the eligible country or from its agencies or instrumentalities.

(ii) *Private-sector companies.* A bank holding company may acquire up to and including 40 percent of the shares, including voting shares, of (or other ownership interests in) any other

[4] For purposes of this section and §§ 211.9 and 211.10 of this part, a direct subsidiary of a member bank is deemed to be an investor.

foreign company located in an eligible country subject to the following conditions:

(A) A bank holding company may acquire more than 25 percent of the voting shares of the foreign company only if another shareholder or group of shareholders unaffiliated with the bank holding company holds a larger block of voting shares of the company;

(B) The bank holding company and its affiliates may not lend or otherwise extend credit to the foreign company in amounts greater than 50 percent of the total loans and extensions of credit to the foreign company; and

(C) The bank holding company's representation on the board of directors or on management committees of the foreign company may be no more than proportional to its shareholding in the foreign company.

(2) *Investments by bank subsidiary of bank holding company.* Upon application, the Board may permit an indirect investment to be made pursuant to this paragraph (g) through an insured bank subsidiary of the bank holding company, where the bank holding company demonstrates that such ownership is consistent with the purposes of the FRA. In granting its consent, the Board may impose such conditions as it deems necessary or appropriate to prevent adverse effects, including prohibiting loans from the bank to the company in which the investment is made.

(3) *Divestiture*—(i) *Time limits for divestiture.* A bank holding company shall divest the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (g) within the longer of:

(A) Ten years from the date of acquisition of the investment, except that the Board may extend such period if, in the Board's judgment, such an extension would not be detrimental to the public interest; or

(B) Two years from the date on which the bank holding company is permitted to repatriate in full the investment in the foreign company.

(ii) *Maximum retention period.* Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) Divestiture shall occur within 15 years of the date of acquisition of the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (g); and

(B) A bank holding company may retain such shares or ownership interests if such retention is otherwise permissible at the time required for divestiture.

(iii) *Report to Board.* The bank holding company shall report to the Board on its plans for divesting an investment made under this paragraph (g) two years prior to the final date for divestiture, in a manner to be prescribed by the Board.

(iv) *Other conditions requiring divestiture.* All investments made pursuant to this paragraph (g) are subject to paragraph (e) of this section requiring prompt divestiture (unless the Board upon application authorizes retention), if the company invested in engages in impermissible business in the United States that exceeds in the aggregate 10 percent of the company's consolidated assets or revenues calculated on an annual basis; provided that such company may not engage in activities in the United States that consist of banking or financial operations (as defined in § 211.23(f)(5)(iii)(B)) of this part, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)), except under regulations of the Board or with the prior approval of the Board.

(4) *Investment procedures*—(i) *General consent.* Subject to the other limitations of this paragraph (g), the Board grants its general consent for investments made under this paragraph (g) if the total amount invested does not exceed the greater of $25 million or 1 percent of the tier 1 capital of the investor.

(ii) All other investments shall be made in accordance with the procedures of § 211.9(f) and (g) of this part, requiring prior notice or specific consent.

(5) *Conditions*—(i) *Name.* Any company acquired pursuant to this paragraph (g) shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates.

(ii) *Confidentiality.* Neither the bank holding company nor its affiliates shall provide to any company acquired pursuant to this paragraph (g) any confidential business information or other information concerning customers that are engaged in the same or related lines of business as the company.

§ 211.9 Investment procedures.

(a) *General provisions.*[5] Direct and indirect investments shall be made in accordance with the general consent, limited general consent, prior notice, or specific consent procedures contained in this section.

(1) *Minimum capital adequacy standards.* Except as the Board may otherwise determine, in order for an investor to make investments pursuant to the procedures set out in this section, the investor, the bank holding company, and the member bank shall be in compliance with applicable minimum standards for capital adequacy set out in the Capital Adequacy Guidelines; provided that, if the investor is an Edge or agreement corporation, the minimum capital required is total and tier 1 capital ratios of 8 percent and 4 percent, respectively.

(2) *Composite rating.* Except as the Board may otherwise determine, in order for an investor to make investments under the general consent or limited general consent procedures of paragraphs (b) and (c) of this section, the investor and any parent insured bank must have received a composite rating of at least 2 at the most recent examination.

(3) *Board's authority to modify or suspend procedures.* The Board, at any time upon notice, may modify or suspend the procedures contained in this section with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities.

(4) *Long-range investment plan.* Any investor may submit to the Board for its specific consent a long-range investment plan. Any plan so approved shall be subject to the other procedures of this section only to the extent determined necessary by the Board to assure safety and soundness of the operations of the investor and its affiliates.

(5) *Prior specific consent for initial investment.* An investor shall apply for and receive the prior specific consent of the Board for its initial investment under this subpart in its first subsidiary or joint venture, unless an affiliate previously has received approval to make such an investment.

(6) *Expiration of investment authority.* Authority to make investments granted under prior notice or specific consent procedures shall expire one year from the earliest date on which the authority could have been exercised, unless the Board determines a longer period shall apply.

(7) *Conditional approval; Access to information.* The Board may impose such conditions on authority granted by it under this section as it deems necessary, and may require termination of any activities conducted under authority of this subpart if an investor is unable to provide information on its activities or those of its affiliates that the

[5] When necessary, the provisions of this section relating to general consent and prior notice constitute the Board's approval under section 25A(8) of the FRA (12 U.S.C. 616) for investments in excess of the limitations therein based on capital and surplus.

Board deems necessary to determine and enforce compliance with U.S. banking laws.

(b) *General consent.* The Board grants its general consent for a well capitalized and well managed investor to make investments, subject to the following:

(1) *Well capitalized and well managed investor.* In order to qualify for making investments under authority of this paragraph (b), both before and immediately after the proposed investment, the investor, any parent insured bank, and any parent bank holding company shall be well capitalized and well managed.

(2) *Individual limit for investment in subsidiary.* In the case of an investment in a subsidiary, the total amount invested directly or indirectly in such subsidiary (in one transaction or a series of transactions) does not exceed:

(i) 10 percent of the investor's tier 1 capital, where the investor is a bank holding company; or

(ii) 2 percent of the investor's tier 1 capital, where the investor is a member bank; or

(iii) The lesser of 2 percent of the tier 1 capital of any parent insured bank or 10 percent of the investor's tier 1 capital, for any other investor.

(3) *Individual limit for investment in joint venture.* In the case of an investment in a joint venture, the total amount invested directly or indirectly in such joint venture (in one transaction or a series of transactions) does not exceed:

(i) 5 percent of the investor's tier 1 capital, where the investor is a bank holding company; or

(ii) 1 percent of the investor's tier 1 capital, where the investor is a member bank; or

(iii) The lesser of 1 percent of the tier 1 capital of any parent insured bank or 5 percent of the investor's tier 1 capital, for any other investor.

(4) *Individual limit for portfolio investment.* In the case of a portfolio investment, the total amount invested directly or indirectly in such company (in one transaction or a series of transactions) does not exceed the lesser of $25 million, or

(i) 5 percent of the investor's tier 1 capital in the case of a bank holding company or its subsidiary, or Edge corporation engaged in banking; or

(ii) 25 percent of the investor's tier 1 capital in the case of an Edge corporation not engaged in banking.

(5) *Investment in a general partnership or unlimited liability company.* An investment in a general partnership or unlimited liability company may be made under authority of paragraph (b) of this section, subject to the limits set out in paragraph (c) of this section.

(6) *Aggregate investment limits*—(i) *Investment limits.* All investments made, directly or indirectly, during the previous 12-month period under authority of this section, when aggregated with the proposed investment, shall not exceed:

(A) 20 percent of the investor's tier 1 capital, where the investor is a bank holding company;

(B) 10 percent of the investor's tier 1 capital, where the investor is a member bank; or

(C) The lesser of 10 percent of the tier 1 capital of any parent insured bank or 50 percent of the tier 1 capital of the investor, for any other investor.

(ii) *Downstream investments.* In determining compliance with the aggregate limits set out in this paragraph (b), an investment by an investor in a subsidiary shall be counted only once, notwithstanding that such subsidiary may, within 12 months of the date of making the investment, downstream all or any part of such investment to another subsidiary.

(7) *Application of limits.* In determining compliance with the limits set out in this paragraph (b), an investor is not required to combine the value of all shares of an organization held in trading or dealing accounts under § 211.10(a)(15) of this part with investments in the same organization.

(c) *Limited general consent*—(1) *Individual limit.* The Board grants its general consent for an investor that is not well capitalized and well managed to make an investment in a subsidiary or joint venture, or to make a portfolio investment, if the total amount invested directly or indirectly (in one transaction or in a series of transactions) does not exceed the lesser of $25 million or:

(i) 5 percent of the investor's tier 1 capital, where the investor is a bank holding company;

(ii) 1 percent of the investor's tier 1 capital, where the investor is a member bank; or

(iii) The lesser of 1 percent of any parent insured bank's tier 1 capital or 5 percent of the investor's tier 1 capital, for any other investor.

(2) *Aggregate limit.* The amount of general consent investments made by any investor directly or indirectly under authority of this paragraph (c) during the previous 12-month period, when aggregated with the proposed investment, shall not exceed:

(i) 10 percent of the investor's tier 1 capital, where the investor is a bank holding company;

(ii) 5 percent of the investor's tier 1 capital, where the investor is a member bank; and

(iii) The lesser of 5 percent of any parent insured bank's tier 1 capital or 25 percent of the investor's tier 1 capital, for any other investor.

(3) *Application of limits.* In calculating compliance with the limits of this paragraph (c), the rules set forth in paragraphs (b)(6)(ii) and (b)(7) of this section shall apply.

(d) *Other eligible investments under general consent.* In addition to the authority granted under paragraphs (b) and (c) of this section, the Board grants its general consent for any investor to make the following investments:

(1) *Investment in organization equal to cash dividends.* Any investment in an organization in an amount equal to cash dividends received from that organization during the preceding 12 calendar months; and

(2) *Investment acquired from affiliate.* Any investment that is acquired from an affiliate at net asset value or through a contribution of shares.

(e) *Investments ineligible for general consent.* An investment in a foreign bank may not be made under authority of paragraphs (b) or (c) of this section if:

(1) After the investment, the foreign bank would be an affiliate of a member bank; and

(2) The foreign bank is located in a country in which the member bank and its affiliates have no existing banking presence.

(f) *Prior notice.* An investment that does not qualify for general consent under paragraph (b), (c), or (d) of this section may be made after the investor has given the Board 30 days' prior written notice, such notice period to commence at the time the notice is received, provided that:

(1) The Board may waive the 30-day period if it finds the full period is not required for consideration of the proposed investment, or that immediate action is required by the circumstances presented; and

(2) The Board may suspend the 30-day period or act on the investment under the Board's specific consent procedures.

(g) *Specific consent.* Any investment that does not qualify for either the general consent or the prior notice procedure may not be consummated without the specific consent of the Board.

§ 211.10 Permissible activities abroad.

(a) *Activities usual in connection with banking.* The Board has determined that the following activities are usual in connection with the transaction of

banking or other financial operations abroad:

(1) Commercial and other banking activities;

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) Leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property consistent with the provisions of Regulation Y (12 CFR part 225);

(4) Acting as fiduciary;

(5) Underwriting credit life insurance and credit accident and health insurance;

(6) Performing services for other direct or indirect operations of a U.S. banking organization, including representative functions, sale of long-term debt, name-saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act (12 U.S.C. 1843(a)(2)(A), (c)(1)(C));

(7) Holding the premises of a branch of an Edge or agreement corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or subsidiary;

(8) Providing investment, financial, or economic advisory services;

(9) General insurance agency and brokerage;

(10) Data processing;

(11) Organizing, sponsoring, and managing a mutual fund, if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise managerial control over the firms in which it invests;

(12) Performing management consulting services, if such services, when rendered with respect to the U.S. market, shall be restricted to the initial entry;

(13) Underwriting, distributing, and dealing in debt securities outside the United States;

(14) Underwriting and distributing equity securities outside the United States as follows:

(i) *Limits for well-capitalized and well-managed investor*—(A) *General.* After providing 30 days' prior written notice to the Board, an investor that is well capitalized and well managed may underwrite equity securities, provided that commitments by an investor and its subsidiaries for the shares of a single organization do not, in the aggregate, exceed:

(*1*) 15 percent of the bank holding company's tier 1 capital, where the investor is a bank holding company;

(*2*) 3 percent of the investor's tier 1 capital, where the investor is a member bank; or

(*3*) The lesser of 3 percent of any parent insured bank's tier 1 capital or 15 percent of the investor's tier 1 capital, for any other investor;

(B) *Qualifying criteria.* An investor will be considered well-capitalized and well-managed for purposes of paragraph (a)(14)(i) of this section only if each of the bank holding company, member bank, and Edge or agreement corporation qualify as well-capitalized and well-managed.

(ii) *Limits for investor that is not well capitalized and well managed.* After providing 30 days' prior written notice to the Board, an investor that is not well capitalized and well managed may underwrite equity securities, provided that commitments by the investor and its subsidiaries for the shares of an organization do not, in the aggregate, exceed $60 million; and

(iii) *Application of limits.* For purposes of determining compliance with the limitations of this paragraph (a)(14), the investor may subtract portions of an underwriting that are covered by binding commitments obtained by the investor or its affiliates from sub-underwriters or other purchasers;

(15) Dealing in equity securities outside the United States as follows:

(i) *Grandfathered authority.* By an investor, or an affiliate, that had commenced such activities prior to March 27, 1991, and subject to the limitations in effect at that time (See 12 CFR part 211, revised January 1, 1991); or

(ii) *Limit on shares of a single issuer.* After providing 30 days' prior written notice to the Board, an investor may deal in the shares of an organization where the shares held in the trading or dealing accounts of an investor and its affiliates under authority of this paragraph (a)(15) do not in the aggregate exceed the lesser of:

(A) $40 million; or

(B) 10 percent of the investor's tier 1 capital;

(iii) *Aggregate equity limit.* The total shares held directly and indirectly by the investor and its affiliates under authority of this paragraph (a)(15) and § 211.8(c)(3) of this part in organizations engaged in activities that are not permissible for joint ventures do not exceed:

(A) 25 percent of the bank holding company's tier 1 capital, where the investor is a bank holding company;

(B) 20 percent of the investor's tier 1 capital, where the investor is a member bank;[6] and

(C) The lesser of 20 percent of any parent insured bank's tier 1 capital or 100 percent of the investor's tier 1 capital, for any other investor;

(iv) *Determining compliance with limits*—(A) *General.* For purposes of determining compliance with all limits set out in this paragraph (a)(15):

(*1*) Long and short positions in the same security may be netted; and

(*2*) Except as provided in paragraph (a)(15)(iv)(B)(*4*) of this section, equity securities held in order to hedge bank permissible equity derivatives contracts shall not be included.

(B) *Use of internal hedging models.* After providing 30 days' prior written notice to the Board the investor may use an internal hedging model that:

(*1*) Nets long and short positions in the same security and offsets positions in a security by futures, forwards, options, and other similar instruments referenced to the same security, for purposes of determining compliance with the single issuer limits of paragraph (a)(15)(ii) of this section;[7] and

(*2*) Offsets its long positions in equity securities by futures, forwards, options, and similar instruments, on a portfolio basis, and for purposes of determining compliance with the aggregate equity limits of paragraph (a)(15)(iii) of this section.

(*3*) With respect to all equity securities held under authority of paragraph (a)(15) of this section, no net long position in a security shall be deemed to have been reduced by more than 75 percent through use of internal hedging models under this paragraph (a)(15)(iv)(B); and

(*4*) With respect to equity securities acquired to hedge bank permissible equity derivatives contracts under authority of paragraph (a)(1) of this section, any residual position that remains in the securities of a single issuer after netting and offsetting of positions relating to the security under the investor's internal hedging models shall be included in calculating compliance with the limits of this paragraph (a)(15)(ii) and (iii).

(C) *Underwriting commitments.* Any shares acquired pursuant to an underwriting commitment that are held for longer than 90 days after the payment date for such underwriting shall be subject to the limits set out in

[6] For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

[7] A basket of stocks, specifically segregated as an offset to a position in a stock index derivative product, as computed by the investor's internal model, may be offset against the stock index.

paragraph (a)(15) of this section and the investment provisions of §§ 211.8 and 211.9 of this part.

(v) *Authority to deal in shares of U.S. organization.* The authority to deal in shares under paragraph (a)(15) of this section includes the authority to deal in the shares of a U.S. organization:

(A) With respect to foreign persons only; and

(B) Subject to the limitations on owning or controlling shares of a company in section 4(c)(6) of the BHC Act (12 U.S.C. 1843(c)(6)) and Regulation Y (12 CFR part 225).

(vi) *Report to senior management.* Any shares held in trading or dealing accounts for longer than 90 days shall be reported to the senior management of the investor;

(16) Operating a travel agency, but only in connection with financial services offered abroad by the investor or others;

(17) Underwriting life, annuity, pension fund-related, and other types of insurance, where the associated risks have been previously determined by the Board to be actuarially predictable; provided that:

(i) Investments in, and loans and extensions of credit (other than loans and extensions of credit fully secured in accordance with the requirements of section 23A of the FRA (12 U.S.C. 371c), or with such other standards as the Board may require) to, the company by the investor or its affiliates are deducted from the capital of the investor (with 50 percent of such capital deduction to be taken from tier 1 capital); and

(ii) Activities conducted directly or indirectly by a subsidiary of a U.S. insured bank are excluded from the authority of this paragraph (a)(17), unless authorized by the Board;

(18) Providing futures commission merchant services (including clearing without executing and executing without clearing) for nonaffiliated persons with respect to futures and options on futures contracts for financial and nonfinancial commodities; provided that prior notice under § 211.9(f) of this part shall be provided to the Board before any subsidiaries of a member bank operating pursuant to this subpart may join a mutual exchange or clearinghouse, unless the potential liability of the investor to the exchange, clearinghouse, or other members of the exchange, as the case may be, is legally limited by the rules of the exchange or clearinghouse to an amount that does not exceed applicable general consent limits under § 211.9 of this part;

(19) Acting as principal or agent in commodity-swap transactions in relation to:

(i) Swaps on a cash-settled basis for any commodity, provided that the investor's portfolio of swaps contracts is hedged in a manner consistent with safe and sound banking practices; and

(ii) Contracts that require physical delivery of a commodity, provided that:

(A) Such contracts are entered into solely for the purpose of hedging the investor's positions in the underlying commodity or derivative contracts based on the commodity;

(B) The contract allows for assignment, termination or offset prior to expiration; and

(C) Reasonable efforts are made to avoid delivery.

(b) *Regulation Y activities.* An investor may engage in activities that the Board has determined in § 225.28(b) of Regulation Y (12 CFR 225.28(b)) are closely related to banking under section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)).

(c) *Specific approval.* With the Board's specific approval, an investor may engage in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

§ 211.11 Advisory opinions under Regulation K.

(a) *Request for advisory opinion.* Any person may submit a request to the Board for an advisory opinion regarding the scope of activities permissible under any subpart of this part.

(b) *Form and content of the request.* Any request for an advisory opinion under this section shall be:

(1) Submitted in writing to the Board;

(2) Contain a clear description of the proposed parameters of the activity, or the service or product, at issue; and

(3) Contain a concise explanation of the grounds on which the submitter contends the activity is or should be considered by the Board to be permissible under this part.

(c) *Response to request.* In response to a request received under this section, the Board shall:

(1) Direct the submitter to provide such additional information as the Board may deem necessary to complete the record for a full consideration of the issue presented; and

(2) Provide an advisory opinion within 45 days after the record on the request has been determined to be complete.

§ 211.12 Lending limits and capital requirements.

(a) *Acceptances of Edge corporations.* (1) Limitations. An Edge corporation shall be and remain fully secured for acceptances of the types described in section 13(7) of the FRA (12 U.S.C. 372), as follows:

(i) All acceptances outstanding in excess of 200 percent of its tier 1 capital; and

(ii) All acceptances outstanding for any one person in excess of 10 percent of its tier 1 capital.

(2) *Exceptions.* These limitations do not apply if the excess represents the international shipment of goods, and the Edge corporation is:

(i) Fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers; or

(ii) Covered by participation agreements from other banks, as described in 12 CFR 250.165.

(b) *Loans and extensions of credit to one person*—(1) *Loans and extensions of credit defined. Loans and extensions of credit* has the meaning set forth in § 211.2(q) of this part [8] and, for purposes of this paragraph (b), also include:

(i) Acceptances outstanding that are not of the types described in section 13(7) of the FRA (12 U.S.C. 372);

(ii) Any liability of the lender to advance funds to or on behalf of a person pursuant to a guarantee, standby letter of credit, or similar agreements;

(iii) Investments in the securities of another organization other than a subsidiary; and

(iv) Any underwriting commitments to an issuer of securities, where no binding commitments have been secured from subunderwriters or other purchasers.

(2) *Limitations.* Except as the Board may otherwise specify:

(i) The total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking, and its direct or indirect subsidiaries, may not exceed 15 percent of the Edge corporation's tier 1 capital;[9] and

(ii) The total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the

[8] In the case of a foreign government, these includes loans and extensions of credit to the foreign government's departments or agencies deriving their current funds principally from general tax revenues. In the case of a partnership or firm, these include loans and extensions of credit to its members and, in the case of a corporation, these include loans and extensions of credit to the corporation's affiliates, where the affiliate incurs the liability for the benefit of the corporation.

[9] For purposes of this pargraph (b), *subsidiaries* includes subsidiaries controlled by the Edge corporation, but does not include companies otherwise controlled by affiliates of the Edge corporation.

total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

(3) *Exceptions.* The limitations of paragraph (b)(2) of this section do not apply to:

(i) Deposits with banks and federal funds sold;

(ii) Bills or drafts drawn in good faith against actual goods and on which two or more unrelated parties are liable;

(iii) Any banker's acceptance, of the kind described in section 13(7) of the FRA (12 U.S.C. 372), that is issued and outstanding;

(iv) Obligations to the extent secured by cash collateral or by bonds, notes, certificates of indebtedness, or Treasury bills of the United States;

(v) Loans and extensions of credit that are covered by bona fide participation agreements; and

(vi) Obligations to the extent supported by the full faith and credit of the following:

(A) The United States or any of its departments, agencies, establishments, or wholly owned corporations (including obligations, to the extent insured against foreign political and credit risks by the Export-Import Bank of the United States or the Foreign Credit Insurance Association), the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank, or the European Bank for Reconstruction and Development;

(B) Any organization, if at least 25 percent of such an obligation or of the total credit is also supported by the full faith and credit of, or participated in by, any institution designated in paragraph (b)(3)(vi)(A) of this section in such manner that default to the lender would necessarily include default to that entity. The total loans and extensions of credit under this paragraph (b)(3)(vi)(B) to any person shall at no time exceed 100 percent of the tier 1 capital of the Edge corporation.

(c) *Capitalization.* (1) An Edge corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities.

(2) In the case of an Edge corporation engaged in banking, the minimum ratio of qualifying total capital to risk-weighted assets, as determined under the Capital Adequacy Guidelines, shall not be less than 10 percent, of which at least 50 percent shall consist of tier 1 capital.

(3) For purposes of this paragraph (c), no limitation shall apply on the inclusion of subordinated debt that qualifies as tier 2 capital under the Capital Adequacy Guidelines.

§ 211.13 Supervision and reporting.

(a) *Supervision.* (1) *Foreign branches and subsidiaries.* U.S. banking organizations conducting international operations under this subpart shall supervise and administer their foreign branches and subsidiaries in such a manner as to ensure that their operations conform to high standards of banking and financial prudence.

(i) Effective systems of records, controls, and reports shall be maintained to keep management informed of their activities and condition.

(ii) Such systems shall provide, in particular, information on risk assets, exposure to market risk, liquidity management, operations, internal controls, legal and operational risk, and conformance to management policies.

(iii) Reports on risk assets shall be sufficient to permit an appraisal of credit quality and assessment of exposure to loss, and, for this purpose, provide full information on the condition of material borrowers.

(iv) Reports on operations and controls shall include internal and external audits of the branch or subsidiary.

(2) *Joint ventures.* Investors shall maintain sufficient information with respect to joint ventures to keep informed of their activities and condition.

(i) Such information shall include audits and other reports on financial performance, risk exposure, management policies, operations, and controls.

(ii) Complete information shall be maintained on all transactions with the joint venture by the investor and its affiliates.

(3) *Availability of reports and information to examiners.* The reports specified in paragraphs (a)(1) and (2) of this section and any other information deemed necessary to determine compliance with U.S. banking law shall be made available to examiners of the appropriate bank supervisory agencies.

(b) *Examinations.* Examiners appointed by the Board shall examine each Edge corporation once a year. An Edge or agreement corporation shall make available to examiners information sufficient to assess its condition and operations and the condition and activities of any organization whose shares it holds.

(c) *Reports*—(1) *Reports of condition.* Each Edge or agreement corporation shall make reports of condition to the Board at such times and in such form as the Board may prescribe. The Board may require that statements of condition or other reports be published or made available for public inspection.

(2) *Foreign operations.* Edge and agreement corporations, member banks, and bank holding companies shall file such reports on their foreign operations as the Board may require.

(3) *Acquisition or disposition of shares.* Member banks, Edge and agreement corporations, and bank holding companies shall report, in a manner prescribed by the Board, any acquisition or disposition of shares.

(d) *Filing and processing procedures*—(1) *Place of filing.* Unless otherwise directed by the Board, applications, notices, and reports required by this part shall be filed with the Federal Reserve Bank of the District in which the parent bank or bank holding company is located or, if none, the Reserve Bank of the District in which the applying or reporting institution is located. Instructions and forms for applications, notices, and reports are available from the Reserve Banks.

(2) *Timing.* The Board shall act on an application under this subpart within 60 calendar days after the Reserve Bank has received the application, unless the Board notifies the investor that the 60-day period is being extended and states the reasons for the extension.

Subpart B—Foreign Banking Organizations

§ 211.20 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841 *et seq.*) and the International Banking Act of 1978 (IBA) (12 U.S.C. 3101 *et seq.*).

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act and the IBA. It applies to foreign banks and foreign banking organizations with respect to:

(1) The limitations on interstate banking under section 5 of the IBA (12 U.S.C. 3103);

(2) The exemptions from the nonbanking prohibitions of the BHC Act and the IBA afforded by sections 2(h) and 4(c)(9) of the BHC Act (12 U.S.C. 1841(h), 1843(c)(9));

(3) Board approval of the establishment of an office of a foreign bank in the United States under sections 7(d) and 10(a) of the IBA (12 U.S.C. 3105(d), 3107(a));

(4) The termination by the Board of a foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(e), 3107(b)), and the transmission of a recommendation to the Comptroller to terminate a federal branch or federal agency under section 7(e)(5) of the IBA (12 U.S.C. 3105(e)(5));

(5) The examination of an office or affiliate of a foreign bank in the United States as provided in sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(c), 3107(c));

(6) The disclosure of supervisory information to a foreign supervisor under section 15 of the IBA (12 U.S.C. 3109);

(7) The limitations on loans to one borrower by state branches and state agencies of a foreign bank under section 7(h)(2) of the IBA (12 U.S.C. 3105(h)(2));

(8) The limitation of a state branch and a state agency to conducting only activities that are permissible for a federal branch under section (7)(h)(1) of the IBA (12 U.S.C. 3105(h)(1)); and

(9) The deposit insurance requirement for retail deposit taking by a foreign bank under section 6 of the IBA (12 U.S.C. 3104).

(10) The management of shell branches (12 U.S.C. 3105(k)).

(c) *Additional requirements.* Compliance by a foreign bank with the requirements of this subpart and the laws administered and enforced by the Board does not relieve the foreign bank of responsibility to comply with the laws and regulations administered by the licensing authority.

§ 211.21 Definitions.

The definitions contained in §§ 211.1 and 211.2 apply to this subpart, except as a term is otherwise defined in this section:

(a) *Affiliate* of a foreign bank or of a parent of a foreign bank means any company that controls, is controlled by, or is under common control with, the foreign bank or the parent of the foreign bank.

(b) *Agency* means any place of business of a foreign bank, located in any state, at which credit balances are maintained, checks are paid, money is lent, or, to the extent not prohibited by state or federal law, deposits are accepted from a person or entity that is not a citizen or resident of the United States. Obligations shall not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(c)(1) *Appropriate Federal Reserve Bank* means, unless the Board designates a different Federal Reserve Bank:

(i) For a foreign banking organization, the Reserve Bank assigned to the foreign banking organization in § 225.3(b)(2) of Regulation Y (12 CFR 225.3(b)(2));

(ii) For a foreign bank that is not a foreign banking organization and proposes to establish an office, an Edge corporation, or an agreement corporation, the Reserve Bank of the Federal Reserve District in which the foreign bank proposes to establish such office or corporation; and

(iii) In all other cases, the Reserve Bank designated by the Board.

(2) The appropriate Federal Reserve Bank need not be the Reserve Bank of the Federal Reserve District in which the foreign bank's home state is located.

(d) *Banking subsidiary,* with respect to a specified foreign bank, means a bank that is a subsidiary as the terms *bank* and *subsidiary* are defined in section 2 of the BHC Act (12 U.S.C. 1841).

(e) *Branch* means any place of business of a foreign bank, located in any state, at which deposits are received, and that is not an agency, as that term is defined in paragraph (b) of this section.

(f) *Change the status* of an office means to convert a representative office into a branch or agency, or an agency or limited branch into a branch, but does not include renewal of the license of an existing office.

(g) *Commercial lending company* means any organization, other than a bank or an organization operating under section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601–604a), organized under the laws of any state, that maintains credit balances permissible for an agency, and engages in the business of making commercial loans. *Commercial lending company* includes any company chartered under article XII of the banking law of the State of New York.

(h) *Comptroller* means the Office of the Comptroller of the Currency.

(i) *Control* has the same meaning as in section 2(a) of the BHC Act (12 U.S.C. 1841(a)), and the terms *controlled* and *controlling* shall be construed consistently with the term *control.*

(j) *Domestic branch* means any place of business of a foreign bank, located in any state, that may accept domestic deposits and deposits that are incidental to or for the purpose of carrying out transactions in foreign countries.

(k) A foreign bank *engages directly in the business of banking outside the United States* if the foreign bank engages directly in banking activities usual in connection with the business of banking in the countries where it is organized or operating.

(l) To *establish* means:

(1) To open and conduct business through an office;

(2) To acquire directly, through merger, consolidation, or similar transaction with another foreign bank, the operations of an office that is open and conducting business;

(3) To acquire an office through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) To change the status of an office; or

(5) To relocate an office from one state to another.

(m) *Federal agency, federal branch, state agency,* and *state branch* have the same meanings as in section 1 of the IBA (12 U.S.C. 3101).

(n) *Foreign bank* means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States. The term *foreign bank* does not include a central bank of a foreign country that does not engage or seek to engage in a commercial banking business in the United States through an office.

(o) *Foreign banking organization* means:

(1) A foreign bank, as defined in section 1(b)(7) of the IBA (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary.

(p) *Home country,* with respect to a foreign bank, means the country in

which the foreign bank is chartered or incorporated.

(q) *Home country supervisor,* with respect to a foreign bank, means the governmental entity or entities in the foreign bank's home country with responsibility for the supervision and regulation of the foreign bank.

(r) *Licensing authority* means:

(1) The relevant state supervisor, with respect to an application to establish a state branch, state agency, commercial lending company, or representative office of a foreign bank; or

(2) The Comptroller, with respect to an application to establish a federal branch or federal agency.

(s) *Limited branch* means a branch of a foreign bank that receives only such deposits as would be permitted for a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611–631).

(t) *Office* or *office of a foreign bank* means any branch, agency, representative office, or commercial lending company subsidiary of a foreign bank in the United States.

(u) A *parent* of a foreign bank means a company of which the foreign bank is a subsidiary. An *immediate parent* of a foreign bank is a company of which the foreign bank is a direct subsidiary. An *ultimate parent* of a foreign bank is a parent of the foreign bank that is not the subsidiary of any other company.

(v) *Regional administrative office* means a representative office that:

(1) Is established by a foreign bank that operates two or more branches, agencies, commercial lending companies, or banks in the United States;

(2) Is located in the same city as one or more of the foreign bank's branches, agencies, commercial lending companies, or banks in the United States;

(3) Manages, supervises, or coordinates the operations of the foreign bank or its affiliates, if any, in a particular geographic area that includes the United States or a region thereof, including by exercising credit approval authority in that area pursuant to written standards, credit policies, and procedures established by the foreign bank; and

(4) Does not solicit business from actual or potential customers of the foreign bank or its affiliates.

(w) *Relevant state supervisor* means the state entity that is authorized to supervise and regulate a state branch, state agency, commercial lending company, or representative office.

(x) *Representative office* means any office of a foreign bank which is located in any state and is not a Federal branch, Federal agency, State branch, State agency, or commercial lending company subsidiary.

(y) *State* means any state of the United States or the District of Columbia.

(z) *Subsidiary* means any organization that:

(1) Has 25 percent or more of its voting shares directly or indirectly owned, controlled, or held with the power to vote by a company, including a foreign bank or foreign banking organization; or

(2) Is otherwise controlled, or capable of being controlled, by a foreign bank or foreign banking organization.

§ 211.22 Interstate banking operations of foreign banking organizations.

(a) *Determination of home state.* (1) A foreign bank that, as of December 10, 1997, had declared a home state or had a home state determined pursuant to the law and regulations in effect prior to that date shall have that state as its home state.

(2) A foreign bank that has any branches, agencies, commercial lending company subsidiaries, or subsidiary banks in one state, and has no such offices or subsidiaries in any other states, shall have as its home state the state in which such offices or subsidiaries are located.

(b) *Change of home state*—(1) *Prior notice.* A foreign bank may change its home state once, if it files 30 days' prior notice of the proposed change with the Board.

(2) *Application to change home state.* (i) A foreign bank, in addition to changing its home state by filing prior notice under paragraph (b)(1) of this section, may apply to the Board to change its home state, upon showing that a national bank or state-chartered bank with the same home state as the foreign bank would be permitted to change its home state to the new home state proposed by the foreign bank.

(ii) A foreign bank may apply to the Board for such permission one or more times.

(iii) In determining whether to grant the request of a foreign bank to change its home state, the Board shall consider whether the proposed change is consistent with competitive equity between foreign and domestic banks.

(3) *Effect of change in home state.* The home state of a foreign bank and any change in its home state by a foreign bank shall not affect which Federal Reserve Bank or Reserve Banks supervise the operations of the foreign bank, and shall not affect the obligation of the foreign bank to file required reports and applications with the appropriate Federal Reserve Bank.

(4) *Conforming branches to new home state.* Upon any change in home state by a foreign bank under paragraph (b)(1) or (b)(2) of this section, the domestic branches of the foreign bank established in reliance on any previous home state of the foreign bank shall be conformed to those which a foreign bank with the new home state could permissibly establish or operate as of the date of such change.

(c) *Prohibition against interstate deposit production offices.* A covered interstate branch of a foreign bank may not be used as a deposit production office in accordance with the provisions in § 208.7 of Regulation H (12 CFR 208.7).

§ 211.23 Nonbanking activities of foreign banking organizations.

(a) *Qualifying foreign banking organizations.* Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions afforded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking; and more than half of its banking business is outside the United States.[10] In order to qualify, a foreign banking organization shall:

(1) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed total worldwide nonbanking assets;

(ii) Revenues derived from the business of banking outside the United States exceed total revenues derived from its worldwide nonbanking business; or

(iii) Net income derived from the business of banking outside the United States exceeds total net income derived from its worldwide nonbanking business; and

(2) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed banking assets held in the United States;

(ii) Revenues derived from the business of banking outside the United States exceed revenues derived from the business of banking in the United States; or

[10] None of the assets, revenues, or net income, whether held or derived directly or indirectly, of a subsidiary bank, branch, agency, commercial lending company, or other company engaged in the business of banking in the United States (including any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands) shall be considered held or derived from the business of banking ''outside the United States''.

(iii) Net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

(b) *Determining assets, revenues, and net income.* (1)(i) For purposes of paragraph (a) of this section, the total assets, revenues, and net income of an organization may be determined on a consolidated or combined basis.

(ii) The foreign banking organization shall include assets, revenues, and net income of companies in which it owns 50 percent or more of the voting shares when determining total assets, revenues, and net income.

(iii) The foreign banking organization may include assets, revenues, and net income of companies in which it owns 25 percent or more of the voting shares, if all such companies within the organization are included.

(2) Assets devoted to, or revenues or net income derived from, activities listed in § 211.10(a) shall be considered banking assets, or revenues or net income derived from the banking business, when conducted within the foreign banking organization by a foreign bank or its subsidiaries.

(c) *Limited exemptions available to foreign banking organizations in certain circumstances.* The following shall apply where a foreign bank meets the requirements of paragraph (a) of this section but its ultimate parent does not:

(1) Such foreign bank shall be entitled to the exemptions available to a qualifying foreign banking organization if its ultimate parent meets the requirements set forth in paragraph (a)(2) of this section and could meet the requirements in paragraph (a)(1) of this section but for the requirement in paragraph (b)(2) of this section that activities must be conducted by the foreign bank or its subsidiaries in order to be considered derived from the banking business;

(2) An ultimate parent as described in paragraph (c)(1) of this section shall be eligible for the exemptions available to a qualifying foreign banking organization except for those provided in § 211.23(f)(5)(iii).

(d) *Loss of eligibility for exemptions*—(1) *Failure to meet qualifying test.* A foreign banking organization that qualified under paragraph (a) or (c) of this section shall cease to be eligible for the exemptions of this section if it fails to meet the requirements of paragraphs (a) or (c) of this section for two consecutive years, as reflected in its annual reports (FR Y–7) filed with the Board.

(2) *Continuing activities and investments.* (i) A foreign banking organization that ceases to be eligible for the exemptions of this section may continue to engage in activities or retain investments commenced or acquired prior to the end of the first fiscal year for which its annual report reflects nonconformance with paragraph (a) or (c) of this section.

(ii) *Termination or divestiture.* Activities commenced or investments made after that date shall be terminated or divested within three months of the filing of the second annual report, or at such time as the Board may determine upon request by the foreign banking organization to extend the period, unless the Board grants consent to continue the activity or retain the investment under paragraph (e) of this section.

(3) *Request for specific determination of eligibility.* (i) A foreign banking organization that ceases to qualify under paragraph (a) or (c) of this section, or an affiliate of such foreign banking organization, that requests a specific determination of eligibility under paragraph (e) of this section may, prior to the Board's determination on eligibility, continue to engage in activities and make investments under the provisions of paragraphs (f)(1), (2), (3), and (4) of this section.

(ii) The Board may grant consent for the foreign banking organization or its affiliate to make investments under paragraph (f)(5) of this section.

(e) *Specific determination of eligibility for organizations that do not qualify for the exemptions*—(1) *Application.* (i) A foreign organization that is not a foreign banking organization or a foreign banking organization that does not qualify under paragraph (a) or (c) of this section for some or all of the exemptions afforded by this section, or that has lost its eligibility for the exemptions under paragraph (d) of this section, may apply to the Board for a specific determination of eligibility for some or all of the exemptions.

(ii) A foreign banking organization may apply for a specific determination prior to the time it ceases to be eligible for the exemptions afforded by this section.

(2) *Factors considered by Board.* In determining whether eligibility for the exemptions would be consistent with the purposes of the BHC Act and in the public interest, the Board shall consider:

(i) The history and the financial and managerial resources of the foreign organization or foreign banking organization;

(ii) The amount of its business in the United States;

(iii) The amount, type, and location of its nonbanking activities, including whether such activities may be conducted by U.S. banks or bank holding companies;

(iv) Whether eligibility of the foreign organization or foreign banking organization would result in undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices; and

(v) The extent to which the foreign banking organization is subject to comprehensive supervision or regulation on a consolidated basis or the foreign organization is subject to oversight by regulatory authorities in its home country.

(3) *Conditions and limitations.* The Board may impose any conditions and limitations on a determination of eligibility, including requirements to cease activities or dispose of investments.

(4) *Eligibility not granted.* Determinations of eligibility generally would not be granted where a majority of the business of the foreign organization or foreign banking organization derives from commercial or industrial activities.

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (a) of this section may:

(1) Engage in activities of any kind outside the United States;

(2) Engage directly in activities in the United States that are incidental to its activities outside the United States;

(3) Own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States, other than those that are incidental to the international or foreign business of such company;

(4) Own or control voting shares of any company in a fiduciary capacity under circumstances that would entitle such shareholding to an exemption under section 4(c)(4) of the BHC Act (12 U.S.C. 1843(c)(4)) if the shares were held or acquired by a bank;

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States; provided that, if the foreign company fails to meet the requirements of this paragraph (f)(5)(i) for two consecutive years (as reflected in annual reports (FR Y–7) filed with the Board by the foreign banking organization), the foreign

company shall be divested or its activities terminated within one year of the filing of the second consecutive annual report that reflects nonconformance with the requirements of this paragraph (f)(5)(i), unless the Board grants consent to retain the investment under paragraph (g) of this section;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 10 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States, except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or must control, an operating company, and its direct or indirect activities in the United States shall be subject to the following limitations:

(A) The foreign company's activities in the United States shall be the same kind of activities, or related to the activities, engaged in directly or indirectly by the foreign company abroad, as measured by the ''establishment'' categories of the Standard Industrial Classification (SIC). An activity in the United States shall be considered related to an activity outside the United States if it consists of supply, distribution, or sales in furtherance of the activity;

(B) The foreign company may engage in activities in the United States that consist of banking, securities, insurance, or other financial operations, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)), only under regulations of the Board or with the prior approval of the Board, subject to the following;

(*1*) Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541); and

(*2*) The following activities shall be considered financial activities and may be engaged in only with the approval of the Board under paragraph (g) of this section: credit reporting services (SIC 7323); computer and data processing services (SIC 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, and 7379); armored car services (SIC 7381); management consulting (SIC 8732, 8741, 8742, and 8748); certain rental and leasing activities (SIC 4741, 7352, 7353, 7359, 7513, 7514, 7515, and 7519); accounting, auditing, and bookkeeping services (SIC 8721); courier services (SIC 4215 and 4513); and arrangement of passenger transportation (SIC 4724, 4725, and 4729).

(g) *Exemptions under section 4(c)(9) of the BHC Act.* A foreign banking organization that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHC Act (12 U.S.C. 1843(c)(9)) may apply to the Board for such a determination by submitting to the appropriate Federal Reserve Bank a letter setting forth the basis for that opinion.

(h) *Reports.* The foreign banking organization shall report in a manner prescribed by the Board any direct activities in the United States by a foreign subsidiary of the foreign banking organization and the acquisition of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired under the authority of this section.

(i) *Availability of information.* If any information required under this section is unknown and not reasonably available to the foreign banking organization (either because obtaining it would involve unreasonable effort or expense, or because it rests exclusively within the knowledge of a company that is not controlled by the organization) the organization shall:

(1) Give such information on the subject as it possesses or can reasonably acquire, together with the sources thereof; and

(2) Include a statement showing that unreasonable effort or expense would be involved, or indicating that the company whose shares were acquired is not controlled by the organization, and stating the result of a request for information.

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

(a) *Board approval of offices of foreign banks*—(1) *Prior Board approval of branches, agencies, commercial lending companies, or representative offices of foreign banks.* (i) Except as otherwise provided in paragraphs (a)(2) and (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it:

(A) Establishes a branch, agency, commercial lending company subsidiary, or representative office in the United States; or

(B) Acquires ownership or control of a commercial lending company subsidiary.

(2) *Prior notice for certain offices.* (i) After providing 45 days' prior written notice to the Board, a foreign bank may establish:

(A) An additional office (other than a domestic branch outside the home state of the foreign bank established pursuant to section 5(a)(3) of the IBA (12 U.S.C. 3103(a)(3))), provided that the Board has previously determined the foreign bank to be subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (*comprehensive consolidated supervision* or *CCS*); or

(B) A representative office, if:

(*1*) The Board has not yet determined the foreign bank to be subject to consolidated comprehensive supervision, but the foreign bank is subject to the BHC Act, either directly or through section 8(a) of the IBA (12 U.S.C. 3106(a)); or

(*2*) The Board previously has approved an application by the foreign bank to establish a branch or agency pursuant to the standard set forth in paragraph (c)(1)(iii) of this section; or

(*3*) The Board previously has approved an application by the foreign bank to establish a representative office.

(ii) The Board may waive the 45-day notice period if it finds that immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is received by the appropriate Federal Reserve Bank. The Board may suspend the period or require Board approval prior to the establishment of such office if the notification raises significant policy or supervisory concerns.

(3) *General consent for certain representative offices.* (i) The Board grants its general consent for a foreign bank that is subject to the BHC Act, either directly or through section 8(a) of the IBA (12 U.S.C. 3106(a)), to establish:

(A) A representative office, but only if the Board has previously determined that the foreign bank proposing to establish a representative office is subject to consolidated comprehensive supervision;

(B) A regional administrative office; or

(C) An office that solely engages in limited administrative functions (such as separately maintaining back-office support systems) that:

(*1*) Are clearly defined;

(*2*) Are performed in connection with the U.S. banking activities of the foreign bank; and

(*3*) Do not involve contact or liaison with customers or potential customers, beyond incidental contact with existing customers relating to administrative matters (such as verification or correction of account information).

(4) *Suspension of general consent or prior notice procedures.* The Board may, at any time, upon notice, modify or suspend the prior notice and general consent procedures in paragraphs (a)(2) and (3) of this section for any foreign bank with respect to the establishment by such foreign bank of any U.S. office of such foreign bank.

(5) *Temporary offices.* The Board may, in its discretion, determine that a foreign bank has not established an office if the foreign bank temporarily operates at one or more additional locations in the same city of an existing branch or agency due to renovations, an expansion of activities, a merger or consolidation of the operations of affiliated foreign banks or companies, or other similar circumstances. The foreign bank must provide reasonable advance notice of its intent temporarily to utilize additional locations, and the Board may impose such conditions in connection with its determination as it deems necessary.

(6) *After-the-fact Board approval.* Where a foreign bank proposes to establish an office in the United States through the acquisition of, or merger or consolidation with, another foreign bank with an office in the United States, the Board may, in its discretion, allow the acquisition, merger, or consolidation to proceed before an application to establish the office has been filed or acted upon under this section if:

(i) The foreign bank or banks resulting from the acquisition, merger, or consolidation, will not directly or indirectly own or control more than 5 percent of any class of the voting securities of, or control, a U.S. bank;

(ii) The Board is given reasonable advance notice of the proposed acquisition, merger, or consolidation; and

(iii) Prior to consummation of the acquisition, merger, or consolidation, each foreign bank, as appropriate, commits in writing either:

(A) To comply with the procedures for an application under this section within a reasonable period of time; to engage in no new lines of business, or otherwise to expand its U.S. activities until the disposition of the application; and to abide by the Board's decision on the application, including, if necessary, a decision to terminate the activities of any such U.S. office, as the Board or the Comptroller may require; or

(B) Promptly to wind-down and close any office, the establishment of which would have required an application under this section; and to engage in no new lines of business or otherwise to expand its U.S. activities prior to the closure of such office.

(7) *Notice of change in ownership or control or conversion of existing office or establishment of representative office under general-consent authority.* A foreign bank with a U.S. office shall notify the Board in writing within 10 days of the occurrence of any of the following events:

(i) A change in the foreign bank's ownership or control, where the foreign bank is acquired or controlled by another foreign bank or company and the acquired foreign bank with a U.S. office continues to operate in the same corporate form as prior to the change in ownership or control;

(ii) The conversion of a branch to an agency or representative office; an agency to a representative office; or a branch or agency from a federal to a state license, or a state to a federal license; or

(iii) The establishment of a representative office under general-consent authority.

(8) *Transactions subject to approval under Regulation Y.* Subpart B of Regulation Y (12 CFR 225.11–225.17) governs the acquisition by a foreign banking organization of direct or indirect ownership or control of any voting securities of a bank or bank holding company in the United States if the acquisition results in the foreign banking organization's ownership or control of more than 5 percent of any class of voting securities of a U.S. bank or bank holding company, including through acquisition of a foreign bank or foreign banking organization that owns or controls more than 5 percent of any class of the voting securities of a U.S. bank or bank holding company.

(b) *Procedures for application*—(1) *Filing application.* An application for the Board's approval pursuant to this section shall be filed in the manner prescribed by the Board.

(2) *Publication requirement*—(i) *Newspaper notice.* Except with respect to a proposed transaction where more extensive notice is required by statute or as otherwise provided in paragraphs (b)(2)(ii) and (iii) of this section, an applicant under this section shall publish a notice in a newspaper of general circulation in the community in which the applicant proposes to engage in business.

(ii) *Contents of notice.* The newspaper notice shall:

(A) State that an application is being filed as of the date of the newspaper notice; and

(B) Provide the name of the applicant, the subject matter of the application, the place where comments should be sent, and the date by which comments are due, pursuant to paragraph (b)(3) of this section.

(iii) *Copy of notice with application.* The applicant shall furnish with its application to the Board a copy of the newspaper notice, the date of its publication, and the name and address of the newspaper in which it was published.

(iv) *Exception.* The Board may modify the publication requirement of paragraphs (b)(2)(i) and (ii) of this section in appropriate circumstances.

(v) *Federal branch or federal agency.* In the case of an application to establish a federal branch or federal agency, compliance with the publication procedures of the Comptroller shall satisfy the publication requirement of this section. Comments regarding the application should be sent to the Board and the Comptroller.

(3) *Written comments.* (i) Within 30 days after publication, as required in paragraph (b)(2) of this section, any person may submit to the Board written comments and data on an application.

(ii) The Board may extend the 30-day comment period if the Board determines that additional relevant information is likely to be provided by interested persons, or if other extenuating circumstances exist.

(4) *Board action on application.* (i) *Time limits.* (A) The Board shall act on an application from a foreign bank to establish a branch, agency, or commercial lending company subsidiary within 180 calendar days after the receipt of the application.

(B) The Board may extend for an additional 180 calendar days the period within which to take final action, after providing notice of and reasons for the extension to the applicant and the licensing authority.

(C) The time periods set forth in this paragraph (b)(4)(i) may be waived by the applicant.

(ii) *Additional information.* The Board may request any information in addition to that supplied in the application when the Board believes that the information is necessary for its decision, and may deny an application if it does not receive the information requested from the applicant or its home country supervisor in sufficient time to permit adequate evaluation of the information within the time periods set forth in paragraph (b)(4)(i) of this section.

(5) *Coordination with other regulators.* Upon receipt of an application by a foreign bank under this section, the Board shall promptly notify, consult with, and consider the views of the licensing authority.

(c) *Standards for approval of U.S. offices of foreign banks*— (1) *Mandatory standards*—(i) *General.* As specified in section 7(d) of the IBA (12 U.S.C. 3105(d)), the Board may not approve an application to establish a branch or an agency, or to establish or acquire ownership or control of a commercial lending company, unless it determines that:

(A) Each of the foreign bank and any parent foreign bank engages directly in the business of banking outside the United States and, except as provided in paragraph (c)(1)(iii) of this section, is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(B) The foreign bank has furnished to the Board the information that the Board requires in order to assess the application adequately.

(ii) *Basis for determining comprehensive consolidated supervision.* In determining whether a foreign bank and any parent foreign bank is subject to comprehensive consolidated supervision, the Board shall determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. In making such a determination, the Board shall assess, among other factors, the extent to which the home country supervisor:

(A) Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide;

(B) Obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;

(C) Obtains information on the dealings and relationship between the foreign bank and its affiliates, both foreign and domestic;

(D) Receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis;

(E) Evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

(iii) *Determination of comprehensive consolidated supervision not required in certain circumstances.* (A) If the Board is unable to find, under paragraph (c)(1)(i) of this section, that a foreign bank is subject to comprehensive consolidated supervision, the Board may, nevertheless, approve an application by the foreign bank if:

(*1*) The home country supervisor is actively working to establish arrangements for the consolidated supervision of such bank; and

(*2*) All other factors are consistent with approval.

(B) In deciding whether to use its discretion under this paragraph (c)(1)(iii), the Board also shall consider whether the foreign bank has adopted and implemented procedures to combat money laundering. The Board also may take into account whether the home country supervisor is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering. In approving an application under this paragraph (c)(1)(iii), the Board, after requesting and taking into consideration the views of the licensing authority, may impose any conditions or restrictions relating to the activities or business operations of the proposed branch, agency, or commercial lending company subsidiary, including restrictions on sources of funding. The Board shall coordinate with the licensing authority in the implementation of such conditions or restrictions.

(2) *Additional standards.* In acting on any application under this subpart, the Board may take into account:

(i) *Consent of home country supervisor.* Whether the home country supervisor of the foreign bank has consented to the proposed establishment of the branch, agency, or commercial lending company subsidiary;

(ii) *Financial resources.* The financial resources of the foreign bank (including the foreign bank's capital position, projected capital position, profitability, level of indebtedness, and future prospects) and the condition of any U.S. office of the foreign bank;

(iii) *Managerial resources.* The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors; the integrity of its principal shareholders; management's experience and capacity to engage in international banking; and the record of the foreign bank and its management of complying with laws and regulations, and of fulfilling any commitments to, and any conditions imposed by, the Board in connection with any prior application;

(iv) *Sharing information with supervisors.* Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(v) *Assurances to Board.* (A) Whether the foreign bank has provided the Board with adequate assurances that information will be made available to the Board on the operations or activities of the foreign bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal banking statutes.

(B) These assurances shall include a statement from the foreign bank describing the laws that would restrict the foreign bank or any of its parents from providing information to the Board;

(vi) *Measures for prevention of money laundering.* Whether the foreign bank has adopted and implemented procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering;

(vii) *Compliance with U.S. law.* Whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. law, and whether the applicant has established adequate controls and procedures in each of its offices to ensure continuing compliance with U.S. law, including controls directed to detection of money laundering and other unsafe or unsound banking practices; and (viii) The needs of the community and the history of operation of the foreign bank and its relative size in its home country, provided that the size of the foreign bank is not the sole factor in determining whether an office of a foreign bank should be approved.

(3) *Additional standards for certain interstate applications.* (i) As specified in section 5(a)(3) of the IBA (12 U.S.C. 3103(a)(3)), the Board may not approve an application by a foreign bank to establish a branch, other than a limited branch, outside the home state of the foreign bank under section 5(a)(1) or (2) of the IBA (12 U.S.C. 3103(a)(1), (2)) unless the Board:

(A) Determines that the foreign bank's financial resources, including the capital level of the bank, are equivalent to those required for a domestic bank to

be approved for branching under section 5155 of the Revised Statutes (12 U.S.C. 36) and section 44 of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831u);

(B) Consults with the Department of the Treasury regarding capital equivalency;

(C) Applies the standards specified in section 7(d) of the IBA (12 U.S.C. 3105(d)) and this paragraph (c); and

(D) Applies the same requirements and conditions to which an application by a domestic bank for an interstate merger is subject under section 44(b)(1), (3), and (4) of the FDIA (12 U.S.C. 1831u(b)(1), (3), (4)); and

(ii) As specified in section 5(a)(7) of the IBA (12 U.S.C. 3103(a)(7)), the Board may not approve an application to establish a branch through a change in status of an agency or limited branch outside the foreign bank's home state unless:

(A) The establishment and operation of such branch is permitted by such state; and

(B) Such agency or branch has been in operation in such state for a period of time that meets the state's minimum age requirement permitted under section 44(a)(5) of the Federal Deposit Insurance Act (12 U.S.C. 183u(a)(5)).

(4) *Board conditions on approval.* The Board may impose any conditions on its approval as it deems necessary, including a condition which may permit future termination by the Board of any activities or, in the case of a federal branch or a federal agency, by the Comptroller, based on the inability of the foreign bank to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.

(d) *Representative offices*—(1) *Permissible activities.* A representative office may engage in:

(i) *Representational and administrative functions.* Representational and administrative functions in connection with the banking activities of the foreign bank, which may include soliciting new business for the foreign bank; conducting research; acting as liaison between the foreign bank's head office and customers in the United States; performing preliminary and servicing steps in connection with lending;[11] or performing back-office functions; but shall not include contracting for any deposit or deposit-like liability, lending money, or engaging in any other banking activity for the foreign bank;

(ii) *Credit approvals under certain circumstances.* Making credit decisions if the foreign bank also operates one or more branches or agencies in the United States, the loans approved at the representative office are made by a U.S. office of the bank, and the loan proceeds are not disbursed in the representative office; and

(iii) *Other functions.* Other functions for or on behalf of the foreign bank or its affiliates, such as operating as a regional administrative office of the foreign bank, but only to the extent that these other functions are not banking activities and are not prohibited by applicable federal or state law, or by ruling or order of the Board.

(2) *Standards for approval of representative offices.* As specified in section 10(a)(2) of the IBA (12 U.S.C. 3107(a)(2)), in acting on the application of a foreign bank to establish a representative office, the Board shall take into account, to the extent it deems appropriate, the standards for approval set out in paragraph (c) of this section. The standard regarding supervision by the foreign bank's home country supervisor (as set out in paragraph (c)(1)(i)(A) of this section) will be met, in the case of a representative office application, if the Board makes a finding that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities and the operating record of the applicant.

(3) *Special-purpose foreign government-owned banks.* A foreign government-owned organization engaged in banking activities in its home country that are not commercial in nature may apply to the Board for a determination that the organization is not a foreign bank for purposes of this section. A written request setting forth the basis for such a determination may be submitted to the Reserve Bank of the District in which the foreign organization's representative office is located in the United States, or to the Board, in the case of a proposed establishment of a representative office. The Board shall review and act upon each request on a case-by-case basis.

(4) *Additional requirements.* The Board may impose any additional requirements that it determines to be necessary to carry out the purposes of the IBA.

(e) *Preservation of existing authority.* Nothing in this subpart shall be construed to relieve any foreign bank or foreign banking organization from any otherwise applicable requirement of federal or state law, including any applicable licensing requirement.

(f) *Reports of crimes and suspected crimes.* Except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation (FDIC), a branch, agency, or representative office of a foreign bank operating in the United States shall file a suspicious activity report in accordance with the provisions of § 208.62 of Regulation H (12 CFR 208.62).

(g) *Management of shell branches.* (1) A state-licensed branch or agency shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such state-licensed branch or agency, any type of activity that a bank organized under the laws of the United States or any state is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) For purposes of this paragraph (g), an office of a foreign bank located outside the United States is ''managed or controlled'' by a state-licensed branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S. office, resides at the state-licensed branch or agency.

(3) The types of activities that a state-licensed branch or agency may manage through an office located outside the United States that it manage or controls include the types of activities authorized to a U.S. bank by state or federal charters, regulations issued by chartering or regulatory authorities, and other U.S. banking laws, including the Federal Reserve Act, and the implementing regulations, but U.S. procedural or quantitative requirements that may be applicable to the conduct of such activities by U.S. banks shall not apply.

(h) *Government securities sales practices.* An uninsured state-licensed branch or agency of a foreign bank that is required to give notice to the Board under section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) and the Department of the Treasury rules under section 15C (17 CFR 400.1(d) and part 401) shall be subject to the provisions of 12 CFR 208.37 to the same extent as a state member bank that is required to give such notice.

(i) *Protection of customer information.* An uninsured state-licensed branch or

[11] *See* 12 CFR 250.141(h) for activities that constitute preliminary and servicing steps.

agency of a foreign bank shall comply with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805), set forth in appendix D–2 to part 208 of this chapter.

§ 211.25 Termination of offices of foreign banks.

(a) *Grounds for termination*—(1) *General*. Under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(d), 3107(b)), the Board may order a foreign bank to terminate the activities of its representative office, state branch, state agency, or commercial lending company subsidiary if the Board finds that:

(i) The foreign bank is not subject to comprehensive consolidated supervision in accordance with § 211.24(c)(1), and the home country supervisor is not making demonstrable progress in establishing arrangements for the consolidated supervision of the foreign bank; or

(ii) Both of the following criteria are met:

(A) There is reasonable cause to believe that the foreign bank, or any of its affiliates, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(B) As a result of such violation or practice, the continued operation of the foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary would not be consistent with the public interest, or with the purposes of the IBA, the BHC Act, or the FDIA.

(2) *Additional ground*. The Board also may enforce any condition imposed in connection with an order issued under § 211.24.

(b) *Factor*. In making its findings under this section, the Board may take into account the needs of the community, the history of operation of the foreign bank, and its relative size in its home country, provided that the size of the foreign bank shall not be the sole determining factor in a decision to terminate an office.

(c) *Consultation with relevant state supervisor*. Except in the case of termination pursuant to the expedited procedure in paragraph (d)(3) of this section, the Board shall request and consider the views of the relevant state supervisor before issuing an order terminating the activities of a state branch, state agency, representative office, or commercial lending company subsidiary under this section.

(d) *Termination procedures*—(1) *Notice and hearing*. Except as otherwise provided in paragraph (d)(3) of this section, an order issued under paragraph (a)(1) of this section shall be issued only after notice to the relevant state supervisor and the foreign bank and after an opportunity for a hearing.

(2) *Procedures for hearing*. Hearings under this section shall be conducted pursuant to the Board's Rules of Practice for Hearings (12 CFR part 263).

(3) *Expedited procedure*. The Board may act without providing an opportunity for a hearing, if it determines that expeditious action is necessary in order to protect the public interest. When the Board finds that it is necessary to act without providing an opportunity for a hearing, the Board, solely in its discretion, may:

(i) Provide the foreign bank that is the subject of the termination order with notice of the intended termination order;

(ii) Grant the foreign bank an opportunity to present a written submission opposing issuance of the order; or

(iii) Take any other action designed to provide the foreign bank with notice and an opportunity to present its views concerning the order.

(e) *Termination of federal branch or federal agency*. The Board may transmit to the Comptroller a recommendation that the license of a federal branch or federal agency be terminated if the Board has reasonable cause to believe that the foreign bank or any affiliate of the foreign bank has engaged in conduct for which the activities of a state branch or state agency may be terminated pursuant to this section.

(f) *Voluntary termination*. A foreign bank shall notify the Board at least 30 days prior to terminating the activities of any office. Notice pursuant to this paragraph (f) is in addition to, and does not satisfy, any other federal or state requirements relating to the termination of an office or the requirement for prior notice of the closing of a branch, pursuant to section 39 of the FDIA (12 U.S.C. 1831p).

§ 211.26 Examination of offices and affiliates of foreign banks.

(a) *Conduct of examinations*—(1) *Examination of branches, agencies, commercial lending companies, and affiliates*. The Board may examine:

(i) Any branch or agency of a foreign bank;

(ii) Any commercial lending company or bank controlled by one or more foreign banks, or one or more foreign companies that control a foreign bank; and

(iii) Any other office or affiliate of a foreign bank conducting business in any state.

(2) *Examination of representative offices*. The Board may examine any representative office in the manner and with the frequency it deems appropriate.

(b) *Coordination of examinations*. To the extent possible, the Board shall coordinate its examinations of the U.S. offices and U.S. affiliates of a foreign bank with the licensing authority and, in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC), including through simultaneous examinations of the U.S. offices and U.S. affiliates of a foreign bank.

(c) *Frequency of on-site examination*—(1) *General*. 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—

(i) The Board;

(ii) The FDIC, if the branch of the foreign bank accepts or maintains insured deposits;

(iii) The Comptroller, if the branch or agency of the foreign bank is licensed by the Comptroller; or

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

(2) *18-month cycle for certain small institutions*—(i) *Mandatory standards*. The Board may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as required in paragraph (c)(1) of this section, if the branch or agency—

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

(B) 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;

(C) Satisfies the requirement of either the following paragraph (c)(2)(i)(C)(*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 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;

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

(E) 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.

(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—

(A) Any of the individual components of the ROCA supervisory rating of a branch or agency of a foreign bank is rated ''3'' or worse;

(B) The results of any off-site surveillance 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 necessitate an annual examination; and

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

(3) *Authority to conduct more frequent examinations.* Nothing in paragraphs (c)(1) and (2) of this section limits the authority of the Board to examine any U.S. branch or agency of a foreign bank as frequently as it deems necessary.

§ 211.27 Disclosure of supervisory information to foreign supervisors.

(a) *Disclosure by Board.* The Board may disclose information obtained in the course of exercising its supervisory or examination authority to a foreign bank regulatory or supervisory authority, if the Board determines that disclosure is appropriate for bank supervisory or regulatory purposes and will not prejudice the interests of the United States.

(b) *Confidentiality.* Before making any disclosure of information pursuant to paragraph (a) of this section, the Board shall obtain, to the extent necessary, the agreement of the foreign bank regulatory or supervisory authority to maintain the confidentiality of such information to the extent possible under applicable law.

§ 211.28 Provisions applicable to branches and agencies: limitation on loans to one borrower.

(a) *Limitation on loans to one borrower.* Except as provided in paragraph (b) of this section, the total loans and extensions of credit by all the state branches and state agencies of a foreign bank outstanding to a single borrower at one time shall be aggregated with the total loans and extensions of credit by all federal branches and federal agencies of the same foreign bank outstanding to such borrower at the time; and shall be subject to the limitations and other provisions of section 5200 of the Revised Statutes (12 U.S.C. 84), and the regulations promulgated thereunder, in the same manner that extensions of credit by a federal branch or federal agency are subject to section 4(b) of the IBA (12 U.S.C. 3102(b)) as if such state branches and state agencies were federal branches and federal agencies.

(b) *Preexisting loans and extensions of credit.* Any loans or extensions of credit to a single borrower that were originated prior to December 19, 1991, by a state branch or state agency of the same foreign bank and that, when aggregated with loans and extensions of credit by all other branches and agencies of the foreign bank, exceed the limits set forth in paragraph (a) of this section, may be brought into compliance with such limitations through routine repayment, provided that any new loans or extensions of credit (including renewals of existing unfunded credit lines, or extensions of the maturities of existing loans) to the same borrower shall comply with the limits set forth in paragraph (a) of this section.

§ 211.29 Applications by state branches and state agencies to conduct activities not permissible for federal branches.

(a) *Scope.* A state branch or state agency shall file with the Board a prior written application for permission to engage in or continue to engage in any type of activity that:

(1) Is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Comptroller; or

(2) Is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction.

(b) *Exceptions.* No application shall be required by a state branch or state agency to conduct any activity that is otherwise permissible under applicable state and federal law or regulation and that:

(1) Has been determined by the FDIC, pursuant to 12 CFR 362.4(c)(3)(i) through (c)(3)(ii)(A), not to present a significant risk to the affected deposit insurance fund;

(2) Is permissible for a federal branch, but the Comptroller imposes a quantitative limitation on the conduct of such activity by the federal branch;

(3) Is conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state in which the branch or agency is licensed; or

(4) Any other activity that the Board has determined may be conducted by any state branch or state agency of a foreign bank without further application to the Board.

(c) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted, and an estimate of the expected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the U.S. operations of the foreign bank in general, and of the branch or agency in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such activity and the filing of this application;

(4) If the activity is to be conducted by a state branch insured by the FDIC, statements by the applicant:

(i) Of whether or not it is in compliance with 12 CFR 346.19 (Pledge of Assets) and 12 CFR 346.20 (Asset Maintenance);

(ii) That it has complied with all requirements of the FDIC concerning an application to conduct the activity and the status of the application, including a copy of the FDIC's disposition of such application, if available; and

(iii) Explaining why the activity will pose no significant risk to the deposit insurance fund; and

(5) Any other information that the Reserve Bank deems appropriate.

(d) *Factors considered in determination.* (1) The Board shall consider the following factors in determining whether a proposed activity is consistent with sound banking practice:

(i) The types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization in general, and the branch or agency in particular;

(ii) If the activity poses any such risks, the magnitude of each risk; and

(iii) If a risk is not de minimis, the actual or proposed procedures to control and minimize the risk.

(2) Each of the factors set forth in paragraph (d)(1) of this section shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the activity.

(e) *Application procedures.* Applications pursuant to this section shall be filed with the appropriate Federal Reserve Bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(f) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the Board or, if applicable, the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the appropriate Federal Reserve Bank within 60 days of the disapproval.

(i) The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity, and shall include a projected timetable describing how long the divestiture or cessation is expected to take.

(ii) Divestiture or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) If a foreign bank operating a state branch or state agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch, or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with paragraph (f)(1) of this section within 60 days of the effective date of this part or of such change or decision.

§ 211.30 Criteria for evaluating U.S. operations of foreign banks not subject to consolidated supervision.

(a) *Development and publication of criteria.* Pursuant to the Foreign Bank Supervision Enhancement Act, Pub. L. 102–242, 105 Stat. 2286 (1991), the Board shall develop and publish criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive consolidated supervision.

(b) *Criteria considered by Board.* Following a determination by the Board that, having taken into account the standards set forth in § 211.24(c)(1), a foreign bank is not subject to CCS, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

(1) The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;

(2) The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

(3) Whether the home country supervisor of such foreign bank is actively working to establish arrangements for comprehensive consolidated supervision of the bank, and whether demonstrable progress is being made;

(4) Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable its management properly to oversee its worldwide operations;

(5) Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

(6) Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(7) The relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due to its U.S. offices from the foreign bank's non-U.S. offices;

(8) The soundness of the foreign bank's overall financial condition;

(9) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors, and the integrity of its principal shareholders;

(10) The scope and frequency of external audits of the foreign bank;

(11) The operating record of the foreign bank generally and its role in the banking system in its home country;

(12) The foreign bank's record of compliance with relevant laws, as well as the adequacy of its anti-money-laundering controls and procedures, in respect of its worldwide operations;

(13) The operating record of the U.S. offices of the foreign bank;

(14) The views and recommendations of the Comptroller or the relevant state supervisors in those states in which the foreign bank has operations, as appropriate;

(15) Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other U.S. banking statutes; and

(16) Any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations*—(1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to CCS may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to ensure the safety and soundness of its U.S. operations.

(2) *Failure to enter into or comply with agreement.* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1) of this section and either fails to do so, or fails to comply with the terms of such agreement, may be subject to:

(i) Enforcement action, in order to ensure safe and sound banking operations, under 12 U.S.C. 1818; or

(ii) Termination or a recommendation for termination of its U.S. operations, under § 211.25(a) and (e) and section (7)(e) of the IBA (12 U.S.C. 3105(e)).

Subpart C—Export Trading Companies

§ 211.31 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1841 *et seq.*), the Bank Export Services Act (title II, Pub. L. 97–290, 96 Stat. 1235 (1982)) (BESA), and the Export Trading Company Act Amendments of 1988 (title III, Pub. L. 100–418, 102 Stat. 1384 (1988)) (ETC Act Amendments).

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act, the BESA, and the ETC Act Amendments, the latter two statutes

being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of this subpart apply to eligible investors as defined in this subpart.

§ 211.32 Definitions.

The definitions in §§ 211.1 and 211.2 of subpart A apply to this subpart, subject to the following:

(a) *Appropriate Federal Reserve Bank* has the same meaning as in § 211.21(c).

(b) *Bank* has the same meaning as in section 2(c) of the BHC Act (12 U.S.C. 1841(c)).

(c) *Company* has the same meaning as in section 2(b) of the BHC Act (12 U.S.C. 1841(b)).

(d) *Eligible investors* means:

(1) Bank holding companies, as defined in section 2(a) of the BHC Act (12 U.S.C. 1841(a));

(2) Edge and agreement corporations that are subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) Banker's banks, as described in section 4(c)(14)(F)(iii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(iii)); and

(4) Foreign banking organizations, as defined in § 211.21(o).

(e) *Export trading company* means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives:

(1) At least one-third of its revenues in each consecutive four-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries; and

(2) More revenues in each four-year period from export activities as described in paragraph (e)(1) of this section than it derives from the import, or facilitating the import, into the United States of goods or services produced outside the United States. The four-year period within which to calculate revenues derived from its activities under this section shall be deemed to have commenced with the first fiscal year after the respective export trading company has been in operation for two years.

(f) *Revenues* shall include net sales revenues from exporting, importing, or third-party trade in goods by the export trading company for its own account and gross revenues derived from all other activities of the export trading company.

(g) *Subsidiary* has the same meaning as in section 2(d) of the BHC Act (12 U.S.C. 1841(d)).

(h) *Well capitalized* has the same meaning as in § 225.2(r) of Regulation Y (12 CFR 225.2(r)).

(i) *Well managed* has the same meaning as in § 225.2(s) of Regulation Y (12 CFR 225.2(s)).

§ 211.33 Investments and extensions of credit.

(a) *Amount of investments.* In accordance with the procedures of § 211.34, an eligible investor may invest no more than 5 percent of its consolidated capital and surplus in one or more export trading companies, except that an Edge or agreement corporation not engaged in banking may invest as much as 25 percent of its consolidated capital and surplus but no more than 5 percent of the consolidated capital and surplus of its parent bank holding company.

(b) *Extensions of credit*—(1) *Amount.* An eligible investor in an export trading company or companies may extend credit directly or indirectly to the export trading company or companies in a total amount that at no time exceeds 10 percent of the investor's consolidated capital and surplus.

(2) *Terms.* (i) An eligible investor in an export trading company may not extend credit directly or indirectly to the export trading company or any of its customers or to any other investor holding 10 percent or more of the shares of the export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extensions of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(ii) For the purposes of this section, an investor in an export trading company includes any affiliate of the investor.

(3) *Collateral requirements.* Covered transactions between a bank and an affiliated export trading company in which a bank holding company has invested pursuant to this subpart are subject to the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c), except where a bank issues a letter of credit or advances funds to an affiliated export trading company solely to finance the purchase of goods for which:

(i) The export trading company has a bona fide contract for the subsequent sale of the goods; and

(ii) The bank has a security interest in the goods or in the proceeds from their sale at least equal in value to the letter of credit or the advance.

§ 211.34 Procedures for filing and processing notices.

(a) *General policy.* Direct and indirect investments by eligible investors in export trading companies shall be made in accordance with the general consent or prior notice procedures contained in this section. The Board may at any time, upon notice, modify or suspend the general-consent procedures with respect to any eligible investor.

(b) *General consent*—(1) *Eligibility for general consent.* Subject to the other limitations of this subpart, the Board grants its general consent for any investment an export trading company:

(i) If the eligible investor is well capitalized and well managed;

(ii) In an amount equal to cash dividends received from that export trading company during the preceding 12 calendar months; or

(iii) That is acquired from an affiliate at net asset value or through a contribution of shares.

(2) *Post-investment notice.* By the end of the month following the month in which the investment is made, the investor shall provide the Board with the following information:

(i) The amount of the investment and the source of the funds with which the investment was made; and

(ii) In the case of an initial investment, a description of the activities in which the export trading company proposes to engage and projections for the export trading company for the first year following the investment.

(c) *Filing notice*—(1) *Prior notice.* An eligible investor shall give the Board 60 days' prior written notice of any investment in an export trading company that does not qualify under the general consent procedure.

(2) *Notice of change of activities.* (i) An eligible investor shall give the Board 60 days' prior written notice of changes in the activities of an export trading company that is a subsidiary of the investor if the export trading company expands its activities beyond those described in the initial notice to include:

(A) Taking title to goods where the export trading company does not have a firm order for the sale of those goods;

(B) Product research and design;

(C) Product modification; or

(D) Activities not specifically covered by the list of activities contained in section 4(c)(14)(F)(ii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(ii)).

(ii) Such an expansion of activities shall be regarded as a proposed investment under this subpart.

(d) *Time period for Board action.* (1) A proposed investment that has not

been disapproved by the Board may be made 60 days after the appropriate Federal Reserve Bank accepts the notice for processing. A proposed investment may be made before the expiration of the 60-day period if the Board notifies the investor in writing of its intention not to disapprove the investment.

(2) The Board may extend the 60-day period for an additional 30 days if the Board determines that the investor has not furnished all necessary information or that any material information furnished is substantially inaccurate. The Board may disapprove an investment if the necessary information is provided within a time insufficient to allow the Board reasonably to consider the information received.

(3) Within three days of a decision to disapprove an investment, the Board shall notify the investor in writing and state the reasons for the disapproval.

(e) *Time period for investment.* An investment in an export trading company that has not been disapproved shall be made within one year from the date of the notice not to disapprove, unless the time period is extended by the Board or by the appropriate Federal Reserve Bank.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

2. Section 265.5 is amended by adding a new paragraph (d)(3) to read as follows:

§ 265.5 Functions delegated to Secretary of the Board.

* * * * *

(d) * * *

(3) *Investments in Edge and Agreement Corporations.* To approve an application by a member bank to invest more than 10 percent of capital and surplus in Edge and agreement corporation subsidiaries.

* * * * *

3. Section 265.6 is amended by revising paragraph (f) to read as follows:

§ 265.6 Functions delegated to General Counsel.

* * * * *

(f) *International banking*—(1) *After-the-fact applications.* With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request by a foreign bank to establish a branch, agency, commercial lending company, or representative office through certain acquisitions, mergers, consolidations, or similar transactions, in conjunction with which:

(i) The foreign bank would be required to file an after-the-fact application for the Board's approval under § 211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)); or

(ii) The General Counsel may waive the requirement for an after-the-fact application if:

(A) The surviving foreign bank commits to wind down the U.S. operations of the acquired foreign bank; and

(B) The merger or consolidation raises no significant policy or supervisory issues.

(2) To modify the requirement that a foreign bank that has submitted an application or notice to establish a branch, agency, commercial lending company, or representative office pursuant to § 211.24(a)(6) of Regulation K (12 CFR 211.24(a)(6)) shall publish notice of the application or notice in a newspaper of general circulation in the community in which the applicant or notificant proposes to engage in business, as provided in § 211.24(b)(2) of Regulation K (12 CFR 211.24(b)(2)).

(3) With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request for an exemption under section 4(c)(9) of the Bank Holding Company Act (12 U.S.C. 1843(c)(9)), provided that the request raises no significant policy or supervisory issues that the Board has not already considered.

(4) To return applications and notices filed under the International Banking Act for informational deficits.

(5) To determine that an entity qualifies as a ''special-purpose foreign government-owned bank'' for purposes of § 211.24(d)(3) (12 CFR 211.24(d)(3)).

* * * * *

4. Section 265.7 is amended by:

a. Revising paragraph (d)(4); and

b. Adding new paragraphs (d)(9), (d)(10), (d)(11), (d)(12), (d)(13), and (d)(14).

The revision and additions read as follows:

§ 265.7 Functions delegated to Director of Division of Banking Supervision and Regulation.

* * * * *

(d) * * *

(4) *Authority under general-consent and prior-notice procedures.* (i) With regard to a prior notice to establish a branch in a foreign country under § 211.3 of Regulation K (12 CFR 211.3):

(A) To waive the notice period;

(B) To suspend the notice period;

(C) To determine not to object to the notice; or

(D) To require the notificant to file an application for the Board's specific consent.

(ii) With regard to a prior notice to make an investment under § 211.9(f) of Regulation K (12 CFR 211.9(f)):

(A) To waive the notice period;

(B) To suspend the notice period; or

(C) To require the notificant to file an application for the Board's specific consent.

(iii) With regard to a prior notice of a foreign bank to establish certain U.S. offices under § 211.24(a)(2)(i) of Regulation K (12 CFR 211.24(a)(2)(i)):

(A) To waive the notice period;

(B) To suspend the notice period; or

(C) To require the notificant to file an application for the Board's specific consent.

(iv) To suspend the ability:

(A) Of a foreign banking organization to establish an office under the prior-notice procedures in § 211.24(a)(2)(i) of Regulation K (12 CFR 211.24(a)(2)(i)) or the general-consent procedures in § 211.24(a)(3) of Regulation K (12 CFR 211.24(a)(3));

(B) Of a U.S. banking organization to establish a foreign branch under the prior-notice or general-consent procedures in § 211.3(b) of Regulation K (12 CFR 211.3(b));

(C) Of an investor to make investments under the general-consent or prior-notice procedures in § 211.9 of Regulation K (12 CFR 211.9); and

(D) Of an eligible investor to make an investment in an export trading company under the general-consent procedures in § 211.34(b) of Regulation K (12 CFR 211.34(b)).

* * * * *

(9) *Allowing use of general-consent procedures.* To allow an investor that is not well-capitalized and well-managed to make investments under the general-consent procedures in § 211.9 or 211.34(b) of Regulation K (12 CFR 211.9 or 211.34(b)), provided that:

(i) The investor has implemented measures to become well-capitalized and well-managed;

(ii) Granting such authority raises no significant policy or supervisory concerns; and

(iii) Authority granted by the Director under this paragraph (d)(9) expires after one year, but may be renewed.

(10) *Exceeding general-consent investment limits.* To allow an investor to exceed the general-consent investment limits under § 211.9 of Regulation K (12 CFR 211.9), provided that:

(i) The investor demonstrates adequate financial and managerial strength;

(ii) The investor's investment strategy is not unsafe or unsound;

(iii) Granting such authority raises no significant policy or supervisory concerns; and

(iv) Authority granted by the Director under this paragraph (d)(10) expires after one year, but may be renewed.

(11) *Approval of temporary U.S. offices.* To allow a foreign bank to operate a temporary office in the United States, pursuant to § 211.24 of Regulation K (12 CFR 211.24), provided that:

(i) There is no direct public access to such office, with respect to any branch or agency function; and

(ii) The proposal raises no significant policy or supervisory issues.

(12) With the concurrence of the General Counsel, to approve applications, notices, exemption requests, waivers and suspensions, and other related matters under Regulation K (12 CFR part 211), where such matters do not raise any significant policy or supervisory issues.

(13) With the concurrence of the General Counsel, to approve:

(i) The establishment by a bank holding company or member bank of an agreement corporation under section 25 of the Federal Reserve Act; and

(ii) Any initial investment associated with the establishment of such agreement corporation.

(14) With the concurrence of the General Counsel, to determine that an election by a foreign bank to become or to be treated as a financial holding company is effective, provided that:

(i) The foreign bank meets the criteria for becoming or being treated as a financial holding company; and

(ii) The election raised no significant policy or supervisory issues.

* * * * *

5. Section 265.11 is amended by:

a. Revising paragraphs (d)(8) and (d)(11); and

b. Adding a new paragraph (d)(12).

The revisions and addition read as follows:

§ 265.11 Functions delegated to Federal Reserve Banks.

* * * * *

(d) * * *

(8) *Authority under prior-notice procedures.* (i) With regard to a prior notice to make an investment under § 211.9(f) of Regulation K (12 CFR 211.9(f)):

(A) To suspend the notice period; or

(B) To require the notificant to file an application for the Board's specific consent.

(ii) With regard to a prior notice of a foreign bank to establish certain U.S. offices under § 211.24(a)(2)(i) of Regulation K (12 CFR 211.24(a)(2)(i)):

(A) To suspend the notice period; or

(B) To require that the foreign bank file an application for the Board's specific consent.

* * * * *

(11) *Investments in Edge and agreement Corporation subsidiaries.* To approve an application by a member bank to invest more than 10 percent of capital and surplus in Edge and agreement corporation subsidiaries.

(12) *Amendments to Edge corporation charters.* To approve amendments to Edge corporation charters.

By order of the Board of Governors of the Federal Reserve System, October 16, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–26513 Filed 10–25–01; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–1114]

International Banking Operations; International Lending Supervision

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is seeking public comment on a proposal to amend its regulations relating to international lending by simplifying the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles (GAAP).

DATES: Comments should be submitted on or before December 1, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1114, may be mailed to the Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551, to the attention of Jennifer J. Johnson, Secretary. Comments addressed to the attention of Ms. Johnson may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Michael G. Martinson, Associate Director (202/452–3640), Division of Banking Supervision and Regulation; or Ann Misback, Assistant General Counsel (202/452–3788), Legal Division, Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901, *et seq.*, requires each federal banking agency to evaluate the foreign country exposure and transfer risk of banking institutions within its jurisdiction for use in examination and supervision of such institutions. To implement ILSA, the federal banking agencies, through the Interagency Country Exposure Review Committee (ICERC), assess and categorize countries on the basis of conditions that may lead to increased transfer risk. Transfer risk may arise due to the possibility that an asset of a banking institution cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of foreign exchange in the country of the obligor. Section 905(a) of ILSA directs each federal banking agency to require banking institutions within its jurisdiction to establish and maintain a special reserve whenever the agency determines that the quality of an institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, or no definite prospects exist for the orderly restoration of debt service. 12 U.S.C. 3904(a). In keeping with the requirements of ILSA, on February 13, 1984, the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, the federal banking agencies) issued a joint notice of final rulemaking requiring banking institutions to establish special reserves, the allocated transfer risk reserve (ATRR), against the risks presented in certain international assets. (49 FR 5594).

ILSA also requires the federal banking agencies to promulgate regulations for accounting for fees charged by banking institutions in connection with international loans. Section 906(a) of ILSA (12 U.S.C. 3905(a)) deals specifically with the restructuring of international loans to avoid excessive debt service burden on debtor countries. This section requires banking institutions, in connection with the restructuring of an international loan, to amortize any fee exceeding the administrative cost of the restructuring over the effective life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) deals with all international loans and requires the federal banking agencies to promulgate regulations for accounting for agency, commitment, management and other fees in connection with such loans to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

The Board's current regulation provides a separate accounting treatment for each type of fee charged by banking institutions in connection with their international lending. When ILSA was enacted in 1983 and the current regulation on accounting for international loan fees was promulgated on March 29, 1984, Congress and the federal banking agencies considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting principles in this area. Since that time, the Financial Accounting Standards Board (FASB) has revised the GAAP rules for fee accounting for international loans in a manner that accommodates the specific requirements of section 906 of ILSA. In order to reduce the regulatory burden on banking institutions, and simplify its regulations, the Board proposes to eliminate from the revised version of Subpart D the requirements as to the particular accounting method to be followed in accounting for fees on international loans and to require instead that institutions follow GAAP in accounting for such fees. The Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency have revised their regulations to eliminate the requirements as to the particular accounting method to be followed in accounting for fees on international loans and to require instead that banking institutions follow GAAP in accounting for such fees. In the event that the FASB changes the GAAP rules on fee accounting for international loans, the Board will reexamine its regulation in light of ILSA to assess the need for a revision to the regulation.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an initial regulatory flexibility analysis with any notice of proposed rulemaking. No analysis is required, however, if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small business entities. 5 U.S.C. 605(b). A description of the reasons why the action by the agency is being considered and a statement of the objectives of, and the legal basis for, the proposed rule are contained in the supplementary information above. As described more fully above, the proposed rule revises accounting mechanisms for fees associated with international loans and harmonizes their treatment with accounting principles set forth in other regulations. Both the underlying regulation and the rule proposed herein primarily affect financial institutions engaged in significant international loan transactions, and the overall impact of the proposed rule will be to reduce regulatory burden. Accordingly, pursuant to 5 U.S.C. 605(b), the Board hereby certifies that the rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The collections of information associated with this proposed rulemaking are found in 12 CFR 211.43 and 211.44. This information is required to evidence compliance with the requirements of Regulation K and the International Lending Supervision Act. The respondents/recordkeepers are for-profit financial institutions, including small businesses.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The information on the allocated transfer risk reserve requested in 211.43 is collected in the Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036), the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128), and the Report of Condition for Edge and Agreement Corporations (FR 2886B; OMB No. 7100–0086). The proposed rule would not change the burden associated with these reports. The information requested in 211.44 on international assets is collected in the Country Exposure Reports (FFIEC 009/009a; OMB No. 7100–0035) and the burden for this report also remains unchanged.

Comments are invited on: a. whether the collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collections, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Mary M. West, Chief, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0036, 7100–0128, 7100–0086, or 7100–0035), Washington, DC 20503.

Solicitation of Comments Regarding Use of "Plain Language"

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the proposed rule easier to understand, including answers to the following questions:

(1) Has the Board organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If so, which language requires clarification?

(4) Would a different format (with respect to grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

List of Subjects in 12 CFR Part 211

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

For the reasons set out in the preamble, the Board proposes to amend 12 CFR part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

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.*, 3109 *et seq.*

2. Sections 211.41 through 211.45 are revised to read as follows:

§ 211.41 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX, 97 Stat. 1153) (International Lending Supervision Act); the Federal Reserve Act (12 U.S.C. 221 *et seq.*) (FRA), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) (BHC Act).

(b) *Purpose and scope.* This subpart is issued in furtherance of the purposes of the International Lending Supervision Act. It applies to State banks that are members of the Federal Reserve System (State member banks); corporations organized under section 25(A) of the FRA (12 U.S.C. 611 through 631) (Edge Corporations); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601 through 604a) (Agreement Corporations); and bank holding companies (as defined in section 2 of the BHC Act (12 U.S.C. 1841(a)) but not including a bank holding company that is a foreign banking organization as defined in § 211.21(n).

§ 211.42 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means a State member bank; bank holding company; Edge Corporation and Agreement Corporation engaged in banking. Banking institution does not include a foreign banking organization as defined in § 211.21(n).

(c) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(d) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC No. 009).

(e) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC Nos. 031 and 041) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(f) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or

restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(g) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

§ 211.43 Allocated transfer risk reserve.

(a) *Establishment of allocated transfer risk reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the Board in accordance with this section.

(b) *Procedures and standards*—(1) *Joint agency determination.* At least annually, the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR*—(i) *Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(*1*) Such obligors have failed to make full interest payments on external indebtedness; or

(*2*) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(*3*) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.* (A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(*1*) The length of time the quality of the asset has been impaired;

(*2*) Recent actions taken to restore debt service capability;

(*3*) Prospects for restored asset quality; and

(*4*) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Board notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the Board shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR established for specified assets may be reduced.

(c) *Accounting treatment of ATRR*—(1) *Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Loan and Lease Losses, and shall deduct the ATRR from ''gross loans and leases'' to arrive at ''net loans and leases.'' The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC Nos. 031 and 041). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the ''Instructions to Consolidated Financial Statements for Bank Holding Companies'' (Form F.R. Y–9). Edge and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge and Agreement Corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Loan and Lease Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset; provided, that only those international assets that may be charged to the Allowance for Loan and Lease Losses pursuant to generally accepted accounting principles may be written down by a charge to the Allowance for Loan and Lease Losses. However, the Allowance for Loan and Lease Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the Board or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 211.44 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98–181, 97 Stat. 1153) (ILSA), a banking institution shall submit to the Board, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the Board information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the Board on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the Federal banking agencies may include changes to existing reporting forms (such as the Country Exposure Report, form FFIEC No. 009) or such other requirements as the Federal banking agencies deem appropriate. The Federal banking agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the Federal banking

agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of authority*. Nothing contained in this rule shall preclude the Board from requiring from a banking institution such additional or more frequent information on the institution's holding of international assets as the Board may consider necessary.

§ 211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans*. No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment*. Subject to paragraph (a) of this section, banking institutions shall account for fees on international loans in accordance with generally accepted accounting principles.

By order of the Board of Governors of the Federal Reserve System, October 18, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–26731 Filed 10–25–01; 8:45 am]

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Federal Register

Friday,
October 26, 2001

Part III

Department of the Treasury

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Designations of Terrorism–Related Blocked Persons; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Designations of Terrorism-Related Blocked Persons

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending appendix A to 31 CFR chapter V by adding the names of 45 individuals and 21 entities who are listed on the annex to Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or have been designated pursuant to Executive Order 13224 as blocked persons and by amending the notes to the appendices to 31 CFR chapter V to reflect the revisions to appendix A.

DATES: This amendment to the CFR is effective October 24, 2001. With regard to those persons named in its annex, Executive Order 13224 was effective at 12:01 a.m. eastern daylight time on September 24, 2001. The determinations made by the Secretary of State and the Secretary of the Treasury were effective at 8:00 a.m. on October 12, 2001.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control (''OFAC'').

On September 23, 2001, President Bush issued Executive Order 13224 (the ''Order'') imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order. This final rule adds those individuals and entities, along with additional identifying information, to appendix A.

This final rule also adds to appendix A 8 individuals who, pursuant to subsection 1(b) of the Order, have been determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

This final rule also adds to appendix A 25 individuals and 6 entities that, pursuant to subsections 1(c) and 1(d) of the Order, have been determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General: to be owned or controlled by, or to act for or on behalf of, persons listed on the annex to the Order or designated pursuant to subsection 1(b), 1(c), or 1(d)(i) of the Order; to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, acts of terrorism or persons listed on the annex or designated pursuant to the Order; or to be otherwise associated with persons listed on the annex to the Order or designated pursuant to subsection 1(b), 1(c), or (1)(d)(i) of the Order.

All property and interests in property of these listed persons that are in the United States, that come within the United States, or that come within the possession or control of United States persons, including their overseas branches, are blocked. All transactions by U.S. persons or within the United States in property or interests in property of these listed persons are prohibited unless licensed by the Office of Foreign Assets Control or exempted by statute.

OFAC is also amending note 6 to the notes to the appendices to 31 CFR chapter V to reflect the revisions to appendix A.

For those persons named in its annex, Executive Order 13224 was effective at 12:01 a.m. eastern daylight time on September 23, 2001. Designation of other persons blocked pursuant to the Order by the Secretary of State or the Secretary of the Treasury were effective at 8:00 a.m. eastern daylight time on October 12, 2001. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

Because this rule involves a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301, 50 U.S.C. 1601–1651, 50 U.S.C. 1701–1706, 22 U.S.C. 287c, and E.O. 13224 of September 23, 2001, the appendices to 31 CFR chapter V are amended as set forth below:

Appendices to Chapter V

1. The notes to the appendices to 31 CFR chapter V are amended by amending note 6 to add the following entry inserted in alphabetical order to read as follows:

Notes: * * *

6. * * *

[SDGT]: Executive Order 13224, 66 FR 49079, September 25, 2001.

* * * * *

Appendix A—[Amended]

2. Appendix A to 31 CFR chapter V is amended by adding the following names inserted in alphabetical order to read as follows:

ABDALLA, Fazul (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].

ABDALLAH, Tarwat Salah (see SHIHATA, Thirwat Salah) (individual) [SDGT].

ABDEL RAHMAN (see ATWAH, Muhsin Musa Matwalli) (individual) [SDGT].

ABDUL RAHMAN (see ATWAH, Muhsin Musa Matwalli) (individual) [SDGT].

ABDULLAH, Abdullah Ahmed (a.k.a. ABU MARIAM; a.k.a. AL–MASRI,

Abu Mohamed; a.k.a. SALEH), Afghanistan (DOB 1963; POB Egypt; Citizen Egypt) (individual) [SDGT].
ABDULLAH, Sheikh Taysir (see ATIF, Muhammad) (individual) [SDT] [SDGT].
ABDUREHMAN, Ahmed Mohammed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
ABU ABDALLAH (see AL–IRAQI, Abd al-Hadi) (individual) [SDGT].
ABU FATIMA (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
ABU HAFS (see ATIF, Muhammad) (individual) [SDT] [SDGT].
ABU HAFS THE MAURITANIAN (a.k.a. AL–SHANQITI, Khalid; a.k.a. AL–WALID, Mafouz Walad; a.k.a. AL–WALID, Mahfouz Ould; a.k.a. SLAHI, Mahamedou Ould) (DOB 1 Jan 1975) (individual) [SDGT].
ABU ISLAM (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
ABU ISMAIL (see UTHMAN, Omar Mahmoud) (individual) [SDGT].
ABU KHADIIJAH (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
ABU MARIAM (see ABDULLAH, Abdullah Ahmed) (individual) [SDGT].
ABU OMRAN (see AL–MUGHASSIL, Ahmad Ibrahim) (individual) [SDGT].
ABU SAYYAF GROUP (a.k.a. AL HARAKAT AL ISLAMIYYA) [FTO] [SDGT].
ABU SITTA, Subhi (see ATIF, Muhammad) (individual) [SDT] [SDGT].
ABU UMAR, Abu Omar (see UTHMAN, Omar Mahmoud) [SDGT].
ABU ZUBAIDA (see ABU ZUBAYDAH) (individual) [SDGT].
ABU ZUBAYDAH (a.k.a. ABU ZUBAIDA; a.k.a. AL-WAHAB, Abd Al-Hadi; a.k.a. HUSAIN, Zain Al-Abidin Muhahhad; a.k.a. HUSAYN, Zayn al-Abidin Muhammad; a.k.a. TARIQ) (DOB 12 Mar 1971; POB Riyadh, Saudi Arabia) (individual) [SDGT].
ADBALLAH, Fazul (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
AGHA, Haji Abdul Manan (a.k.a. SAIYID, Abd Al-Man'am), Pakistan (individual) [SDGT].
AH HAQ, Dr. Amin (see AL-HAQ, Amin) (individual) [SDGT].
AHMAD, Abu Bakr (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
AHMAD, Mufti Rasheed (see LADEHYANOY, Mufti Rashid Ahmad) (individual) [SDGT].
AHMAD, Mustafa Muhammad (see SAI'ID, Shaykh) (individual) [SDGT].
AHMAD, Tariq Anwar al-Sayyid (a.k.a. FARAG, Hamdi Ahmad; a.k.a. FATHI, Amr Al-Fatih) (DOB 15 Mar 1963; POB Alexandria, Egypt) (individual) [SDGT].
AHMED, A. (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
AHMED, Abubakar (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
AHMED, Abubakar K. (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
AHMED, Abubakar Khalfan (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
AHMED, Abubakary K. (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
AHMED, Ahmed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
AHMED, Ahmed Khalfan (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
AHMED HAMED (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
AHMED THE EGYPTIAN (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
AHMED THE TALL (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
''AHMED THE TANZANIAN'' (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
AIADI, Ben Muhammad (see BIN MUHAMMAD, Ayadi Chafiq) (individual) [SDGT].
AIADY, Ben Muhammad (see BIN MUHAMMAD, Ayadi Chafiq) (individual) [SDGT].
AIAI (see AL-ITIHAAD AL-ISLAMIYA) [SDGT].
AISHA, Abu (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
AL HARAKAT AL ISLAMIYYA (see ABU SAYYAF GROUP) [FTO] [SDGT].
AL MASRI, Abd Al Wakil (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
AL QA'IDA (see AL QAIDA) [SDT] [FTO] [SDGT].
AL QAEDA (see AL QAIDA) [SDT] [FTO] [SDGT].
AL QAIDA (a.k.a. ISLAMIC ARMY; a.k.a. ''THE BASE''; a.k.a. AL QA'IDA; a.k.a. AL QAEDA; a.k.a. INTERNATIONAL FRONT FOR FIGHTING JEWS AND CRUSADES; a.k.a. ISLAMIC ARMY FOR THE LIBERATION OF HOLY SITES; a.k.a. ISLAMIC SALVATION FOUNDATION; a.k.a. THE GROUP FOR THE PRESERVATION OF THE HOLY SITES; a.k.a. THE ISLAMIC ARMY FOR THE LIBERATION OF THE HOLY PLACES; a.k.a. THE WORLD ISLAMIC FRONT FOR JIHAD AGAINST JEWS AND CRUSADERS; a.k.a. USAMA BIN LADEN NETWORK; a.k.a. USAMA BIN LADEN ORGANIZATION) [SDT] [FTO] [SDGT].
AL RASHEED TRUST (see AL RASHID TRUST) [SDGT].
AL RASHID TRUST (a.k.a. AL RASHEED TRUST; a.k.a. AL-RASHEED TRUST; a.k.a. AL-RASHID TRUST), Kitab Ghar, 4 Dar-el-Iftah, Nazimabad, Karachi, Pakistan; Jamia Masjid, Sulaiman Park, Begum Pura, Lahore, Pakistan; Office Dha'rb-i-M'unin, opposite Khyber Bank, Abbottabad Road, Mansehra, Pakistan; Office Dha'rb-i-M'unin, Z.R. Brothers, Katchehry Road, Chowk Yadgaar, Peshawar, Pakistan; Office Dha'rb-i-M'unin, Room no. 3, Third Floor, Moti Plaza, near Liaquat Bagh, Murree Road, Rawalpindi, Pakistan; Office Dha'rb-i-M'unin, Top Floor, Dr. Dawa Khan Dental Clinic Surgeon, Main Baxar, Mingora, Swat, Pakistan (Operations in Afghanistan: Herat, Jalalabad, Kabul, Kandahar, Mazar Sharif. Also operations in: Kosovo, Chechnya) [SDGT].
AL SUDANI, Abu Seif (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
AL TANZANI, Ahmad (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
AL WAFA (see WAFA HUMANITARIAN ORGANIZATION) [SDGT].
AL WAFA ORGANIZATION (see WAFA HUMANITARIAN ORGANIZATION) [SDGT].
AL ZAWAHIRI, Dr. Ayman (see AL-ZAWAHIRI, Ayman) (individual) [SDT] [SDGT].
AL-'ADIL, Saif (see AL-ADL, Sayf) (individual) [SDGT].
AL-ADL, Sayf (a.k.a. AL-'ADIL, Saif) (DOB 1963; POB Egypt) (individual) [SDGT].
AL-AHDAL, Mohammad Hamdi Sadiq (see AL-HAMATI, Muhammad) (individual) [SDGT].
AL-AMRIKI, Abu-Ahmad (see HIJAZI, Riad) (individual) [SDGT].
AL-FILISTINI, Abu Qatada (see UTHMAN, Omar Mahmoud) (individual) [SDGT].
AL-HAMATI, Muhammad (a.k.a. AL-AHDAL, Mohammad Hamdi Sadiq; a.k.a. AL-MAKKI, Abu Asim), Yemen (individual) [SDGT].
AL-HAMATI SWEETS BAKERIES, Al-Mukallah, Hadhramawt Governorate, Yemen [SDGT].
AL-HAQ, Amin (a.k.a. AMIN, Muhammad; a.k.a. AH HAQ, Dr. Amin; a.k.a. UL-HAQ, Dr. Amin) (DOB 1960; POB Nangahar Province, Afghanistan) (individual) [SDGT].
AL-HAWEN, Abu-Ahmad (see HIJAZI, Riad) (individual) [SDGT].
AL-HOURI, Ali Saed Bin Ali (see EL-HOORIE, Ali Saed Bin Ali) (individual) [SDGT].

AL-IRAQI, Abd al-Hadi (a.k.a. ABU ABDALLAH; a.k.a. AL-IRAQI, Abdal al-Hadi) (individual) [SDGT].
AL-IRAQI, Abdal al-Hadi (see AL-IRAQI, Abd al-Hadi) (individual) [SDGT].
AL-ITIHAAD AL-ISLAMIYA (a.k.a. AIAI) [SDGT].
AL-JADAWI, Saqar (DOB 1965) (individual) [SDGT].
AL-JAMA'AH AL-ISLAMIYAH AL-MUSALLAH (see ARMED ISLAMIC GROUP) [FTO] [SDGT].
AL-JIHAD (a.k.a. EGYPTIAN AL-JIHAD; a.k.a. EGYPTIAN ISLAMIC JIHAD; a.k.a. JIHAD GROUP; a.k.a. NEW JIHAD) [SDT] [FTO] [SDGT].
AL-KADR, Ahmad Sa'id (a.k.a. AL-KANADI, Abu Abd Al-Rahman) (DOB 01 Mar 1948; POB Cairo, Egypt) (individual) [SDGT].
AL-KANADI, Abu Abd Al-Rahman (see AL-KADR, Ahmad Sa'id) (individual) [SDGT].
AL-KINI, Usama (see MSALAM, Fahid Mohammed Ally) (individual) [SDGT].
AL-LIBI, Anas (see AL-LIBY, Anas) (individual) [SDGT].
AL-LIBI, Ibn Al-Shaykh (individual) [SDGT].
AL-LIBY, Anas (a.k.a. AL-LIBI, Anas; a.k.a. AL-RAGHIE, Nazih; a.k.a. AL-RAGHIE, Nazih Abdul Hamed; a.k.a. AL-SABAI, Anas), Afghanistan (DOB 30 Mar 1964; alt. DOB 14 May 1964; POB Tripoli, Libya; Citizen Libya) (individual) [SDGT].
AL-MAGHRIBI, Rashid (see HIJAZI, Riad) (individual) [SDGT].
AL-MAKKI, Abu Asim (see AL-HAMATI, Muhammad) (individual) [SDGT].
AL-MASRI, Abu Hafs (see ATIF, Muhammad) (individual) [SDT] [SDGT].
AL-MASRI, Abu Mohamed (see ABDULLAH, Abdullah Ahmed) (individual) [SDGT].
AL-MASRI, Ahmad (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
AL-MUGHASSIL, Ahmad Ibrahim (a.k.a. AL-MUGHASSIL, Ahmed Ibrahim; a.k.a. ABU OMRAN) (DOB 26 Jun 1967; POB Qatif—Bab al Shamal, Saudi Arabia; Citizen Saudi Arabia) (individual) [SDGT].
AL-MUGHASSIL, Ahmed Ibrahim (see AL-MUGHASSIL, Ahmad Ibrahim) (individual) [SDGT].
AL-MUHAJIR, Abdul Rahman (see ATWAH, Muhsin Musa Matwalli) (individual) [SDGT].
AL-NAMER, Mohammed K.A. (see ATWAH, Muhsin Musa Matwalli) (individual) [SDGT].
AL-NASSER, Abdelkarim Hussein Mohamed (POB Al Ihsa, Saudi Arabia; Citizen Saudi Arabia) (individual) [SDGT].
AL-NUBI, Abu (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
AL-NUR HONEY CENTER (see AL-NUR HONEY PRESS SHOPS) [SDGT].
AL-NUR HONEY PRESS SHOPS (a.k.a. AL-NUR HONEY CENTER), Sanaa, Yemen [SDGT].
AL-QADI, Yasin (a.k.a. KADI, Shaykh Yassin Abdullah; a.k.a. KAHDI, Yasin), Jeddah, Saudi Arabia (individual) [SDGT]
AL-RAGHIE, Nazih (see AL-LIBY, Anas) (individual) [SDGT].
AL-RAGHIE, Nazih Abdul Hamed (see AL-LIBY, Anas) (individual) [SDGT].
AL-RASHEED TRUST (see AL RASHID TRUST) [SDGT].
AL-RASHID TRUST (see AL RASHID TRUST) [SDGT].
AL-SABAI, Anas (see AL-LIBY, Anas) (individual) [SDGT].
AL-SHAHID, Abu-Ahmad (see HIJAZI, Riad) (individual) [SDGT].
AL-SHANQITI, Khalid (see ABU HAFS THE MAURITANIAN) (individual) [SDGT].
AL-SHARIF, Sa'd (DOB 1969; POB Saudi Arabia) (individual) [SDGT].
AL-SHIFA' HONEY PRESS FOR INDUSTRY AND COMMERCE, P.O. Box 8089, Al-Hasabah, Sanaa, Yemen; By the Shrine Next to the Gas Station, Jamal Street, Ta'iz, Yemen; Al-rudh Square, Khur Maksar, Aden, Yemen; Al-Nasr Street, Doha, Qatar [SDGT].
AL-SURIR, Abu Islam (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
AL-WAHAB, Abd Al-Hadi (see ABU ZUBAYDAH) (individual) [SDGT].
AL-WALID, Mafouz Walad (see ABU HAFS THE MAURITANIAN) (individual) [SDGT].
AL-WALID, Mahfouz Ould (see ABU HAFS THE MAURITANIAN) (individual) [SDGT].
AL-YACOUB, Ibrahim Salih Mohammed (DOB 16 Oct 1966; POB Tarut, Saudi Arabia; Citizen Saudi Arabia) (individual) [SDGT].
AL-ZAWAHIRI, Aiman Muhammad Rabi (see AL-ZAWAHIRI, Ayman) (individual) [SDT] [SDGT].
AL-ZAWAHIRI, Ayman (a.k.a. AL ZAWAHIRI, Dr. Ayman; a.k.a. AL-ZAWAHIRI, Aiman Muhammad Rabi; a.k.a. SALIM, Ahmad Fuad), Operational and Military Leader of JIHAD GROUP (DOB 19 Jun 1951; POB Giza, Egypt; Passport No. 1084010 (Egypt); alt. Passport No. 19820215) (individual) [SDT] [SDGT].
ALI, Ahmed Khalfan (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
ALI, Ahmed Mohammed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
ALI, Ahmed Mohammed Hamed (a.k.a. ABDUREHMAN, Ahmed Mohammed; a.k.a. ABU FATIMA; a.k.a. ABU ISLAM; a.k.a. ABU KHADIIJAH; a.k.a. AHMED, Ahmed; a.k.a. AHMED HAMED; a.k.a. Ahmed The Egyptian; a.k.a. ALI, Hamed; a.k.a. ALI, Ahmed Mohammed; a.k.a. AL-MASRI, Ahmad; a.k.a. AL-SURIR, Abu Islam; a.k.a. HEMED, Ahmed; a.k.a. SHIEB, Ahmed; a.k.a. SHUAIB), Afghanistan (DOB 1965; POB Egypt; Citizen Egypt) (individual) [SDGT].
ALI, Fadel Abdallah Mohammed (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
ALI, Hamed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
ALI, Hassan (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
ALI, Salem (see MOHAMMED, Khalid Shaikh) (individual) [SDGT].
ALLY, Ahmed (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
ALLY, Fahid Mohammed (see MSALAM, Fahid Mohammed Ally) (individual) [SDGT].
AMIN, Muhammad (see AL-HAQ, Amin) (individual) [SDGT].
ANIS, Abu (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
ARMED ISLAMIC GROUP (a.k.a. AL-JAMA'AH AL-ISLAMIYAH AL-MUSALLAH; a.k.a. GIA; a.k.a. GROUPEMENT ISLAMIQUE ARME) [FTO] [SDGT].
ARMY OF MOHAMMED (see JAISH-I-MOHAMMED) [SDGT].
ASBAT AL-ANSAR [SDGT].
ATEF, Muhammad (see ATIF, Muhammad) (individual) [SDT] [SDGT].
ATIF, Mohamed (see ATIF, Muhammad) (individual) [SDT] [SDGT].
ATIF, Muhammad (a.k.a. AL-MASRI, Abu Hafs; a.k.a. ABDULLAH, Sheikh Taysir; a.k.a. ABU HAFS; a.k.a. ABU SITTA, Subhi; a.k.a. ATEF, Muhammad; a.k.a. ATIF, Mohamed; a.k.a. EL KHABIR, Abu Hafs el Masry; a.k.a. TAYSIR) (DOB 1951; alt. DOB 1956 alt. DOB 1944; POB Alexandria, Egypt) (individual) [SDT] [SDGT].
ATWA, Ali (a.k.a. BOUSLIM, Ammar Mansour; a.k.a. SALIM, Hassan Rostom), Lebanon (DOB 1960; POB Lebanon; Citizen Lebanon) (individual) [SDGT].
ATWAH, Muhsin Musa Matwalli (a.k.a. ABDEL RAHMAN; a.k.a. ABDUL RAHMAN; a.k.a. AL-MUHAJIR, Abdul Rahman; a.k.a. AL-NAMER, Mohammed K.A.), Afghanistan (DOB 19 Jun 1964; POB Egypt; Citizen Egypt) (individual) [SDGT].
AYADI CHAFIK, Ben Muhammad (see BIN MUHAMMAD, Ayadi Chafiq) (individual) [SDGT].

AYADI SHAFIQ, Ben Muhammad (see BIN MUHAMMAD, Ayadi Chafiq) (individual) [SDGT].
BAHAMAD (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
BAHAMAD, Sheik (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
BAHAMADI, Sheikh (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
BAKR, Abu (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
''THE BASE'' (see AL QAIDA) [SDT] [FTO] [SDGT].
BIN KHALID, Fahd Bin Adballah (see MOHAMMED, Khalid Shaikh) (individual) [SDGT].
BIN LADEN, Osama (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN LADEN, Usama (a.k.a. BIN LADIN, Usama bin Muhammad bin Awad; a.k.a. BIN LADEN, Osama; a.k.a. BIN LADIN, Osama; a.k.a. BIN LADIN, Osama bin Muhammad bin Awad; a.k.a. BIN LADIN, Usama) (DOB 30 Jul 57; alt. DOB 1958; POB Jeddah, Saudi Arabia; alt. POB Yemen) (individual) [SDT] [SDGT].
BIN LADIN, Osama (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN LADIN, Osama bin Muhammad bin Awad (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN LADIN, Usama (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN LADIN, Usama bin Muhammad bin Awad (see BIN LADEN, Usama) (individual) [SDT] [SDGT].
BIN MARWAN, Bilal (DOB 1947) (individual) [SDGT].
BIN MUHAMMAD, Ayadi Chafiq (a.k.a. AYADI SHAFIQ, Ben Muhammad; a.k.a. AYADI CHAFIK, Ben Muhammad; a.k.a. AIADI, Ben Muhammad; a.k.a. AIADY, Ben Muhammad), Helene Meyer Ring 10–1415–80809, Munich, Germany; 129 Park Road, NW8, London, England; 28 Chaussee de Lille, Mouscron, Belgium; Darvingasse 1/2/58–60, Vienna, Austria; Tunisia (DOB 21 Jan 1963; POB Safais (Sfax), Tunisia) (individual) [SDGT].
BOUSLIM, Ammar Mansour (see ATWA, Ali) (individual) [SDGT].
DARKAZANLI, Mamoun, Uhlenhorster Weg 34 11, Hamburg, 22085 Germany (DOB 4 Aug 1958; POB Aleppo, Syria; Passport No. 1310636262 (Germany)) (individual) [SDGT].
DARKAZANLI COMPANY (see MAMOUN DARKAZANLI IMPORT-EXPORT COMPANY) [SDGT].
DARKAZANLI EXPORT-IMPORT SONDERPOSTEN (see MAMOUN DARKAZANLI IMPORT-EXPORT COMPANY) [SDGT].
EGYPTIAN AL-JIHAD (see AL-JIHAD) [SDT] [FTO] [SDGT].
EGYPTIAN ISLAMIC JIHAD (see AL-JIHAD) [SDT] [FTO] [SDGT].
EL KHABIR, Abu Hafs el Masry (see ATIF, Muhammad) (individual) [SDT] [SDGT].
EL-HOORIE, Ali Saed Bin Ali (a.k.a. AL-HOURI, Ali Saed Bin Ali; a.k.a. EL-HOURI, Ali Saed Bin Ali) (DOB 10 Jul 1965; alt. DOB 11 Jul 1965; POB El Dibabiya, Saudi Arabia; Citizen Saudi Arabia) (individual) [SDGT].
EL-HOURI, Ali Saed Bin Ali (see EL-HOORIE, Ali Saed Bin Ali) (individual) [SDGT].
ELBISHY, Moustafa Ali (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
FADHIL, Mustafa Mohamed (a.k.a. ELBISHY, Moustafa Ali; a.k.a. MOHAMMED, Mustafa; a.k.a. FAZUL, Mustafa; a.k.a. HUSSEIN; a.k.a. ALI, Hassan; a.k.a. FADIL, Mustafa Muhamad; a.k.a. AL MASRI, Abd Al Wakil; a.k.a. ANIS, Abu; a.k.a. YUSSRR, Abu; a.k.a. ALI, Hassan; a.k.a. MAN, Nu; a.k.a. KHALID; a.k.a. JIHAD, Abu; a.k.a. AL-NUBI, Abu) (DOB 23 Jun 1976; POB Cairo, Egypt; Citizen Egypt; alt. Citizen Kenya; Kenyan ID No. 12773667; Serial No. 201735161) (individual) [SDGT].
FADIL, Mustafa Muhamad (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
FARAG, Hamdi Ahmad (see AHMAD, Tariq Anwar al-Sayyid) (individual) [SDGT].
FATHI, Amr Al-Fatih (see AHMAD, Tariq Anwar al-Sayyid) (individual) [SDGT].
FAZUL, Abdalla (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Abdallah (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Abdallah Mohammed (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Haroon (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Harun (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
FAZUL, Mustafa (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
''FOOPIE'' (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
''FUPI'' (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
GARBAYA, Ahmed (see IZZ-AL-DIN, Hasan) (individual) [SDGT].
GHAILANI, Abubakary Khalfan Ahmed (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
GHAILANI, Ahmed (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
GHAILANI, Ahmed Khalfan (a.k.a. GHILANI, Ahmad Khalafan; a.k.a. AHMED, Ahmed Khalfan; a.k.a. AHMED, Abubakar K.; a.k.a. AHMED, Abubakary K.; a.k.a. AHMED, Abubakar; a.k.a. AHMAD, Abu Bakr; a.k.a. AHMED, A.; a.k.a. KHALFAN, Ahmed; a.k.a. ALI, Ahmed Khalfan; a.k.a. AHMED, Abubakar Khalfan; a.k.a. GHAILANI, Ahmed; a.k.a. AL TANZANI, Ahmad; a.k.a. KHABAR, Abu; a.k.a. BAKR, Abu; a.k.a. GHAILANI, Abubakary Khalfan Ahmed; a.k.a. HUSSEIN, Mahafudh Abubakar Ahmed Abdallah; a.k.a. MOHAMMED, Shariff Omar; a.k.a. ''FOOPIE''; a.k.a. ''FUPI''; a.k.a. ''AHMED THE TANZANIAN'') (DOB 14 Mar 1974; alt. DOB 13 Apr 1974; alt. DOB 14 Apr 1974; alt. DOB 1 Aug 1970; POB Zanzibar, Tanzania; Citizen Tanzania) (individual) [SDGT].
GHILANI, Ahmad Khalafan (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
GIA (see ARMED ISLAMIC GROUP) [FTO] [SDGT].
THE GROUP FOR THE PRESERVATION OF THE HOLY SITES (see AL QAIDA) [SDT] [FTO] [SDGT].
GROUPEMENT ISLAMIQUE ARME (see ARMED ISLAMIC GROUP) [FTO] [SDGT].
GSPC (see SALAFIST GROUP FOR CALL AND COMBAT) [SDGT].
HARAKAT UL-ANSAR (see HARAKAT UL-MUJAHIDIN) [FTO] [SDGT].
HARAKAT UL-MUJAHIDEEN (see HARAKAT UL-MUJAHIDIN) [FTO] [SDGT].
HARAKAT UL-MUJAHIDIN (a.k.a. HARAKAT UL-MUJAHIDEEN; a.k.a. HARAKAT UL-ANSAR; a.k.a. HUA; a.k.a. HUM) [FTO] [SDGT].
HAROON (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
HAROUN, Fadhil (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
HARUN (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
HASANAYN, Nasr Fahmi Nasr (see SALAH, Muhammad) (individual) [SDGT].
HEMED, Ahmed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
HENIN, Ashraf Refaat Nabith (see MOHAMMED, Khalid Shaikh) (individual) [SDGT].
HIJAZI, Raed M. (see HIJAZI, Riad) (individual) [SDGT].
HIJAZI, Riad (a.k.a. HIJAZI, Raed M.; a.k.a. AL-HAWEN, Abu-Ahmad; a.k.a. AL-MAGHRIBI, Rashid; a.k.a. AL-AMRIKI, Abu-Ahmad; a.k.a. AL-SHAHID, Abu-Ahmad), Jordan (DOB 1968; POB California, U.S.A.; SSN 548–91–5411) (individual) [SDGT].
HUA (see HARAKAT UL-MUJAHIDIN) [FTO] [SDGT].
HUM (see HARAKAT UL-MUJAHIDIN) [FTO] [SDGT].
HUSAIN, Zain Al-Abidin Muhahhad (see ABU ZUBAYDAH) (individual) [SDGT].
HUSAYN, Zayn al-Abidin Muhammad (see ABU ZUBAYDAH) (individual) [SDGT].
HUSSEIN (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
HUSSEIN, Mahafudh Abubakar Ahmed Abdallah (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
IMU (see ISLAMIC MOVEMENT OF UZBEKISTAN) [FTO] [SDGT].

INTERNATIONAL FRONT FOR FIGHTING JEWS AND CRUSADES (see AL QAIDA) [SDT] [FTO] [SDGT].
ISLAMIC ARMY (see AL QAIDA) [SDT] [FTO] [SDGT].
THE ISLAMIC ARMY FOR THE LIBERATION OF THE HOLY PLACES (see AL QAIDA) [SDT] [FTO] [SDGT].
ISLAMIC ARMY FOR THE LIBERATION OF HOLY SITES (see AL QAIDA) [SDT] [FTO] [SDGT].
ISLAMIC ARMY OF ADEN [SDGT].
ISLAMIC MOVEMENT OF UZBEKISTAN (a.k.a. IMU) [FTO] [SDGT].
ISLAMIC SALVATION FOUNDATION (see AL QAIDA) [SDT] [FTO] [SDGT].
IZZ-AL-DIN, Hasan (a.k.a. GARBAYA, Ahmed; a.k.a. SA-ID; a.k.a. SALWWAN, Samir), Lebanon (DOB 1963; POB Lebanon; Citizen Lebanon) (individual) [SDGT].
JAISH-I-MOHAMMED (a.k.a. ARMY OF MOHAMMED), Pakistan [SDGT].
JAM'IYAT AL TA'AWUN AL ISLAMIYYA (see JAM'YAH TA'AWUN AL-ISLAMIA) [SDGT].
JAM'YAH TA'AWUN AL-ISLAMIA (a.k.a. JAM'IYAT AL TA'AWUN AL ISLAMIYYA; a.k.a. JIT; a.k.a. SOCIETY OF ISLAMIC COOPERATION), Qandahar City, Afghanistan [SDGT].
JIHAD, Abu (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
JIHAD GROUP (see AL-JIHAD) [SDT] [FTO] [SDGT].
JIT (see JAM'YAH TA'AWUN AL-ISLAMIA) [SDGT].
KADI, Shaykh Yassin Abdullah (see AL-QADI, Yasin) (individual) [SDGT].
KAHDI, Yasin (see AL-QADI, Yasin) (individual) [SDGT].
KHABAR, Abu (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
KHALFAN, Ahmed (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
KHALID (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
LADEHYANOY, Mufti Rashid Ahmad (a.k.a. LUDHIANVI, Mufti Rashid Ahmad; a.k.a. AHMAD, Mufti Rasheed; a.k.a. WADEHYANOY, Mufti Rashid Ahmad), Karachi, Pakistan (individual) [SDGT].
LE GROUPE SALAFISTE POUR LA PREDICATION ET LE COMBAT (see SALAFIST GROUP FOR CALL AND COMBAT) [SDGT].
LIBYAN ISLAMIC FIGHTING GROUP [SDGT].
LUDHIANVI, Mufti Rashid Ahmad (see LADEHYANOY, Mufti Rashid Ahmad) (individual) [SDGT].
LUQMAN, Abu (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
MAKHTAB AL-KHIDAMAT/AL KIFAH, House no. 125, Street 54, Phase II, Hayatabad, Peshawar, Pakistan [SDGT].
MAMOUN DARKAZANLI IMPORT-EXPORT COMPANY (a.k.a. DARKAZANLI COMPANY; a.k.a. DARKAZANLI EXPORT-IMPORT SONDERPOSTEN), Uhlenhorsterweg 34 11, Hamburg, Germany [SDGT].
MAN, Nu (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
MOHAMMED, Fazul (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
MOHAMMED, Fazul Abdilahi (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
MOHAMMED, Fazul Abdullah (a.k.a. FAZUL, Abdallah; a.k.a. FAZUL, Abdalla; a.k.a. FAZUL, Abdallah Mohammed; a.k.a. MOHAMMED, Fazul Abdilahi; a.k.a. ADBALLAH, Fazul; a.k.a. ABDALLA, Fazul; a.k.a. MOHAMMED, Fazul; a.k.a. HAROON; a.k.a. HARUN; a.k.a. FAZUL, Haroon; a.k.a. FAZUL, Harun; a.k.a. MUHAMAD, Fadil Abdallah; a.k.a. HAROUN, Fadhil; a.k.a. AL SUDANI, Abu Seif; a.k.a. AISHA, Abu; a.k.a. LUQMAN, Abu; a.k.a. ALI, Fadel Abdallah Mohammed; a.k.a. MOHAMMED, Fouad) (DOB 25 Aug 1972; alt. DOB 25 Dec 1974; alt. DOB 25 Feb 1974; POB Moroni, Comoros Islands; Citizen Comoros; alt. Citizen Kenya) (individual) [SDGT].
MOHAMMED, Fouad (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
MOHAMMED, Khalid Shaikh (a.k.a. HENIN, Ashraf Refaat Nabith; a.k.a. WADOOD, Khalid Adbul; a.k.a. ALI, Salem; a.k.a. BIN KHALID, Fahd Bin Adballah) (DOB 14 Apr 1965; alt. DOB 01 Mar 1964; POB Kuwait; Citizen Kuwait) (individual) [SDGT].
MOHAMMED, Mustafa (see FADHIL, Mustafa Mohamed) (individual) [SDGT].
MOHAMMED, Shariff Omar (see GHAILANI, Ahmed Khalfan) (individual) [SDGT].
MSALAM, Fahad Ally (see MSALAM, Fahid Mohammed Ally) (individual) [SDGT].
MSALAM, Fahid Mohammed Ali (see MSALAM, Fahid Mohammed Ally) (individual) [SDGT].
MSALAM, Fahid Mohammed Ally (a.k.a. ALLY, Fahid Mohammed; a.k.a. MUSALAAM, Fahid Mohammed Ali; a.k.a. MSALAM, Fahid Mohammed Ali; a.k.a. SALEM, Fahid Muhamad Ali; a.k.a. MSALAM, Mohammed Ally; a.k.a. AL-KINI, Usama; a.k.a. MSALAM, Fahad Ally) (DOB 19 Feb 1976; POB Mombasa, Kenya; Citizen Kenya) (individual) [SDGT].
MSALAM, Mohammed Ally (see MSALAM, Fahid Mohammed Ally) (individual) [SDGT].
MUHAMAD, Fadil Abdallah (see MOHAMMED, Fazul Abdullah) (individual) [SDGT].
MUSALAAM, Fahid Mohammed Ali (see MSALAM, Fahid Mohammed Ally) (individual) [SDGT].
NEW JIHAD (see AL-JIHAD) [SDT] [FTO] [SDGT].
RABITA TRUST, Room 9A, 2nd Floor, Wahdat Road, Education Town, Lahore, Pakistan; Wares Colony, Lahore, Pakistan [SDGT].
SA-ID (see IZZ-AL-DIN, Hasan) (individual) [SDGT].
SAI'ID, Shaykh (a.k.a. AHMAD, Mustafa Muhammad) (POB Egypt) (individual) [SDGT].
SAIYID, Abd Al-Man'am (see AGHA, Haji Abdul Manan) (individual) [SDGT].
SALAFIST GROUP FOR CALL AND COMBAT (a.k.a. GSPC; a.k.a. LE GROUPE SALAFISTE POUR LA PREDICATION ET LE COMBAT) [SDGT].
SALAH, Muhammad (a.k.a. HASANAYN, Nasr Fahmi Nasr) (individual) [SDGT].
SALEH (see ABDULLAH, Abdullah Ahmed) (individual) [SDGT].
SALEM, Fahid Muhamad Ali (see MSALAM, Fahid Mohammed Ally) (individual) [SDGT].
SALIM, Ahmad Fuad (see AL-ZAWAHIRI, Ayman) (individual) [SDT] [SDGT].
SALIM, Hassan Rostom (see ATWA, Ali) (individual) [SDGT].
SALWWAN, Samir (see IZZ-AL-DIN, Hasan) (individual) [SDGT].
SHIEB, Ahmed (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
SHIHATA, Thirwat Salah (a.k.a. ABDALLAH, Tarwat Salah; a.k.a. THIRWAT, Salah Shihata; a.k.a. THIRWAT, Shahata) (DOB 29 Jun 60; POB Egypt) (individual) [SDGT].
SHUAIB (see ALI, Ahmed Mohammed Hamed) (individual) [SDGT].
SLAHI, Mahamedou Ould (see ABU HAFS THE MAURITANIAN) (individual) [SDGT].
SOCIETY OF ISLAMIC COOPERATION (see JAM'YAH TA'AWUN AL-ISLAMIA) [SDGT].
SUWEIDAN, Sheikh Ahmad Salem (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
SWEDAN, Sheikh (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
SWEDAN, Sheikh Ahmed Salem (see SWEDAN, Sheikh Ahmed Salim) (individual) [SDGT].
SWEDAN, Sheikh Ahmed Salim (a.k.a. SUWEIDAN, Sheikh Ahmad Salem; a.k.a. SWEDAN, Sheikh Ahmed Salem; a.k.a. SWEDAN, Sheikh; a.k.a.

BAHAMADI, Sheikh; a.k.a. ALLY, Ahmed; a.k.a. BAHAMAD; a.k.a. BAHAMAD, Sheik; a.k.a. Ahmed the Tall) (DOB 09 Apr 1969; alt. DOB 09 Apr 1960; POB Mombasa, Kenya; Citizen Kenya) (individual) [SDGT].

TAHA, Abdul Rahman S. (see YASIN, Abdul Rahman) (individual) [SDGT].

TAHER, Abdul Rahman S. (see YASIN, Abdul Rahman) (individual) [SDGT].

TAKFIRI, Abu ''Umr (see UTHMAN, Omar Mahmoud) (individual) [SDGT].

TARIQ (see ABU ZUBAYDAH) (individual) [SDGT].

TAYSIR (see ATIF, Muhammad) (individual) [SDT] [SDGT].

THIRWAT, Salah Shihata (see SHIHATA, Thirwat Salah) (individual) [SDGT].

THIRWAT, Shahata (see SHIHATA, Thirwat Salah) (individual) [SDGT].

UL-HAQ, Dr. Amin (see AL-HAQ, Amin) (individual) [SDGT].

UMAR, Abu Umar (see UTHMAN, Omar Mahmoud) (individual) [SDGT].

USAMA BIN LADEN NETWORK (see AL QAIDA) [SDT] [FTO] [SDGT].

USAMA BIN LADEN ORGANIZATION (see AL QAIDA) [SDT] [FTO] [SDGT].

UTHMAN, Al-Samman (see UTHMAN, Omar Mahmoud) (individual) [SDGT].

UTHMAN, Omar Mahmoud (a.k.a. ABU ISMAIL; a.k.a. ABU UMAR, Abu Omar; a.k.a. AL–FILISTINI, Abu Qatada; a.k.a. TAKFIRI, Abu 'Umr; a.k.a. UMAR, Abu Umar; a.k.a. UTHMAN, Al-Samman; a.k.a. UTHMAN, Umar), London, England (DOB 30 Dec 1960; alt. DOB 13 Dec 1960) (individual) [SDGT].

UTHMAN, Umar (see UTHMAN, Omar Mahmoud) (individual) [SDGT].

WADEHYANOY, Mufti Rashid Ahmad (see LADEHYANOY, Mufti Rashid Ahmad) (individual) [SDGT].

WADOOD, Khalid Adbul (see MOHAMMED, Khalid Shaikh) (individual) [SDGT].

WAFA AL-IGATHA AL–ISLAMIA (see WAFA HUMANITARIAN ORGANIZATION) [SDGT].

WAFA HUMANITARIAN ORGANIZATION (a.k.a. AL WAFA; a.k.a. AL WAFA ORGANIZATION; a.k.a. WAFA AL-IGATHA AL&-ISLAMIA) [SDGT].

THE WORLD ISLAMIC FRONT FOR JIHAD AGAINST JEWS AND CRUSADERS (see AL QAIDA) [SDT] [FTO] [SDGT].

YASIN, Abdul Rahman (a.k.a. TAHA, Abdul Rahman S.; a.k.a. TAHER, Abdul Rahman S.; a.k.a. YASIN, Abdul Rahman Said; a.k.a. YASIN, Aboud) (DOB 10 Apr 1960; POB Bloomington, Indiana, U.S.A.; SSN 156–92–9858 (U.S.A.); Passport No. 27082171 (U.S.A. [issued 21 Jun 1992 in Amman, Jordan]); alt. Passport No. M0887925 (Iraq); Citizen U.S.A. (individual) [SDGT].

YASIN, Abdul Rahman Said (see YASIN, Abdul Rahman) (individual) [SDGT].

YASIN, Aboud (see YASIN, Abdul Rahman) (individual) [SDGT].

YULDASHEV, Takhir (see YULDASHEV, Tohir) (individual) [SDGT].

YULDASHEV, Tohir (a.k.a. YULDASHEV, Takhir), Uzbekistan (individual) [SDGT].

YUSSRR, Abu (see FADHIL, Mustafa Mohamed) (individual) [SDGT].

ZIA, Ahmad (see ZIA, Mohammad) (individual) [SDGT].

ZIA, Mohammad, (a.k.a. ZIA, Ahmad) c/o Ahmed Shah s/o Painda Mohammad al-Karim Set, Peshawar, Pakistan; c/o Alam General Store Shop 17, Awami Market, Peshawar, Pakistan; c/o Zahir Shah s/o Murad Khan Ander Sher, Peshawar, Pakistan (individual) [SDGT].

Dated: October 16, 2001.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 16, 2001.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 01–27076 Filed 10–24–01; 11:31 am]

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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/nara005.html*. Some laws may not yet be available.

S.J. Res. 19/P.L. 107–54

Providing for the reappointment of Anne d'Harnoncourt as citizen regent of the Board of Regents of the Smithsonian Institution. (Oct. 24, 2001; 115 Stat. 270)

S.J. Res. 20/P.L. 107–55

Providing for the appointment of Roger W. Sant as citizen regent of the Board of Regents of the Smithsonian Institution. (Oct. 24, 2001; 115 Stat. 271)

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