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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN: 3206–AJ47

Basic Pay for Employees of Temporary Organizations

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations on setting pay for employees of temporary organizations established by law or Executive order. These regulations will enable agencies to determine the rate of basic pay and locality payments for employees of temporary organizations.

DATES: Effective Date: The regulations are effective on January 25, 2002.

Applicability Dates: The regulations apply on the first day of the first applicable pay period beginning on or after January 25, 2002.

Comments Date: Comments must be received on or before March 26, 2002.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email: *payleave@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Ron Genua, (202) 606–2858.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations on compensation for employees of temporary organizations established by law or Executive order. Section 1101 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Public Law 106–398, October 30, 2000), adds a new subchapter IV to chapter 31 of title 5, United States Code. Subchapter IV provides that the head of a temporary organization may make excepted service appointments of up to 3 years to fill positions of the temporary organization. The appointments may be extended for an additional 2 years consistent with regulations published by OPM. This authority is available to executive and legislative branch agencies. In addition, subchapter IV provides that, upon request by the head of a temporary organization, the head of any department or agency of the Government may detail employees on a nonreimbursable basis to the temporary organization to assist the temporary organization in carrying out its duties.

Subchapter IV defines a temporary organization as a commission, committee, board, or other organization that is established for a specific period of time, not in excess of 3 years, for the purpose of performing a specific study or other project. Such a temporary organization generally terminates upon completion of the study or project.

Subchapter IV provides OPM with authority to establish regulations to determine the rate of basic pay for employees of temporary organizations without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code. (See 5 U.S.C. 3161(d).) These interim regulations do not apply to temporary organizations established prior to October 30, 2000.

Subchapter IV also provides that the rate of basic pay for the chairman, a member, an executive director, a staff director, or other executive level position of a temporary organization may not exceed the maximum rate of basic pay established for the Senior Executive Service (SES) under section 5382 of title 5, United States Code. The rate of basic pay for other positions in a temporary organization may not exceed the maximum rate of basic pay for GS–15. However, the rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of the agency to be exceptional, exceed the maximum rate of basic pay for GS–15, but may not exceed the maximum rate of basic pay for the SES. Subchapter IV defines *basic pay* as including locality pay provided under section 5304 of title 5, United States Code.

In setting rates of basic pay for staff and other non-executive level positions, the interim regulations require that the head of a temporary organization give consideration to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. This is consistent with a parallel requirement established under regulations published by the General Services Administration for setting basic pay for advisory committee members and staff under the Federal Advisory Committee Act. (See 41 CFR 101–6.1033.) The interim regulations also require the head of a temporary organization to take into account rates of basic pay paid to Federal employees who have duties that are similar in terms of difficulty and responsibility.

The interim regulations provide General Schedule locality payments to all executive level and staff positions of temporary organizations. The regulations set maximum rates of basic pay and locality-adjusted rates of pay for employees of temporary organizations. This will make it easier to determine pay when employees move from General Schedule positions to positions in temporary organizations, and vice versa.

The compensation authority in 5 U.S.C. 3161(d) is limited to determining rates of basic pay and locality-adjusted rates of pay for employees of temporary organizations. In addition, subchapter IV provides that an employee of a temporary organization is entitled to the same benefits provided to temporary employees under title 5, United States Code. The interim regulations clarify, however, that subchapter IV provides no new independent authority for the head of a temporary organization to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific authority. For example, the law does not create any new authority for providing premium pay, bonuses, awards, leave, or benefits differently than under title 5 or any other already existing statute.

The interim regulations require that the head of a temporary organization comply with section 5504 of title 5, United States Code, including the requirement for biweekly pay periods and requirements for converting an annual rate of basic pay to a basic

hourly, daily, weekly, or biweekly rate. The regulations also require that employees of temporary organizations receive basic pay on an hourly basis. These requirements will facilitate compliance with the laws and regulations on crediting and using leave on an hourly basis, or fractions thereof.

Finally, subchapter IV provides criteria under which the head of a temporary organization may accept volunteer services without regard to section 1342 of title 31, United States Code.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective on the date of its publication in the **Federal Register**. This waiver is appropriate because the interim regulations are being published to implement changes in law that are already in effect.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending part 534 of title 5 of the Code of Federal Regulations as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 is revised to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

2. Subpart C of part 534 is added to read as follows:

Subpart C—Basic Pay for Employees of Temporary Organizations

534.301 General.
534.302 Applicability.
534.303 Basic pay for executive level positions.
534.304 Basic pay for staff positions.
534.305 Pay periods and computation of pay.

Subpart C—Basic Pay for Employees of Temporary Organizations

§ 534.301 Coverage.

This subpart provides rules for setting rates of basic pay for employees who are appointed to positions in temporary organizations in accordance with subchapter IV of chapter 31 of title 5, United States Code (5 U.S.C. 3161). Such temporary organizations are established by law or Executive order. Employees appointed under 5 U.S.C. 3161(b) are not subject to the provisions applicable to General Schedule employees covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

§ 534.302 Applicability.

The regulations in this subpart are applicable to employees of temporary organizations who are appointed and compensated under 5 U.S.C. 3161. The rates of basic pay for employees appointed under 5 U.S.C. 3161(b) must be established under the regulations in this subpart. This subpart provides rules for determining rates of basic pay and locality-adjusted rates of basic pay. This subpart does not provide authority to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific statutory authority.

§ 534.303 Basic pay for executive level positions.

(a) Rates of basic pay for executive level positions of temporary organizations may not exceed the maximum rate of basic pay established for the Senior Executive Service under 5 U.S.C. 5382. Therefore, the highest rate of basic pay for executive level positions of temporary organizations, not including any applicable locality-based comparability payment under 5 U.S.C. 5304, may not exceed the rate of basic pay for level IV of the Executive Schedule.

(b) Employees in executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay for executive level positions may not exceed the rate of basic pay for level III of the Executive Schedule.

§ 534.304 Basic pay for staff positions.

(a)(1) Rates of basic pay for staff or other non-executive level positions of temporary organizations may not exceed the maximum rate of basic pay for grade GS–15 of the General Schedule under 5 U.S.C. 5332, excluding any locality-based comparability payment under 5 U.S.C. 5304.

(2) In establishing rates of basic pay for staff and other non-executive level positions of temporary organizations, the head of a temporary organization must give consideration to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. The head of a temporary organization must also take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility.

(b) Employees in staff and other non-executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay may not exceed the locality-adjusted rate of basic pay for grade GS–15 of the General Schedule under 5 U.S.C. 5304, for the locality pay area involved.

(c) Notwithstanding the limitations in paragraphs (a) and (b) of this section, the rate of basic pay and locality-adjusted rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of a temporary organization to be exceptional, exceed the maximum rates established under those paragraphs. However, the higher payable rates may not exceed the applicable maximum rate of basic pay or locality-adjusted rate of basic pay authorized under this subpart for an executive level position.

§ 534.305 Pay periods and computation of pay.

(a) The requirements of 5 U.S.C. 5504, must be applied to employees of temporary organizations. This includes requirements for biweekly pay periods and requirements for converting an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate.

(b) Employees of temporary organizations must receive basic pay on an hourly basis.

[FR Doc. 02–1604 Filed 1–24–02; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–036–3]

Citrus Canker; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding portions of Hendry and Hillsborough Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL, due to detections of citrus canker in these areas. The interim rule imposed restrictions on the interstate movement of regulated articles from and through the quarantined areas and was necessary to prevent the spread of citrus canker into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on August 29, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective August 29, 2000, and published in the **Federal Register** on September 5, 2000 (65 FR 53528–53531, Docket No. 00–036–1), we amended the citrus canker regulations, contained in 7 CFR 301.75–1 through 301.75–16, in response to the detection of the disease in areas outside of the previously quarantined areas. On September 26, 2000, we published a correction (65 FR 57723, Docket No. 00–036–2) that clarified the description of quarantined areas contained in the interim rule. The interim rule, as corrected by that document, added portions of Hendry and Hillsborough Counties, FL, to the list of quarantined areas and expanded the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL. The interim rule imposed restrictions on the interstate movement of regulated articles from and through the quarantined areas.

Comments on the interim rule were required to be received on or before November 6, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

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

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by adding portions of Hendry and Hillsborough Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL, due to the detection of citrus canker in those areas. The interim rule imposed certain restrictions on the interstate movement of regulated articles from and through the quarantined areas. The interim rule was necessary to prevent the spread of citrus canker into noninfested areas of the United States.

In accordance with 5 U.S.C. 604 of the Regulatory Flexibility Act, we have performed a final regulatory flexibility analysis regarding the economic effects of the interim rule on small entities. The Small Business Administration (SBA) defines a firm engaged in agriculture as ''small'' if it has less than $750,000 in annual receipts.

The entities who could be affected by the interim rule include those businesses that produce, sell, process, handle, or move regulated articles, such as commercial groves, grove maintenance services, fruit transporters, fruit processors, nurseries, nursery stock dealers, fresh fruit retail stores, fruit packers, gift fruit shippers, fruit harvesting contractors, lawn maintenance businesses, and flea markets. Because the interim rule restricted the interstate movement of regulated articles from and through the quarantined areas, entities that are located within the new or expanded quarantined areas, as well as entities located outside the quarantined areas, could be affected.

The number of these entities that meet the SBA definition of a small entity is unavailable. However, it is reasonable to assume that most of these entities are small in size because the majority of the same or similar businesses in southern Florida, as well as the rest of the United States, are small by SBA standards. For example, we have identified a total of 317 commercial citrus groves in those counties in which quarantined areas were established or expanded by the interim rule. Approximately 285 of the 317 commercial citrus groves in those counties meet the SBA definition of a small entity.

Commercial citrus growers, processors, packers, and shippers within the quarantined areas will still be able to move their fruit interstate, provided that, among other things, the fruit is treated and not shipped to another citrus-producing State. Growers will have to bear the cost of treatment, but that cost is expected to be minimal. The prohibition on moving the fruit to other citrus-producing States is not expected to negatively affect entities within the quarantined areas because most States do not produce citrus and growers are expected to be able to find a ready market in non-citrus-producing States.

Alternatively, owners of commercial citrus groves whose trees were removed because of citrus canker pursuant to a public order between 1986 and 1990 or on or after September 28, 1995, may, subject to the availability of funding, receive payments to replace commercial citrus trees. Eligible commercial citrus grove owners may also, subject to the availability of funding, receive payments to recover income from production that was lost as a result of the removal of commercial citrus trees to control citrus canker. These lost production and tree replacement payments will help to reduce the economic effects of the citrus canker quarantine on affected commercial citrus growers.

The nurseries and commercial groves affected by the interim rule will be required to undergo periodic inspections. These inspections may be inconvenient, but the inspections will not result in any additional costs for the nurseries or growers because the Animal and Plant Health Inspection Service or the State of Florida will provide the services of an inspector without cost to the nursery or grower.

Fresh fruit retail stores, nurseries, and lawn maintenance companies, for the most part, operate locally; they do not typically move regulated articles outside of the State of Florida during the normal course of their business, and consumers do not generally move products purchased from those entities out of the State. The fruit sold by grocery stores and other retail food outlets is generally sold for local consumption. Retail nurseries also market their products for local consumption. Lawn maintenance businesses collect yard debris, but they do not normally transport that debris outside the State for disposal.

The fresh fruit retailers affected by the interim rule will be required to abide by restrictions on the interstate movement of regulated articles. They may be affected by the interim rule because fruit sold within the quarantined areas in retail stores cannot be moved outside of the quarantined areas. However, we expect any direct costs of compliance for fresh fruit retailers will be minimal.

The lawn maintenance companies affected by the interim rule will be required to perform additional sanitation measures when maintaining an area inside the quarantined areas. Lawn maintenance companies will have to clean and disinfect their equipment after grooming an area within the quarantined areas, and they must properly dispose of any clippings from plants or trees within the quarantined areas. These requirements will slightly increase costs for lawn maintenance companies affected by the interim rule.

Consideration of Alternatives

The alternative to the interim rule was to make no changes in the citrus canker regulations. We rejected this alternative because failure to quarantine portions of Hendry and Hillsborough Counties, FL, and additional portions of Broward, Collier, Dade, and Manatee Counties, FL, could result in greater economic losses for domestic citrus producers due to citrus canker.

The interim rule contained no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 that was published at 65 FR 53528–53531 on September 5, 2000, and that was corrected in a document that was published at 65 FR 57723 on September 26, 2000.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 18th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1858 Filed 1–24–02; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, 34, 70, 71, 72, and 73

RIN 3150–AG79

Revised Filing Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise filing and advance notification requirements to reflect organizational changes within the NRC. The amended regulations are necessary to correct telephone numbers, eliminate duplicative filings, and to inform the public of administrative changes within the NRC.

EFFECTIVE DATE: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8092, e-mail: cxb@nrc.gov.

SUPPLEMENTARY INFORMATION: The Commission's Announcement No. 108, dated December 24, 1998, announced its decision to abolish the Office for Analysis and Evaluation of Operational Data (AEOD), effective January 3, 1999. The emergency response function of AEOD was transferred to the Office of Incident Response Operations (IRO). Any future general correspondence and technical documents relating to incident response should be addressed to IRO. This final rule also corrects the telephone number for the NRC Operations Center.

In 1995 the NRC transferred responsibility for receiving advance notification of shipments of licensed materials from the Division of Industrial and Medical Nuclear Safety (IMNS) and NRC Regional Administrators to the Spent Fuel Project Office (SFPO). Future applications and reports as required under parts 72 and 73 should be addressed to the SFPO rather than IMNS or the Regional Administrators. The attached final rule will inform the public of these previous organizational changes and will eliminate duplicate filings.

Because these minor amendments only reflect organizational changes, the notice and comment provisions of the Administrative Procedures Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective on publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because this amendment is of a minor and administrative nature, dealing with the NRC's organization.

Environmental Impact: Categorical Exclusion

NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule decreases the burden on licensees to eliminate the submittal of multiple copies of reports to the NRC Regional Administrator and the Director, Office of Nuclear Material Safety and Safeguards for 10 CFR 72.44(f) and 72.186(b). The public burden reduction for this information collection is estimated to average 0.20 hour(s) per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and

recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, NRC is adopting the following amendments to 10 CFR Parts 1, 20, 34, 70, 71, 72, and 73.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

§ 1.32 [Amended]

2. In § 1.32(b), remove the words ''the Office for Analysis and Evaluation of Operational Data,'' and add in their place the words ''Incident Response Operations,''.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202,206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

§ 20.2201 [Amended]

4. In § 20.2201(a)(2)(ii), revise the telephone number for the NRC Operations Center from ''301–951–0550'' to ''(301)–816–5100.''

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETYREQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

5. The authority citation for Part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Section 34.45 also issued under sec. 206, 88 Stat. 1246, (42 U.S.C. 5846).

§ 34.101 [Amended]

6. In § 34.101(a), remove the words ''Office for Analysis and Evaluation of Operational Data,'' and add in their place the words ''Incident Response Operations,''.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub.L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243). Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.20b [Amended]

8. Section 70.20b is amended as follows:

a. In paragraphs (f)(1) and (g)(1), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

b. In paragraph (f)(2)(ii), remove the words ''Division of Industrial and Medical Nuclear Safety has been notified by telephone at (301) 415–7197,'' and add in their place the words ''Director, Spent Fuel Project Office has been notified by telephone at (301) 415–8500,''.

c. In paragraph (f)(2)(iii), remove the words ''Division of Industrial and Medical Nuclear Safety will be notified by telephone at (301) 415–7197,'' and add in their place the words ''Director, Spent Fuel Project Office has been notified by telephone at (301) 415–8500,''.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

9. The authority citation for Part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

§ 71.1 [Amended]

10. In § 71.1(a), remove the words ''Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 71.5 [Amended]

11. In § 71.5(b), remove the words ''Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 71.12 [Amended]

12. In § 71.12(c)(3), remove the words ''Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 71.93 [Amended]

13. In § 71.93(c), remove the words ''Administrator of the appropriate NRC Regional Office listed in appendix A of part 73 of this chapter,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

§ 71.95 [Amended]

14. In § 71.95, remove the words ''Office of Nuclear Material Safety and

Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 71.97 [Amended]

15. In § 71.97(c)(1), remove the words ''Administrator of the appropriate NRC Regional Office listed in appendix A to part 73 of this chapter.'' and add in their place the words ''Director, Spent Fuel Project Office.''.

15a. In § 71.97(f)(1), remove the words ''Administrator of the appropriate NRC Regional Office listed in appendix A of part 73 of this chapter.'' and add in their place the words ''Director, Spent Fuel Project Office.''.

§ 71.101 [Amended]

16. In § 71.101(c) and (f), remove the words ''Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

17. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168). Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

§ 72.16 [Amended]

18. In § 72.16(a), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 72.44 [Amended]

19. In § 72.44(f), remove the words ''appropriate NRC Regional Office specified in appendix A to part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

§ 72.186 [Amended]

20. In § 72.186(b) remove the words ''Regional Administrator of the appropriate NRC Regional Office specified in appendix A of part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

§ 73.26 [Amended]

22. In § 73.26(i)(6), remove the words ''appropriate Nuclear Regulatory Commission Regional Office listed in appendix A of this part'' and add in their place the words ''Director, Spent Fuel Project Office''.

§ 73.27 [Amended]

23. In § 73.27(b) in the first, second, and fourth sentences remove the words ''Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A'' and add in their place the words ''Director, Spent Fuel Project Office''. In the third sentence remove the words ''Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A of this part,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

§ 73.67 [Amended]

24. In § 73.67(e)(7)(ii), remove the words ''Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A'' and add in their place the words ''Director, Spent Fuel Project Office''.

§ 73.71 [Amended]

25. In § 73.71(a)(4), remove the words '' appropriate NRC Regional Office listed in appendix A to this part.'' and add in their place the words ''Director, Spent Fuel Project Office.''.

§ 73.72 [Amended]

26. Section 73.72 is amended as follows:

a. In paragraph (a)(1), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

b. In paragraphs (a)(4) and (a)(5), remove the words ''Division of Industrial and Medical Nuclear Safety by telephone at 301– 415–7197'' and add in their place the words ''Director, Spent Fuel Project Office by telephone at (301) 415–8500''.

§ 73.73 [Amended]

27. Section 73.73 is amended as follows:

a. In paragraph (a)(1), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

b. In paragraph (b), remove the words ''Division of Industrial and Medical Nuclear Safety at 301–415–7197.'' and add in their place the words ''Director, Spent Fuel Project Office at (301)415–8500.''.

§ 73.74 [Amended]

28. Section 73.74 is amended as follows:

a. In paragraph (a)(1), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

b. In paragraph (b), remove the words ''Division of Industrial and Medical Nuclear Safety at 301–415–7197.'' and add in their place the words ''Director, Spent Fuel Project Office at (301) 415–8500.''.

Appendix A to Part 73 [Amended]

29. In appendix A to Part 73, under the **ADDRESSES** column, remove the words ''Office for Analysis and Evaluation of Operational Data,'' and add in their place the words ''Incident Response Operations,''.

Dated at Rockville, Maryland, this 10th day of January, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–1721 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1777

RIN 2550–AA12

Prompt Supervisory Response and Corrective Action

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final rule to set forth the procedures by which OFHEO administers the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, under which OFHEO takes prompt corrective action in response to specified declines in the capital levels of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The rule also implements a system of prompt supervisory responses to be taken whenever developments internal or external to an Enterprise, as identified by the agency on a case-by-case basis, may warrant special supervisory review by OFHEO. The initiation of a special supervisory review pursuant to such a procedure does not of itself indicate that an Enterprise is in an unsound condition; rather, it means only that OFHEO is undertaking a focused inquiry to ascertain the likely consequences of a particular development or developments for the Enterprise.

EFFECTIVE DATE: February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 414–3788 or David W. Roderer, Deputy General Counsel, (202) 414–6924 (not toll-free numbers), 1700 G Street NW, Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339 (TDD only).

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), established OFHEO. OFHEO is an independent office within the Department of Housing and Urban Development with responsibility for ensuring that the Enterprises are adequately capitalized and operate safely and in conformity to the requirements of applicable statutes, rules and regulations, including their respective charter acts.[1] The Enterprises were established to effect specific public purposes under Federal law, including the provision of liquidity to the residential mortgage market and the promotion of the availability of mortgage credit benefiting low- and moderate-income families and areas that are underserved by lending institutions.[2]

The enumerated statutory authorities of the Director explicitly include the authority to issue rules to carry out the duties of the Director,[3] as well as other broad supervisory powers essentially similar to those of the Federal bank regulatory agencies. OFHEO is empowered to conduct examinations of the Enterprises; to require the Enterprises to provide reports;[4] to establish capital standards for the Enterprises;[5] and, in appropriate circumstances, to exercise administrative enforcement authority. OFHEO's range of enforcement authorities include, among other things, the power to issue temporary and permanent cease and desist orders to an Enterprise or its executive officers or directors, and to otherwise sanction or impose civil money penalties when appropriate.[6] OFHEO's enforcement regime, addressing the scope of these authorities and the applicable rules of practice and procedure, is set forth in part 1780 of OFHEO's regulations.[7]

In addition, subtitle B of the 1992 Act requires OFHEO to establish certain capital thresholds for the Enterprises.[8] The statute directs OFHEO to assign capital classifications to the Enterprises based on those capital thresholds, and authorizes OFHEO to reclassify an Enterprise notwithstanding the thresholds.[9] An Enterprise that is not classified as ''adequately capitalized'' is required to obtain OFHEO's approval for, and carry out, a formal plan to restore the Enterprise's capital. Statutory provisions also prohibit an Enterprise from making any capital distribution that would result in the Enterprise not meeting the capital thresholds, absent OFHEO's approval, and imposes additional restrictions on capital distributions so long as the Enterprise is not classified as adequately capitalized. An Enterprise that is not classified as adequately capitalized may also be subject to a variety of regulatory limitations and restrictions as deemed to be appropriate by OFHEO.[10]

On April 10, 2001, OFHEO published a notice of proposed rulemaking at 66 FR 18694 seeking public comment on a proposal to issue a rule describing the scope of the actions the agency is authorized to take under certain prompt corrective action statutory provisions applicable to the Enterprises at 12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623, as well as the procedures by which such actions will be carried out. OFHEO also sought public comment on adopting a proposed prompt supervisory response procedure, separate from the capital-based prompt corrective action regime, under which OFHEO proposed to monitor various supervisory concerns in addition to an

[1] 12 U.S.C. 4513(a). *See also* 12 U.S.C. 4513(b)(1)–(5), 4517, 4521(a)(2)–(3), 4631(a)(3), 4636(a)(1).

[2] See Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; 1992 Act at 12 U.S.C. 4561–4567, 4562 note.

[3] 12 U.S.C. 4513(b)(1).

[4] 12 U.S.C. 4514, 4517, 1456(c), 1723a(k).

[5] 12 U.S.C. 4611–4614.

[6] 12 U.S.C. 4631–4641.

[7] 12 CFR part 1780; *see* 66 FR 18040 (April 5, 2001)(OFHEO final rule amending purpose and scope section of part 1780, to summarize agency's statutory enforcement powers).

[8] *See* 12 U.S.C. 4614–4619, 4622, 4623.

[9] Subtitle B of the 1992 Act directs OFHEO to classify the Enterprises into one of four capital classifications (''adequately capitalized,'' ''undercapitalized,'' ''significantly undercapitalized,'' or ''critically undercapitalized,''), based on the level of capital maintained by the Enterprise. For these purposes, OFHEO assesses the Enterprises' capital by reference to two standards. The first capital standard is based on ratios of core capital instruments to on balance sheet assets and off balance sheet obligations. The ratios are set according to percentages contained in 12 U.S.C. 4612 and 4613, subject to certain adjustments by OFHEO, and calculated in accordance with guidance from OFHEO under part 1750 of OFHEO's regulations (12 CFR Part 1750). The statute provides for a ''minimum capital'' level based on these ratios, as well as a ''critical capital'' level, based on lower ratios, that triggers additional enforcement requirements and authorities under subtitle B of the 1992 Act. The other capital standard is risk-based. On September 13, 2001, OFHEO published a final rule amending 12 CFR Part 1750 to implement this capital standard. 66 FR 47729. Rather than applying leverage ratios, this risk-based capital standard requires the Enterprises to hold sufficient total capital to maintain a positive capital position during a hypothetical ten-year stress period characterized by statutorily prescribed stressful credit conditions and large movements in interest rates, plus an additional amount to cover management and operations risk. As directed by 12 U.S.C. 4611, OFHEO has developed a stress test which, when applied to an Enterprise's book of business, will project the amount of total capital that would be necessary to survive the stresses described in the statute during the stress period. However, as provided in 12 U.S.C. 4614(d) and 4615(c), OFHEO is not to include consideration of an Enterprise's total capital during the classification process, until September 13, 2002.

[10] For a more detailed description of the prompt corrective action provisions of subtitle B of the 1992 Act, *see* 66 FR 18696–18698 (April 10, 2001)(OFHEO's NPR on prompt supervisory response and PCA).

Enterprise's capital classification, and to pursue early action by an Enterprise to preclude losses or possible losses, or to address particular threats to safety and soundness. The proposed procedure would be part of OFHEO's ongoing supervisory program that includes monitoring and examination of Enterprise activities on a continuous basis. The prompt supervisory response approach would complement and not supplant ongoing review programs. Similar to the procedures under the capital-based, prompt corrective action regime, as proposed the prompt supervisory response provision would have established a set of ''tripwires,'' looking to specifically enumerated developments proposed to be appropriate junctures for a supervisory review to ascertain the financial or operational consequences of such developments upon the Enterprise. Under the proposal, the occasion of a specified tripwire event or condition would have triggered an automatic supervisory response by OFHEO.

OFHEO received comments on these proposals from Fannie Mae, Freddie Mac, and one former senior government official. The three commenters questioned the need for the prompt supervisory response regime. They similarly asserted that, since OFHEO already conducts continuous and comprehensive on-site supervision of the Enterprises and can work with the Enterprises informally to resolve any significant supervisory issues that arise, the prompt supervisory response approach would add nothing to OFHEO's ability to exercise supervisory oversight for the Enterprises.

The prompt supervisory response approach reflects OFHEO's commitment to use a broad-based method to effectuate early identification of and supervisory action regarding potentially adverse developments or conditions affecting the Enterprises, by moving beyond the capital-based focus of prompt corrective action in appropriate circumstances. The prompt supervisory response approach mandates no specific conduct by the Enterprises; indeed, the need for action is to be ascertained on a case-by-case basis. In those instances in which the Enterprise has already undertaken appropriate steps, OFHEO anticipates that no additional action will be necessary. The approach also increases the transparency of the procedures and analytical framework OFHEO is to use in such matters. The role of OFHEO to ensure the safety and soundness of the Enterprises is not restricted to examination and capital monitoring functions on the one hand and to an enforcement or prompt corrective action procedures on the other. OFHEO's duty to ensure the Enterprises are adequately capitalized and operate safely [11] means that the agency is charged by Congress to act to ensure the safety and soundness of the Enterprises at all points on the supervisory spectrum between examination and enforcement.[12] Thus, OFHEO is also charged with ensuring that each Enterprise acts prudently in dealing with perceived problems as they emerge.

OFHEO has taken the comments provided into consideration and is now issuing a final rule, with several modifications. In formulating Subpart A, the final prompt supervisory response rule, OFHEO has adopted a less rigid approach to identify developments warranting specific supervisory response under the rule, while the supervisory response process set out in the rule has been adopted as proposed, without substantive change. OFHEO has also made certain modifications to Subpart B, the prompt corrective action provisions of the rule. The final rule, along with the comments and modifications, are described below.

Prompt Supervisory Response Provisions of the Proposed Rule

Subpart A establishes a system of prompt supervisory response to be taken when developments internal or external to an Enterprise, as identified by OFHEO, warrant special supervisory review. In order to provide a broad early intervention regime that addresses both capital-related and non-capital-related supervisory concerns, the rule describes how OFHEO may initiate specified prompt supervisory responses to address non-capital considerations that are outside the primary focus of the prompt corrective action regime, of Subpart B.

Authority, Purpose, and Scope

In their comments, each Enterprise asserted that the prompt supervisory response rule, as proposed, exceeded OFHEO's statutory authority, and should be wholly withdrawn. The rule—as proposed, and as adopted in final form here—contemplates that a letter be issued directing an Enterprise to respond to OFHEO's inquiry or that OFHEO may require an Enterprise to prepare and carry out an acceptable action plan. The Enterprises argue that this procedure would bypass specified statutory thresholds and procedural protections contained in the 1992 Act, under which OFHEO may only issue cease and desist orders or require capital restoration plans in certain narrowly defined circumstances, pursuant to defined due process procedures. Moreover, the Enterprises asserted that OFHEO has no explicit statutory mandate to establish safety and soundness standards by regulation or other guidance.

As OFHEO discussed in the preamble to the proposed rule, the prompt supervisory response approach is simply a procedural framework through which OFHEO may employ its current array of supervisory tools and regulatory authority to confront special factual scenarios. The 1992 Act, at 12 U.S.C. 4631(a)(3)(A), sets out OFHEO's authority to order an Enterprise to cease and desist unsafe or unsound practices.[13] By identifying and working with an Enterprise to eliminate perceived unsafe or unsound conditions or practices through an interactive supervisory process, such as is reflected in the prompt supervisory response approach, instead of resorting directly to an adjudicative enforcement action, OFHEO seeks to carry out its oversight responsibilities and neither exceeds its statutory authority nor circumvents the procedural scheme contained in 12 U.S.C. 4631. Any subsequent use of formal or informal enforcement procedures will be dependent, in large part, upon Enterprise action to address supervisory concerns, and will be undertaken pursuant to the applicable statutory procedures.

OFHEO rejects assertions that the agency has no explicit statutory mandate to establish safety and soundness standards by regulation or guideline. The 1992 Act, at 12 U.S.C. 4513, particularly 12 U.S.C. 4513(b)(1) and (b)(5), explicitly establishes such authority without reservation. More pertinently, the prompt supervisory response rule does not establish supervisory standards or specify remedies; rather, it establishes a supervisory process.

As described in § 1777.1(a) and 1777.1(b) of the final rule, the regulation is being issued under OFHEO's broad statutory authority to take such actions as the Director of OFHEO deems appropriate to ensure that the Enterprises operate in a safe and sound

[11] *See,* e.g., 12 U.S.C. 4513(a).

[12] *See, e.g.,* 12 U.S.C. 4513(b)(5)(OFHEO authorized to take such actions and perform such functions as OFHEO determines necessary regarding ''* * * *other* matters relating to safety and soundness'' (emphasis added)).

[13] OFHEO has responded to Enterprise challenges to its authority to institute cease and desist proceedings to address unsafe or unsound practices. *See* 66 Fed. Reg. 18040, 18041 (April 5, 2001) (discussion of Fannie Mae's and Freddie Mac's comments on OFHEO's procedural rules for enforcement actions).

manner, together with OFHEO's reporting [14] and examination [15] authorities. As set out in § 1777.1(b), the purpose of subpart A of the rule is to fashion an early intervention regime to address matters of supervisory concern to OFHEO under its congressional mandate in addition to the capital considerations already focused upon by the prompt corrective action regime. However, as stated in § 1777.1(b) of the final rule, OFHEO's initiation of the procedures under the rule does not necessarily indicate that an unsound condition exists; rather, the final rule is consistent with the process that OFHEO employs in reviewing the conduct of an Enterprise's affairs as a safety and soundness regulator. The possible supervisory responses described below, including a supervisory letter, an action plan, or a notice to show cause, as they might be used under the rule, do not constitute orders under the 1992 Act for purposes of 12 U.S.C. 4631 or 4636. They are simply steps in a predictable and organized process under which OFHEO will review issues and, as necessary and appropriate, provide supervisory guidance to an Enterprise.

Developments Prompting Supervisory Response

In § 1777.10 of the proposed rule, OFHEO proposed to adopt a list of nine possible developments that would cause OFHEO to initiate a special review under the prompt supervisory response process. The proposed list included both external indicators tied to market factors, as well as internal indicators tied to factors within a particular Enterprise. The Enterprises submitted separate comments objecting to each of the nine proposed ''triggers'' on various grounds. In some instances, the Enterprises agreed that occurrence of a particular trigger event might indicate a potential for financial difficulties for the Enterprise, but asserted that the proposed triggers generally failed to take into account countervailing factors that could ameliorate any supervisory concern about a particular development. The Enterprises also asserted that the proposed triggers focused on matters that would most often have innocuous underlying causes, and would likely have already been subject to identification and assessment by the Enterprises and by OFHEO prior to the time that a prompt supervisory response inquiry might be initiated under the rule. OFHEO does not agree with the Enterprises' conclusions. OFHEO does agree that ongoing supervision and examination are central to its regulatory oversight, and OFHEO notes that ameliorative actions and prudent planning by an Enterprise to address a particular development would be relevant to a supervisory inquiry or suggested remedy under the prompt supervisory response approach.

The final version of § 1777.10 revises the approach of the proposed rule. In response to the comments, the list of developments prompting a supervisory response has been revised by deleting certain proposed developments and by retaining others, either as proposed or with modifications. The revised list retains proposed § 1777.10(a) (relating to declines in the Housing Price Index) and proposed paragraph (j) , redesignated as paragraph (e) (as to the discretionary authority of the Director to initiate a supervisory letter in other circumstances). The final rule modifies § 1777.10(c) to provide only that changes in ''publicly reported'' net income are the type of development addressed, and similarly paragraph (d) to provide only that changes in ''publicly reported'' net interest margin are the type of development addressed. The final rule modifies § 1777.10(d) to raise the threshold amount of change in delinquent loans contemplated under this paragraph from one half of one percent to one percent, more appropriately defining the point that prompts a supervisory response. Based on comments received, the final rule does not include earlier proposed paragraphs (b) (relating to interest rate risk measures), (f) (matters related to equity calculations), (g) (matters related to data system operational problems), (h) (matters related to external auditor changes) and (i) (matters related to board meetings). The deletion of those paragraphs does not preclude their consideration as developments that might merit a supervisory response either under routine examination and supervision procedures of OFHEO or under the discretionary authority retained by the Director, under redesignated subsection (e).[16] OFHEO will continue to review and refine the list of early warning indicators and to identify additional developments that may signal a significant possibility of difficulties so as to warrant a prompt supervisory response.

In their comments, both Enterprises noted that proposed § 1777.10 (j), redesignated (e) in the final rule, would be sufficient to encompass all of the possible developments with which OFHEO was concerned under proposed § 1777.10. In addition, Freddie Mac noted that proposed § 1777.10 (j) most closely approximates OFHEO's existing oversight practices because it incorporates discretionary elements and implicitly suggests that OFHEO will consider the context of particular developments before initiating the prompt supervisory response process. Under § 1777.10 (e) of the final rule, the Director of OFHEO has the discretion to initiate the prompt supervisory response process whenever he or she is concerned about a development or condition relating to an Enterprise's safety and soundness, regardless of whether it has manifested an impact on the Enterprise's capital level. Developments and conditions of concern to the Director under § 1777.10 (e) might be detected by OFHEO in connection with an examination of the Enterprises, or in some other manner as the agency conducts its continuous supervisory and oversight functions.

Supervisory Response

Section 1777.11 of the final rule sets out the various forms of supervisory response that may be taken under the regulation. As noted earlier, all elements of the response process are recognized and existing elements of OFHEO's oversight authorities. The final rule adopts the approach of the proposal with only conforming changes and one clarification. Under the procedures set forth under the final rule, there are several levels of response.

In each case, OFHEO is to initiate a Level I supervisory action under § 1777.11(a) within five days of OFHEO's determination under § 1777.10 that a development or condition warrants supervisory response. The Enterprise will receive a supervisory letter advising the Enterprise that OFHEO has begun the prompt supervisory response process to address the development or condition and setting forth such other information and specific directions as the Director deems appropriate in light of the circumstances. For example, OFHEO may direct the Enterprise to provide information about the situation, to respond to OFHEO's specific questions or concerns, to take corrective or remedial action, or other preventative action as deemed appropriate.

Based on the Enterprise's response to the supervisory letter and other relevant concerns, OFHEO will promptly

[14] 12 U.S.C. 4514, 1456(c), 1723a(k).

[15] 12 U.S.C. 4517.

[16] Redesignated § 1777.10(e) provides that a supervisory response may be initiated upon the occurrence of ''[a]ny other development, including conduct of an activity by an Enterprise, that OFHEO determines in its discretion presents a risk to the safety and soundness of the Enterprises or is a possible violation of applicable law, regulation, or order.''

determine whether additional supervisory response under the rule is necessary. The Enterprise's response to the supervisory letter may cause OFHEO to conclude that the subject development creates no substantial supervisory concern or that the Enterprise's management of the risks and concerns presented by the development is adequate. In other instances, the supervisory letter process may cause OFHEO to conclude that a heightened level of supervisory concern is warranted, yet the letter process itself and continuing supervisory dialogue may be all that is needed to ensure that the Enterprise undertakes sufficient preventative or remedial measures.

If additional supervisory action is deemed necessary, OFHEO has a variety of alternatives under § 1777.11. Level II supervisory action, as set out in § 1777.11(b), provides for a special review of an Enterprise. A special review may be useful in supplementing information already obtained by OFHEO through the examination process, and might provide OFHEO with a clearer picture of the situation than could otherwise be obtained through letters or reports. Such review could be conducted by OFHEO's Office of General Counsel, Office of Research and Model Development, Office of Examination and Oversight, Office of Policy Analysis and Research, or such other department or individual as designated by the Director. In light of such a special review, OFHEO will determine whether further supervisory action is warranted.

Under Level III supervisory action set out in § 1777.11(c), OFHEO may direct an Enterprise to prepare and submit an action plan addressing the development or condition. Among other things, the Enterprise's action plan may be required to include information about the circumstances leading up to the subject condition or development and an assessment of its possible effects upon the Enterprise. The Enterprise may also be asked to describe its proposed course of action for dealing with the development, including an analysis of available alternatives. If OFHEO determines that the action plan is insufficient to resolve the supervisory issues created by the development, OFHEO may direct the Enterprise to revise the plan. However, if OFHEO determines that the supervisory issues will not be resolved even under a revised plan, OFHEO may determine to initiate other supervisory responses.

Under Level IV supervisory action, as set out in § 1777.11(d), OFHEO will require the Enterprise to show cause why OFHEO should not initiate formal enforcement action against the Enterprise. OFHEO is not, however, required to issue a show cause notice prior to initiating an administrative enforcement action.

The three commenters alleged that the prompt supervisory response process represents a ''one-size-fits-all'' approach that would unnecessarily limit OFHEO's flexibility and discretion, as well as the agency's ability to formulate timely, fact-specific, and flexible responses to emerging supervisory issues. OFHEO disagrees with that characterization. OFHEO is well aware of the necessity for a regulatory agency to apply its expertise to specific supervisory problems in light of the particular attendant facts, and to do so swiftly. Nothing in the prompt supervisory response process limits the flexibility necessary for OFHEO to meet its supervisory responsibilities. As the exclusive safety and soundness regulator of the Enterprises, OFHEO has been constituted with broad supervisory authorities in order to detect and address any safety and soundness concerns that may arise, and has broad enforcement powers to ensure that any safety and soundness deficiency or violation of law is promptly remedied, possibly long before harm to an Enterprise reaches the level of capital impairment. OFHEO's concerns may include an array of considerations—ranging, for example, from matters such as declining collateral values to asset quality, liquidity, and operational difficulties—that could result in substantial harm to an Enterprise before capital is impaired. OFHEO will analyze the totality of each situation, rather than awaiting a decline in capital to initiate agency action. If an analysis reveals a supervisory concern, then OFHEO's response might reasonably include a mixture of early warning and early action initiatives that would be effective before specific problems seriously affect an Enterprise.

OFHEO designed the prompt supervisory response process to provide it flexibility as a supervisor, both in structuring the scope of the review and in overseeing the Enterprise's implementation of responsive measures. Under § 1777.11(a), OFHEO will issue a supervisory letter commencing the prompt supervisory response review, but the content of the letter will depend entirely on the ''particular circumstances and the nature of the development.'' There are then three additional levels of available supervisory responses under § 1777.11(b) through (d), but OFHEO's decision as to which, if any, of the levels to use will be based on the Enterprise's ''response to the supervisory letter and other appropriate factors.'' At every level of supervisory response in § 1777.11(b) through (d), the rule expressly states that OFHEO will assess the effectiveness of actions as well as other relevant factors in determining whether additional supervisory action is appropriate. As stated in the preamble to the proposed rule, the levels of supervisory response need not be carried out sequentially, and OFHEO may pursue simultaneous actions. In the final rule, OFHEO has expanded the text of the rule at § 1777.11(a)(4), so as to avoid confusion on this point.[17] In addition, as reflected in § 1777.2 and § 1777.12, the prompt supervisory response process in no way limits OFHEO's discretion to use any of its other supervisory tools and authorities to respond to the particular situation. OFHEO also rejects the suggestion that the prompt supervisory response process would not be rapid. The supervisory letter is to be issued within five days after OFHEO determines that a development or condition warrants review under the rule, and the text of § 1777.11 requires OFHEO to implement any additional levels of supervisory response promptly and review the effectiveness of such response promptly.

Finally, the commenters expressed concerns that, if the prompt supervisory response approach results in public disclosure of supervisory actions, discussions, or correspondence, the contents could be misunderstood by the public and could cause the markets to lose confidence in the Enterprises. However, as reflected in § 1777.2(b), supervisory responses issued under § 1777.11 do not constitute public orders enforceable under 12 U.S.C. 1371 or 1376, and, as noted in § 1777.1(b), OFHEO's initiation of procedures under the prompt supervisory response regime does not necessarily indicate that an unsound condition exists.

Implementation of the Prompt Corrective Action Provisions of the 1992 Act by the Final Rule

Subpart B of the final rule describes the scope of actions OFHEO is authorized to take under the prompt corrective action provisions applicable to the Enterprises under the 1992 Act at 12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623, as well as the procedures by which such an actions are to be carried out. The

[17] With the exception of nonsubstantive changes made to conform § 1777.11 of the final rule to the revised § 1777.10, OFHEO has made no other alterations to § 1777.11.

following is an overview of the provisions of the final rule and the statutory authorities implemented thereby. Freddie Mac and Fannie Mae submitted numerous comments on proposed Subpart B, which OFHEO has taken into account in formulating the final rule. These comments are addressed below, as part of the description of the section of the final rule to which each comment pertains.

Authority, Purpose, Scope, and Implementation Dates

The authority, purpose, and scope of subpart B are set out in § 1777.1(a) and (c), which briefly review the statutes underlying the rule. Subpart B is issued under OFHEO's broad authorities to take such actions as are deemed appropriate by the Director of OFHEO to ensure that the Enterprises maintain adequate capital and operate in a safe and sound manner, as established by 12 U.S.C. 4513, 4631, 4632, and 4636, as well as under the specific prompt corrective action provisions contained in subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623), the Federal Home Loan Mortgage Corporation Act at 12 U.S.C. 1452(b)(2), and the Federal National Mortgage Association Charter Act at 12 U.S.C. 1718(c)(2). These provisions authorize OFHEO to administer certain capital requirements for the Enterprises, to classify the capital of the Enterprises based on capital levels specified in the 1992 Act, and, in appropriate circumstances, to exercise discretion to reclassify an Enterprise into a lower capital category. Under these provisions, there are also automatic consequences for an Enterprise that is not classified as adequately capitalized, as well as discretionary authority for OFHEO to require an Enterprise to take remedial actions.

As discussed in § 1777.1(d), the 1992 Act directs OFHEO to determine capital classifications for the Enterprises by reference to three capital ''triggers'' (the minimum capital level, the critical capital level, and the risk-based capital level). Notably, however, 12 U.S.C. 4614(d) delays consideration of the risk-based capital level until one year after OFHEO's risk-based capital rule becomes effective, that is, September 13, 2001. Section 4615 of Title 12, which sets out the supervisory actions to be taken as applicable to an Enterprise that is classified as undercapitalized, similarly provides that its provisions will not take effect until one year after OFHEO's risk-based capital rule becomes effective. Section 4614(d) provides that, until that time, an Enterprise shall be classified as adequately capitalized if the Enterprise maintains an amount of capital that equals or exceeds the minimum capital level.

Therefore, under subpart B of the final rule at § 1777.20, different sets of capital classifications will apply before and after September 13, 2002. Section 1777.20(a) contains the ''permanent'' set of capital classifications taking the risk-based capital level into account as well as the minimum capital level and critical capital level. This set of capital classifications will apply any time after September 13, 2002.

The currently applicable ''temporary'' set of capital classifications is contained in § 1777.20(c) as an exception to § 1777.20(a) that applies until September 13, 2002. This currently applicable set of classifications is based on an Enterprise's minimum capital level and critical capital level, reflecting the classification criteria presently used by OFHEO. Section 4614(a) of Title 12, when read together with 12 U.S.C. 4616(c) [18] and 12 U.S.C. 4617(d),[19] indicates that Congress intended OFHEO to classify the Enterprises for prompt corrective action purposes by reference to minimum capital and critical capital levels, pending expiration of the one-year post-effectiveness period for the risk-based capital test.

Preservation of Other Authority

As set forth in § 1777.2(b) through (c), the prompt corrective action provisions are but one aspect of OFHEO's broad supervisory authority to ensure that each Enterprise maintains capital that is adequate for its safe and sound operation. In their comments, the Enterprises objected to language in § 1777.2(b) that states OFHEO has authority to require an Enterprise to hold capital in addition to that necessary to comply with the minimum and risk-based capital levels, when in OFHEO's judgment circumstances indicate additional capital is necessary or appropriate in light of the overall strength of the Enterprise and market conditions. The Enterprises argue that the minimum and risk-based capital levels defined by the statute are exclusive, and OFHEO is not vested under law with discretion to require the Enterprises to hold additional capital.

OFHEO disagrees and has adopted § 1777.2(b) without change. Subtitle B of the 1992 Act, establishing the minimum and risk-based capital levels, contains no language to the effect that such levels are exclusive. The 1992 Act taken as a whole demonstrates congressional understanding that capital by itself is but one indicator of the financial health or weakness of an Enterprise. All circumstances must be weighed in determining the capital adequacy of an Enterprise. That is, differing conditions may warrant greater capital to ensure the strength and viability of an Enterprise. Thus, under 12 U.S.C. 4513(a), it is the supervisory responsibility of OFHEO to ensure that the Enterprises are adequately capitalized and operating safely. Under 12 U.S.C. 4513(b), OFHEO has exclusive authority to take such actions as it determines necessary regarding the safety and soundness of the Enterprises.

An Enterprise's maintenance of capital sufficient to meet the minimum capital level and risk-based capital level does not alone establish that the Enterprise possesses sufficient capital to operate safely and soundly in all circumstances. The legislative history of the 1992 Act indicates that Congress specifically debated whether subtitle B established the exclusive capital levels for the Enterprises or instead represented a minimum ''floor'' level. In the end, Congress concluded that subtitle B takes the ''floor'' approach, and that OFHEO's safety and soundness authority includes the ability to require an Enterprise to hold additional capital whenever circumstances indicate supplementary capital is appropriate in consideration of the Enterprise's overall safety and soundness.[20] Similarly, the language of 12 U.S.C. 4614(a)(1) provides that, for an Enterprise to be classified as adequately capitalized, the Enterprise should ''meet or exceed'' the minimum and risk-based capital levels (emphasis added).

In addition to its authority to require the Enterprises to maintain additional capital as a safety and soundness matter, OFHEO is authorized, as reflected in § 1777.2(c) of the final rule, to take various kinds of supervisory action to deal with capital deficiencies at an Enterprise, other than or in addition to the prompt corrective action provisions. The 1992 Act grants OFHEO broad discretion to take other supervisory

[18] 12 U.S.C. 4616(c) provides that statutory provisions requiring prompt corrective action with regard to a significantly undercapitalized Enterprise are to be effective from the time the Enterprise is first classified under 12 U.S.C. 4614.

[19] 12 U.S.C. 4617(d) provides that statutory provisions requiring prompt corrective action with regard to a critically undercapitalized Enterprise are to be effective from the time the Enterprise is first classified under 12 U.S.C. 4614.

[20] *See, e.g.,* 138 Cong. Rec. S9353–54 (July 1, 1992)(colloquy between Senator Metzenbaum and Senator Reigle concerning the effect of section 202 of S. 2733, which is substantially the same as 12 U.S.C. 1362); 138 Cong. Rec. H11102 (Oct. 3, 1992)(colloquy between Mr. Gonzalez, Mr. Frank, and Mr. Leach).

actions as may be deemed by OFHEO to be appropriate, including issuing temporary and permanent cease and desist orders, imposing civil money penalties, appointing a conservator, entering into a written agreement the violation of which is actionable through enforcement proceedings, or entering into any other formal or informal agreement with an Enterprise. Moreover, the initiation of a particular action or a combination of actions does not foreclose OFHEO from pursuing any other action.

Definitions

The definitions in § 1777.3 cross-reference to OFHEO's capital rules at 12 CFR part 1750 in defining core and total capital. Section 1777.3 defines the minimum capital level as the minimum amount of core capital specified for an Enterprise pursuant to 12 U.S.C. 4612, as determined under OFHEO's capital rules at § 1750.4. The definition of the critical capital level in § 1777.3 refers to the calculation of core capital required to meet the minimum capital level under § 1750.4 of OFHEO's capital rules, making the appropriate adjustments thereto in order to implement the lower percentages specified in 12 U.S.C. 4613 as compared to 12 U.S.C. 4612. Thus, § 1777.3 defines the critical capital level as the amount of core capital that is equal to the sum of one half of the amount determined under § 1750.4(a)(1) and five-ninths of the amounts determined under § 1750.4(a)(2) through § 1750.4(a)(7). Section 1777.3 defines the risk-based capital level to mean the amount of total capital specified for an Enterprise pursuant to 12 U.S.C. 4611, as determined under OFHEO's risk-based capital regulations in 12 CFR part 1750.[21]

The definitions of ''affiliate'' and ''Enterprise'' are taken from 12 U.S.C. 4502(1) and 4502(6), respectively. The 1992 Act, in defining an Enterprise to include the Enterprise's affiliates, vests OFHEO with the same broad jurisdiction over the supervision and regulation of such affiliates as the agency has over the operations and activities of the federally chartered entity. Section 4502(1) defines an affiliate to be any entity that controls, is controlled by, or is under common control with an Enterprise. The 1992 Act does not, however, define control, thereby leaving the term to be interpreted by OFHEO in light of the context in which the term is to be used and the particular provision of the 1992 Act at issue.[22] In its comments, Freddie Mac disagreed with OFHEO's statement to this effect in the preamble to the proposed rule, and instead asserted that the term should be interpreted to have a single meaning throughout the 1992 Act. However, as seen in other laws, when Congress intends that an agency use a single definition of ''control'' throughout an entire act in connection with an ''affiliate'' definition, Congress enacts a statutory definition of ''control,'' including language in the definition that specifies the test to be applied. *See, e.g.,* 12 U.S.C. 1813(w)(5); 12 U.S.C. 1841(a)(2). Where, as is the case in the 1992 Act, the term is not defined, Congress leaves the term to be defined by the expert agency in light of the particular context in which it is to be used and the particular substantive provision at issue.

The term ''capital distribution'' as defined in the rule is taken from 12 U.S.C. 4502(2). Both Enterprises' comments included objections to one aspect of OFHEO's proposed definition, under which an Enterprise's payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401 *et seq.*) or any substantially equivalent plan would not be treated as a capital distribution so long as it was approved in writing by OFHEO in advance. The Enterprises argue that, under 12 U.S.C. 4502(2)(B), OFHEO's only proper approval function goes to the issue of whether an employee stock ownership plan is substantially equivalent to a plan that is qualified under section 401 of the Internal Revenue Code, and the Enterprises are not required to obtain OFHEO's approval of payments made to fulfill the Enterprises' repurchase obligations under the plan.

The language of 12 U.S.C. 4502(2)(B) is susceptible to either the proposed or the subsequently suggested interpretation. Upon further review, OFHEO has modified the final version of § 1777.3 to eliminate the requirement that the Enterprises obtain OFHEO's prior written approval for stock repurchases by employee stock ownership plans and such substantially equivalent plans. Under the revised language, payments made by an Enterprise to repurchase its shares for the purpose of fulfilling the Enterprise's obligation under an ESOP that is qualified under IRC 401 will not be defined as capital distributions. The same types of payments made to ESOPs that are substantially equivalent to 401-qualified ESOPs will also enjoy the exception, so long as OFHEO determines that the plan in question is substantially equivalent to a 401-qualified ESOP.

Section 4502(2) authorizes OFHEO to define additional transactions as capital distributions by regulation for these purposes. OFHEO has at this time identified no other transactions to be deemed capital distributions beyond those listed in the statutory definition.

Capital Classifications and Discretionary Reclassification

Section 1777.20(a) sets out the capital classifications that, as discussed above, will be applicable to the Enterprises after September 13, 2002, taking the risk-based capital level into account as well as the minimum and critical capital levels. Until then, the classifications under § 1777.20(c), discussed below, apply to the Enterprises. Section 1777.20(a) sets out the capital classifications as follows:

- *Adequately capitalized:* An Enterprise will be classified as adequately capitalized if the Enterprise meets the risk-based capital level and the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise into a lower capital classification;
- *Undercapitalized:* An Enterprise will be classified as undercapitalized if it meets the minimum capital level but does not meet the risk-based capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise into a lower capital classification;
- *Significantly undercapitalized:* An Enterprise will be classified as significantly undercapitalized if the Enterprise meets the critical capital level but fails to meet the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise as critically undercapitalized;
- *Critically undercapitalized:* An Enterprise will be classified as critically undercapitalized if the Enterprise does not meet the critical capital level; and
- *Discretionary reclassification:* As is set out in more detail below, 12 U.S.C. 4614(b) authorizes OFHEO to reclassify an Enterprise into the next lower capital classification at any time, in the

[21] OFHEO has recently published such rules at 66 FR 47729 (Sept. 13, 2001).

[22] In determining whether control exists for the purposes of exercising jurisdiction over an affiliate of an Enterprise under any particular provision of the 1992 Act, OFHEO considers the nature of the particular provision and the facts and circumstances involved. Among other things, OFHEO considers whether an Enterprise or other entity exercises a controlling influence over the management and policies of a particular entity, by ownership of, or the power to vote, a substantial percentage of any class of voting securities, by the ability to elect or appoint members of the board of directors or officers of the entity, or by other means.

discretion of the Director of OFHEO. Appropriate grounds for reclassification include a finding by the Director that the Enterprise is either engaging in conduct that could result in a rapid depletion of the Enterprise's core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly. Other reclassifications, based on other sections of subtitle B of the 1992 Act pertaining to failure to submit an acceptable capital restoration plan or implement it, are located in § 1777.7, the section addressing capital restoration plans.

Under § 1777.20(a), the minimum and critical capital levels are the determinative standards for assessing whether an Enterprise falls into the significantly undercapitalized or critically undercapitalized classification based on capital, without regard to whether the Enterprise maintains total capital at or above its risk-based capital level. Under the 1992 Act, the minimum and critical capital levels act as the ''tripwires'' for the prompt corrective actions specified in 12 U.S.C. 4616 and 4617. The amount of capital an Enterprise is required to hold to meet its risk-based capital level could be either less or more than the amount of the capital required to meet its minimum capital level or even its critical capital level. The rule therefore avoids a result under which an Enterprise that fails to meet its minimum capital level or critical capital level might avoid classification as significantly undercapitalized or critically undercapitalized by maintaining total capital in compliance with its risk-based capital level.

The final version of § 1777.20(a)(5) sets forth the grounds for reclassification of an Enterprise. Under section 4614(b), grounds for reclassification include a finding by the Director that the Enterprise is either engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result in a rapid depletion of the Enterprise's core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly. In their comments, the Enterprises objected to language proposed in § 1777.20(a)(5) to the effect that OFHEO could also issue a discretionary reclassification if OFHEO deems it to be necessary to ensure that the Enterprise holds adequate capital and operates safely. OFHEO disagrees. Section 4614(b) recites that OFHEO may issue a discretionary reclassification if the Director determines that an Enterprise is engaging in conduct that could result in a rapid depletion of core capital, or that the value of the Enterprise's mortgage collateral has decreased significantly. Notably, section 4614(b) is silent with regard to whether the statutorily recited grounds for reclassification are exclusive. Section 4513(b) empowers the Director of OFHEO to make other determinations, including those necessary to determine the capital classification of an Enterprise and those necessary for other matters that the Enterprises are adequately capitalized and operating safely.

Taken together, the above-referenced statutory provisions evidence a Congressional purpose that the Director of OFHEO have the discretionary authority to reclassify Enterprise if the Director determines that the Enterprise's capital position is not deemed by the Director to be sufficient to ensure its safety and soundness. OFHEO is therefore adopting § 1777.20 (a)(5) as proposed.

For purposes of OFHEO's discretionary authority to reclassify an Enterprise based on ''conduct that could result in a rapid depletion of core capital'' under 12 U.S.C. 4614(b), OFHEO interprets the term ''conduct'' to include action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events). In its comments, Fannie Mae objected to inclusion of this language in proposed § 1777.20(a)(5)(i). However, the regulatory language is well within the ordinary meaning of the term ''conduct,'' and OFHEO has included it in the final version of § 1777.20(a)(5) without change. Freddie Mac also objected to OFHEO's assertion in the preamble to the proposed rule that the rapid depletion of core capital referred to in section 4614(b) and § 1777.20(a)(5) need only be a possible consequence of the conduct in question. Freddie Mac argues that OFHEO appears to be implementing too liberal a standard in light of the more extreme formulation contained in section 4614(b) itself. OFHEO reiterates the point, as stated in the preamble to the proposed rule, that the statutory language under section 4614(b) does not require OFHEO to find that the rapid depletion is underway or imminent, but requires only that OFHEO determine that such rapid depletion ''could result,'' i.e., that it is a possible outcome or result of the conduct in question, or that the conduct could contribute significantly to deepening losses. Congress, having already established the capital classifications based on capital levels to address cases in which an Enterprise's capital has already declined, established a broad standard for discretionary reclassification, to authorize early intervention by OFHEO when appropriate.

Section 1777.20(d) of the final rule provides that OFHEO will not reclassify an Enterprise for conduct that was previously approved by the Director of OFHEO in connection with the Director's approval of the Enterprise's capital restoration plan or of a written agreement that is enforceable in accordance with 12 U.S.C. 4631. The Enterprises argued in their comments that OFHEO proposal impermissibly would narrow section 4614(b), and that the statutory language thereunder immunizes any conduct however approved by the Director.

Section 4614(b) provides that OFHEO may reclassify an Enterprise that engages in conduct ''not approved by the Director'' that could result in a rapid depletion of core capital. However, the statute is silent as to what constitutes an approval for these purposes, leaving OFHEO to define the term by regulation pursuant to the authority granted by section 4513(b). An administrative agency is entitled under law to establish reasonable procedures in such manner as to enable the agency to channel and manage its approval processes.

The Enterprises suggest that the only reasonable interpretation of section 4614(b) is that it immunizes all conduct ''approved by the Director'' of OFHEO in any context or manner. However, such interpretation is so open-ended as to be unreasonable. In light of the significance of an approval for purposes of section 4614(b), the statute can be reasonably read to require an approval to be made through a formal mechanism, in a context in which OFHEO can evaluate the consequences thereof for purposes of capital classification. Thus, it is reasonable to define the approvals exception under section 4614(b) as referring to approvals made as part of a capital restoration plan under subtitle B and to formal supervisory agreements. The inclusion of formal written agreements serves the underlying purpose of fairness to the Enterprise, particularly since such written agreements may be used simultaneously with a capital restoration plan.

As provided in § 1777.20(b), if an Enterprise is reclassified by OFHEO on grounds that the Enterprise is engaging in action or inaction that could result in a rapid depletion of core capital, OFHEO will continue to take such conduct into account for each subsequent determination of the Enterprise's capital classification, until

OFHEO determines that the action, inaction, or condition in question has ceased and been remedied to OFHEO's satisfaction. For example, if OFHEO reclassified an Enterprise from adequately capitalized to undercapitalized based on such conduct, and during the pendency of such conduct, the Enterprise's total capital declined below the risk based capital level (which, standing alone, would result in classification in the undercapitalized category), the resulting classification could be to the significantly undercapitalized category. In addition, as provided in § 1777.20(b), nothing in 12 U.S.C. 4614(b) prohibits OFHEO from subsequently reclassifying an Enterprise again if the action, inaction or condition has not ceased or been eliminated and remedied to OFHEO's satisfaction within a reasonable time. The foregoing would also apply for a discretionary reclassification under § 1777.20(a)(5), based on a decline in collateral values.

The Enterprises also objected to proposed § 1777.20(b), on various grounds. Freddie Mac argues that once OFHEO has issued a reclassification based on conduct and the Enterprise has submitted an acceptable capital restoration plan, OFHEO may not subsequently reclassify the Enterprise for failure to eliminate the objectionable conduct within a reasonable time, so long as the Enterprise continues to make good faith reasonable efforts to comply with the capital restoration plan. However, section 4614(b) contains no explicit restriction or limitation on reasonable successive reclassifications, and such a limit could inhibit OFHEO's ability to meet its supervisory obligations under evolving circumstances. Thus, OFHEO is adopting the text of § 1777.20(b)(2) without change.

Fannie Mae suggests § 1777.20(b)(2) should be revised to ensure the Enterprises are given advance notice of what constitutes a reasonable period to remedy or eliminate conduct or conditions forming the basis of a discretionary reclassification. However, this issue is too fact-driven for OFHEO to specify by rule. The question of timing will be resolved as it arises. OFHEO would specify such timing matters reasonably and fairly, in light of relevant circumstances.

Fannie Mae further suggests that it would be unfair that OFHEO might attempt to exercise unbridled discretion over so significant a question as to when a discretionary reclassification should be terminated. Fannie Mae suggests discretionary reclassifications should be presumptively terminated fifteen days after an executive officer certifies that the condition that led to reclassification has been corrected for at least one calendar quarter. However, given that initiation of a reclassification under section 4614(b) is vested in OFHEO's discretion, as is approval of the capital restoration plan designed to restore the Enterprise to a secure condition, OFHEO rejects Fannie Mae's assertion that OFHEO's discretion over termination of such reclassification is somehow unfair, or of such significance to be beyond the agency's supervisory authority. Moreover, the quarterly classification process gives the Enterprise formal written notice of OFHEO's intention with regard to continuation or termination of a discretionary reclassification; provides the Enterprise with an opportunity to submit information that OFHEO might take into consideration; and provides the Enterprise with the opportunity for judicial review (if the Enterprise is not classified as critically undercapitalized). The Enterprises are thus adequately insulated from possible unfair treatment by the agency.

As noted above, § 1777.20(c) contains a set of capital classifications based on an Enterprise's minimum capital level and critical capital level, reflecting the classification criteria presently used by OFHEO. These classifications apply until September 13, 2002, which is one year following the initial effective date of OFHEO's regulations establishing the risk-based test:

- *Adequately capitalized:* Until September 13, 2002, an Enterprise is deemed to be classified as adequately capitalized so long as it meets the minimum capital level, as required by 12 U.S.C. 4614(d);
- *Undercapitalized:* Until September 13, 2002, 12 U.S.C. 4614(d) provides that an Enterprise that meets the minimum capital level is to be classified as adequately classified, notwithstanding whether the Enterprise maintains an amount of total capital that equals or exceeds the risk-based capital level as otherwise required by 12 U.S.C. 4614(a)(2)(A);
- *Significantly undercapitalized:* An Enterprise will be classified as significantly undercapitalized if it meets the critical capital level but fails to meet the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise as critically undercapitalized;
- *Critically undercapitalized:* An Enterprise will be classified as critically undercapitalized if it does not meet the critical capital level; and
- *Discretionary reclassification:* As set out above, 12 U.S.C. 4614(b) authorizes OFHEO to reclassify an Enterprise into a lower capital classification in certain circumstances, in the discretion of the Director of OFHEO.

The Enterprises specifically objected to proposed § 1777.20(c)(5)(i)(A) and (B), under which OFHEO notes that the agency can reclassify an Enterprise that otherwise meets the minimum capital requirement. The Enterprises assert that, during the one-year transition period following the effective date of OFHEO's risk-based capital rules, OFHEO may not make a discretionary reclassification of an Enterprise otherwise classified as ''adequately capitalized,'' because 12 U.S.C. 4614(d) and 4615(c) prohibit OHFEO from issuing such a reclassification.

OFHEO disagrees. Sections 4614(d) and 4615(c) are merely transition provisions designed to give the Enterprises one year to optimize their operations in light of the new risk-based capital rules before OFHEO begins periodically issuing capital classifications based on risk-based capital as well as minimum capital. Nothing in the law or its legislative history indicates a Congressional intention to make the OFHEO powerless to confront circumstances that might threaten the viability of the Enterprises during the transition period. Nor were the referenced sections intended by Congress to immunize an Enterprise engaged in conduct that might result in rapid depletion of core capital. OFHEO is therefore adopting § 1777.20(c)(5) as proposed.

The Enterprises' comments on proposed § 1777.20(a)(5)(i), concerning the scope of the conduct included therein, and on proposed § 1777.20(a)(5)(ii), concerning the scope of conduct approved by the Director, as well as OFHEO's responses to those comments as discussed above, apply equally to § 1777.20(c)(5) of the final rule. The Enterprise's comments on § 1777.20(b), concerning successive reclassifications, specification of reasonable periods to remedy conduct upon which reclassification was based, and OFHEO's discretion over termination of reclassifications, as well as OFHEO's response to these comments as discussed above, apply equally to reclassifications under § 1777.20(a)(5) as they do to reclassifications under § 1777.20(c)(5) of the final rule.

Classification Procedures

Section 1777.21, implementing 12 U.S.C. 4618, sets out the procedure by which OFHEO classifies the Enterprises. These procedures apply to routine classifications that OFHEO issues for

each Enterprise at least once a quarter based on capital reports from the Enterprise and any other additional relevant information. These procedures would also be used by OFHEO to reclassify an Enterprise pursuant to its discretionary authority to do so under subtitle B of the 1992 Act, or if OFHEO otherwise determines that a new classification would be appropriate. OFHEO's current classification procedures at 12 CFR 1750.5 are terminated as part of this rulemaking, but procedures for submitting capital reports to OFHEO will continue to be addressed in part 1750.

OFHEO may determine capital classifications using different ''as of'' dates for the Enterprise's risk-based capital level and minimum and critical capital levels. The respective ''as of'' dates will be specifically identified in the proposed and final capital classifications. Thus, OFHEO may assess compliance by an Enterprise with the minimum capital level more often than it would calculate the Enterprise's risk-based capital level.

As § 1777.21(a)(4) provides, OFHEO may initiate a capital classification proceeding at any time. If another proposed capital classification is pending at such time, OFHEO will advise the Enterprise whether the later proposed classification supersedes the pending one.

Under the classification procedure in 12 U.S.C. 4618, OFHEO is to deliver written information to the Enterprise describing the proposed capital classification and the agency's basis for such classification, as described in § 1777.21(a)(1) of the final rule. In their comments, the Enterprises argued that OFHEO's proposed procedure in § 1777.21(a)(1)(ii), for reclassifying an Enterprise for failure to file an acceptable capital plan, without additional notice, is inconsistent with 12 U.S.C. 4618(a) and (b), under which an Enterprise is entitled to additional notice when OFHEO takes new action. The Enterprises assert that OFHEO may not combine notices in this way.

OFHEO disagrees. 12 U.S.C. 4618(b) evidences Congress' express authorization that the notice required under 12 U.S.C. 4618(a) may be a combined notice. Section 4618(b) states that, in providing notice under 12 U.S.C. 4618(a), OFHEO may combine a notice of classification or reclassification under 12 U.S.C. 4614 (classifications based on capital levels or discretionary reclassification based on conduct or housing prices) with a notice of discretionary supervisory action under 12 U.S.C. 4615 (reclassification from undercapitalized to significantly undercapitalized for failure to file an acceptable capital plan or to comply with an approved plan). The statute's language can be given meaning only if a notice of proposed classification as undercapitalized is permitted to be combined with a notice of proposing to reclassify the Enterprise as significantly undercapitalized in the event the Enterprise fails to submit an acceptable capital plan. Similarly, 12 U.S.C. 4618(b) provides that OFHEO may combine notice of discretionary supervisory action under 12 U.S.C. 4616 (issuance of certain orders to the Enterprise, as well as reclassification from significantly undercapitalized to critically undercapitalized based on failure to file an acceptable plan or comply with an approved plan) with notices of classification or reclassification under 12 U.S.C. 4614.

Contrary to Freddie Mac's comments, such a notice is also consistent with the remainder of 12 U.S.C. 4618. It satisfies the requirements of 12 U.S.C. 4618(a), since the combined notice describes both proposed actions, the reasons therefore, and the information upon which they are based. During the Enterprise's response period under 12 U.S.C. 4618(c), the Enterprise has an opportunity to submit information and arguments as to why the Enterprise should not be further reclassified. OFHEO's notice to Congress under 12 U.S.C. 4618(d) will provide all information required therein. OFHEO is therefore adopting proposed § 1777.21(a)(1)(ii), as well as § 1777.23(c)(1) and § 1777.23(c)(3), without change.

As described in § 1777.21(a)(2), an Enterprise is to have thirty days from the date it is provided notice of capital classification to submit any relevant information in response to a notice. 12 U.S.C. 4618 authorizes OFHEO to extend the response period up to an additional thirty days for good cause or to reduce the response period if the condition of the Enterprise so requires; the Enterprise may also consent to an abbreviated response period. In exigent circumstances, the response period afforded to an Enterprise may be quite brief. In its comments, Fannie Mae objected to proposed § 1777.21(a)(2)(i), to the extent the proposed rule suggests that OFHEO can shorten an Enterprise's response period to less than thirty days as OFHEO determines to be appropriate. Fannie Mae points out that the statutory standard, at 12 U.S.C. 4618(c)(3), is that the condition of the Enterprise requires the period to be shortened. OFHEO's determination as to whether an curtailment is ''appropriate,'' as under the language of proposed § 1777.21(a)(2)(i), is to be made in consideration of the statutory standard under 12 U.S.C. 4618(c)(3). In light of the comment, OFHEO has changed the language of the final version of § 1777.21(a)(2)(i) to reflect the language of 12 U.S.C. 4618(c)(3).

An Enterprise's failure to respond within the applicable period waives the opportunity to comment on the proposed classification. Once the response period has closed, OFHEO will make a final determination of the Enterprise's capital classification. OFHEO will take into consideration any relevant information submitted by the Enterprise during the response period in reaching the final decision. The final capital classification is to be provided to the Enterprise in writing, including a description of OFHEO's basis for the classification.

OFHEO proposed a requirement under § 1777.21(b)(1) that the Enterprise notify OFHEO of any material event that may reasonably be expected to cause the Enterprise's minimum, critical, or risk-based capital level to fall to a point that could result in a capital classification lower than the Enterprise's existing or proposed capital classifications. In their comments, the Enterprises objected to this requirement as being overly vague. Freddie Mac suggested it be narrowed, to require notice only when the Enterprise has reason to believe it has failed to meet a capital requirement. Fannie Mae called for elimination of any such notice requirement. In response to the Enterprises' expressed concerns about vagueness, OFHEO has decided to model its standard on a similar standard successfully used by the Federal bank regulatory agencies under their PCA system. *See, e.g.*, 12 CFR 325.102(c)(1). Thus, OFHEO has revised final § 1777.21(b)(1) to require notice of any material development that would cause the Enterprise's core or total capital to fall to a point that would cause the Enterprise to be placed in a lower capital classification.

As suggested by one commenter, OFHEO has deleted the words ''as appropriate'' from the proposed version of § 1777.21(a)(1)(i), as unnecessary. In addition, various erroneous citations and cross-references have been corrected in the final rule.[23]

[23] Freddie Mac's comments on the prompt corrective action proposal also expressly incorporated by reference certain comments Freddie Mac made to OFHEO in a submission dated March 10, 2000, as to OFHEO's second risk-based capital proposal. Those comments addressed the proposed risk-based capital reporting procedure and other matters unrelated to the classification procedure, and have been responded to in the

Continued

Capital Distribution Restrictions

Section 1777.22 sets forth statutory capital distribution restrictions, including those provisions of the Enterprise's respective charter acts [24] prohibiting, without regard to capital classification, an Enterprise from making a capital distribution that would decrease the capital of the Enterprise to an amount less than the risk-based capital level or the minimum capital level, except as explicitly approved by OFHEO. Section 1777.22(a) reflects these statutory restrictions.[25] Under § 1777.22(b)(1), any Enterprise that is not classified as adequately capitalized is prohibited from making a capital distribution that would result in classification into a lower capital classification as provided by 12 U.S.C. 4615(a)(2) and 4616(a)(2). Under § 1777.22(b)(2), a significantly undercapitalized Enterprise is prohibited from making a capital distribution absent OFHEO's prior approval, as provided by 12 U.S.C. 4616(a)(2). Section 1777.22(b)(2) also applies in the case of an Enterprise classified as critically undercapitalized. The final rule recites, in a manner consistent with 12 U.S.C. 4617(b) through (c), OFHEO's authority to take actions authorized by 12 U.S.C. 4616 in the case of a critically undercapitalized Enterprise. Under the same authority, § 1777.23 requires an Enterprise classified as critically undercapitalized to submit a complete and acceptable capital restoration plan to OFHEO.

Capital Restoration Plans

Under § 1777.23(a)(1), an Enterprise is required to file a complete capital restoration plan with OFHEO within ten days of receiving final notice of capital classification indicating that the Enterprise is classified as undercapitalized, significantly undercapitalized, or critically undercapitalized, unless OFHEO extends the period. In its comments, Fannie Mae objected to this ten-day period as being too short. However, the time period is consistent with 12 U.S.C. 4622(b). OFHEO has set the deadline at ten days as a general rule to allow sufficient time for the Enterprise to articulate its responsive business plans, which, absent catastrophe, would likely have been developed over some time before a written submission is required. At the very least, the Enterprise and OFHEO will likely be aware of any impending threat and need for a capital restoration strategy by the time a notice of proposed classification is issued. In light of the serious implications of an adverse classification under subtitle B of the 1992 Act, swift implementation of a required capital plan is crucial. If it appears to OFHEO that additional time is appropriate under the particular circumstances, § 1777.23(a)(1) provides that OFHEO may extend the timeframe.

Under § 1777.23(a)(2), an Enterprise that is already operating under an approved capital restoration plan need not submit a new plan each time the Enterprise receives subsequent notices of capital classification, unless OFHEO notifies the Enterprise to the contrary. As a general matter, OFHEO would likely direct an Enterprise to submit a new or amended plan if subsequent notices of capital classification are on grounds different from or in addition to the grounds underlying previous notices, or if changes in circumstances underlying the original plan necessitate a revised plan, or if the original plan is not effective within a reasonable period.

Section 1777.23(b) requires an Enterprise's capital restoration plan to include the information specified in by 12 U.S.C. 4622(a) and such other information as directed by OFHEO. If the Enterprise does not submit a complete plan by the specified deadline, OFHEO may in its discretion lower the Enterprise's capital classification, as set forth in § 1777.23(c). If a complete and timely capital restoration plan is not filed by an Enterprise, OFHEO may reclassify the Enterprise under § 1777.21(a)(3) immediately upon expiration of the filing deadline, without further notice. As further provided in § 1777.23(c), an Enterprise's failure to submit a complete and timely plan may be considered in the determination of each subsequent capital classification of the Enterprise, until the Enterprise files a plan that obtains OFHEO's approval. If the Enterprise has not corrected its failure to file an acceptable plan after a reasonable period, OFHEO may reclassify the Enterprise, without further written notice.[26]

As specified in § 1777.23(d), OFHEO is to review the Enterprise's capital plan and issue an order within thirty days either approving or disapproving the plan, subject to extension for an additional thirty days as OFHEO deems necessary. If the plan is disapproved, the Enterprise must then submit an amended plan acceptable to OFHEO within thirty days or such longer period as OFHEO specifies. Notably, the thirty-day period is longer than the ten-day period for submission of the initial plan in order to facilitate dialogue with the Enterprise as to how the Enterprise may rehabilitate a disapproved plan. However, as provided in § 1777.23(c), OFHEO may reclassify the Enterprise into a lower capital classification, without additional notice, at any time before the Enterprise files an amended capital plan and OFHEO approves it.

Once a capital plan is approved, it may be amended only with the prior written approval of OFHEO, as provided in § 1777.23(f). As that section provides, the Enterprise's obligations under an approved plan remain in place except to the extent the plan itself identifies dates, events, or conditions upon which the obligations terminate. To the extent the plan is silent in regard to a particular obligation, the obligation remains in place until OFHEO issues an order terminating the obligation. An Enterprise may seek such termination orders from OFHEO under § 1777.23(g)(2).

In its comments, Fannie Mae objected to proposed § 1777.23(g), on the grounds that leaving a decision as significant as termination of a capital plan to the unlimited discretion of OFHEO would be fundamentally unfair.[27] Fannie Mae asserted that the plan should terminate upon the Enterprise's certification that the measures in the plan have been fulfilled, absent specific written findings to the contrary by OFHEO.

agency's disposition of the final risk-based capital rule at 66 FR 47730 (September 13, 2001).

[24] The Federal Home Loan Mortgage Corporation Act at 12 U.S.C. 1452(b)(2), and the Federal National Mortgage Association Charter Act at 12 U.S.C. 1718(c)(2).

[25] The proposed rule contained § 1777.22(c), implementing these statutory provisions prior to the initial date of OFHEO's risk-based capital rules. With the publication of such rules on September 13, 2001, § 1777.22(c) is unnecessary and has been dropped from the final rule.

[26] As is discussed above in connection with § 1777.21(a)(1)(ii), the Enterprises object to this combined notice under § 1777.23(c)(1) and § 1777.23(c)(3), but this approach is specifically authorized under 12 U.S.C. 4618(b).

[27] Fannie Mae also requested, under similar arguments of potential unfairness, that OFHEO create an ombudsman function within OFHEO, and that OFHEO also establish a formal appeals process whereby the Enterprises would have an avenue to appeal any significant supervisory decision to a senior agency official who was not involved in the original decision making process. Fannie Mae notes that the Federal bank regulatory agencies are required by the FDI Act to maintain such an appellate procedure. OFHEO has not implemented these suggestions because key differences between OFHEO and the bank regulatory agencies render such functions superfluous. Among such differences, because OFHEO supervises only two entities it lacks a large, decentralized supervisory structure, common among the banking agencies. The significantly smaller size of OFHEO makes it impracticable to provide a senior supervisory officer to act as ombudsman in such matters. The Enterprises have greater opportunities to provide input into the prompt corrective action classification and order process under the 1992 Act than is provided for insured depository institutions under the Federal Deposit Insurance Act.

OFHEO disagrees. The initial approval of the capital restoration plan (including its duration) is vested wholly in OFHEO's discretion. No reason supports a contention that OFHEO's parallel discretion over termination of a capital restoration plan is somehow otherwise unfair, or of such significance as to be beyond the agency's supervisory purview. Furthermore, an Enterprise can request that its obligations under an approved plan be terminated. In addition, as noted in § 1777.23(g)(1), to the extent particular provisions of a particular plan may be appropriately subject to termination by reference to specified dates, events, or conditions, the plan may be structured accordingly.

If an Enterprise fails to take timely action reasonably necessary to comply with an approved plan, OFHEO may exercise its authority under 12 U.S.C. 4615(b)(2) and 4616(b)(5) to reclassify the Enterprise. In their comments, the Enterprises objected to the language of proposed § 1777.23(h)(1), under which an Enterprise must make efforts reasonably necessary to comply with the capital restoration plan and to fulfill the schedule thereunder, as not being consistent with the statutory standard. OFHEO interprets the ''good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan'' language in sections 4615(b) and 4616(b) to mean that the Enterprise must make all reasonable efforts as are necessary to comply with the plan. OFHEO would consider it a demonstration of a lack of good faith if an Enterprise fails to attempt to carry out one or more efforts contemplated by an approved capital restoration plan. OFHEO would not deem an Enterprise's efforts to be in bad faith simply because such efforts fail to effect a desired result.

In light of the Enterprise's comments that OFHEO's proposed formulation does not adequately express the statutory standard, § 1777.23(h)(1)(i) has been revised to expressly refer to good faith, and to note that it is incumbent upon the Enterprise to make all reasonable efforts necessary to comply with an approved plan. The final rule provides that OFHEO may reclassify the Enterprise if, in the agency's discretion, the Enterprise has failed to make, in good faith, reasonable efforts necessary to comply with a capital restoration plan and to fulfill the schedule thereunder.

As is provided in § 1777.23(h)(1)(ii) through (iii), an Enterprise's failure to implement an approved capital plan may be considered in the determination of each subsequent capital classification of the Enterprise until OFHEO determines the Enterprise is making reasonable efforts. The Enterprise may face successive reclassifications for failure to make such efforts after a reasonable period.

As is noted in § 1777.23(h)(2), a capital plan that has received an approval order by OFHEO shall be deemed an order under the 1992 Act for enforcement purposes, and an Enterprise in any capital classification, its executive officers, and directors may be subject to action by OFHEO under 12 U.S.C. 4631, 4632, and 4636 and 12 CFR part 1780 for failure to comply with an approved plan. In its comments, Fannie Mae objects to such characterization. Fannie Mae asserts that the terms of an approved capital plan are not enforceable under OFHEO's cease and desist authority or civil money penalties, and that such an action by OFHEO would exceed its authority under the 1992 Act.

OFHEO disagrees and is adopting § 1777.23(h)(2) without change. Fannie Mae improperly infers that the only ''orders'' susceptible to enforcement action under these statutes are OFHEO determinations that are designated as ''orders'' by the 1992 Act itself. However, the 1992 Act does not designate any particular OFHEO determination with respect to an Enterprise or its directors or executive officers as an ''order,'' thereby begging the question under Fannie Mae's reasoning as to what would constitute an ''order'' for purposes of sections 4631, 4632, and 4636. While the 1992 Act describes OFHEO's decisions under sections 4631, 4632, and 4636 as ''orders,'' to argue that these are the exclusive ''orders'' to which such sections refer is not convincing. It would be circular to interpret these sections to mean that the only order the violation of which is redressable by a cease and desist order is another cease and desist order or an order imposing civil money penalties. While circumstances may occur in which a regulatory agency that is faced with noncompliance with a formal enforcement order may appropriately resort to further administrative enforcement action, more often a judicial enforcement of the enforcement order is likely to be sought. *Cf.* 12 U.S.C. 4635(a) (judicial actions to enforce orders and notice issued under subtitles B and C of the 1992 Act). Moreover, the statutory language in section 4361(a)(3)(A) and section 4636(a)(1) broadly refers to any order under the 1992 Act or the charter acts, without restriction as to particular sections of such acts.

Orders Under Section 4616

Section 1777.24 of the final rule implements OFHEO's discretionary authority under 12 U.S.C. 4616(b)(1) through (4), to issue orders requiring a significantly undercapitalized Enterprise to take remedial and corrective actions. OFHEO may fashion such remedy or require supervisory action as appropriate including, but not limited to, any of the following:

- Limit an increase in, or require a reduction of, any borrowings and other types of obligations of an Enterprise, including off-balance sheet obligations;
- Limit or prohibit the growth of assets of an Enterprise or require reduction of its assets;
- Require an Enterprise to obtain additional capital in such form and amount as specified by OFHEO; and
- Require an Enterprise to terminate, reduce, or modify a program or activity that entails excessive risk to the Enterprise.

As indicated by § 1777.24, OFHEO may also issue orders to an Enterprise that has been classified as critically undercapitalized under authority provided by 12 U.S.C. 4617(b) through (c).

The procedures under which such orders may be issued are similar to the procedures for issuance of capital classifications, and are set out in §§ 1777.24 through 1777.26. Similar to the treatment of approved capital plans discussed above, the provisions contained in these orders will bind the Enterprise until such provisions terminate under the terms of the order or OFHEO modifies the order, as discussed in § 1777.26(b). As indicated in § 1777.26(c), such orders constitute orders under the 1992 Act, and an Enterprise in any capital classification, its executive officers, and directors may be subject to administrative enforcement action by OFHEO under 12 U.S.C. 4631, 4632, and 4636 and 12 CFR part 1780 for failure to comply with such orders. Moreover, 12 U.S.C. 4635 provides jurisdiction in the United States District Court of the District of Columbia for direct enforcement of such orders.

Administrative Exhaustion

Section 1777.27 summarizes 12 U.S.C. 4623, which provides that an Enterprise not classified as critically undercapitalized may seek judicial review of OFHEO's final notice of its capital classification, or a final notice of order issued under 12 U.S.C. 4616(b)(1) through (4). For any issue raised by such Enterprise in connection with such review, the Enterprise must have first exhausted its administrative remedies,

by presenting its objections, arguments, and information relating to such issue for OFHEO's consideration in the Enterprise's response to OFHEO's notice of capital classification or notice of intent to issue an order. The Enterprise's judicial action will not operate as a stay of a capital classification or order by OFHEO.

In its comments, Freddie Mac asserted that OFHEO's requirement in proposed § 1777.27(b) that the Enterprise assert its objections concerning a classification to OFHEO before raising them before the D.C. Circuit would be inconsistent with applicable judicial doctrine. OFHEO disagrees. Section 1777.27 is consistent with controlling judicial precedent on exhaustion and review, and has been adopted in the final rule without change.

Appointment of a Conservator for a Significantly or Critically Undercapitalized Enterprise

Section 1777.28 addresses appointment of a conservator for a significantly undercapitalized or critically undercapitalized Enterprise.[28] As is described in § 1777.28(a), 12 U.S.C. 4616 empowers OFHEO to appoint a conservator for a significantly undercapitalized Enterprise, if OFHEO determines the Enterprise's core capital is less than the minimum capital level and the alternative remedies available to OFHEO under the 1992 Act are not satisfactory. As is described in § 1777.28(b), 12 U.S.C. 4617 requires the Director to appoint a conservator for a critically undercapitalized Enterprise, unless the Director makes a written determination, and the Secretary of the Treasury concurs in writing, that the appointment of a conservator is likely to have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market, and that the public interest would be better served by taking some other enforcement action authorized by the 1992 Act. In response to a comment, OFHEO has revised the final version of § 1777.28(b)(2), to clarify that the written determination described therein is to be in support of the agency's determination not to appoint a conservator.

Under 12 U.S.C. 4619(e)(2), a conservatorship appointment under either § 1777.28(a) or 1777.28(b) is to be terminated by OFHEO upon determining that the Enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level. OFHEO is also vested with discretion, under 12 U.S.C. 4619(e)(1), to terminate such a conservatorship appointment based upon determining that such termination is in the public interest and may safely be accomplished. These termination provisions are reflected in § 1777.28(d).

[28] OFHEO also has authority under 12 U.S.C. 4619(a)(1) through (2) to appoint conservators on various grounds, regardless of an Enterprise's capital classification.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The final rule is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

Unfunded Mandates Reform Act of 1995

This final rule does not include a Federal mandate that could result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the final rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the final rule under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the rule only affects the Enterprises, their executive officers, and their directors.

Paperwork Reduction Act of 1995

This final rule contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1777

Administrative practice and procedure, Capital classification, Mortgages.

Accordingly, for the reasons set out in the preamble, OFHEO adds part 1777 to subchapter C of 12 CFR chapter XVII, to read as follows:

PART 1777—PROMPT CORRECTIVE ACTION

Sec.
1777.1 Authority, purpose, scope, and implementation dates.
1777.2 Preservation of other authority.
1777.3 Definitions.

Subpart A—Prompt Supervisory Response

1777.10 Developments prompting supervisory response.
1777.11 Supervisory response.
1777.12 Other supervisory action.

Subpart B—Capital Classifications and Orders Under Section 1366 of the 1992 Act

1777.20 Capital classifications.
1777.21 Notice of capital category, and adjustments.
1777.22 Limitation on capital distributions.
1777.23 Capital restoration plans.
1777.24 Notice of intent to issue an order.
1777.25 Response to notice.
1777.26 Final notice of order.
1777.27 Exhaustion and review.
1777.28 Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

Authority: 12 U.S.C. 1452(b)(2), 1456(c), 1718(c)(2), 1723a(k), 4513(a), 4513(b), 4514, 4517, 4611–4619, 4622, 4623, 4631, 4635.

§ 1777.1 Authority, purpose, scope, and implementation dates.

(a) *Authority.* This part is issued by the Office of Federal Housing Enterprise Oversight (OFHEO) pursuant to sections 1313, 1371, 1372, and 1376 of the Federal Housing Enterprises Financial Safety and Soundness Act (1992 Act) (12 U.S.C. 4513, 4631, 4632, and 4636). These provisions broadly authorize OFHEO to take such actions as are deemed appropriate by the Director of OFHEO to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the

Enterprises) maintain adequate capital and operate in a safe and sound manner.

(b) *Authority, purpose and scope of subpart A.* In addition to the authority set forth in paragraph (a) of this section, subpart A of this part is also issued pursuant to section 1314 of the 1992 Act (12 U.S.C. 4514), section 307(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and section 309(k) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(k)), requiring each Enterprise to submit such reports to OFHEO as the Director of OFHEO determines, in his or her judgment, are necessary to carry out the purposes of the 1992 Act. Subpart A of this part is also issued in reliance on section 1317 of the 1992 Act (12 U.S.C. 4517) authorizing OFHEO to conduct examinations of the Enterprises. The purpose of subpart A of this part is to set forth a framework of early intervention supervisory measures, other than formal enforcement actions, that OFHEO may take to address emerging developments that merit supervisory review to ensure they do not pose a current or future threat to the safety and soundness of an Enterprise. OFHEO's initiation of procedures under subpart A does not necessarily indicate that any unsound condition exists. The supervisory responses enumerated in § 1777.11 do not constitute orders under the 1992 Act for purposes of sections 1371 and 1376 thereof (12 U.S.C. 4631 and 4636).

(c) *Authority, purpose, and scope of subpart B.* In addition to the authority set forth in paragraph (a) of this section, subpart B of this part is also issued pursuant to subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623), section 303(b)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)(2)), and section 303(c)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1718(c)(2)). These provisions authorize OFHEO to administer certain capital requirements for the Enterprises, to classify the capital of the Enterprises based on capital levels specified in the 1992 Act, and, in appropriate circumstances, to exercise discretion to reclassify an Enterprise into a lower capital category. Under these provisions, there are also automatic consequences for an Enterprise that is not classified as adequately capitalized, as well as discretionary authority for OFHEO to require an Enterprise to take remedial actions. Subpart B implements the provisions of sections 1364 through 1368, 1369(b) through (e), 1369C, and 1369D of the 1992 Act as they apply to the Enterprises (12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623). The principal purposes of subpart B are to identify the capital measures and capital levels that OFHEO uses in determining the capital classification of an Enterprise; to set out the procedures OFHEO uses in determining such capital classifications; to establish procedures for submission and review of capital restoration plans of an Enterprise that is not classified as adequately capitalized; and to establish procedures under which OFHEO issues orders pursuant to section 1366(b)(1) through (4) of the 1992 Act (12 U.S.C. 4616(b)(1) through (4)).

(d) *Effective dates of capital classifications.* Section 1364 of the 1992 Act (12 U.S.C. 4614(d)) directs OFHEO to determine capital classifications for the Enterprises by reference to two capital standards, consisting of the minimum or critical capital level on the one hand, and the risk-based capital level on the other. Section 1364(d) of the 1992 Act (12 U.S.C. 4614(d)) excludes consideration of whether the Enterprises meet the risk-based capital level in determining capital classifications or reclassifications under 1364, until one year after the effective date of OFHEO's regulation implementing OFHEO's risk-based capital test (issued under section 1361(e) of the 1992 Act (12 U.S.C. 4611(e)), until such time, section 1364(d) provides that an Enterprise is to be classified as adequately capitalized so long as it meets the minimum capital level. Subpart B contains a currently effective set of capital classifications omitting consideration of the risk-based capital level, as well as another set of capital classifications which will take effect, and displace the current set of capital classifications, on September 13, 2002 that is, one year after the effective date of OFHEO's risk-based capital rule published at 66 FR 47730, September 13, 2001.

§ 1777.2 Preservation of other authority.

(a) *Supervisory standards.* Notwithstanding the existence of procedures in § 1777.10 for the Director of OFHEO to designate certain developments for supervisory response under subpart A of this part, nothing in this part in any way limits the authority of OFHEO otherwise to take such actions with respect to any issue as is deemed appropriate by the Director of OFHEO to ensure that the Enterprises maintain adequate capital, operate in a safe and sound manner, and comply with the 1992 Act and regulations, orders, and agreements thereunder.

(b) *Capital floor.* Classification of an Enterprise as adequately capitalized in accordance with subtitle B of the 1992 Act and subpart B of this part indicates that the Enterprise meets the capital levels under sections 1361 and 1362 of the 1992 Act (12 U.S.C. 4611 and 4612) and regulations promulgated thereunder as of the times specified in the classification determination. Nothing in subpart B of this part or subtitle B of the 1992 Act limits OFHEO's authority otherwise to address circumstances that would require additional capital through regulations, orders, notices, guidance, or other actions.

(c) *Form of supervisory action or response.* In addition to the supervisory responses contemplated under subpart A of this part, and the authority to classify and reclassify the Enterprises, to issue orders, and to appoint conservators under subpart B of this part, the 1992 Act grants OFHEO broad discretion to take such other supervisory actions as may be deemed by OFHEO to be appropriate, including issuing temporary and permanent cease and desist orders, imposing civil money penalties, appointing a conservator under section 1369(a)(1) through (2) of the 1992 Act (12 U.S.C. 4619(a)(1) through (2)), entering into a written agreement the violation of which is actionable through enforcement proceedings, or entering into any other formal or informal agreement with an Enterprise. Neither the 1992 Act nor this part in any way limit OFHEO's discretion over the selection of the type of these actions, and the selection of one type of action under this part or under these other statutory authorities, or a combination thereof, does not foreclose OFHEO from pursuing any other action.

§ 1777.3 Definitions.

For purposes of this part, the following definitions will apply:

1992 Act means the Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*

Affiliate means an entity that controls an Enterprise, is controlled by an Enterprise, or is under common control with an Enterprise.

Capital distribution means:

(1) Any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an Enterprise, except a dividend consisting only of shares of the Enterprise; and

(2) Any payment made by an Enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit made to finance an acquisition by the Enterprise of such shares or other ownership interests, except to the extent the Enterprise

makes a payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401 *et seq.*) or any substantially equivalent plan as determined by the Director of OFHEO in writing in advance.

Core capital has the same meaning as provided in 12 CFR 1750.2.

Critical capital level means the amount of core capital that is equal to the sum of one half of the amount determined under 12 CFR 1750.4(a)(1) and five-ninths of the amounts determined under 12 CFR 1750.4(a)(2) through 1750.4(a)(7).

Enterprise means the Federal National Mortgage Association and any affiliate thereof, and the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Minimum capital level means the minimum amount of core capital specified for an Enterprise pursuant to section 1362 of the 1992 Act (12 U.S.C. 4612), as determined under 12 CFR 1750.4.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Risk-based capital level means the amount of total capital specified for an Enterprise pursuant to section 1361 of the 1992 Act (12 U.S.C. 4611), as determined under OFHEO's regulations implementing section 1361.

Total capital has the same meaning as provided at 12 CFR 1750.11(n).

Subpart A—Prompt Supervisory Response

§ 1777.10 Developments prompting supervisory response.

In the event of any of the following developments, OFHEO shall undertake one of the supervisory responses enumerated in § 1777.11, or a combination thereof:

(a) OFHEO's national House Price Index (HPI) for the most recent quarter is more than two percent less than the national HPI four quarters previously, or for any Census Division or Divisions in which are located properties securing more than 25 percent of single-family mortgages owned or securing securities guaranteed by an enterprise, the HPI for the most recent quarter for such Division or Divisions is more than five percent less than the HPI for that Division or Divisions four quarters previously;

(b) An Enterprise's publicly reported net income for the most recent calendar quarter is less than one-half of its average quarterly net income for any four-quarter period during the prior eight quarters;

(c) An Enterprise's publicly reported net interest margin (NIM) for the most recent quarter is less than one-half of its average NIM for any four-quarter period during the prior eight quarters;

(d) For single-family mortgage loans owned or securities by an Enterprise that are delinquent ninety days or more or in foreclosure, the proportion of such loans in the most recent quarter has increased more than one percentage point compared to the lowest proportion of such loans in any of the prior four quarters; or

(e) Any other development, including conduct of an activity by an Enterprise, that OFHEO determines in its discretion presents a risk to the safety and soundness of the Enterprise or a possible violation of applicable law, regulation, or order.

§ 1777.11 Supervisory response.

(a) *Level I supervisory response*—(1) *Supervisory letter.* Not later than five business days after OFHEO determines that a development enumerated in § 1777.10 has transpired, OFHEO shall deliver a supervisory letter alerting the chief executive officer or the board of directors of the Enterprise to OFHEO's determination.

(2) *Contents of supervisory letter.* The supervisory letter shall notify the Enterprise that, pursuant to this subpart, OFHEO is commencing review of a potentially adverse development. As is appropriate under the particular circumstances and the nature of the potentially adverse development, the letter may direct the Enterprise to undertake one or more of the following actions, as of such time as OFHEO directs:

(i) Provide OFHEO with any relevant information known to the Enterprise about the potentially adverse development, in such format as OFHEO directs;

(ii) Respond to specific questions and concerns that OFHEO poses about the potentially adverse development; and

(iii) Take appropriate action.

(3) *Review; further action.* Based on the Enterprise's response to the supervisory letter and consideration of other relevant factors, OFHEO shall promptly determine whether the Level I supervisory response is adequate to resolve any supervisory issues implicated by the potentially adverse development, or whether additional supervisory response under this section is warranted.

(4) *Sequence of supervisory responses.* The Level II through Level IV supervisory responses in paragraphs (b) through (d) of this section may be carried out in any sequence, including simultaneous performance of two or more such responses. OFHEO may also carry out one or more such responses simultaneously with a Level I supervisory response pursuant to this paragraph (a).

(b) *Level II supervisory response*—(1) *Special review.* In addition to any other supervisory response described in this section, OFHEO may conduct a special review of an Enterprise in order to assess the impact of the potentially adverse development on the Enterprise.

(2) *Review; further action.* Based on the results of the special review and consideration of other factors deemed by OFHEO to be relevant, OFHEO shall promptly determine whether additional supervisory response under this section is warranted.

(c) *Level III supervisory response*—(1) *Action plan.* In addition to any other supervisory response described in this section, OFHEO may direct the Enterprise to prepare and submit an action plan to OFHEO, in such format and at such time as OFHEO directs.

(2) *Contents of action plan.* Such action plan shall include, subject to additional direction by OFHEO, the following:

(i) In the case of any potentially adverse development arising from conditions or practices internal to the Enterprise, any relevant information known to the Enterprise about the circumstances that led to the potentially adverse development;

(ii) An assessment of likely consequences that the potentially adverse development may have for the Enterprise; and

(iii) The proposed course of action the Enterprise will undertake in response to the potentially adverse development, including an explanation as to why such approach is preferred to any other alternative actions by the Enterprise and how such approach will address the concerns of OFHEO.

(3) *Review; further action.* If OFHEO in its discretion determines that the information, assessment, or proposed course of action contained in the action plan is incomplete or inadequate, OFHEO shall promptly direct the Enterprise to correct such deficiencies to the extent OFHEO determines such corrections will aid in resolving supervisory issues implicated by the potentially adverse development, and will promptly determine whether additional supervisory response under this section is warranted.

(d) *Level IV supervisory response*—(1) *Notice to show cause.* In addition to any other supervisory response described in

this section, OFHEO may issue written notice to the chief executive officer or the board of directors of the Enterprise directing the Enterprise to show cause, on or before the date specified in the notice, why OFHEO should not issue one or more of the following:

(i) A notice of charges to the Enterprise under section 1371 of the 1992 Act (12 U.S.C. 4631) and the procedures in 12 CFR part 1780 commencing an action to order the Enterprise to cease and desist conduct, conditions, or violations specified in the notice to show cause;

(ii) A temporary order to the Enterprise under section 1372 of the 1992 Act (12 U.S.C. 4632) and the procedures in 12 CFR part 1780 to cease and desist from, and take affirmative actions to prevent or remedy harm from, conduct, conditions, or violations specified in the notice to show cause;

(iii) A notice of charges under section 1376 of the 1992 Act (12 U.S.C. 4636) and the procedures in 12 CFR part 1780 commencing imposition of a civil money penalty against the Enterprise; or

(iv) A notice of discretionary reclassification of the Enterprise's capital classification under section 1364(b) of the 1992 Act (12 U.S.C. 4614(b)) and subpart B of this part.

(2) *Review; further action.* Based on the Enterprise's response to the notice to show cause and consideration of other relevant factors, OFHEO shall promptly determine whether to commence the actions described in the notice, and whether additional supervisory response under this section is warranted.

§ 1777.12 Other supervisory action.

Notwithstanding the pendency or completion of one or more supervisory responses described in § 1777.11, OFHEO may at any time undertake additional supervisory steps and actions in the form of any informal or formal supervisory tool available to OFHEO under the 1992 Act, including, but not limited to, issuing guidance or directives under section 1313 (12 U.S.C. 4513), requiring reports under section 1314 (12 U.S.C. 4514), conducting other examinations under section 1317 (12 U.S.C. 4517), issuing discretionary reclassification under section 1364 (12 U.S.C. 4614), initiating discretionary action under section 1366(b) (12 U.S.C. 4616(b)), appointing a conservator under section 1369(a) (12 U.S.C. 4619(a)), or initiating administrative enforcement action under sections 1371, 1372, and 1376 (12 U.S.C. 4631, 4632 and 4636). In addition, OFHEO may take any such steps or actions with respect to an Enterprise that fails to make a submission or comply with a directive as required by § 1777.11, or to address an Enterprise's failure to implement an appropriate action in response to a supervisory letter or under an action plan under § 1777.11.

Subpart B—Capital Classifications and Orders Under Section 1366 of the 1992 Act

§ 1777.20 Capital classifications.

(a) *Capital classifications after the effective date of section 1365 of the 1992 Act.* The capital classification of an Enterprise for purposes of subpart B of this part is as follows:

(1) *Adequately capitalized.* Except as otherwise provided under paragraph (a)(5) of this section, an Enterprise will be classified as adequately capitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds total capital equaling or exceeding the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(2) *Undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds total capital less than the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(3) *Significantly undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as significantly undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the critical capital level.

(4) *Critically undercapitalized.* An Enterprise will be classified as critically undercapitalized if, as of the date specified in the notice of proposed capital classification, the Enterprise holds core capital less than the critical capital level.

(5) *Discretionary reclassification—determination to reclassify.* If OFHEO determines in writing that an Enterprise is engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result in a rapid depletion of core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly, or that reclassification is otherwise deemed necessary to ensure that the Enterprise holds adequate capital and operates safely, OFHEO may reclassify the Enterprise as:

(i) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized;

(ii) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized; or

(iii) Critically undercapitalized if the Enterprise is otherwise classified as significantly undercapitalized.

(b) *Duration of reclassification; successive reclassifications.* (1) A reclassification of an Enterprise based on action, inaction, or conditions under paragraph (a)(5) or (c)(5) of this section shall be considered in the determination of each subsequent capital classification of the Enterprise, and shall only cease being considered in the determination of the Enterprise's capital classification after OFHEO determines that the action, inaction or condition upon which the reclassification was based has ceased or been eliminated and remedied to OFHEO's satisfaction.

(2) If the action, inaction, or condition upon which a reclassification was based under paragraph (a)(5) or (c)(5) of this section has not ceased or been eliminated and remedied to OFHEO's satisfaction within such reasonable time as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under such paragraph (a)(5) or (c)(5) of this section into a lower capital classification.

(c) *Capital classifications before the effective date of section 1365 of the 1992 Act.* Notwithstanding paragraph (a) of this section, until September 13, 2002, the capital classification of an Enterprise for purposes of subpart B of this part is as follows:

(1) *Adequately capitalized.* Except as otherwise provided in paragraph (c)(5) of this section, an Enterprise will be classified as adequately capitalized if the Enterprise, as of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(2) *Undercapitalized.* An Enterprise will be classified as undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level; and

(ii) Is reclassified as undercapitalized by OFHEO under paragraph (c)(5) of this section.

(3) *Significantly undercapitalized.* Except as otherwise provided under paragraph (c)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as significantly undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, held core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the critical capital level.

(4) *Critically undercapitalized.* An Enterprise will be classified as critically undercapitalized if, as of the date specified in the notice of proposed capital classification, the Enterprise held core capital less than the critical capital level.

(5) *Discretionary reclassification.* If OFHEO determines in writing that an Enterprise is engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result a rapid depletion of core capital, or that the value of the property subject to mortgages held or securitized by the Enterprise has decreased significantly or that reclassification is deemed necessary to ensure that the Enterprise holds adequate capital and operates safely, OFHEO may reclassify the Enterprise as:

(i) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized:

(ii) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized; or

(iii) Critically undercapitalized if the Enterprise is otherwise classified as significantly undercapitalized.

(d) *Prior approvals.* In making a determination to reclassify an Enterprise under paragraph (a)(5) or (c)(5) of this section, OFHEO will not base its decision to reclassify solely on action or inaction that previously was given specific approval by the Director of OFHEO in connection with the Director's approval of the Enterprise's capital restoration plan under section 1369C of the 1992 Act (12 U.S.C. 4622), or of a written agreement with the Enterprise that is enforceable in accordance with section 1371 of the 1992 Act.

§ 1777.21 Notice of capital category, and adjustments.

(a) *Notice of capital classification.* OFHEO will classify each Enterprise according to the capital classifications in § 1777.20(a) or § 1777.20(c) on at least a quarterly basis. OFHEO may classify an Enterprise according to the capital classifications in § 1777.20(a) or § 1777.20(c), or reclassify an Enterprise as set out in § 1777.20(a)(5), § 1777.20(c)(5), § 1777.23(c), or § 1777.23(h), at such other times as OFHEO deems appropriate.

(1) *Notice of proposed capital classification.*—(i) Before OFHEO classifies or reclassifies an Enterprise, OFHEO will provide the Enterprise with written notice containing the proposed capital classification, the information upon which the proposed classification is based, and the reason for the proposed classification.

(ii) Notices proposing to classify or reclassify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice that OFHEO may further reclassify the Enterprise under § 1777.23(c), without additional notice.

(iii) Notices proposing to classify or reclassify an Enterprise as significantly undercapitalized or critically undercapitalized may be combined with a notice under § 1777.24 that OFHEO intends to issue an order under section 1366 of the 1992 Act (12 U.S.C. 4616).

(iv) Notices proposing to classify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice proposing to simultaneously reclassify the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5).

(2) *Response by the Enterprise.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in classifying or reclassifying the Enterprise.

(i) The Enterprise may, within thirty calendar days from receipt of a notice of proposed capital classification, submit a response to OFHEO, unless OFHEO determines the condition of the Enterprise requires a shorter period or the Enterprise consents to a shorter period.

(ii) The Enterprise's response period may be extended for up to an additional thirty calendar days if OFHEO determines there is good cause for such extension.

(iii) The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed capital classification.

(3) *Classification determination and written notice of capital classification.* After the Enterprise has submitted its response under paragraph (a)(2) of this section or the response period (as extended or shortened, if applicable) has expired, whichever occurs first, OFHEO will make its determination of the Enterprise's capital classification, taking into consideration such relevant information as is provided by the Enterprise in its response, if any, under paragraph (a)(2) of this section. OFHEO will provide the Enterprise with a written notice of capital classification, which shall include a description of the basis for OFHEO's determination.

(4) *Timing.* OFHEO may, in its discretion, issue a notice of proposed capital classification to an Enterprise at any time. If a notice of proposed classification is pending (under the process set out in paragraphs (a)(1) through (3) of this section) at that time, OFHEO may, in its discretion, specify whether the subsequent notice of proposed capital classification supersedes the pending notice.

(b) *Developments warranting possible change to capital classification*—(1) *Notice to OFHEO.* An Enterprise shall promptly provide OFHEO with written notice of any material development that would result in the Enterprise's core or total capital to fall to a point causing the Enterprise to be placed in a lower capital classification than the capital classification assigned to the Enterprise in its most recent notice of capital classification from OFHEO, or than is proposed to be assigned in the Enterprise's most recent notice of proposed capital classification from OFHEO. The Enterprise shall deliver such notice to OFHEO no later than ten calendar days after the Enterprise becomes aware of such development.

(2) OFHEO, in its discretion, will determine whether to issue a new notice of proposed capital classification under paragraph (a) of this section, based on OFHEO's review of the notice under paragraph (b)(1) of this section from the Enterprise and any other information deemed relevant by OFHEO.

§ 1777.22 Limitation on capital distributions.

(a) *Capital distributions in general.* An Enterprise shall make no capital distribution that would decrease the total capital of the Enterprise to an amount less than the risk-based capital level or the core capital of the Enterprise to an amount less than the minimum capital level without the prior written approval of OFHEO.

(b) *Capital distributions by an Enterprise that is not adequately capitalized*—(1) *Prohibited distributions.* An Enterprise that is not

classified as adequately capitalized shall make no capital distribution that would result in the Enterprise being classified into a lower capital classification than the one to which it is classified at the time of such distribution.

(2) *Restricted distributions.* An Enterprise classified as significantly or critically undercapitalized shall make no capital distribution without the prior written approval of OFHEO. OFHEO may grant a request for such a capital distribution only if OFHEO determines, in its discretion, that the distribution:

(i) Will enhance the ability of the Enterprise to meet the risk-based capital level and the minimum capital level promptly;

(ii) Will contribute to the long-term financial safety and soundness of the Enterprise; or

(iii) Is otherwise in the public interest.

§ 1777.23 Capital restoration plans.

(a) *Schedule for filing plans*—(1) *In general.* An Enterprise shall file a capital restoration plan in writing with OFHEO within ten days of receiving a notice of capital classification under § 1777.21(a)(3) stating that the Enterprise is classified as undercapitalized, significantly undercapitalized, or critically undercapitalized, unless OFHEO in its discretion determines an extension of the ten-day period is necessary and provides the Enterprise with written notice of the date the plan is due.

(2) *Successive capital classifications.* Notwithstanding paragraph (a)(1) of this section, an Enterprise that has already submitted and is operating under a capital restoration plan approved by OFHEO under this part is not required to submit an additional capital restoration plan based on a subsequent notice of capital classification, unless OFHEO notifies the Enterprise that it must submit a new or amended capital restoration plan. An Enterprise that receives such a notice to submit a new or amended capital restoration plan shall file in writing with OFHEO a complete plan that is responsive to the terms of and within the deadline specified in such notice.

(b) *Contents of capital restoration plan.* (1) The capital restoration plan submitted under paragraph (a)(1) or (2) of this section shall:

(i) Specify the level of capital the Enterprise will achieve and maintain;

(ii) Describe the actions that the Enterprise will take to become classified as adequately capitalized;

(iii) Establish a schedule for completing the actions set forth in the plan;

(iv) Specify the types and levels of activities (including existing and new programs) in which the Enterprise will engage during the term of the plan;

(v) Describe the actions that the Enterprise will take to comply with any mandatory or discretionary requirements to be imposed under Subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623) or subpart B of this part;

(vi) To the extent the Enterprise is required to submit or revise a capital restoration plan as the result of a reclassification of the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5), describe the steps the Enterprise will take to cease or eliminate and remedy the action, inaction, or conditions that caused the reclassification; and

(vii) Provide any other information or discuss any other issues as instructed by OFHEO.

(2) The plan shall include a declaration by the chief executive officer, treasurer, or other officer designated by the Board of Directors of the Enterprise to make such declaration, that the material contained in the plan is true and correct to the best of such officer's knowledge and belief.

(c) *Failure to submit*—(1) *Failure to submit; submission of unacceptable plan.* If, upon the expiration of the period provided in paragraph (a)(1) or (2) of this section for an Enterprise to submit a capital restoration plan, an Enterprise fails to comply with the requirement to file a complete capital restoration plan, or if the capital restoration plan is disapproved after review under paragraph (d) of this section, OFHEO may, in accordance with § 1777.21(a)(1)(ii) without additional notice, reclassify the Enterprise:

(i) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(ii) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(2) *Duration of reclassification.* An Enterprise's failure to submit an approved capital restoration plan as described in paragraph (c)(1) of this section shall continue to be grounds for reclassification at each subsequent capital classification of the Enterprise, and shall only cease being considered grounds for reclassification after the Enterprise files a capital restoration plan that receives OFHEO's approval under paragraph (d) of this section.

(3) *Successive reclassifications.* If an Enterprise has not remedied its failure to file a complete capital restoration plan or an acceptable capital restoration plan within such period as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under paragraph (c)(1) of this section into a lower capital classification. Such reclassification may be made without additional notice in accordance with § 1777.21(a)(1)(ii).

(d) *Order approving or disapproving plan.* Not later than thirty calendar days after receipt of the Enterprise's complete or amended capital restoration plan under this section (subject to extension upon written notice to the Enterprise for an additional thirty calendar days as OFHEO deems necessary), OFHEO shall issue an order to the Enterprise approving or disapproving the plan. An order disapproving a plan shall include the reasons therefore.

(e) *Resubmission.* An Enterprise that receives an order disapproving its capital restoration plan shall submit an amended capital plan acceptable to OFHEO within thirty calendar days of the date of such order, or a longer period if OFHEO determines an extension is in the public interest.

(f) *Amendment.* An Enterprise that has received an order approving its capital restoration plan may amend the capital restoration plan only after written notice to OFHEO and OFHEO's written approval of the modification. Pending OFHEO's review and approval of the amendment in OFHEO's discretion, the Enterprise shall continue to implement the capital restoration plan under the original approval order.

(g) *Termination*—(1) *Termination under the terms of the plan.* An Enterprise that has received an order approving its capital restoration plan remains bound by each of its obligations under the plan until each such obligation terminates under express terms of the plan itself identifying a date, event, or condition upon which such obligation shall terminate.

(2) *Termination orders.* To the extent the plan does not include such express terms for any obligation thereunder, the Enterprise's obligation continues until OFHEO issues an order terminating such obligation under the plan. The Enterprise may also submit a written request to OFHEO seeking termination of such obligations. OFHEO will approve termination of such obligation to the extent that OFHEO determines, in its discretion, that the obligation's purpose under the plan has been fulfilled and that termination of the obligation is consistent with the overall safety and soundness of the Enterprise.

(h) *Implementation*—(1) An Enterprise that has received an order approving its capital restoration plan is required to implement the plan.

(i) If OFHEO determines, in its discretion, that an Enterprise has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule thereunder, OFHEO may reclassify the Enterprise:

(A) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(B) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(ii) *Duration of reclassification.* An Enterprise's failure to implement an approved capital restoration plan as described in paragraph (h)(1)(i) of this section shall continue to be grounds for reclassification at each subsequent capital classification of the Enterprise, and shall only cease being considered grounds for reclassification after OFHEO determines, in its discretion, that the Enterprise is making such efforts as are reasonably necessary to comply with the capital restoration plan and fulfill the schedule thereunder.

(iii) *Successive reclassifications.* If an Enterprise has not remedied its failure to implement an approved capital restoration plan within such period as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under paragraph (h)(1)(i) of this section into a lower capital classification.

(2) *Administrative enforcement action.* A capital plan that has received an approval order from OFHEO under this section shall constitute an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers, and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such plan.

§ 1777.24 Notice of intent to issue an order.

(a) *Orders under section 1366 of the 1992 Act (12 U.S.C. 4616).* In addition to any other action taken under this part, part 1780 of this chapter, or any other applicable authority, OFHEO may, in its discretion, issue an order to an Enterprise that is classified as significantly undercapitalized or critically undercapitalized, or is in conservatorship, directing the Enterprise to take one or more of the following actions:

(1) Limit any increase in, or reduce, any obligations of the Enterprise, including off-balance sheet obligations;

(2) Limit or eliminate growth of the Enterprise's assets or reduce the amount of the Enterprise's assets;

(3) Acquire new capital, in such form and amount as determined by OFHEO; or

(4) Terminate, reduce, or modify any activity of the Enterprise that OFHEO determines creates excessive risk to the Enterprise.

(b) *Notice of intent to issue an order.* Before OFHEO issues an order to an Enterprise pursuant to section 1366 of the 1992 Act (12 U.S.C. 4616), OFHEO will provide the Enterprise with written notice containing the proposed order.

(c) *Contents of notice.* A notice of intent to issue an order under this subpart shall include:

(1) A statement of the Enterprise's capital classification and its minimum capital level or critical capital level, and its risk-based capital level;

(2) A description of the restrictions, prohibitions, or affirmative actions that OFHEO proposes to impose or require; and

(3) The proposed date when such restrictions or prohibitions would become effective or the proposed date for the commencement and/or completion of the affirmative actions.

§ 1777.25 Response to notice.

(a) *Content of response.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in connection with the proposed order. The response should include, but is in no way limited to, the following:

(1) Any relevant information, mitigating circumstances, documentation, or other information the Enterprise wishes OFHEO to consider in support of the Enterprise's position regarding the proposed order; and

(2) Any recommended modification to the proposed order, and justification thereof.

(b) *Time to respond.* The Enterprise may, within thirty calendar days after receipt of the notice of proposed order, submit a response to OFHEO, unless OFHEO determines a shorter period to be appropriate or the Enterprise consents to a shorter period. OFHEO may extend the Enterprise's response period for up to an additional thirty calendar days if OFHEO determines, in its discretion, that there is good cause for such extension.

(c) *Waiver and consent.* The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed order.

§ 1777.26 Final notice of order.

(a) *Determination and notice.* After the Enterprise has submitted its response under § 1777.25 or the response period (as extended or shortened, if applicable) has expired, whichever occurs first, OFHEO will determine, in its discretion, whether to take into consideration such relevant information as is provided by the Enterprise in its response, if any, under § 1777.25. OFHEO will provide the Enterprise with a written final notice of any order issued by OFHEO under this subpart, which is to include a description of the basis for OFHEO's determination.

(b) *Termination or modification.* An Enterprise that has received an order under paragraph (a) of this section remains subject to each provision of the order until each such provision terminates under the express terms of the order. The Enterprise may submit a written request to OFHEO seeking modification or termination of one or more provisions of the order. Pending OFHEO's review and approval, in OFHEO's discretion of the Enterprise's request, the Enterprise shall remain subject to the provisions of the order.

(c) *Enforcement of order*—(1) *Judicial enforcement.* An order issued under paragraph (a) of this section is an order for purposes of section 1375 of the 1992 Act (12 U.S.C. 4635). An Enterprise in any capital classification may be subject to enforcement of such order in the United States District Court for the District of Columbia pursuant to such section.

(2) *Administrative enforcement.* An order issued under paragraph (a) of this section constitutes an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such order.

§ 1777.27 Exhaustion and review.

(a) *Judicial review*—(1) *Review of certain actions.* An Enterprise that is not classified as critically undercapitalized may seek judicial review of a final notice of capital classification issued pursuant to § 1777.21(a)(3) or a final notice of order issued pursuant to § 1777.26(a) in accordance with section 1369D of the 1992 Act (12 U.S.C. 4623)

(2) *Other review barred.* Except as set out in paragraph (a)(1) of this section, or review of conservatorship appointments to the limited extent provided in section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)) and § 1777.28(c), no court shall

have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of a capital classification or any other action of OFHEO pursuant to this subpart B, as provided in section 1369D of the 1992 Act (12 U.S.C. 4623).

(b) *Exhaustion of administrative remedies.* In connection with any issue for which an Enterprise seeks judicial review in connection with an action described in paragraph (a)(1) of this section, the Enterprise must have first exhausted its administrative remedies, by presenting all its objections, arguments, and information relating to such issue for OFHEO's consideration pursuant to § 1777.21(a)(2), as part of the Enterprise's response to OFHEO's notice of capital classification, or pursuant to § 1777.25, as part of the Enterprise's response to OFHEO's notice of intent to issue an order.

(c) *No stay pending review.* The commencement of proceedings for judicial review of a final capital classification or order as described in paragraph (a)(1) of this section shall not operate as a stay thereof.

§ 1777.28 Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

(a) *Significantly undercapitalized Enterprise.* At any time after an Enterprise is classified as significantly undercapitalized, OFHEO may issue an order appointing a conservator for the Enterprise upon determining that:

(1) The amount of core capital of the Enterprise is less than the minimum capital level; and

(2) The alternative remedies available to OFHEO under the 1992 Act are not satisfactory.

(b) *Critically undercapitalized Enterprise*—(1) *Appointment upon classification.* Not later than thirty days after issuing a final notice of capital classification pursuant to § 1777.21(a)(3) classifying an Enterprise as significantly undercapitalized, OFHEO shall issue an order appointing a conservator for the Enterprise.

(2) *Exception.* Notwithstanding paragraph (b)(1) of this section, OFHEO may determine not to appoint a conservator if OFHEO makes a written finding, with the written concurrence of the Secretary of the Treasury, that:

(i) The appointment of a conservator would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market; and

(ii) The public interest would be better served by taking some other enforcement action authorized under this title.

(c) *Judicial review.* An Enterprise for which a conservator has been appointed pursuant to paragraph (a) or (b) of this section may seek judicial review of the appointment in accordance with section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)). Except as provided therein, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of the powers or functions of a conservator.

(d) *Termination*—(1) *Upon reaching the minimum capital level.* OFHEO will issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that the Enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level.

(2) *In OFHEO's discretion.* OFHEO may, in its discretion, issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that such termination order is in the public interest and may safely be accomplished.

Dated: January 18, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–1842 Filed 1–24–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–198–AD; Amendment 39–12607; AD 2002–01–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires inspections to detect cracking and corrosion of the aft trunnion of the outer cylinder of the main landing gear (MLG) and various follow-on actions. That AD also currently requires termination of the inspections by repairing the outer cylinder and installing new aft trunnion bushings. This amendment prohibits the use of a particular corrosion inhibiting compound during accomplishment of the terminating action. This action is necessary to prevent the collapse of the MLG due to stress corrosion cracking of the aft trunnion of the outer cylinder. This action is intended to address the identified unsafe condition.

DATES: Effective March 1, 2002.

The incorporation by reference of Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of March 1, 2002.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 16, 1996 (61 FR 3552, February 1, 1996).

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 29, 1996 (61 FR 55080, October 24, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–21–06, amendment 39–9783 (61 FR 55080, October 24, 1996), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on August 24, 2001 (66 FR 44553). The action proposed to continue to require inspections and various follow-on actions to detect cracking and corrosion of the aft trunnion of the outer cylinder of the main landing gear (MLG). The action also proposed to continue to require termination of the inspections by repairing the outer cylinder and installing new aft trunnion bushings. Finally, the action proposed to prohibit the use of a particular corrosion inhibiting compound during accomplishment of the terminating action.

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.

Request To Supersede Multiple ADs

One commenter requests that the FAA revise the proposed AD to supersede AD 96–21–06, AD 95–19–10, amendment 39–9372 (60 FR 47689, September 14, 1995), and AD 95–20–51, amendment 39–9398 (60 FR 53109, October 12, 1995), with one AD. The commenter sees no benefit in having four ADs (i.e., the three listed previously and the proposed AD) that address the same area of the aft trunnion of the MLG on Model 767 series airplanes. The commenter states that superseding all of the ADs related to the aft trunnion would ease the administrative burden and simplify the recordkeeping associated with these ADs.

The FAA does not concur with the commenter's request. We note that this AD does supersede AD 96–21–06, one of the ADs to which the commenter refers. We also note that the applicability statements of all three ADs differ; that is, all three ADs apply to different groups of airplanes. With this in mind, combining the three ADs into one superseding AD would result in a lengthy, highly complex AD, which may be confusing for operators. For this reason, we find that a combined AD would be likely to impose more of an administrative and recordkeeping burden, rather than less of one, as the commenter suggests, and could increase the potential for recordkeeping mistakes. For these reasons, we find it inappropriate to supersede the three ADs listed above with a single AD action. No change to the final rule is needed in this regard.

Refer to Alternative Terminating Action

The same commenter presents an alternative if we do not agree to supersede the three ADs identified previously. It asks that we revise paragraph (e) of the proposed AD to refer to Part 4 of Boeing Service Bulletin 767–32A0192, dated May 31, 2001, as an acceptable terminating action for paragraph (e) of the proposed AD. The commenter states that the actions in Part 4 of that service bulletin are equivalent to those in Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, which is identified in paragraph (e) of the proposed AD as the appropriate source of service information for the actions in that paragraph.

We concur with the intent of the commenter's request. We agree that accomplishment of ''Part 4—Terminating Action'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192 terminates paragraph (e) of this AD. We note that we have previously issued another notice of proposed rulemaking (NPRM), Rules Docket Number 2001–NM–189–AD, which, if adopted, would apply to all Boeing Model 767–200, –300, and –300F series airplanes. Paragraph (i) of that NPRM specifies accomplishment of the terminating action in Boeing Alert Service Bulletin 767–32A0192. In addition, paragraph (j) of that NPRM states, ''Accomplishment of the actions specified in paragraph (i) of this AD is considered acceptable for compliance with the requirements of paragraph (e) of AD 96–21–06, amendment 39–9783.'' The provision of paragraph (j) of that NPRM applies to paragraph (e) of this AD because this AD supersedes AD 96–21–06. Therefore, for clarification, we have added a new paragraph (h) to this AD to state that accomplishment of ''Part 4—Terminating Action'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192 constitutes terminating action for paragraph (e) of this AD. Paragraphs subsequent to this new paragraph (h) have been reordered accordingly.

Limit Area of Prohibition

One commenter recommends that the proposed AD prohibit the application of the corrosion inhibiting compound Desoto 823E508 (Titanine JC5A) only on the aft trunnion of the MLG. The commenter notes that the wording of paragraph (h) of the proposed rule prohibits application of that compound anywhere on an airplane. The commenter states that service history and laboratory test data have shown that typical usage of this corrosion inhibiting compound in thin layers (such as on fasteners and faying surfaces) does not promote corrosion.

While we neither accept nor reject the commenter's argument, we agree that the unsafe condition associated with this AD relates specifically to the aft trunnion of the MLG. Therefore, it is appropriate to limit the prohibition of the application of the subject corrosion inhibiting compound to the aft trunnion of the MLG. Due to the addition of a paragraph described previously, paragraph (h) of the proposed AD has been reordered as paragraph (i) in this final rule, and we have revised that paragraph accordingly.

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 605 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 200 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–21–06 take approximately 252 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $9,510 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $4,926,000, or $24,630 per airplane.

The prohibition of a certain corrosion inhibiting compound, which is the only new requirement of this AD, will not change the cost impact on U.S. operators from that associated with AD 96–21–06.

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 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 final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9783 (61 FR 55080, October 24, 1996), and by adding a new airworthiness directive (AD), amendment 39–12607, to read as follows:

2002–01–13 Boeing: Amendment 39–12607. Docket 2001–NM–198–AD. Supersedes AD 96–21–06, Amendment 39–9783.

Applicability: Model 767 series airplanes having line numbers 001 through 605 inclusive, on which the terminating action required by paragraph (e) of this AD has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 (j)(1) 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 collapse of the main landing gear (MLG) due to stress corrosion cracking of the aft trunnion of the outer cylinder, accomplish the following:

Note 2: This AD is merely a restatement of the requirements of AD 96–21–06, amendment 39–9783, with one exception: Only Revision 2, dated November 30, 2000, of Boeing Service Bulletin 767–32A0148, which disallows the use of Desoto 823E508 (Titanine JC5A) corrosion inhibiting compound, may be used after the effective date of this new AD. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 96–21–06 have already been accomplished prior to the effective date of this AD in accordance with prior versions of that service bulletin, this AD does not require that those actions be repeated. However, the FAA is considering the issuance of a separate rulemaking action to further address the identified unsafe condition on airplanes on which Desoto 823E508 (Titanine JC5A) was used.

Restatement of the Requirements of AD 96–21–06

Inspections and Various Follow-On Actions

(a) Perform the inspections described in paragraph III, Accomplishment Instructions, of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996, to detect cracking and corrosion of the aft trunnion of the outer cylinder of the MLG at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. These inspections are to be accomplished in accordance with Figure 1 of the service bulletin. Repeat these inspections thereafter at the intervals specified in that service bulletin. To determine the category in which an airplane falls, the age of the outer cylinder of the MLG is to be calculated as of February 16, 1996 (the effective date of AD 96–03–02 R1, amendment 39–9526). For airplanes on which the age of the right MLG differs from the age of the left MLG, an operator may place the airplane into a category that is the higher (numerically) of the two categories to ease its administrative burden, and to simplify the recordkeeping requirements imposed by this AD. Once the category into which an airplane falls is determined, operators must obtain approval from the Manager, Seattle Aircraft Certification Office (ACO), FAA, to move that airplane into another category.

Note 3: The broken (dash) lines used in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, and Revision 1, dated October 10, 1996, denote ''go to'' actions for findings of discrepancies detected during any of the inspections required by this AD.

Note 4: Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, and Revision 1, dated October 10, 1996, refer to Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995, and Revision 1, dated October 10, 1996, for procedures to repair the outer cylinder and replace the bushings in the outer cylinder of the MLG with new bushings.

(1) For airplanes identified as Category 3 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Perform the initial inspections within 30 days after February 16, 1996 (the effective date of AD 96–03–02 R1, amendment 39–9526).

(2) For airplanes identified as Category 2 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Perform the initial inspections within 90 days after February 16, 1996.

(3) For airplanes identified as Category 1 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Perform the initial inspections prior to the accumulation of 2½ years since the MLG outer cylinder was new or last overhauled, or within 150 days after February 16, 1996, whichever occurs later.

(b) If no cracking or corrosion is detected during the inspections required by paragraph (a) of this AD, accomplish the follow-on actions described in Boeing Alert Service Bulletin 767–32A0151, November 30, 1995, or Revision 1, dated October 10, 1996, at the time specified in the service bulletin. These follow-on actions are to be accomplished in accordance with that service bulletin.

(c) If any cracking is detected during the inspections required by paragraph (a) of this AD, prior to further flight, replace the outer cylinder with a new or serviceable outer cylinder in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996.

(d) If any corrosion is detected during the inspections required by paragraph (a) of this AD, accomplish the follow-on actions at the time specified in the ''Corrosion Flowchart,'' in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996. The follow-on actions are to be accomplished in accordance with that service bulletin.

Terminating Action

(e) Unless previously accomplished in accordance with paragraph (e) of AD 96–21–06, at the time specified in either paragraph (e)(1) or (e)(2) of this AD, as applicable, repair the outer cylinder and replace the bushings in the aft trunnion and crossbolt of the MLG with new bushings, in accordance with Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000. Accomplishment of this repair and replacement constitutes terminating action for this AD, and for the requirements of AD 95–19–10, amendment 39–9372; and AD 95–20–51, amendment 39–9398.

Note 5: Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, refers to Boeing Component Maintenance Manual (CMM) 32–11–40 for certain procedures.

(1) For airplanes identified as Category 3 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Accomplish the repair and replacement within 18 months after November 29, 1996 (the effective date of AD 96–21–06, amendment 39–9783).

(2) For airplanes identified as either Category 1 or Category 2 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151,

dated November 30, 1995, or Revision 1, dated October 10, 1996: Accomplish the repair and replacement at the time specified in either paragraph (e)(2)(i) or (e)(2)(ii) of this AD:

(i) Prior to the accumulation of 5½ years since the MLG outer cylinders were new or last overhauled, or within 18 months after November 29, 1996, whichever occurs later; or

(ii) Prior to the accumulation of 7 years since the MLG outer cylinders were new or last overhauled, provided that accomplishment of visual and non-destructive testing (NDT) inspections at the times specified in Figure 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996, are repeated until the repair and replacement are accomplished.

(f) Accomplishment of the inspection requirements of this AD (in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996) is considered acceptable for compliance with AD 95–19–10, amendment 39–9372; and AD 95–20–51, amendment 39–9398.

New Requirements of This AD

(g) Except as provided by paragraph (h) of this AD: As of the effective date of this AD, only Revision 2, dated November 30, 2000, of Boeing Service Bulletin 767–32A0148 shall be used to accomplish the actions required by paragraph (e) of this AD.

(h) Accomplishment of the terminating action (including removal of the existing bushings, repair of the aft trunnion area of the outer cylinder, and machining and installation of new bushings) in accordance with ''Part 4—Terminating Action'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001, constitutes terminating action for the requirements of paragraph (e) of this AD.

Use of Titanine JC5A Prohibited

(i) As of the effective date of this AD, no person shall use the corrosion inhibiting compound Desoto 823E508 (Titanine JC5A) on the aft trunnion of the MLG on any airplane.

Alternative Methods of Compliance

(j)(1) 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 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(2) Alternative methods of compliance, approved in accordance with AD 96–03–02, amendment 39–9497; AD 96–03–02 R1, amendment 39–9526; AD 95–19–10, amendment 39–9372; or AD 95–20–51, amendment 39–9398; are approved as alternative methods of compliance with this AD except as required in paragraph (i) of this AD.

Special Flight Permits

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

Incorporation by Reference

(l) Except as provided by paragraphs (a) and (h) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995; Boeing Service Bulletin 767–32A0151, Revision 1, dated October 10, 1996; or Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995; was approved previously by the Director of the Federal Register as of February 16, 1996 (61 FR 3552, February 1, 1996).

(3) The incorporation by reference of Boeing Service Bulletin 767–32A0151, Revision 1, dated October 10, 1996; was approved previously by the Director of the Federal Register as of November 29, 1996 (61 FR 55080, October 24, 1996).

(4) 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

(m) This amendment becomes effective on March 1, 2002.

Issued in Renton, Washington, on January 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1452 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30292; Amdt. No. 2090]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal

Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS or FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or FMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

Effective February 21, 2002

Sacramento, CA, Sacramento Mather, VOR or GPS RWY 4R, Orig-C, CANCELLED
Sacramento, CA, Sacramento Mather, VOR RWY 4R, Orig-C
Sacramento, CA, Sacramento Mather, VOR/DME or GPS RWY 22L, Orig-C, CANCELLED
Sacramento, CA, Sacramento Mather, VOR/DME RWY 22L, Orig-C
Santa Ana, CA, John Wayne Airport-Orange County, NDB or GPS RWY 1L, Amdt 1A, CANCELLED
Santa Ana, CA, John Wayne Airport-Orange County, NDB RWY 1L, Amdt 1A
Santa Ana, CA, John Wayne Airport-Orange County, NDB or GPS RWY 19R, Amdt 1, CANCELLED
Santa Ana, CA, John Wayne Airport-Orange County, NDB RWY 19R, Amdt 1
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, NDB or GPS RWY 13, Amdt 15, CANCELLED
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, NDB RWY 13, Amdt 15
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, VOR or GPS RWY 27R, Amdt 11, CANCELLED
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, VOR RWY 27R, Amdt 11
Atlanta, GA, The William B. Hartsfield Atlanta Intl, VOR or GPS RWY 27L, Amdt 4A, CANCELLED
Atlanta, GA, The William B. Hartsfield Atlanta Intl, VOR RWY 27L, Amdt 4A
Kahului, HI, Kahului, NDB/DME or GPS RWY 2, Amdt 2A, CANCELLED
Kahului, HI, Kahului, NDB/DME RWY 2, Amdt 2A
Pella, IA, Pella Muni, NDB or GPS RWY 34, Amdt 7, CANCELLED
Pella, IA, Pella Muni, NDB RWY 34, Amdt 7
Chicago, IL, Chicago Midway, NDB or GPS RWY 4R, Amdt 12C, CANCELLED
Chicago, IL, Chicago Midway, NDB RWY 4R, Amdt 12C
Marks, MS, Selfs, NDB or GPS RWY 2, Amdt 4, CANCELLED
Marks, MS, Selfs, NDB RWY 2, Amdt 4
West Point, MS, McCharen Field, VOR/DME RNAV or GPS RWY 36, Amdt 3A, CANCELLED
West Point, MS, McCharen Field, VOR/DME RNAV RWY 36, Amdt 3A
Kalispell, MT, Glacier Park Intl, VOR or GPS RWY 30, Amdt 9A, CANCELLED
Kalispell, MT, Glacier Park Intl, VOR RWY 30, Amdt 9A
Asheville, NC, Asheville Regional, NDB or GPS RWY 16, Amdt 15B, CANCELLED
Asheville, NC, Asheville Regional, NDB RWY 16, Amdt 15B
Asheville, NC, Asheville Regional, NDB or GPS RWY 34, Amdt 18C, CANCELLED

Asheville, NC, Asheville Regional, NDB RWY 34, Amdt 18C
Monroe, NC, Monroe, NDB or GPS RWY 5, Amdt 2C, CANCELLED
Monroe, NC, Monroe, NDB RWY 5, Amdt 2C
Newark, NJ, Newark Intl, NDB or GPS RWY 4L, Amdt 10A, CANCELLED
Newark, NJ, Newark Intl, NDB RWY 4L, Amdt 10A
Newark, NJ, Newark Intl, NDB or GPS RWY 4R, Amdt 6A, CANCELLED
Newark, NJ, Newark Intl, NDB RWY 4R, Amdt 6A
Albuquerque, NM, Albuquerque Intl Sunport, NDB or GPS RWY 35, Amdt 7B, CANCELLED
Albuquerque, NM, Albuquerque Intl Sunport, NDB RWY 35, Amdt 7B
Medford, OR, Medford/Rouge Valley Intl-Medford, VOR/DME or GPS RWY 14, Amdt 4, CANCELLED
Medford, OR, Medford/Rouge Valley Intl-Medford, VOR/DME RWY 14, Amdt 4
Harrisburg, PA, Harrisburg Intl, VOR or GPS RWY 31, Amdt 1, CANCELLED
Harrisburg, PA, Harrisburg Intl, VOR RWY 31, Amdt 1
Madisonville, TX, Madisonville Muni, VOR/DME or GPS RWY 18, Amdt 1, CANCELLED
Madisonville, TX, Madisonville Muni, VOR/DME RWY 18, Amdt 1
Roanoke, VA, Roanoke Regional/ Woodrum Field, NDB or GPS RWY 33, Amdt 9, CANCELLED
Roanoke, VA, Roanoke Regional/ Woodrum Field, NDB RWY 33, Amdt 9

[FR Doc. 02–1866 Filed 1–24–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30291; Amdt. No. 2089]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC) /Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion of FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the

public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January, 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
12/26/01	GA	Atlanta	The William B. Hartsfield Atlanta Intl	1/3457	RNAV (GPS) Rwy 27R, Orig.
01/03/02	NC	Greensboro	Piedmont Triad Intl	2/0074	RADAR-1, Amdt 9B.
01/03/02	AK	Fairbanks	Fairbanks Intl	2/0076	ILS Rwy 19R, Amdt 21.
01/03/02	UT	Salt Lake City	Salt Lake City Intl	2/0088	ILS Rwy 35, Amdt 1C.
01/04/02	AK	Petersburg	James A. Johnson	2/0096	LDA/DME-D, Amdt 5C.
01/04/02	TN	Hohenwald	John A. Baker Field	2/0105	NDB Rwy 2, Orig.
01/04/02	UT	Cedar City	Cedar City Regional	2/0107	ILS Rwy 20, Amdt 3A.
01/04/02	UT	Cedar City	Cedar City Regional	2/0108	VOR Rwy 20, Amdt 6A
01/04/02	UT	Cedar City	Cedar City Regional	2/0109	NDB Rwy 20, Amdt 2A.
01/07/02	LA	Bastrop	Morehouse Memorial	2/0173	NDB or GPS Rwy 34, Amdt 5.
01/07/02	LA	Bastrop	Morehouse Memorial	2/0174	VOR/DME-A, Amdt 8.
01/08/02	AL	Gadsen	Gadsden Muni	2/0192	GPS Rwy 24, Orig.
01/08/02	TX	Houston	William P. Hobby	2/0193	VOR/DME Rwy 30L, Amdt 17.
01/10/02	UT	Salt Lake City	Salt Lake City Muni	2/0277	RNAV (GPS) Rwy 34, Orig.
01/11/02	FL	Gainesville	Gainesville Regional	2/0308	VOR/DME Rwy 6, Orig-A.
01/11/02	GA	Tifton	Henry Tift Myers	2/0309	ILS Rwy 33, Orig-B.
01/11/02	FL	Gainesville	Gainesville Regional	2/0311	VOR Rwy 28, Orig-A.
01/11/02	FL	Gainesville	Gainesville Regional	2/0314	VOR Rwy 24, Orig-A.

[FR Doc. 02–1865 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30290; Amdt. No. 2088]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the national Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR), sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identified and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective February 21, 2002

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, ILS RWY 27R, Amdt 7
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 27R, Orig
Fort Mead (Odenton), MD, Tipton, VOR–A, Orig
Fort Mead (Odenton), MD, Tipton, RNAV (GPS) RWY 10, Orig
Fort Mead (Odenton), MD, Tipton, RNAV (GPS) RWY 28, Orig
Marks, MS, Selfs, RNAV (GPS) RWY 2, Orig
Marks, MS, Selfs, RNAV (GPS) RWY 20, Orig
Union, SC, Union County, Troy Shelton Field, NDB RWY 5, Orig
Hohenwald, TN, John A. Baker Field, RNAV (GPS) RWY 2, Orig

Effective April 18, 2002

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 26, Orig
Harrisburg, IL, Harrisburg-Raleigh, RNAV (GPS) RWY 24, Orig
Harrisburg, IL, Harrisburg-Raleigh, GPS RWY 24, Orig-A CANCELLED
Tecumseh, MI, Meyers-Diver's, VOR OR GPS–A, Amdt 7 CANCELLED
Duluth, MN, Duluth Intl, NDB RWY 9, Amdt 24
Duluth, MN, Duluth Intl, RNAV (GPS) RWY 9, Orig
Ely, MN, Ely Muni, RNAV (GPS) RWY 12, Orig
Ely, MN, Ely Muni, RNAV (GPS) RWY 30, Orig
Longville, MN, Longville Muni, RNAV (GPS) RWY 31, Orig
Rice Lake, WI, Rice Lake Regional-Carl's Field, RNAV (GPS) RWY 1, Orig
Rice Lake, WI, Rice Lake Regional-Carl's Field, RNAV (GPS) RWY 19, Orig

[FR Doc. 02–1864 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK64

Diseases Specific to Radiation-Exposed Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning presumptive service connection for certain diseases for veterans who participated in radiation-risk activities during active service or while members of reserve components during active duty for training or inactive duty training. This amendment adds cancers of the bone, brain, colon, lung, and ovary to the list of diseases which may be presumptively service connected and amends the definition of the term ''radiation-risk activity.'' The intended effect of this amendment is to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes.

DATES: Effective Date: March 26, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 8, 2001 (66 FR 41483–41485), VA proposed to amend its adjudication regulations concerning presumptive service connection for veterans who participated in radiation-risk activities during active service. VA proposed to add cancers of the bone, brain, colon, lung, and ovary to the list of diseases which may be presumptively service connected and amend the definition of the term ''radiation-risk activity.'' The intended effect of this amendment was to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes.

I. Comments on the Proposed Rule

The comment period ended October 9, 2001. We received written comments from the American Legion, the National Association of Atomic Veterans, the Honorable Patsy T. Mink (HI) and 14 individuals. Ten of the comments expressed support of the proposed rule.

Definition of Radiation-Risk Activity

Current law defines ''radiation-risk activity'' for purposes of presuming that specified diseases are the result of radiation exposure during military service to mean (1) onsite participation in a test involving the atmospheric detonation of a nuclear device; (2) the occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946; or (3) internment as a prisoner of war in Japan or service on active duty in Japan following such internment during World War II which resulted in an opportunity for exposure to ionizing radiation. (See 38 U.S.C. 1112(c)(3)(B) and 38 CFR 3.309(d)).

As stated in the preamble to the proposed rule, recent legislation authorized benefits for certain Department of Energy (DOE) employees and persons employed by DOE contractors, subcontractors, and vendors who were involved in DOE nuclear weapons-related programs. This includes those who worked on Amchitka Island, Alaska prior to January 1, 1974, who were exposed to ionizing radiation in the performance of duty related to certain underground nuclear tests. It also includes certain persons who worked at gaseous diffusion plants in Paducah, Kentucky; Portsmouth, Ohio; and Oak Ridge, Tennessee before February 1, 1992. Our rulemaking proposed to add these exposures to the list of radiation-risk activities in 38 CFR 3.309(d).

One commenter stated that VA's definition of radiation-risk activity, even as expanded by this rulemaking, does not cover all veterans exposed to radiation while in the service of their country, and urged VA to expand its definition to include veterans exposed to ''residual contamination'' of nuclear tests. Another commenter urged VA to include veterans who may have been exposed to radiation during various activities involving the development, maintenance and handling of nuclear weapons, as well as clean up operations following nuclear testing. Another commenter specifically asked that VA expand the definition to include all military personnel who participated in the clean up of Enewetak Atoll from 1977 to 1980. Another commenter suggested that the definition of ''radiation-risk'' activity should include military duty at all DOE nuclear weapons development, testing, and manufacturing facilities.

Congress created certain presumptions for veterans in the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, section 2(a), 102 Stat. 485–86 (codified as amended at 38 U.S.C. 1112(c)). Congress has also created presumptions for certain civilians in the Radiation Exposure Compensation Act (RECA), Pub. L. 101–426, 104 Stat. 920 (1990) (codified as amended at 42 U.S.C. 2210 note), the RECA Amendments of 2000, Public Law 106–245, section 3, 114 Stat. 501, 502, and title XXXVI of the Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106–398, 114 Stat. 1654A–1232. Under the Energy Employees Occupational Illness Compensation Program Act of 2000, if a member of the Special Exposure Cohort develops a ''specified'' cancer after beginning employment at a DOE facility or at an atomic weapons facility for an atomic weapons contractor, the cancer is presumed to have been sustained in the performance of duty and is compensable. The burden of proof for the Special Exposure Cohort is similar to that under 38 CFR 3.309(d). Congress has not created any presumptions for veterans or civilians based on ''residual contamination'' of nuclear tests, service at Enewetak Atoll, or any of the other types of duties suggested by the commenters.

This rulemaking was only intended to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes. We proposed to expand the definition of radiation-risk activity in § 3.309(d)(3)(ii) to include only the relevant activities listed in these civilian statutes. We therefore make no change based on these comments.

One commenter noted that the ''Radiation Compensation Act of 1990'' was recently amended to include civilian employees assigned to DOE nuclear weapons-related programs who were exposed to radiation, beryllium or silica. The commenter also stated that veterans involved in these programs are effectively precluded from being compensated for diseases related to such duty. The commenter urged that, in order to achieve true equity between radiation-exposed veterans and civilians, VA regulations should be amended to include veterans who were exposed to beryllium and silica during service.

We are aware that the RECA Amendments of 2000, Public Law 106–245, section (2)(A)(ii) and 3(c)(1), 114 Stat. at 501, 502, authorized compensation for above-ground uranium miners, millers and persons who transported ore and have a ''nonmalignant respiratory disease,'' which the statute defines as fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the

lung, silicosis, and pneumoconiosis. The Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106–398, tit. xxxvi, 114 Stat. 1654A–1232, authorized compensation for employees exposed to beryllium in the performance of duty for a DOE contractor, subcontractor, beryllium vendor, or subcontractor of a vendor.

However, under these statutes, beryllium-related diseases and silica-related diseases are clearly classified separately from radiogenic diseases. The purpose of this rulemaking is only to amend VA's presumptions for radiation exposure and radiogenic diseases.

In addition, we believe that existing regulations allow a sufficient basis to grant service connection, on a direct basis, for veterans exposed to beryllium or silica during military service who later suffer from these diseases. For these reasons, we do not revise the regulation to include diseases related to beryllium or silica exposure in this rulemaking, and we therefore make no change based on these comments.

Dose Reconstruction

One commenter stated that he opposed the current dose estimate requirement in 38 CFR 3.311, as being arbitrary, unreliable and inaccurate. Another commenter urged that VA should not rely on dose reconstruction estimates because they are based on lab tests, not on data collected at the atomic test sites. Another commenter also asked VA to eliminate the use of dose estimates since they are inaccurate.

Dose reconstruction is required only under 38 CFR 3.311, which is a separate and distinct basis for service connection from 38 CFR 3.309(d). The purpose of the rulemaking is only to amend VA's presumption for radiation exposure and radiogenic diseases (found in 3.309(d)), which does not require a dose estimate to establish entitlement to service connection. Therefore, these comments are outside the scope of this rulemaking and we make no change based on these comments.

Radiogenic Diseases

Several commenters urged VA to add certain diseases to 3.309(d)(2), in addition to those we proposed to add in this rulemaking. One commenter stated that radiation is a ''complete carcinogen'' and therefore we should list all cancers. Another commenter urged VA to add certain non-cancer diseases, such as cardiovascular disease, chronic hepatitis, and liver cirrhosis, which have been linked to radiation exposure by the Radiation Effects Research Foundation.

The basis for enactment of the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000 was scientific data resulting from enactment of the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, and obtained from the President's Advisory Committee on Human Radiation Experiments. Based on data from these sources, Congress authorized compensation for persons suffering from these cancers who lived downwind from Government above-ground nuclear tests, were underground uranium miners, participated onsite in a test involving the atmospheric detonation of a nuclear device, or were employed at certain locations by DOE contractors or subcontractors or an atomic weapons employer. We believe this data also supports compensation for veterans suffering from the same cancers, some of whom participated in the same activities as persons entitled to be compensated under the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000. We therefore proposed to amend 38 CFR 3.309(d)(2) to include the cancers for which compensation is payable under these other statutes.

As explained above and in the notice of proposed rulemaking, this rulemaking was only intended to ensure equity between veterans who may have been exposed to radiation during military service and civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes, including RECA. The Federal statutes referenced above do not presume that the diseases that the commenters asked VA to add to this rulemaking are due to radiation exposures in civilian occupations. Therefore, veterans do not have a higher burden of proof than civilians do, and we are making no change based on this comment.

Public Laws 98–542 and 102–578

One commenter stated that, because VA submitted a report to Congress containing its response to a report submitted to VA by the Veterans' Advisory Committee on Environmental Hazards on May 26, 1994, rather than December 1, 1993, as required by the Veterans' Radiation Exposure Amendments of 1992, Public Law 102–578, section 3, 106 Stat. 4774, 4775, radiation exposure by naval nuclear propulsion workers, those involved in weapons development for the Department of Defense, nuclear weapons maintenance workers and handlers and others have never been considered under the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98–542, 98 Stat. 2725 (1984), or the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, 102 Stat. 485.

This rulemaking does not involve VA's compliance with Public Law 102–578 and these comments are outside the scope of this rulemaking. We therefore make no change based on these comments.

Effective Dates

One commenter stated that the effective date for claims that VA previously denied but are now granted under these new regulations should be the date of the original claim. The commenter urged that veterans exposed to radiation be given the same consideration as veterans exposed to Agent Orange under *Nehmer* v. *United States Veterans Admin.*, C.A. No. C–86–6160 TEH (N.D. Cal.).

Section 5110 of title 38 United States Code and 38 CFR 3.114 establish effective date requirements that are binding on VA. Those requirements limit retroactive awards to no earlier than the effective date of a liberalizing statute or regulation, such as this rulemaking. The *Nehmer* lawsuit and court rulings do create an exception to these effective date rules, but the Nehmer case is limited to only diseases linked to herbicide exposure under 38 CFR 3.309(e). We have no authority to expand the exceptions established by the *Nehmer* court to include claims filed under 3.309(d). We therefore make no change based on this comment.

Opposition to Proposed Rule

One commenter asserted that it is very unlikely that any of the cancers developed by veterans are caused by their radiation exposure during military service. He stated that many of the premises contained in the preamble to the proposed rule are not based on valid scientific information. This commenter urged VA not to promulgate this proposed rule.

As we explained above, the basis for enactment of the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000 was scientific data resulting from enactment of the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, and obtained from the President's Advisory Committee on Human Radiation Experiments. We believe this data equally supports adding these same cancers to the list of diseases that may be presumptively

service connected for radiation-exposed veterans, some of whom participated in the same activities as persons entitled to be compensated under the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000.

This rulemaking was only intended to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes, including RECA. If we do not adopt this rule, veterans will have a higher burden of proof than civilians do. Therefore, we make no change based on this comment.

Medical Benefits

One commenter suggested that atomic veterans should be given a special priority for VA medical services, which should be provided without means testing and co-payments. The commenter also suggested that VA should focus on preventive measures to reduce the risk of cancer, appropriate medical treatment to keep atomic veterans healthy, and programs to educate veterans on dietary and lifestyle changes to prevent cancer. The commenter also suggested VA should work with Congress to determine if an arrangement for financial cost sharing between VA and Medicare is possible.

These comments are beyond the scope of the rulemaking. Also, some of the comments would require an amendment to title 38, United States Code, which cannot be accomplished by rulemaking. We therefore make no changes based on these comments.

II. Compliance With the Congressional Review Act, the Regulatory Flexibility Act, and Executive Order 12866

We estimate that the ten-year benefits cost of this rule from appropriated funds will be $769 million in benefits costs. We estimate that during several of these years, the annual benefits costs will be more than $100 million. We also estimate that the ten-year cost in government operating expenses will be $34 million. Since we estimate that the adoption of the rule will have an annual effect on the economy of $100 million or more, the Office of Management and Budget has designated this rule as a major rule under the Congressional Review Act, 5 U.S.C. 802, and a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The following information is provided pursuant to E.O. 12866.

The Secretary has made this regulatory amendment to ensure that veterans exposed to radiation during military service receive the same consideration for the risks of this exposure as DOE employees, contractors and subcontractors. There are no feasible alternatives to this proposed rule, since it is needed to provide fairness and equity for veterans and their survivors. This rule will not interfere with state, local or tribal governments in the exercise of their governmental functions.

Benefits Costs

Over the next ten years, VA expects to process 91,567 service-connected disability compensation claims (living veterans) and 48,050 Dependency and Indemnity Compensation (DIC) claims (veterans' survivors claims for service connection for cause of death) filed as a result of this proposed rule. Historically, about 12% of all radiation related claims have been granted. If past experience proves a reliable indicator of future events, VA expects to grant approximately 10,988 of those disability compensation claims and approximately 5,766 of those DIC claims.

We estimate that the cumulative totals of benefits awards to claimants over the next ten years will be as follows: $8,040,630; $26,248,947; $44,265,910; $61,126,347; $76,565,137; $90,329,734; $102,328,198; $112,436,560; $120,555,709; and $126,704,527, for a total benefits cost of $768,601,698 over ten years.

Administrative Costs

Based on the administrative workload projected to result from this rule (discussed above), VA estimates that full time employee (FTE) resources devoted to processing claims in years one through ten will be 77, 113, 69, 64, 51, 40, 39, 35, 35, and 33 respectively. Estimated government operating expenses (GOE) costs for the next 10 years are as follows: $3,910,578; $5,047,838; $3,584,683; $4,127,798; $3,419,862; $2,817,402; $2,825,825; $2,669,755; $2,780,414; and $2,750,142, for a total GOE cost of $33,934,297 over ten years.

Unfunded Mandates

The Unfunded Mandates Reform Act requires , at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing 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 or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

OMB Review

This rule is economically significant under Executive Order 12866 and major under the Congressional Review Act. This rule has been reviewed by OMB.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments will not directly affect any small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: December 10, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.309 is amended by:

A. Adding new paragraphs (d)(2)(xvii) through (d)(2)(xxi).

B. Adding new paragraph (d)(3)(ii)(D).

The additions read as follows:

§ 3.309 Diseases subject to presumptive service connection.

* * * * *

(d) *Diseases specific to radiation-exposed veterans.****

(2) * * *
(xvii) Cancer of the bone.
(xviii) Cancer of the brain.
(xix) Cancer of the colon.
(xx) Cancer of the lung.
(xxi) Cancer of the ovary.
(3) * * *
(ii) * * *
(D)(*1*) Service in which the service member was, as part of his or her official military duties, present during a total of at least 250 days before February 1, 1992, on the grounds of a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or the area identified as K25 at Oak Ridge, Tennessee, if, during such service the veteran:

(i) Was monitored for each of the 250 days of such service through the use of dosimetry badges for exposure at the plant of the external parts of veteran's body to radiation; or

(ii) Served for each of the 250 days of such service in a position that had exposures comparable to a job that is or was monitored through the use of dosimetry badges; or

(*2*) Service before January 1, 1974, on Amchitka Island, Alaska, if, during such service, the veteran was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(*3*) For purposes of paragraph (d)(3)(ii)(D)(1) of this section, the term ''day'' refers to all or any portion of a calendar day.

* * * * *

[FR Doc. 02–1839 Filed 1–24–02; 8:45 am]
BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[FCC 02–3]

Termination of Rulemaking Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination of rulemaking proceedings.

SUMMARY: The Federal Communications Commission has terminated the rulemaking proceedings as set forth in the Order adopted by the Commission on January 9, 2002, and released January 11, 2002. The Commission has determined that no further action by the Commission is required in the proceedings.

DATES: These docket proceedings are terminated effective January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Consumer Information Bureau, (202) 418–0294

SUPPLEMENTARY INFORMATION: 1. We have reviewed the open rulemaking proceedings listed in the Appendix, and have determined that the proceedings should be terminated. The matters at issue in these rulemaking proceedings are either moot or stale due to the passage of time or other regulatory and industry changes. Therefore, no further action by the Commission is required in the proceedings listed in the attached Appendix, and they are hereby closed.

2. Accordingly, pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j), *it is ordered* that the rulemaking proceedings set forth in the Appendix *are closed and terminated,* effective on January 11, 2002.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

APPENDIX

Docket No.	Subject matter	Action	Cite
CC 84–490	Amendment of the rules to permit registration of terminal equipment for connection to voiceband private line channels; petition for rule making filed by AT&T.	NPRM	FCC 84–230
CC 90–629	Order To Show Cause; Nevada Bell Tariff F.C.C. No. 1; Transmittal No. 113	OSC	6 FCC Rcd 48
CC 91–377	U.S. Communications of Westchester Tocsia Informational Tariffs	OR	DA 91–1612
CC 92–275	New Service Reporting Requirements Under Price Cap Regulation	NPRM	8 FCC Rcd 2150
CC 94–139	AT&T Communications F.C.C. Tariff No. 1, Transmittal No. 7322	OR	DA 95–2407
CC 94–18	Establishment of a Federal Advisory Committee To Assist the Common Carrier Bureau in the Development and Implementation of an Electronic Filing System.	PN	59 FR 11604
CS 94–42	Amendment of the Commission's Rules To Include Decatur, Texas in the Dallas-Fort Worth, Texas, Television.	NPRM	59 FR 26615
CS 94–43	Amendment of the Commission's Rules To Include Kenosha and Racine, Wisconsin, in the Milwaukee, Wisconsin, Television Market.	NPRM	59 FR 26617
CS 94–99	Amendment of Section 76.51 of the Rules To Include Sanger, California in the Fresno-Visalia-Hanford-Clovis, California Television Market.	NPRM	59 FR 50538
CS 95–143	Amendment of Section 76.51 of the Commission's Rules To Include Greensburg, Pennsylvania in the Pittsburgh, Pennsylvania Television Market.	NPRM	60 FR 46805
CS 96–119	Amendment of Section of the Commission's Rules To Include Dubuque, Iowa in the Cedar Rapids-Waterloo, Iowa Television Market.	NPRM	61 FR 29336
CS 96–139	Amendment of Section 76.51 of the Commission's Rules To Include Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe, Texas in the Houston, Texas Television Market.	NPRM	61 FR 34408
ET 93–59	Amendment of Section 2.106 of the Rules to Allocate Spectrum for Wind Profiler Radar Systems.	NPRM	58 FR 19644
ET 99–300	Information Sought on Methods for Verifying Compliance With E911 Accuracy Standards	PN	DA 99–2130
ET 99–34	In the Matter of An Industry Coordination Committee System for Broadcast Digital Television Service.	NPRM	64 FR 6296
GN 84–361	Federal Communications Commission's List of Rules To Be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1983–1984.	OR	49 FR 27179
GN 85–75	Federal Communications Commission's List of Rules To Be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1985–1986.	FN	50 FR 26593
GN 86–367	In the Matter of Private Sector Preparation and Administration of Commission Commercial Radio Operator Examinations.	NOI	51 FR 36415
MM 89–77	Transfers of Control of Certain Licensed Non-Stock Entities	NOI	54 FR 15957
MM 91–214	Station KROQ–FM	LT	6 FCC Rcd 7262
MM 93–225	Amendment of Part 73 of the Rules To Clarify the Definition and Measurement of Aural Modulation Limits in the Broadcast Services.	NOI	58 FR 44483
MM 93–226	Revision of 47 CFR 73.208, Reference Points and Distance Computations	NPRM	58 FR 49278

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
MM 93–232	Amendment of Section 76.51 of the Rules To Include Concord, California, in the San Francisco-Oakland-San Jose, California, Television Market.	NPRM	58 FR 45312
MM 93–260	Amendment of Section 76.51 of the Rules To Include Marion, Indiana, in the Indianapolis-Bloomington, Indiana, Television Market.	NPRM	58 FR 53696
MM 93–303	Amendment of Section 76.51 of the Rules To Include Hazelton and Williamsport, Pennsylvania in the Wilkes-Barre-Scranton, Pennsylvania Television Market.	NPRM	58 FR 68844
PP 96–17	Improving Commission Processes	NOI	11 FCC Rcd 14006
PR 93–199	Amendment of Part 90 Concerning the Commission's Finder's Preference Rules	NPRM	58 FR 38722

Action: FN Further Notice of Proposed Rulemaking.
LT Letter.
NOI Notice of Inquiry.
NPRM Notice of Proposed Rulemaking.
OR Order.
OS Order to Show Cause.
PN Public Notice.

[FR Doc. 02–1860 Filed 1–24–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[FCC 01–385]

Termination of Stale or Moot Docketed Proceedings

AGENCY: Federal Communications Commission

ACTION: Final rule; termination of docketed proceedings.

SUMMARY: The Federal Communications Commission has terminated the stale or moot docketed proceedings as set forth in the Order adopted by the Commission on December 21, 2001, and released January 11, 2002. The Commission has determined that no further action by the Commission is required in the proceedings.

DATES: These docket proceedings are terminated effective on January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Consumer Information Bureau, (202) 418–0294.

SUPPLEMENTARY INFORMATION: 1. We have reviewed the docket proceedings listed in the Appendix, and have determined that the dockets should be terminated. None of the dockets have any outstanding issues. The matters at issue in these proceedings were resolved by the issuance of final orders that were not subject to judicial review, or if subject to judicial review, were affirmed and the court's mandate was issued. Therefore, no further action by the Commission is required in the dockets listed in the attached Appendix, and they are hereby deemed terminated.

2. Accordingly, pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j), *it is ordered* that the docketed proceedings set forth in the Appendix are terminated, effective on January 11, 2002.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

APPENDIX

Docket No.	Subject matter	Action	Cite
CC 85–89	Preemption of State Entry Regulation in the Public Land Mobile Service	MO	2 FCC Rcd 6434
CC 85–93	Tariff FCC No. 3 (Transmittal Nos. 197, 208 & 209); Tariff FCC No. 38 (Transmittal Nos. 445 and 455); Tariff FCC No. 41 (Transmittal Nos. 742 and 753).	MO	5 FCC Rcd 2573
CC 86–1	WATS-Related and Other Amendments of Part 69 of the Commission's Rules	MO	7 FCC Rcd 5644
CC 86–164	Amendment of the Commission's Rules To Simplify Individual Licensing Procedures in the Domestic Public Air-Ground Radiotelephone Service.	RO	51 FR 39754
CC 86–165	Amendment of the Commission's Rules To Simplify the Separate Subsidiary Reporting Requirement in the Domestic Public Cellular Radio Telecommunications Service.	RO	51 FR 37022
CC 87–120	In the Matter of Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services.	OR	57 FR 37105
CC 87–274	Amendment of Section 22.901(D) of the Commission's Rules To Eliminate Commission Review of Capitalization Plans for Mobile Radio Cellular Systems.	RO	53 FR 23765
CC 88–326	In the Matter of Access Tariff Filing Schedules	RO	55 FR 6989
CC 88–471	In the Matter of Tariff F.C.C. No. 15—Competitive Pricing Plans; Holiday Rate Plan. (Transmittal No. 1215).	ON	5 FCC Rcd 7504
CC 91–141	Expanded Interconnection With Local Telephone Company Facilities	ON	13 FCC Rcd 16102
CC 91–213	MTS and WATS Market Structure/Transport Rate Structure and Pricing	RO	13 FCC Rcd 6332
CC 91–328	CPS Operator Services, Inc. TOCSIA Informational Tariffs	OR	DA 91–1548
CC 91–64	Amendment of Equal Access Balloting and Carrier Selection Rules To Require That Interexchange Carriers Obtain Written Customer Authorization Before Submitting Primary Interchange Carrier Selections.	OR	8 FCC Rcd 3215
CC 92–135	Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation	ON	12 FCC Rcd 2259
CC 92–24	Local Exchange Carrier Line Information Database—Open Network Architecture	OR	8 FCC Rcd 8118
CC 93–162	Ameritech Operating Companies Revisions to Tariff FCC No. 2; Bell Atlantic Telephone Companies Revisions to Tariff FCC No. 1; Bellsouth Telecommunications Inc. Revisions to Tariff FCC No. 1, etc.	OR	14 FCC Rcd 987
CC 93–179	Price Cap Regulation of Local Exchange Carriers; Rate of Return Sharing and Lower Formula Adjustment.	OR	10 FCC Rcd 11979

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
CC 94–157	Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690; NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328.	OR	12 FCC Rcd 18724
CC 95–133	AT&T Contract Tariff No. 374	OR	DA 95–2142
CC 95–146	AT&T Communications Contract Tariff No. 360	OR	10 FCC Rcd 1379
CC 95–80	AT&T Communications Contract Tariff No. 360	OR	11 FCC Rcd 3194
CC 96–150	Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.	ON	15 FCC Rcd 1161
CC 96–152	Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services.	OR	14 FCC Rcd 19259
CC 96–187	Implementation of a Section of the Telecommunications Act of 1996	RO	62 FR 5757
CC 96–22	Responsible Accounting Officer Letter 20, Uniform Accounting for Postretirement Benefits Other Than Pensions in Part 32 Amendments to Part 65, Interstate Rate of Return Precription Procedures A.	RO	62 FR 15117
CC 96–23	Revision of Filing Requirements	RO	62 FR 5160
CC 96–237	Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996	OR	65 FR 26203
CC 97–11	Implementation of Section 402(B)(2)(A) of the Telecommunications Act of 1996	RO	64 FR 39938
CC 98–103	In the Matter of SBC Communications Inc. Pacific Bell Telephone Company Pacific Transmittal No. 1986.	MO	13 FCC Rcd 23667
CC 98–108	In the Matter of Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada	ON	14 FCC Rcd 8077
CC 98–117	In the Matter of 1998 Biennial Regulatory Review—Review of Armis Reporting Requirements	RO	14 FCC Rcd 11443
CC 98–131	1998 Biennial Regulatory Review—Part 61 of the Commission's Rules and Related Tariffing Requirements.	RO	64 FR 46584
CC 98–137	In the Matter of 1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers.	ON	66 FR 13690
CC 98–14	In the Matter of Number Portability Query Services	MO	14 FCC Rcd 1664
CC 98–157	In the Matter of Petition of US West Communications, Inc. for Forbearance From Regulation ASA Dominant Carrier in the Phoenix, Arizona MS.	MO	14 FCC Rcd 19947
CC 98–161	In the Matter of BellSouth Telecommunications, Inc	MO	13 FCC Rcd 23667
CC 98–199	In the Matter of BellSouth Telecommunications, Inc. F.C.C. Tariff No. 1 for Provision of Local Number Portability Database Services.	OR	14 FCC Rcd 1320
CC 98–210	Fidelity Telephone Company and Bourbeuse Telephone Company Joint Applications for Consent to Assignment of Authority Under Section 214 of the Communications Act.	MO	13 FCC Rcd 22899
CC 98–25	Application for Authority, Pursuant to Part of the Commission's Rules, to Transfer Control of Licenses Controlled By Southern New England.	MO	13 FCC Rcd 21292
CC 98–81	In the Matter of 1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements.	RO	13 FCC Rcd 21625
CC 98–91	Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief From Regulation Pursuant to Section of the Telecommunications Act of 1996 and 47 U.S.C. for ADSL Infrastructure and Service.	OR	66 FR 2336
CC 98–92	Petition for Preemption of Tennessee Code Annotated and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority To Provide Service in Tennessee Rural LEC Service Areas.	MO	16 FCC Rcd 1247
CC 98–94	In the Matter of 1998 Biennial Regulatory Review—Testing New Technology	ST	14 FCC Rcd 6065
CC 99–249	In the Matter of Low-Volume Long-Distance Users	OR	15 FCC Rcd 23614
CC 99–316	In the Matter of National Exchange Carrier Association, Inc	OR	65 FR 64892
CS 94–48	Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992.	RT	59 FR 64657
CS 95–61	Implementation of Section of the Cable Television Consumer Protection and Competition of 1992—Annual Assessment of the Status of Competition in the Market for Delivery of Video Prog.	RT	61 FR 1932
CS 96–46	Implementation of Section 302 of the Telecommunications Act of 1996	OR	65 FR 375
CS 98–201	In the Matter of Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.	ON	64 FR 73429
CS 98–61	In the Matter of 1998 Biennial Regulatory Review—Annual Report of Cable Television System, Form 325, Filed Pursuant to Section of the Commission's Rules.	OR	15 FCC Rcd 9707
ET 93–40	Allocation of the 219–220 Band for Use by the Amateur Radio Service	MO	61 FR 15382
ET 94–124	Amendment of Part 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHZ for New Radio Applications.	MO	65 FR 38431
ET 96–20	Amendment of Parts 2 and 25 of the Commission's Rules to Allocate the 13.75–14.0 GHZ Band to the Fixed-Satelite Service.	RO	61 FR 52301
ET 96–256	Amendment of the Commission's Rules to Revise the Experimental Radio Service Regulations.	RO	63 FR 64199
ET 97–206	In the Matter of Technical Requirements To Enable Blocking of Video Programming Based on Program Ratings.	RO	63 FR 20131
ET 98–197	Amendment of Parts of the Commission's Rules Regarding the Radionavigation Service at 31.8–32.3 GHz.	RO	65 FR 60108
ET 99–254	In the Matter of Closed Captioning Requirements for Digital Television Receivers	RO	65 FR 58467
ET 99–261	In the Matter of Amendment of Part of the Commission's Rules to Allocate Additional Spectrum to the Inter-Satellite, Fixed, and Mobile Services and to Permit Unlicensed Devices to Use Certain Segments in the 50.2–50.4 GHz and 51.4–71.0.	RO	66 FR 7402
FO 91–171	Inquiry into Possible Technical Improvements in the Emergency Broadcasting System	RO	64 FR 5950

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
FO 91–301	Amendment of Part 73, Subpart G. of the Commission's Rules Regarding the Emergency Broadcast System.	RO	64 FR 5950
GC 91–119	Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in Which the Commission is a Party.	MO	57 FR 32180
GC 97–113	Electronic Filing of Documents in Rulemaking Proceedings	MO	63 FR 56090
GN 84–467	In the Matter of Preparation for an International Telecommunications Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605–1705 kHz Band.	OR	53 FR 26612
GN 85–172	In the Matter of Further Sharing of the UHF Television Band by Private Land Mobile Radio Services.	OR	52 FR 43205
GN 88–441	In the Matter of Technical compatibility protocol standards for equipment operating in the 800 MHz public safety bands.	OR	55 FR 4888
GN 89–554	In the Matter of an Inquiry Relating to Preparation for the International Telecommunication Union World Administrative Radio Conference for Dealing With Frequency Allocations in Certain parts of the Spectrum.	RT	56 FR 31095
GN 90–357	Amendment of the Rules With Regard to the Establishment and Regulation of New Digital Audio Radio Services.	MO	63 FR 24126
GN 93–252	Implementaiton of Sections 3(N) and 332 of the Communications Act—Regulatory Treatment of Mobile Services.	ON	66 FR 13022
GN 94–90	Eligibility for Specialized Mobile Radio Services and Radio Services in the 220–222 MHZ Land Mobile Band and Use of Radio Dispatch Communications.	MO	12 FCC Rcd 9962
IB 97–142	Rules and Policies on Foreign Participation in the U.S. Telecommunications Market	PN; OR	15 FCC Rcd 21945; 65 FR 60113
IB 98–212	AT&T Corporation and British Telecommunications PLC	MO	14 FCC Rcd 19140
MD 92–92	Establishment of Systems of Records Exempt Under the Privacy Act	RO	58 FR 11549
MD 94–19	Implementation of Section 9 of the Communications Act—Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year.	MO	62 FR 39450
MD 96–186	Amendment of Part 1 of the Commission's Rules, Pertaining to the Schedule of Annual Regulatory Fees for Mass Media Services.	RO	62 FR 59822
MD 98–200	In the Matter of Assessment and Collection of Regulatory Fees For Fiscal year 1999	MO	65 FR 78989
MM 85–91	Amendment of the Commission's Rules To Expand the Use of Automatic Transmission Systems at AM, FM and Television Broadcast Stations.	RO	51 FR 1374
MM 85–126	Review of Technical and Operational Requirements: Broadcast Remote Pickup Service; and Low Power Auxiliary Stations.	RO	51 FR 4599
MM 86–110	Amendment of Part 73 of the Commission's Rules Regarding Telecommunications Transmissions in the Vertical Blanking Interval.	RO	51 FR 34620
MM 87–267	Review of Technical Assignment Criteria for AM Broadcast Service	MO	65 FR 59751
MM 87–268	Institute Inquiry on Issues Relating to the Introduction of Advanced Television Technologies (e.g., HDTV).	OR	FCC 00–59
MM 91–122	Commission Policies Regarding Spousal Attribution	ST	57 FR 8845
MM 91–168	Codification of the Commission's Political Programming Policies	MO	9 FCC Rcd 7919
MM 91–204	For Renewal of License of Station KUCB(FM); for Construction Permit for a New FM Station Des Moines, IA.	MO	FCC 92M–264
MM 92–304	Renewal Reporting Requirements for Full Power, Commercial AM, FM and TV Broadcast Stations.	OR	58 FR 48323
MM 94–149	Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities	MO	64 FR 56974
MM 94–34	Implementation of Commission's Equal Employment Opportunity Rules	RT	59 FR 53363
MM 95–176	Closed Captioning and Video Description of Video Programming	OR	16 FCC Rcd 5067
PR 84–232	In the Matter of Future Public Safety Telecommunications	OR	50 FR 42573
PR 87–5	Amendment of Footnote 3 of the Rules To Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625–952.8375 MHZ Band.	MO	54 FR 19836
PR 89–552	Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220–222 MHZ Band by the Private Land Mobile Radio Services.	MO	15 FCC Rcd 13924
PR 89–553	Modification of the Rules Governing Multiple Sites for Specialized Mobile Radio Service Systems in Rural Markets.	MO	65 FR 24419
PR 90–315	Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations	MO	8 FCC Rcd 3156
PR 91–111	Miscellaneous Amendments to Part 80 of the Rules Governing the Maritime Radio Services	OR	57 FR 26778
PR 91–167	Amendment of the Maritime Services Rules (Part 80) To Permit VHF Marine Channel 9 To Be Used as a Second Calling Channel.	RO	57 FR 19552
PR 93–61	Amendment of Part 90 of the Rules To Adopt Regulations for Automatic 16 Vehicle Monitoring Systems.	ON	14 FCC Rcd 1339
PR 94–103	Petition for Authority To Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii.	RO	10 FCC Rcd 7872
PR 94–104	Petition To Extend State Authority Over Rate and Entry Regulation of All Commerical Mobile Radio Services.	RO	10 FCC Rcd 7824
PR 94–105	Petition To Retain Regulatory Authority Over Intrastate Cellular Service Rates (Accompanied by Request for Proprietary Treatment of Documents Used in Support of Petition To Retain Regulatory Authority Over Intrastate.	OR	11 FCC Rcd 796
PR 94–106	Petition To Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut.	OR	11 FCC Rcd 848

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
PR 94–107	Petition for Authority To Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana.	RO	10 FCC Rcd 7898
PR 94–108	Petition To Extend Rate Regulation	RO	10 FCC Rcd 8187
PR 94–109	Statement of Intention To Preserve Its Right for Future Rate and Market Entry Regulation of the Commercial Mobile Radio Services.	OR	10 FCC Rcd 12427
PR 94–110	Petition for Authority To Maintain Current Regulation of Rates and Market Entry	PN	DA 94–1043
WT 00–130	Request Amendment of the Commission's Rules to seek consent to Transfer Control of, or Assign,Broadband PCS and LMDS Licenses.	MO	DA 00–2443
WT 00–81	Application of Southwestern Bell Mobile Systems, Inc. and Alloy LLC for Authority, Pursuant to Part of the Commission's Rules, To Transfer Control of a License Controlled by SBC Communications Inc.	MO	15 FCC Rcd 25459
WT 95–11	In the Matter of the Application of Herbert L. Schoenbohm for Amateur Station and Operator License, Kingshill, Virgin Islands.	OR	13 FCC Rcd 23774
WT 95–35	Applications of George E. Rodgers for Amateur Station and Operator Licenses	MO	FCC 94M–121
WT 95–5	Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures.	MO	65 FR 43349
WT 95–56	Amendment of the Commission's Rules Concerning Low Power and Automated Maritime Telecommunications System Operations in the 216–217 MHZ Band.	MO	63 FR 24126
WT 96–148	Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees.	SRO	FCC 00–141
WT 96–162	Amendment of the Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commerical Mobile Radio Services.	OR	14 FCC Rcd 414
WT 97–150	Commission Opens Inquiry on Competitive Bidding Process for Report to Congress	RT	13 FCC Rcd 9601
WT 98–228	Commission Opens Filing Window For Commercial Operator License Examination Managers	PN	DA 98–2537
WT 99–263	Petition of the Wireless Consumers Alliance, Inc. for a Declaratory Ruling concerning the provisions of the Communications Act of 1934.	ON	16 FCC Rcd 5618
WT 99–355	SBC Communications Inc. and RadioFone, Inc. seek FCC Consent to Transfer Control or Assign RadioFone's Licenses to SBC.	PN	15 FCC Rcd 4441
WT 99–364	Triton Communications, L.L.C. and RCC Holdings, Inc. Seek Consent For Assignment	PN	DA 00–309
WT 99–365	In the Matter of Paging Network, Inc. and Arch Communications Group, Inc. for Transfers of Control of Their Radio Licenses Location.	OR	16 FCC Rcd 1026
WT 00–207	In the Matter of Petition for Determination of the Public Interest Under Section of the Communications Act 1934, As Amended.	PN	DA 00–2397
WT 00–38	Bell Atlantic, GTE, and ALLTEL Seek FCC Consent For Assignment and Transfer of Control of Wireless Licenses to Comply with Sopectrum Cap Rules and Department of Justice Consent Decree Regarding Pending Applications of Bell Atlantic, GTE, and Vodafone Airt.	PN	DA 00–502

Action: ET Order Granting Extention of. Time .
MO Memorandum Opinion and Order.
ON Order on Reconsideration.
OR Order.
PN Public Notice.
RO Report and Order.
RT Report.
SRO Second Report and Order.
ST Statement.

[FR Doc. 02–1859 Filed 1–24–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[CC 96–45; FCC 01–376]

Implementation of Interim Filing Procedures for Filings of Requests for Review

AGENCY: Federal Communications Commission.

ACTION: Temporary waiver of procedural requirements.

SUMMARY: In this document, the Commission waives its procedures for filing requests for review from decisions of the Universal Service Administrative Company (Administrator) and petitions for reconsideration and applications for review that arise from such proceedings on an emergency, interim basis. We extend the period for filing a request for review, or applications for review arising from such proceedings, from the current 30 day period to 60 days, provide applicants with the option of electronic filing (via either electronic mail or facsimile) for requests for review and petitions for reconsideration or applications for review that arise from such proceedings, and provide parties that have mailed such pleadings on or after September 12, 2001 with an opportunity to refile their pleadings electronically. These measures will help to ensure continued timely processing of such filings and to avoid prejudice to parties as a result of the recent disruptions in mail service.

EFFECTIVE DATE: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, (202) 418–7369.

SUPPLEMENTARY INFORMATION: This Order, adopted December 20, 2001, and released December 26, 2001, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. The complete text is available through 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 at qualexint@aol.com.

Synopsis of Order

1. Effective upon publication in the **Federal Register** and until further notice, we waive our rules as follows. First, requests for review filed pursuant to §§ 54.719 through 54.725, 47 CFR 54.719 through 54.725, and any applications for review arising from such proceedings shall be filed within 60 days of the issuance of the decision being reviewed. This 60-day period will be applicable to all such pleadings that were required to be filed on or after September 12, 2001 and were received by the Commission on or after September 12, 2001. Second, parties filing requests for review, or petitions for reconsideration or applications for review of decisions on requests for review, may, at their option, file their pleadings electronically, either by electronic mail or facsimile.

2. If filed by electronic mail, pleadings shall be filed at the following e-mail address: *CCBSecretary@fcc.gov.* Documents filed via electronic mail may be submitted in Adobe Portable Document Format (PDF), Word, WordPerfect, or any other widely used word processing format. The Commission will automatically reply to all incoming e-mails to confirm receipt. If filed by facsimile, pleadings shall be faxed to 202–418–0187. The fax transmission should include a cover sheet listing contact name, phone number, and, if available, an e-mail address. Pleadings submitted by electronic mail will be considered filed on a business day if they are received at the Commission on that day at any time up to 12 a.m. Pleadings received after that time will be considered received on the next business day. Similarly, facsimile transmissions will be considered filed on a business day if the complete transmission is received by any time up to 12 a.m.

3. We further provide that pleadings of the type described in paragraph 1 above that were due on or after September 12, 2001 and that were submitted by non-electronic means between September 12, 2001 and the effective date of this order may be refiled electronically within 30 days of the effective date of this order in accordance with the procedures specified in the preceding paragraph. Pleadings filed electronically pursuant to this paragraph shall be accompanied by a signed affidavit or a declaration pursuant to Commission rule § 1.16 stating that the previously filed pleading was timely filed, and providing the date the pleading was originally mailed to the Commission, and by what means. For this purpose only, the original pleading will be considered filed as of the date that it was mailed.

4. Accordingly, *it is ordered* that, pursuant to the authority of sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), the Commission ADOPTS the procedural requirements set forth in this order and waives any contrary requirements.

5. *It is further ordered* that the waiver shall become effective upon publication in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–873 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–105, WT Docket No. 00–110; FCC 01–351]

Public Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the public information collection contained in the Commission's decision regarding the use of N11 codes and other abbreviated emergency dialing arrangements. Therefore, the Commission announces that those regulations containing public information collections, including 47 CFR 64.3002, are effective February 13, 2002.

DATES: Section 64.3002, published at 67 FR 1649, January 14, 2002, is effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: David Siel and Susan Kimmel, 202–418–1310.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for the reporting requirement in its Fifth Report and Order in CC Docket No. 92–105, First Report and Order in WT Docket No. 00–110, and Memorandum Opinion and Order in CC docket No. 92–105, and WT Docket No. 00–110 (known collectively as the Order), which appears at 67 FR 1643, January 14, 2002. The effective date of the rules and regulations adopted in that decision was published as February 13, 2002, except for § 64.3002, which contains modified information collection requirements that will not be effective until approved by the Office of Management and Budget. Through this document, the Commission announces that it has received this approval (OMB Control No.: 3060–0954, Expiration Date: 06/30/02) and that § 64.3002 and other non-codified requirements adopted in the Order will also be effective on February 13, 2002. Pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1693 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 01–344]

The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses the rules regarding per-call compensation for payphone calls to ensure that payphone service providers (PSPs) are fairly compensated for all completed, coinless calls made from payphones. The Commission addresses the key issues raised in the petitions for declaratory ruling, reconsideration and/or clarification, and clarifies, on its own motion, certain aspects of the per-call compensation rules.

DATES: Effective February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Tania Cho, (202) 418–2320; fax (202)

418–2345; TTY (202) 418–0484; email at *tcho@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Order on Reconsideration and Order on Clarification* in CC Docket No. 96–128, FCC 01–344, adopted and released on November 21, 2001. The full text of the item is available for inspection and copying during the hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, or copies may be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Suite CY–B402, Washington, DC 20554, phone (202) 863–2893. This Order contains no new or modified information collection subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

Synopsis of the Third Order on Reconsideration and Order on Clarification

To implement Section 276 of the Telecommunications Act of 1996, the Commission has adopted several rules that define the relationship between PSPs and carriers in the call path in order to ensure that PSPs are adequately compensated for calls placed from payphones. In the *First Payphone Order,* 61 FR 52309, October 7, 1996, the Commission concluded that the interexchange carrier (IXC), as the primary beneficiary of payphone calls, should compensate the PSP. The Commission also recognized that a reseller lacking its own facilities does not have the ability to track calls, and that the facilities-based carrier should therefore pay compensation to the PSP. A requirement to track, or arrange for tracking of, compensable calls was also established for the underlying IXC, and the IXC was permitted to recover the cost of such tracking from the reseller. In the *Payphone Order on Reconsideration,* 61 FR 65341, December 12, 1996, the Commission modified its rules to provide that switch-based resellers (SBRs) are responsible for paying compensation directly to PSPs. In the *Coding Digit Waiver Order,* 63 FR 26497, May 13, 1998, the Common Carrier Bureau responded to PSP complaints that IXCs refused to identify SBRs by clarifying that when SBRs identified themselves to the first facilities-based IXC as responsible for paying compensation, the IXC was obligated to provide this information to the PSP.

On April 5, 2001, the Commission released the *Second Order on Reconsideration,* 66 FR 21105, April 27, 2001, which modified the payphone compensation rules. The modified rules provided that the first facilities-based IXC to which a LEC routes a coinless payphone call must (1) Compensate the PSP for the completed call; (2) track or arrange for tracking of all compensable calls; and (3) send to the PSP call completion information to enable the PSP to verify the accuracy of compensation it receives for coinless, compensable calls and/or to bill the underlying facilities-based carrier. The first IXC may then seek reimbursement from the switchless or switch-based reseller ultimately responsible for the compensation.

In this *Third Order on Reconsideration and Order on Clarification,* we decline to modify the rules as established in the *Second Order on Reconsideration.* We also reaffirm that, for purposes of payphone compensation, only calls that are answered by the called party are ''completed'' and thus compensable. Further, we clarify that the Commission supports the preservation and establishment of direct relationships and agreements between PSPs and SBRs for tracking and payment of payphone compensation, and that the liability of the first facilities-based IXC is limited to the extent that SBRs enter into such direct relationships. We also reiterate that the Commission did not, by revising the payphone compensation rules, intend to nullify any current or future contractual arrangements. Finally, we clarify that carriers are only required to report to PSPs calls that are completed, and thus compensable.

Ordering Clause

Pursuant to the authority contained in Sections 1, 4(i), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 276, the Bulletins Petition for Clarification is denied to the extent described herein; WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration is granted in part and denied in part to the extent described herein; AT&T Petition for Clarification and/or Reconsideration is denied to the extent described herein; and Global Crossing Telecommunications, Inc. Petition for Reconsideration and Clarification is denied, to the extent described herein.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1810 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–203; FCC 01–306]

RIN 4213

The Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the Commission's amended rules to require that noncommercial educational (''NCE'') television licensees provide a nonprofit, noncommercial educational service. We hope that this clarifies the manner in which NCE licensees may use their excess DTV capacity for remunerative purposes.

DATES: Sections 73.621(i); 73.624(g) introductory text and (g)(2)(ii); 73.642(a), (b) and (e); and 73.644(a) became effective on December 26, 2001. Section 73.624(g)(2)(i) is not yet effective. The Commission will release a document in the **Federal Register** announcing the effective date of this section.

FOR FURTHER INFORMATION CONTACT: Jane Gross, Policy and Rules Division, Mass Media Bureau (202) 418–2130, or *jgross@fcc.gov.*

SUPPLEMENTARY INFORMATION: 1. On October 17, 2001, the Commission released Report & Order (''*R&O*'') clarifying the manner in which noncommercial educational (''NCE'') television licensees may use their excess digital television (''DTV'') capacity for remunerative purposes. In the Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees, MM Docket No. 98–203, 66 FR 58973 (November 26, 2001). Among other things, the Commission amended § 73.621 of its rules to apply to the entire digital bitstream, including ancillary or supplementary services, thereby requiring NCE licensees to use their digital capacity primarily for a noncommercial, nonprofit, educational broadcast service. The Commission also amended §§ 73.642 (a), (b), (e) and § 73.644(a) of its rules to clarify that NCE licenses may offer subscription services on their excess digital capacity. When it amended these rules, the Commission ordered that the amended rules would ''be effective the later of

either thirty days after publication in the **Federal Register**, or upon receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Public Law 104–121'' (summary of *R&O* paragraph 49).

2. Under current General Accounting Office (''GAO'') procedures, submission to the GAO or publication in the **Federal Register** is sufficient to satisfy the requirements of the Congressional Review Act (formerly known as the Contract with America Advancement Act). The amendments to §§ 73.621, 73.642 and 73.644 of the Commission's rules were submitted to the GAO and to Congress on November 26, 2001, the same day that they were published in the **Federal Register**. Thus, pursuant to the Administrative Procedure Act, the amended §§ 73.621, 73.642 and 73.644 of the Commission's rules will be effective on December 26, 2001, thirty days after publication in the **Federal Register**.

3. Finally, in the same proceeding the Commission amended §§ 73.624(g)(1), (g)(2)(i), and (g)(2)(ii) of its rules to apply to NCE licensees the program for assessing and collecting fees upon feeable ancillary or supplementary services provided on their DTV capacity that it had previously established for commercial licensees, as required by the Telecommunications Act of 1996 (''1996 Act''). Public Law 104–104, 110 Stat. 56 section 201 (1996), codified at 47 U.S.C. 336. In addition, NCE licensees will be required to maintain documentation sufficient to show, at renewal time and in response to any complaint, compliance with the requirement to use their entire bitstream primarily for nonprofit, noncommercial, educational broadcast services on a weekly basis (summary of *R&O* paragraph 16). These requirements were analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Thus, implementation of these requirements is subject to approval by the Office of Management and Budget as prescribed by the PRA (summary of *R&O* paragraphs 46, 50 and 66). The Commission will publish a notice in the **Federal Register** when this approval is received.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1811 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005244–2011–02; I.D. No. 092401D]

RIN 0648–AP08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2002 Specifications and Foreign Fishing Restrictions

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

ACTION: Final rule; specifications for 2002.

SUMMARY: NMFS announces final initial specifications for the 2002 fishing year for Atlantic mackerel, squid, and butterfish (MSB); including an in-season adjustment provision for the 2002 mackerel joint venture processing (JVP) annual specification. This action also specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III. The intent of this final rule is to promote the development and conservation of the MSB resource.

DATES: This rule is effective January 25, 2002. The quotas in Tables 1 and 2 for *Loligo* and *Illex* squid, Atlantic mackerel, and butterfish are effective January 25, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Essential Fish Habitat Assessment, are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is accessible via the Internet at *http://www.nero.nmfs.gov.*

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of quota set-asides to be used for research purposes.

Proposed 2002 initial specifications were published on October 23, 2001 (66 FR 53575). Public comments were accepted through November 23, 2001. The final specifications are unchanged from those that were proposed except that they reflect the research set-aside (RSA) allocations that have been recommended to the NOAA Grants Office for funding. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

2002 Final Initial Specifications

The following table contains the final initial specifications and RSA for the 2002 MSB fisheries as recommended by the Mid-Atlantic Fishery Management Council (Council).

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
Max OY	26,000	24,000	N/A[1]	16,000
ABC	17,000	24,000	347,000	7,200
IOY	16,898[5]	24,000	85,000[2]	5,900
DAH	16,898[5]	24,000	85,000[3]	5,900

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002—Continued

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
DAP	16,898[5]	24,000	50,000	5,900
JVP	0	0	20,000[4]	0
TALFF	0	0	0	0
RSA	102	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 30,000 mt at discretion of Regional Administrator.
[5] Excludes 102 mt for RSA.

Atlantic Mackerel

This final rule specifies an Atlantic mackerel JVP of 20,000 mt for the 2002 fishery, with a possible increase of up to 10,000 mt (for a total JVP of up to 30,000 mt) later in the fishing year, should additional applications for JVP be received. This adjustment would be made by NMFS, through publication of notification in the **Federal Register**, following consultation with the Council. The action also specifies an Atlantic mackerel DAP of 50,000 mt and a DAH of 85,000 mt, which includes a 15,000–mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2002 Atlantic mackerel fishery, as follows: (1) JVPs would be allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but it should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JVP allocation for 2002 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Research Set-Asides

Framework Adjustment 1 to the FMP allows the specification of quota set-asides to be used for research purposes. The Council recommended that up to 2 percent of the 2002 IOY be set aside for scientific research purposes for each of the species in the FMP. A Request for Proposals was published to solicit proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001. On November 8, 2001, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panelist comments, two *Loligo* squid project proposals were recommended for approval and forwarded to the NOAA Grants Office for award. Consistent with the recommendations, the quotas in this final rule have been adjusted to reflect the projects recommended for approval. If the awards are not made by the NOAA Grants Office for any reason, NMFS will publish an additional rule to restore the unused set-aside amount to the annual quota.

Distribution of the Annual *Loligo* Squid Quota

Due to the recommendation of two research projects that would utilize *Loligo* squid RSA, this final rule adjusts the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2002 quarterly allocations are as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons (mt)	Research Set-aside (mt)
I (Jan—Mar)	33.23	5,615	N/A
II (Apr—Jun)	17.61	2,976	N/A
III (Jul—Sep)	17.3	2,923	N/A
IV (Oct—Dec)	31.86	5,384	N/A
Total	100	16,898	102

Carry-over of *Loligo* Squid Quarterly Quota Underages

For the 2001 fishing year, by default, quarterly underages carry over into Quarter IV because the directed fishery in Quarter IV does not close until 95 percent of the total annual quota has been harvested. This final rule modifies the method for carrying over *Loligo* squid quarterly underages for 2002 and subsequent fishing years by adding a provision stating that, in the event that the Quarter I landings for *Loligo* squid are less than 70 percent of the Quarter I allocation, the underage below 70 percent would be applied to Quarter III. Underages from Quarters II and III would continue to be added to Quarter IV by default, based on the 95–percent closure rule mentioned above.

Comments and Responses

Three commenters made five comments on the proposed specifications.

Comment 1: One commenter supported the proposed allocation of Atlantic mackerel JVP.

Response 1: This final rule implements the proposed allocation of Atlantic mackerel JVP.

Comment 2: One commenter supported the proposed zero allocation of Atlantic mackerel TALFF.

Response 2: This final rule implements the proposed zero allocation of Atlantic mackerel TALFF.

Comment 3: Two commenters instead proposed specifying TALFF at 5,000 mt and a possible JVP increase of up to 20,000 mt (for a total JVP of up to 40,000 mt) later in the fishing year.

Response 3: The question of whether or not to recommend a level of optimum yield that provided for an allocation of TALFF, other than zero, was reviewed and discussed by the Council at length before it made its final recommendation to the National Marine Fisheries Service. After extended debate, the Council recommended a level of OY that was a reduction of the maximum sustainable yield based upon all relevant social, economic, and ecological factors. The Council firmly believed that the specification of the OY at a level that resulted in a zero TALFF would provide the greatest overall benefit to the Nation, because it would enhance development of the U.S. domestic mackerel fishery, which is one of the principal objectives of the Magnuson-Stevens Fishery Conservation and Management Act. Even though a zero TALFF would result in an economic loss to the Nation from the loss of any poundage fees collected from foreign fishing vessel owners for allocations of TALFF, the Council was concerned that allocations of TALFF would compete directly with mackerel produced by United States processors for foreign markets. Such competition would impede the expansion of domestic mackerel processing facilities. The expansion of domestic mackerel processing facilities would enable the domestic fleet to use more of their harvesting capacity to land mackerel at shoreside facilities.

Comment 4: One commenter opposed the Atlantic mackerel JVP specification of 20,000 mt for the 2002 fishery because he believes shore-based processors would be negatively affected by foreign joint ventures. The commenter believes the foreign at-sea processors can operate at lower cost than U.S. shoreside plants in part due to U.S. legal requirements such as Hazard Analysis Critical Control Point standards.

Response 4: The Council's annual processor survey indicates that the capacity of the domestic fleet to harvest mackerel greatly exceeds the domestic processors' capacity to process mackerel. As a result, the Council recommended, and NMFS is implementing, the 20,000–mt JVP allocation to provide additional opportunity for U.S. vessels to sell mackerel.

Comment 5: One commenter stated that NMFS was utilizing outdated data to set the 2002 *Loligo* squid quota specification. The commenter recommended a *Loligo* quota increase, either in this rule or through an in-season adjustment to the annual specifications.

Response 5: The commenter is correct that the most recent stock assessment for *Loligo* squid (29th Northeast Regional Stock Assessment Workshop (SAW–29)) was completed some time ago, in August 1999. However, the Council and NMFS did not rely solely on that information in recommending the 2002 quota. The Council and NMFS also utilized the most recent survey data for *Loligo* squid, which indicates that abundance of this species has increased significantly since SAW–29 was conducted. Estimates of biomass based on NMFS' Northeast Fisheries Science Center fall 1999, spring 2000, and fall 2000 survey indices for *Loligo* squid indicate that the stock is currently at or near the biomass level that would produce maximum sustainable yield (B_{msy}). Based on the assumption that the stock would be at or near B_{msy} in 2001, the Council recommended, and NMFS implemented, an ABC specification for 2001 that is the yield associated with 75 percent of F_{msy} at B_{msy}, or 17,000 mt. Given the high survey index observed in the fall 2000 survey, the quota is being maintained at that level in 2002. The Council and NMFS may adjust the specifications through an in-season adjustment during the 2002 fishing year should the results of the 34th Northeast Regional Stock Assessment Workshop warrant that change.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA for this action. The FRFA includes comments on the IRFA, responses contained herein, and a summary of the analyses done in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

The reasons why action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Three comments were submitted on the proposed rule, but none of them were specific to the initial regulatory flexibility analysis. However, two individuals commented on the economic impacts of the measures on the fishing industry; NMFS has responded to those comments (3 and 4) in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

The numbers of potential fishing vessels in the 2002 fisheries are 395 for *Loligo* squid/butterfish, 77 for *Illex* squid, and 2,098 for Atlantic mackerel. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed ABC specifications of 347,000 mt and DAH of 95,000 mt for Atlantic mackerel, the DAH specifications of 24,000 mt for *Illex* squid, and the DAH specifications of 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The levels of landings allowed under the specifications for 2002 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of this action.

From 1996–2000, *Loligo* squid landings averaged 16,548 mt. If the 2002 DAH specification of 16,898 mt for *Loligo* squid is achieved, there would be a slight increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1996–2000.

This action modifies the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 70 percent of the Quarter I allocation would be applied to Quarter III. Previously, all underages from Quarter I were applied to Quarter IV because the directed *Loligo* fishery in Quarter IV does not close until 95 percent of the total annual quota is harvested. However, by making the underage available during Quarter III, *Loligo* squid permit holders will be able to fish during a time when the quarter may have otherwise been closed. This could potentially provide an added economic benefit to fishers during Quarter III. This provision will only shift a limited amount of quota from one period to another and does not modify the *Loligo* squid annual quota, so no overall change in revenue is expected.

Three non-selected alternatives were considered for the Atlantic mackerel fishery. The first was to set the 2002

specifications at the same level as 2001. The specifications under this alternative are the same as those established by this action, with the exception of IOY and TALFF. Under this alternative, the IOY specification would be slightly higher than the specification in the preferred alternative (88,000 mt) because TALFF would be specified at 3,000 mt. However, specifying TALFF at 3,000 mt would be inconsistent with the goal of further developing the U.S. domestic fishery for Atlantic mackerel. This alternative would have had no constraints and consequently no revenue impacts on the fishery because the proposed levels of harvest for Atlantic mackerel under this alternative have not been attained in recent years.

The second alternative for Atlantic mackerel was to set ABC at the long-term potential catch, or 134,000 mt. This alternative was found inconsistent with the FMP because it did not consider the variations in the status of the stock. The current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at 134,000 mt would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The potential level of foregone yield under this alternative was considered unacceptable.

The third alternative considered for mackerel eliminated the JVP allocation for 2002, which would lower the specification of IOY to 68,000 mt, also far in excess of recent landings. This alternative was rejected because JVPs allow U.S. harvesters to take Atlantic mackerel at levels in excess of current U.S. processing capacity. None of these alternatives were expected to constrain the mackerel fishery and they all were determined to have no impact on the revenues of participants in this fishery.

Two non-selected alternatives were considered for *Loligo* squid. The first would have set the ABC, DAH, DAP, and IOY at 13,000 mt, a 23.3–percent reduction from the 2001 level. This was the same level initially specified for the 2000 fishing year (an in-season adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt (65 FR 60118, October 10, 2000). If the 13,000–mt alternative were adopted for the 2002 fishing year, 132 of the 497 impacted vessels would experience a total gross revenue reduction of greater than 6 percent (all species combined). The remaining 365 vessels would experience a 4–percent or less reduction in revenue or an increase in revenue. The second alternative would have set ABC, DAH, DAP, and IOY at 11,700 mt. This would represent a 31–percent reduction in landings relative to 2000. Under this scenario, 170 of the 497 impacted vessels would experience a gross revenue reduction of greater than 6 percent (all species combined). The remaining 327 vessels would experience a 4–percent or less reduction in revenue, or an increase in revenue.

Two non-selected alternatives were considered for *Illex* squid. The first would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt and the second alternative would have set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. These specifications would be far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these non-selected specifications.

Two non-selected alternatives were considered for butterfish. The first would have set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second alternative set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed the specifications implemented by this final rule. Recent harvests in the butterfish fishery have been well below the level allowed by this final rule, so none of the alternatives would constrain or impact the industry. However, the non-selected alternatives could lead to overfishing of the stock and, thus, were rejected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides''. The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the mackerel, squid, and butterfish fisheries. The guide and this final rule will be available upon request (see **ADDRESSES**).

This final rule establishes annual and seasonal quotas for the managed species, which are used for the purpose of closing the fishery when the quotas are reached and which serve as the basis for issuing joint venture permits. The mackerel specifications have a foreign fishing component. Until the specifications are final, no foreign fishing permits to authorize joint ventures may be issued. A number of foreign fishing vessels operated in the EEZ in 2001. Some of these foreign vessels have remained in U.S. waters in anticipation of receiving foreign fishing permits authorizing joint ventures for Atlantic mackerel in 2002. Until the mackerel specification are finalized and these foreign vessels are permitted, domestic fishermen cannot deliver mackerel to these foreign vessels. This will have a negative economic impact on domestic fishermen. Therefore, with respect to the mackerel fishery, this final rule relieves a restriction and pursuant to 5 U.S.C. 553(d)(1) the 30–day delay in effectiveness does not apply.

In addition, if implementation of the quota provisions and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of the loligo squid fishery. The loligo squid fishery covered by this action is already underway. Landings data for loligo squid in previous years reflect that landings are highly variable and largely dependent on availability. Since the loligo squid fishery is now managed on a quarterly quota basis, the unpredictable nature of loligo squid landing could compromise the initial quarterly quota if no closure mechanism is in place due to a delay in the effectiveness of the loligo squid specification. Failure to implement timely closures could result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for the mackerel and loligo squid specifications and other management measures.

This final rule does not contain policies with federalism implications under Executive Order 13132.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 22, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.21, paragraph (f)(3) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2002, if commercial landings in Quarter I are determined to be less than 70 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 70 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 70 percent, or 20,000 lb (44,092 kg), would be reallocated to Quarter III. A balance of 30 percent, or 30,000 lb (66,139 kg), would remain in Quarter I).

* * * * *

[FR Doc. 02–1997 Filed 1–23–02; 1:26 pm]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 17
Friday, January 25, 2002

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN: 3206–AJ47

Basic Pay for Employees of Temporary Organizations

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations on setting pay for employees of temporary organizations established by law or Executive order. These regulations will enable agencies to determine the rate of basic pay and locality payments for employees of temporary organizations.

DATES: Effective Date: The regulations are effective on January 25, 2002.

Applicability Dates: The regulations apply on the first day of the first applicable pay period beginning on or after January 25, 2002.

Comments Date: Comments must be received on or before March 26, 2002.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email: *payleave@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Ron Genua, (202) 606–2858.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations on compensation for employees of temporary organizations established by law or Executive order. Section 1101 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Public Law 106–398, October 30, 2000), adds a new subchapter IV to chapter 31 of title 5, United States Code. Subchapter IV provides that the head of a temporary organization may make excepted service appointments of up to 3 years to fill positions of the temporary organization. The appointments may be extended for an additional 2 years consistent with regulations published by OPM. This authority is available to executive and legislative branch agencies. In addition, subchapter IV provides that, upon request by the head of a temporary organization, the head of any department or agency of the Government may detail employees on a nonreimbursable basis to the temporary organization to assist the temporary organization in carrying out its duties.

Subchapter IV defines a temporary organization as a commission, committee, board, or other organization that is established for a specific period of time, not in excess of 3 years, for the purpose of performing a specific study or other project. Such a temporary organization generally terminates upon completion of the study or project.

Subchapter IV provides OPM with authority to establish regulations to determine the rate of basic pay for employees of temporary organizations without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code. (See 5 U.S.C. 3161(d).) These interim regulations do not apply to temporary organizations established prior to October 30, 2000.

Subchapter IV also provides that the rate of basic pay for the chairman, a member, an executive director, a staff director, or other executive level position of a temporary organization may not exceed the maximum rate of basic pay established for the Senior Executive Service (SES) under section 5382 of title 5, United States Code. The rate of basic pay for other positions in a temporary organization may not exceed the maximum rate of basic pay for GS–15. However, the rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of the agency to be exceptional, exceed the maximum rate of basic pay for GS–15, but may not exceed the maximum rate of basic pay for the SES. Subchapter IV defines *basic pay* as including locality pay provided under section 5304 of title 5, United States Code.

In setting rates of basic pay for staff and other non-executive level positions, the interim regulations require that the head of a temporary organization give consideration to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. This is consistent with a parallel requirement established under regulations published by the General Services Administration for setting basic pay for advisory committee members and staff under the Federal Advisory Committee Act. (See 41 CFR 101–6.1033.) The interim regulations also require the head of a temporary organization to take into account rates of basic pay paid to Federal employees who have duties that are similar in terms of difficulty and responsibility.

The interim regulations provide General Schedule locality payments to all executive level and staff positions of temporary organizations. The regulations set maximum rates of basic pay and locality-adjusted rates of pay for employees of temporary organizations. This will make it easier to determine pay when employees move from General Schedule positions to positions in temporary organizations, and vice versa.

The compensation authority in 5 U.S.C. 3161(d) is limited to determining rates of basic pay and locality-adjusted rates of pay for employees of temporary organizations. In addition, subchapter IV provides that an employee of a temporary organization is entitled to the same benefits provided to temporary employees under title 5, United States Code. The interim regulations clarify, however, that subchapter IV provides no new independent authority for the head of a temporary organization to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific authority. For example, the law does not create any new authority for providing premium pay, bonuses, awards, leave, or benefits differently than under title 5 or any other already existing statute.

The interim regulations require that the head of a temporary organization comply with section 5504 of title 5, United States Code, including the requirement for biweekly pay periods and requirements for converting an annual rate of basic pay to a basic

hourly, daily, weekly, or biweekly rate. The regulations also require that employees of temporary organizations receive basic pay on an hourly basis. These requirements will facilitate compliance with the laws and regulations on crediting and using leave on an hourly basis, or fractions thereof.

Finally, subchapter IV provides criteria under which the head of a temporary organization may accept volunteer services without regard to section 1342 of title 31, United States Code.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective on the date of its publication in the **Federal Register**. This waiver is appropriate because the interim regulations are being published to implement changes in law that are already in effect.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending part 534 of title 5 of the Code of Federal Regulations as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 is revised to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

2. Subpart C of part 534 is added to read as follows:

Subpart C—Basic Pay for Employees of Temporary Organizations

534.301 General.
534.302 Applicability.
534.303 Basic pay for executive level positions.
534.304 Basic pay for staff positions.
534.305 Pay periods and computation of pay.

Subpart C—Basic Pay for Employees of Temporary Organizations

§ 534.301 Coverage.

This subpart provides rules for setting rates of basic pay for employees who are appointed to positions in temporary organizations in accordance with subchapter IV of chapter 31 of title 5, United States Code (5 U.S.C. 3161). Such temporary organizations are established by law or Executive order. Employees appointed under 5 U.S.C. 3161(b) are not subject to the provisions applicable to General Schedule employees covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

§ 534.302 Applicability.

The regulations in this subpart are applicable to employees of temporary organizations who are appointed and compensated under 5 U.S.C. 3161. The rates of basic pay for employees appointed under 5 U.S.C. 3161(b) must be established under the regulations in this subpart. This subpart provides rules for determining rates of basic pay and locality-adjusted rates of basic pay. This subpart does not provide authority to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific statutory authority.

§ 534.303 Basic pay for executive level positions.

(a) Rates of basic pay for executive level positions of temporary organizations may not exceed the maximum rate of basic pay established for the Senior Executive Service under 5 U.S.C. 5382. Therefore, the highest rate of basic pay for executive level positions of temporary organizations, not including any applicable locality-based comparability payment under 5 U.S.C. 5304, may not exceed the rate of basic pay for level IV of the Executive Schedule.

(b) Employees in executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay for executive level positions may not exceed the rate of basic pay for level III of the Executive Schedule.

§ 534.304 Basic pay for staff positions.

(a)(1) Rates of basic pay for staff or other non-executive level positions of temporary organizations may not exceed the maximum rate of basic pay for grade GS–15 of the General Schedule under 5 U.S.C. 5332, excluding any locality-based comparability payment under 5 U.S.C. 5304.

(2) In establishing rates of basic pay for staff and other non-executive level positions of temporary organizations, the head of a temporary organization must give consideration to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. The head of a temporary organization must also take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility.

(b) Employees in staff and other non-executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay may not exceed the locality-adjusted rate of basic pay for grade GS–15 of the General Schedule under 5 U.S.C. 5304, for the locality pay area involved.

(c) Notwithstanding the limitations in paragraphs (a) and (b) of this section, the rate of basic pay and locality-adjusted rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of a temporary organization to be exceptional, exceed the maximum rates established under those paragraphs. However, the higher payable rates may not exceed the applicable maximum rate of basic pay or locality-adjusted rate of basic pay authorized under this subpart for an executive level position.

§ 534.305 Pay periods and computation of pay.

(a) The requirements of 5 U.S.C. 5504, must be applied to employees of temporary organizations. This includes requirements for biweekly pay periods and requirements for converting an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate.

(b) Employees of temporary organizations must receive basic pay on an hourly basis.

[FR Doc. 02–1604 Filed 1–24–02; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–036–3]

Citrus Canker; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding portions of Hendry and Hillsborough Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL, due to detections of citrus canker in these areas. The interim rule imposed restrictions on the interstate movement of regulated articles from and through the quarantined areas and was necessary to prevent the spread of citrus canker into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on August 29, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective August 29, 2000, and published in the **Federal Register** on September 5, 2000 (65 FR 53528–53531, Docket No. 00–036–1), we amended the citrus canker regulations, contained in 7 CFR 301.75–1 through 301.75–16, in response to the detection of the disease in areas outside of the previously quarantined areas. On September 26, 2000, we published a correction (65 FR 57723, Docket No. 00–036–2) that clarified the description of quarantined areas contained in the interim rule. The interim rule, as corrected by that document, added portions of Hendry and Hillsborough Counties, FL, to the list of quarantined areas and expanded the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL. The interim rule imposed restrictions on the interstate movement of regulated articles from and through the quarantined areas.

Comments on the interim rule were required to be received on or before November 6, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

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

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by adding portions of Hendry and Hillsborough Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined areas in Broward, Collier, Dade, and Manatee Counties, FL, due to the detection of citrus canker in those areas. The interim rule imposed certain restrictions on the interstate movement of regulated articles from and through the quarantined areas. The interim rule was necessary to prevent the spread of citrus canker into noninfested areas of the United States.

In accordance with 5 U.S.C. 604 of the Regulatory Flexibility Act, we have performed a final regulatory flexibility analysis regarding the economic effects of the interim rule on small entities. The Small Business Administration (SBA) defines a firm engaged in agriculture as ''small'' if it has less than $750,000 in annual receipts.

The entities who could be affected by the interim rule include those businesses that produce, sell, process, handle, or move regulated articles, such as commercial groves, grove maintenance services, fruit transporters, fruit processors, nurseries, nursery stock dealers, fresh fruit retail stores, fruit packers, gift fruit shippers, fruit harvesting contractors, lawn maintenance businesses, and flea markets. Because the interim rule restricted the interstate movement of regulated articles from and through the quarantined areas, entities that are located within the new or expanded quarantined areas, as well as entities located outside the quarantined areas, could be affected.

The number of these entities that meet the SBA definition of a small entity is unavailable. However, it is reasonable to assume that most of these entities are small in size because the majority of the same or similar businesses in southern Florida, as well as the rest of the United States, are small by SBA standards. For example, we have identified a total of 317 commercial citrus groves in those counties in which quarantined areas were established or expanded by the interim rule. Approximately 285 of the 317 commercial citrus groves in those counties meet the SBA definition of a small entity.

Commercial citrus growers, processors, packers, and shippers within the quarantined areas will still be able to move their fruit interstate, provided that, among other things, the fruit is treated and not shipped to another citrus-producing State. Growers will have to bear the cost of treatment, but that cost is expected to be minimal. The prohibition on moving the fruit to other citrus-producing States is not expected to negatively affect entities within the quarantined areas because most States do not produce citrus and growers are expected to be able to find a ready market in non-citrus-producing States.

Alternatively, owners of commercial citrus groves whose trees were removed because of citrus canker pursuant to a public order between 1986 and 1990 or on or after September 28, 1995, may, subject to the availability of funding, receive payments to replace commercial citrus trees. Eligible commercial citrus grove owners may also, subject to the availability of funding, receive payments to recover income from production that was lost as a result of the removal of commercial citrus trees to control citrus canker. These lost production and tree replacement payments will help to reduce the economic effects of the citrus canker quarantine on affected commercial citrus growers.

The nurseries and commercial groves affected by the interim rule will be required to undergo periodic inspections. These inspections may be inconvenient, but the inspections will not result in any additional costs for the nurseries or growers because the Animal and Plant Health Inspection Service or the State of Florida will provide the services of an inspector without cost to the nursery or grower.

Fresh fruit retail stores, nurseries, and lawn maintenance companies, for the most part, operate locally; they do not typically move regulated articles outside of the State of Florida during the normal course of their business, and consumers do not generally move products purchased from those entities out of the State. The fruit sold by grocery stores and other retail food outlets is generally sold for local consumption. Retail nurseries also market their products for local consumption. Lawn maintenance businesses collect yard debris, but they do not normally transport that debris outside the State for disposal.

The fresh fruit retailers affected by the interim rule will be required to abide by restrictions on the interstate movement of regulated articles. They may be affected by the interim rule because fruit sold within the quarantined areas in retail stores cannot be moved outside of the quarantined areas. However, we expect any direct costs of compliance for fresh fruit retailers will be minimal.

The lawn maintenance companies affected by the interim rule will be required to perform additional sanitation measures when maintaining an area inside the quarantined areas. Lawn maintenance companies will have to clean and disinfect their equipment after grooming an area within the quarantined areas, and they must properly dispose of any clippings from plants or trees within the quarantined areas. These requirements will slightly increase costs for lawn maintenance companies affected by the interim rule.

Consideration of Alternatives

The alternative to the interim rule was to make no changes in the citrus canker regulations. We rejected this alternative because failure to quarantine portions of Hendry and Hillsborough Counties, FL, and additional portions of Broward, Collier, Dade, and Manatee Counties, FL, could result in greater economic losses for domestic citrus producers due to citrus canker.

The interim rule contained no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 that was published at 65 FR 53528–53531 on September 5, 2000, and that was corrected in a document that was published at 65 FR 57723 on September 26, 2000.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 18th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1858 Filed 1–24–02; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, 34, 70, 71, 72, and 73

RIN 3150–AG79

Revised Filing Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise filing and advance notification requirements to reflect organizational changes within the NRC. The amended regulations are necessary to correct telephone numbers, eliminate duplicative filings, and to inform the public of administrative changes within the NRC.

EFFECTIVE DATE: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8092, e-mail: cxb@nrc.gov.

SUPPLEMENTARY INFORMATION: The Commission's Announcement No. 108, dated December 24, 1998, announced its decision to abolish the Office for Analysis and Evaluation of Operational Data (AEOD), effective January 3, 1999. The emergency response function of AEOD was transferred to the Office of Incident Response Operations (IRO). Any future general correspondence and technical documents relating to incident response should be addressed to IRO. This final rule also corrects the telephone number for the NRC Operations Center.

In 1995 the NRC transferred responsibility for receiving advance notification of shipments of licensed materials from the Division of Industrial and Medical Nuclear Safety (IMNS) and NRC Regional Administrators to the Spent Fuel Project Office (SFPO). Future applications and reports as required under parts 72 and 73 should be addressed to the SFPO rather than IMNS or the Regional Administrators. The attached final rule will inform the public of these previous organizational changes and will eliminate duplicate filings.

Because these minor amendments only reflect organizational changes, the notice and comment provisions of the Administrative Procedures Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective on publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because this amendment is of a minor and administrative nature, dealing with the NRC's organization.

Environmental Impact: Categorical Exclusion

NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule decreases the burden on licensees to eliminate the submittal of multiple copies of reports to the NRC Regional Administrator and the Director, Office of Nuclear Material Safety and Safeguards for 10 CFR 72.44(f) and 72.186(b). The public burden reduction for this information collection is estimated to average 0.20 hour(s) per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and

recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, NRC is adopting the following amendments to 10 CFR Parts 1, 20, 34, 70, 71, 72, and 73.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

§ 1.32 [Amended]

2. In § 1.32(b), remove the words ''the Office for Analysis and Evaluation of Operational Data,'' and add in their place the words ''Incident Response Operations,''.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202,206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

§ 20.2201 [Amended]

4. In § 20.2201(a)(2)(ii), revise the telephone number for the NRC Operations Center from ''301–951–0550'' to ''(301)–816–5100.''

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETYREQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

5. The authority citation for Part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Section 34.45 also issued under sec. 206, 88 Stat. 1246, (42 U.S.C. 5846).

§ 34.101 [Amended]

6. In § 34.101(a), remove the words ''Office for Analysis and Evaluation of Operational Data,'' and add in their place the words ''Incident Response Operations,''.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub.L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243). Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.20b [Amended]

8. Section 70.20b is amended as follows:

a. In paragraphs (f)(1) and (g)(1), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

b. In paragraph (f)(2)(ii), remove the words ''Division of Industrial and Medical Nuclear Safety has been notified by telephone at (301) 415–7197,'' and add in their place the words ''Director, Spent Fuel Project Office has been notified by telephone at (301) 415–8500,''.

c. In paragraph (f)(2)(iii), remove the words ''Division of Industrial and Medical Nuclear Safety will be notified by telephone at (301) 415–7197,'' and add in their place the words ''Director, Spent Fuel Project Office has been notified by telephone at (301) 415–8500,''.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

9. The authority citation for Part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

§ 71.1 [Amended]

10. In § 71.1(a), remove the words ''Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 71.5 [Amended]

11. In § 71.5(b), remove the words ''Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 71.12 [Amended]

12. In § 71.12(c)(3), remove the words ''Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 71.93 [Amended]

13. In § 71.93(c), remove the words ''Administrator of the appropriate NRC Regional Office listed in appendix A of part 73 of this chapter,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

§ 71.95 [Amended]

14. In § 71.95, remove the words ''Office of Nuclear Material Safety and

Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 71.97 [Amended]

15. In § 71.97(c)(1), remove the words ''Administrator of the appropriate NRC Regional Office listed in appendix A to part 73 of this chapter.'' and add in their place the words ''Director, Spent Fuel Project Office.''.

15a. In § 71.97(f)(1), remove the words ''Administrator of the appropriate NRC Regional Office listed in appendix A of part 73 of this chapter.'' and add in their place the words ''Director, Spent Fuel Project Office.''.

§ 71.101 [Amended]

16. In § 71.101(c) and (f), remove the words ''Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Spent Fuel Project Office,''.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

17. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168). Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

§ 72.16 [Amended]

18. In § 72.16(a), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Spent Fuel Project Office,''.

§ 72.44 [Amended]

19. In § 72.44(f), remove the words ''appropriate NRC Regional Office specified in appendix A to part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

§ 72.186 [Amended]

20. In § 72.186(b) remove the words ''Regional Administrator of the appropriate NRC Regional Office specified in appendix A of part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

§ 73.26 [Amended]

22. In § 73.26(i)(6), remove the words ''appropriate Nuclear Regulatory Commission Regional Office listed in appendix A of this part'' and add in their place the words ''Director, Spent Fuel Project Office''.

§ 73.27 [Amended]

23. In § 73.27(b) in the first, second, and fourth sentences remove the words ''Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A'' and add in their place the words ''Director, Spent Fuel Project Office''. In the third sentence remove the words ''Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A of this part,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

§ 73.67 [Amended]

24. In § 73.67(e)(7)(ii), remove the words ''Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in appendix A'' and add in their place the words ''Director, Spent Fuel Project Office''.

§ 73.71 [Amended]

25. In § 73.71(a)(4), remove the words '' appropriate NRC Regional Office listed in appendix A to this part.'' and add in their place the words ''Director, Spent Fuel Project Office.''.

§ 73.72 [Amended]

26. Section 73.72 is amended as follows:

a. In paragraph (a)(1), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

b. In paragraphs (a)(4) and (a)(5), remove the words ''Division of Industrial and Medical Nuclear Safety by telephone at 301– 415–7197'' and add in their place the words ''Director, Spent Fuel Project Office by telephone at (301) 415–8500''.

§ 73.73 [Amended]

27. Section 73.73 is amended as follows:

a. In paragraph (a)(1), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

b. In paragraph (b), remove the words ''Division of Industrial and Medical Nuclear Safety at 301–415–7197.'' and add in their place the words ''Director, Spent Fuel Project Office at (301)415–8500.''.

§ 73.74 [Amended]

28. Section 73.74 is amended as follows:

a. In paragraph (a)(1), remove the words ''Division of Industrial and Medical Nuclear Safety,'' and add in their place the words ''Director, Spent Fuel Project Office,''.

b. In paragraph (b), remove the words ''Division of Industrial and Medical Nuclear Safety at 301–415–7197.'' and add in their place the words ''Director, Spent Fuel Project Office at (301) 415–8500.''.

Appendix A to Part 73 [Amended]

29. In appendix A to Part 73, under the **ADDRESSES** column, remove the words ''Office for Analysis and Evaluation of Operational Data,'' and add in their place the words ''Incident Response Operations,''.

Dated at Rockville, Maryland, this 10th day of January, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–1721 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1777

RIN 2550–AA12

Prompt Supervisory Response and Corrective Action

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final rule to set forth the procedures by which OFHEO administers the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, under which OFHEO takes prompt corrective action in response to specified declines in the capital levels of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The rule also implements a system of prompt supervisory responses to be taken whenever developments internal or external to an Enterprise, as identified by the agency on a case-by-case basis, may warrant special supervisory review by OFHEO. The initiation of a special supervisory review pursuant to such a procedure does not of itself indicate that an Enterprise is in an unsound condition; rather, it means only that OFHEO is undertaking a focused inquiry to ascertain the likely consequences of a particular development or developments for the Enterprise.

EFFECTIVE DATE: February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 414–3788 or David W. Roderer, Deputy General Counsel, (202) 414–6924 (not toll-free numbers), 1700 G Street NW, Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339 (TDD only).

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), established OFHEO. OFHEO is an independent office within the Department of Housing and Urban Development with responsibility for ensuring that the Enterprises are adequately capitalized and operate safely and in conformity to the requirements of applicable statutes, rules and regulations, including their respective charter acts.[1] The Enterprises were established to effect specific public purposes under Federal law, including the provision of liquidity to the residential mortgage market and the promotion of the availability of mortgage credit benefiting low- and moderate-income families and areas that are underserved by lending institutions.[2]

The enumerated statutory authorities of the Director explicitly include the authority to issue rules to carry out the duties of the Director,[3] as well as other broad supervisory powers essentially similar to those of the Federal bank regulatory agencies. OFHEO is empowered to conduct examinations of the Enterprises; to require the Enterprises to provide reports;[4] to establish capital standards for the Enterprises;[5] and, in appropriate circumstances, to exercise administrative enforcement authority. OFHEO's range of enforcement authorities include, among other things, the power to issue temporary and permanent cease and desist orders to an Enterprise or its executive officers or directors, and to otherwise sanction or impose civil money penalties when appropriate.[6] OFHEO's enforcement regime, addressing the scope of these authorities and the applicable rules of practice and procedure, is set forth in part 1780 of OFHEO's regulations.[7]

In addition, subtitle B of the 1992 Act requires OFHEO to establish certain capital thresholds for the Enterprises.[8] The statute directs OFHEO to assign capital classifications to the Enterprises based on those capital thresholds, and authorizes OFHEO to reclassify an Enterprise notwithstanding the thresholds.[9] An Enterprise that is not classified as ''adequately capitalized'' is required to obtain OFHEO's approval for, and carry out, a formal plan to restore the Enterprise's capital. Statutory provisions also prohibit an Enterprise from making any capital distribution that would result in the Enterprise not meeting the capital thresholds, absent OFHEO's approval, and imposes additional restrictions on capital distributions so long as the Enterprise is not classified as adequately capitalized. An Enterprise that is not classified as adequately capitalized may also be subject to a variety of regulatory limitations and restrictions as deemed to be appropriate by OFHEO.[10]

On April 10, 2001, OFHEO published a notice of proposed rulemaking at 66 FR 18694 seeking public comment on a proposal to issue a rule describing the scope of the actions the agency is authorized to take under certain prompt corrective action statutory provisions applicable to the Enterprises at 12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623, as well as the procedures by which such actions will be carried out. OFHEO also sought public comment on adopting a proposed prompt supervisory response procedure, separate from the capital-based prompt corrective action regime, under which OFHEO proposed to monitor various supervisory concerns in addition to an

[1] 12 U.S.C. 4513(a). *See also* 12 U.S.C. 4513(b)(1)–(5), 4517, 4521(a)(2)–(3), 4631(a)(3), 4636(a)(1).

[2] See Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; 1992 Act at 12 U.S.C. 4561–4567, 4562 note.

[3] 12 U.S.C. 4513(b)(1).

[4] 12 U.S.C. 4514, 4517, 1456(c), 1723a(k).

[5] 12 U.S.C. 4611–4614.

[6] 12 U.S.C. 4631–4641.

[7] 12 CFR part 1780; *see* 66 FR 18040 (April 5, 2001)(OFHEO final rule amending purpose and scope section of part 1780, to summarize agency's statutory enforcement powers).

[8] *See* 12 U.S.C. 4614–4619, 4622, 4623.

[9] Subtitle B of the 1992 Act directs OFHEO to classify the Enterprises into one of four capital classifications (''adequately capitalized,'' ''undercapitalized,'' ''significantly undercapitalized,'' or ''critically undercapitalized,''), based on the level of capital maintained by the Enterprise. For these purposes, OFHEO assesses the Enterprises' capital by reference to two standards. The first capital standard is based on ratios of core capital instruments to on balance sheet assets and off balance sheet obligations. The ratios are set according to percentages contained in 12 U.S.C. 4612 and 4613, subject to certain adjustments by OFHEO, and calculated in accordance with guidance from OFHEO under part 1750 of OFHEO's regulations (12 CFR Part 1750). The statute provides for a ''minimum capital'' level based on these ratios, as well as a ''critical capital'' level, based on lower ratios, that triggers additional enforcement requirements and authorities under subtitle B of the 1992 Act. The other capital standard is risk-based. On September 13, 2001, OFHEO published a final rule amending 12 CFR Part 1750 to implement this capital standard. 66 FR 47729. Rather than applying leverage ratios, this risk-based capital standard requires the Enterprises to hold sufficient total capital to maintain a positive capital position during a hypothetical ten-year stress period characterized by statutorily prescribed stressful credit conditions and large movements in interest rates, plus an additional amount to cover management and operations risk. As directed by 12 U.S.C. 4611, OFHEO has developed a stress test which, when applied to an Enterprise's book of business, will project the amount of total capital that would be necessary to survive the stresses described in the statute during the stress period. However, as provided in 12 U.S.C. 4614(d) and 4615(c), OFHEO is not to include consideration of an Enterprise's total capital during the classification process, until September 13, 2002.

[10] For a more detailed description of the prompt corrective action provisions of subtitle B of the 1992 Act, *see* 66 FR 18696–18698 (April 10, 2001)(OFHEO's NPR on prompt supervisory response and PCA).

Enterprise's capital classification, and to pursue early action by an Enterprise to preclude losses or possible losses, or to address particular threats to safety and soundness. The proposed procedure would be part of OFHEO's ongoing supervisory program that includes monitoring and examination of Enterprise activities on a continuous basis. The prompt supervisory response approach would complement and not supplant ongoing review programs. Similar to the procedures under the capital-based, prompt corrective action regime, as proposed the prompt supervisory response provision would have established a set of ''tripwires,'' looking to specifically enumerated developments proposed to be appropriate junctures for a supervisory review to ascertain the financial or operational consequences of such developments upon the Enterprise. Under the proposal, the occasion of a specified tripwire event or condition would have triggered an automatic supervisory response by OFHEO.

OFHEO received comments on these proposals from Fannie Mae, Freddie Mac, and one former senior government official. The three commenters questioned the need for the prompt supervisory response regime. They similarly asserted that, since OFHEO already conducts continuous and comprehensive on-site supervision of the Enterprises and can work with the Enterprises informally to resolve any significant supervisory issues that arise, the prompt supervisory response approach would add nothing to OFHEO's ability to exercise supervisory oversight for the Enterprises.

The prompt supervisory response approach reflects OFHEO's commitment to use a broad-based method to effectuate early identification of and supervisory action regarding potentially adverse developments or conditions affecting the Enterprises, by moving beyond the capital-based focus of prompt corrective action in appropriate circumstances. The prompt supervisory response approach mandates no specific conduct by the Enterprises; indeed, the need for action is to be ascertained on a case-by-case basis. In those instances in which the Enterprise has already undertaken appropriate steps, OFHEO anticipates that no additional action will be necessary. The approach also increases the transparency of the procedures and analytical framework OFHEO is to use in such matters. The role of OFHEO to ensure the safety and soundness of the Enterprises is not restricted to examination and capital monitoring functions on the one hand and to an enforcement or prompt corrective action procedures on the other. OFHEO's duty to ensure the Enterprises are adequately capitalized and operate safely [11] means that the agency is charged by Congress to act to ensure the safety and soundness of the Enterprises at all points on the supervisory spectrum between examination and enforcement.[12] Thus, OFHEO is also charged with ensuring that each Enterprise acts prudently in dealing with perceived problems as they emerge.

OFHEO has taken the comments provided into consideration and is now issuing a final rule, with several modifications. In formulating Subpart A, the final prompt supervisory response rule, OFHEO has adopted a less rigid approach to identify developments warranting specific supervisory response under the rule, while the supervisory response process set out in the rule has been adopted as proposed, without substantive change. OFHEO has also made certain modifications to Subpart B, the prompt corrective action provisions of the rule. The final rule, along with the comments and modifications, are described below.

Prompt Supervisory Response Provisions of the Proposed Rule

Subpart A establishes a system of prompt supervisory response to be taken when developments internal or external to an Enterprise, as identified by OFHEO, warrant special supervisory review. In order to provide a broad early intervention regime that addresses both capital-related and non-capital-related supervisory concerns, the rule describes how OFHEO may initiate specified prompt supervisory responses to address non-capital considerations that are outside the primary focus of the prompt corrective action regime, of Subpart B.

Authority, Purpose, and Scope

In their comments, each Enterprise asserted that the prompt supervisory response rule, as proposed, exceeded OFHEO's statutory authority, and should be wholly withdrawn. The rule—as proposed, and as adopted in final form here—contemplates that a letter be issued directing an Enterprise to respond to OFHEO's inquiry or that OFHEO may require an Enterprise to prepare and carry out an acceptable action plan. The Enterprises argue that this procedure would bypass specified statutory thresholds and procedural protections contained in the 1992 Act, under which OFHEO may only issue cease and desist orders or require capital restoration plans in certain narrowly defined circumstances, pursuant to defined due process procedures. Moreover, the Enterprises asserted that OFHEO has no explicit statutory mandate to establish safety and soundness standards by regulation or other guidance.

As OFHEO discussed in the preamble to the proposed rule, the prompt supervisory response approach is simply a procedural framework through which OFHEO may employ its current array of supervisory tools and regulatory authority to confront special factual scenarios. The 1992 Act, at 12 U.S.C. 4631(a)(3)(A), sets out OFHEO's authority to order an Enterprise to cease and desist unsafe or unsound practices.[13] By identifying and working with an Enterprise to eliminate perceived unsafe or unsound conditions or practices through an interactive supervisory process, such as is reflected in the prompt supervisory response approach, instead of resorting directly to an adjudicative enforcement action, OFHEO seeks to carry out its oversight responsibilities and neither exceeds its statutory authority nor circumvents the procedural scheme contained in 12 U.S.C. 4631. Any subsequent use of formal or informal enforcement procedures will be dependent, in large part, upon Enterprise action to address supervisory concerns, and will be undertaken pursuant to the applicable statutory procedures.

OFHEO rejects assertions that the agency has no explicit statutory mandate to establish safety and soundness standards by regulation or guideline. The 1992 Act, at 12 U.S.C. 4513, particularly 12 U.S.C. 4513(b)(1) and (b)(5), explicitly establishes such authority without reservation. More pertinently, the prompt supervisory response rule does not establish supervisory standards or specify remedies; rather, it establishes a supervisory process.

As described in § 1777.1(a) and 1777.1(b) of the final rule, the regulation is being issued under OFHEO's broad statutory authority to take such actions as the Director of OFHEO deems appropriate to ensure that the Enterprises operate in a safe and sound

[11] *See,* e.g., 12 U.S.C. 4513(a).

[12] *See, e.g.,* 12 U.S.C. 4513(b)(5)(OFHEO authorized to take such actions and perform such functions as OFHEO determines necessary regarding ''* * * *other* matters relating to safety and soundness'' (emphasis added)).

[13] OFHEO has responded to Enterprise challenges to its authority to institute cease and desist proceedings to address unsafe or unsound practices. *See* 66 Fed. Reg. 18040, 18041 (April 5, 2001) (discussion of Fannie Mae's and Freddie Mac's comments on OFHEO's procedural rules for enforcement actions).

manner, together with OFHEO's reporting [14] and examination [15] authorities. As set out in § 1777.1(b), the purpose of subpart A of the rule is to fashion an early intervention regime to address matters of supervisory concern to OFHEO under its congressional mandate in addition to the capital considerations already focused upon by the prompt corrective action regime. However, as stated in § 1777.1(b) of the final rule, OFHEO's initiation of the procedures under the rule does not necessarily indicate that an unsound condition exists; rather, the final rule is consistent with the process that OFHEO employs in reviewing the conduct of an Enterprise's affairs as a safety and soundness regulator. The possible supervisory responses described below, including a supervisory letter, an action plan, or a notice to show cause, as they might be used under the rule, do not constitute orders under the 1992 Act for purposes of 12 U.S.C. 4631 or 4636. They are simply steps in a predictable and organized process under which OFHEO will review issues and, as necessary and appropriate, provide supervisory guidance to an Enterprise.

Developments Prompting Supervisory Response

In § 1777.10 of the proposed rule, OFHEO proposed to adopt a list of nine possible developments that would cause OFHEO to initiate a special review under the prompt supervisory response process. The proposed list included both external indicators tied to market factors, as well as internal indicators tied to factors within a particular Enterprise. The Enterprises submitted separate comments objecting to each of the nine proposed ''triggers'' on various grounds. In some instances, the Enterprises agreed that occurrence of a particular trigger event might indicate a potential for financial difficulties for the Enterprise, but asserted that the proposed triggers generally failed to take into account countervailing factors that could ameliorate any supervisory concern about a particular development. The Enterprises also asserted that the proposed triggers focused on matters that would most often have innocuous underlying causes, and would likely have already been subject to identification and assessment by the Enterprises and by OFHEO prior to the time that a prompt supervisory response inquiry might be initiated under the rule. OFHEO does not agree with the Enterprises' conclusions. OFHEO does agree that ongoing supervision and examination are central to its regulatory oversight, and OFHEO notes that ameliorative actions and prudent planning by an Enterprise to address a particular development would be relevant to a supervisory inquiry or suggested remedy under the prompt supervisory response approach.

The final version of § 1777.10 revises the approach of the proposed rule. In response to the comments, the list of developments prompting a supervisory response has been revised by deleting certain proposed developments and by retaining others, either as proposed or with modifications. The revised list retains proposed § 1777.10(a) (relating to declines in the Housing Price Index) and proposed paragraph (j) , redesignated as paragraph (e) (as to the discretionary authority of the Director to initiate a supervisory letter in other circumstances). The final rule modifies § 1777.10(c) to provide only that changes in ''publicly reported'' net income are the type of development addressed, and similarly paragraph (d) to provide only that changes in ''publicly reported'' net interest margin are the type of development addressed. The final rule modifies § 1777.10(d) to raise the threshold amount of change in delinquent loans contemplated under this paragraph from one half of one percent to one percent, more appropriately defining the point that prompts a supervisory response. Based on comments received, the final rule does not include earlier proposed paragraphs (b) (relating to interest rate risk measures), (f) (matters related to equity calculations), (g) (matters related to data system operational problems), (h) (matters related to external auditor changes) and (i) (matters related to board meetings). The deletion of those paragraphs does not preclude their consideration as developments that might merit a supervisory response either under routine examination and supervision procedures of OFHEO or under the discretionary authority retained by the Director, under redesignated subsection (e).[16] OFHEO will continue to review and refine the list of early warning indicators and to identify additional developments that may signal a significant possibility of difficulties so as to warrant a prompt supervisory response.

In their comments, both Enterprises noted that proposed § 1777.10 (j), redesignated (e) in the final rule, would be sufficient to encompass all of the possible developments with which OFHEO was concerned under proposed § 1777.10. In addition, Freddie Mac noted that proposed § 1777.10 (j) most closely approximates OFHEO's existing oversight practices because it incorporates discretionary elements and implicitly suggests that OFHEO will consider the context of particular developments before initiating the prompt supervisory response process. Under § 1777.10 (e) of the final rule, the Director of OFHEO has the discretion to initiate the prompt supervisory response process whenever he or she is concerned about a development or condition relating to an Enterprise's safety and soundness, regardless of whether it has manifested an impact on the Enterprise's capital level. Developments and conditions of concern to the Director under § 1777.10 (e) might be detected by OFHEO in connection with an examination of the Enterprises, or in some other manner as the agency conducts its continuous supervisory and oversight functions.

Supervisory Response

Section 1777.11 of the final rule sets out the various forms of supervisory response that may be taken under the regulation. As noted earlier, all elements of the response process are recognized and existing elements of OFHEO's oversight authorities. The final rule adopts the approach of the proposal with only conforming changes and one clarification. Under the procedures set forth under the final rule, there are several levels of response.

In each case, OFHEO is to initiate a Level I supervisory action under § 1777.11(a) within five days of OFHEO's determination under § 1777.10 that a development or condition warrants supervisory response. The Enterprise will receive a supervisory letter advising the Enterprise that OFHEO has begun the prompt supervisory response process to address the development or condition and setting forth such other information and specific directions as the Director deems appropriate in light of the circumstances. For example, OFHEO may direct the Enterprise to provide information about the situation, to respond to OFHEO's specific questions or concerns, to take corrective or remedial action, or other preventative action as deemed appropriate.

Based on the Enterprise's response to the supervisory letter and other relevant concerns, OFHEO will promptly

[14] 12 U.S.C. 4514, 1456(c), 1723a(k).

[15] 12 U.S.C. 4517.

[16] Redesignated § 1777.10(e) provides that a supervisory response may be initiated upon the occurrence of ''[a]ny other development, including conduct of an activity by an Enterprise, that OFHEO determines in its discretion presents a risk to the safety and soundness of the Enterprises or is a possible violation of applicable law, regulation, or order.''

determine whether additional supervisory response under the rule is necessary. The Enterprise's response to the supervisory letter may cause OFHEO to conclude that the subject development creates no substantial supervisory concern or that the Enterprise's management of the risks and concerns presented by the development is adequate. In other instances, the supervisory letter process may cause OFHEO to conclude that a heightened level of supervisory concern is warranted, yet the letter process itself and continuing supervisory dialogue may be all that is needed to ensure that the Enterprise undertakes sufficient preventative or remedial measures.

If additional supervisory action is deemed necessary, OFHEO has a variety of alternatives under § 1777.11. Level II supervisory action, as set out in § 1777.11(b), provides for a special review of an Enterprise. A special review may be useful in supplementing information already obtained by OFHEO through the examination process, and might provide OFHEO with a clearer picture of the situation than could otherwise be obtained through letters or reports. Such review could be conducted by OFHEO's Office of General Counsel, Office of Research and Model Development, Office of Examination and Oversight, Office of Policy Analysis and Research, or such other department or individual as designated by the Director. In light of such a special review, OFHEO will determine whether further supervisory action is warranted.

Under Level III supervisory action set out in § 1777.11(c), OFHEO may direct an Enterprise to prepare and submit an action plan addressing the development or condition. Among other things, the Enterprise's action plan may be required to include information about the circumstances leading up to the subject condition or development and an assessment of its possible effects upon the Enterprise. The Enterprise may also be asked to describe its proposed course of action for dealing with the development, including an analysis of available alternatives. If OFHEO determines that the action plan is insufficient to resolve the supervisory issues created by the development, OFHEO may direct the Enterprise to revise the plan. However, if OFHEO determines that the supervisory issues will not be resolved even under a revised plan, OFHEO may determine to initiate other supervisory responses.

Under Level IV supervisory action, as set out in § 1777.11(d), OFHEO will require the Enterprise to show cause why OFHEO should not initiate formal enforcement action against the Enterprise. OFHEO is not, however, required to issue a show cause notice prior to initiating an administrative enforcement action.

The three commenters alleged that the prompt supervisory response process represents a ''one-size-fits-all'' approach that would unnecessarily limit OFHEO's flexibility and discretion, as well as the agency's ability to formulate timely, fact-specific, and flexible responses to emerging supervisory issues. OFHEO disagrees with that characterization. OFHEO is well aware of the necessity for a regulatory agency to apply its expertise to specific supervisory problems in light of the particular attendant facts, and to do so swiftly. Nothing in the prompt supervisory response process limits the flexibility necessary for OFHEO to meet its supervisory responsibilities. As the exclusive safety and soundness regulator of the Enterprises, OFHEO has been constituted with broad supervisory authorities in order to detect and address any safety and soundness concerns that may arise, and has broad enforcement powers to ensure that any safety and soundness deficiency or violation of law is promptly remedied, possibly long before harm to an Enterprise reaches the level of capital impairment. OFHEO's concerns may include an array of considerations—ranging, for example, from matters such as declining collateral values to asset quality, liquidity, and operational difficulties—that could result in substantial harm to an Enterprise before capital is impaired. OFHEO will analyze the totality of each situation, rather than awaiting a decline in capital to initiate agency action. If an analysis reveals a supervisory concern, then OFHEO's response might reasonably include a mixture of early warning and early action initiatives that would be effective before specific problems seriously affect an Enterprise.

OFHEO designed the prompt supervisory response process to provide it flexibility as a supervisor, both in structuring the scope of the review and in overseeing the Enterprise's implementation of responsive measures. Under § 1777.11(a), OFHEO will issue a supervisory letter commencing the prompt supervisory response review, but the content of the letter will depend entirely on the ''particular circumstances and the nature of the development.'' There are then three additional levels of available supervisory responses under § 1777.11(b) through (d), but OFHEO's decision as to which, if any, of the levels to use will be based on the Enterprise's ''response to the supervisory letter and other appropriate factors.'' At every level of supervisory response in § 1777.11(b) through (d), the rule expressly states that OFHEO will assess the effectiveness of actions as well as other relevant factors in determining whether additional supervisory action is appropriate. As stated in the preamble to the proposed rule, the levels of supervisory response need not be carried out sequentially, and OFHEO may pursue simultaneous actions. In the final rule, OFHEO has expanded the text of the rule at § 1777.11(a)(4), so as to avoid confusion on this point.[17] In addition, as reflected in § 1777.2 and § 1777.12, the prompt supervisory response process in no way limits OFHEO's discretion to use any of its other supervisory tools and authorities to respond to the particular situation. OFHEO also rejects the suggestion that the prompt supervisory response process would not be rapid. The supervisory letter is to be issued within five days after OFHEO determines that a development or condition warrants review under the rule, and the text of § 1777.11 requires OFHEO to implement any additional levels of supervisory response promptly and review the effectiveness of such response promptly.

Finally, the commenters expressed concerns that, if the prompt supervisory response approach results in public disclosure of supervisory actions, discussions, or correspondence, the contents could be misunderstood by the public and could cause the markets to lose confidence in the Enterprises. However, as reflected in § 1777.2(b), supervisory responses issued under § 1777.11 do not constitute public orders enforceable under 12 U.S.C. 1371 or 1376, and, as noted in § 1777.1(b), OFHEO's initiation of procedures under the prompt supervisory response regime does not necessarily indicate that an unsound condition exists.

Implementation of the Prompt Corrective Action Provisions of the 1992 Act by the Final Rule

Subpart B of the final rule describes the scope of actions OFHEO is authorized to take under the prompt corrective action provisions applicable to the Enterprises under the 1992 Act at 12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623, as well as the procedures by which such an actions are to be carried out. The

[17] With the exception of nonsubstantive changes made to conform § 1777.11 of the final rule to the revised § 1777.10, OFHEO has made no other alterations to § 1777.11.

following is an overview of the provisions of the final rule and the statutory authorities implemented thereby. Freddie Mac and Fannie Mae submitted numerous comments on proposed Subpart B, which OFHEO has taken into account in formulating the final rule. These comments are addressed below, as part of the description of the section of the final rule to which each comment pertains.

Authority, Purpose, Scope, and Implementation Dates

The authority, purpose, and scope of subpart B are set out in § 1777.1(a) and (c), which briefly review the statutes underlying the rule. Subpart B is issued under OFHEO's broad authorities to take such actions as are deemed appropriate by the Director of OFHEO to ensure that the Enterprises maintain adequate capital and operate in a safe and sound manner, as established by 12 U.S.C. 4513, 4631, 4632, and 4636, as well as under the specific prompt corrective action provisions contained in subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623), the Federal Home Loan Mortgage Corporation Act at 12 U.S.C. 1452(b)(2), and the Federal National Mortgage Association Charter Act at 12 U.S.C. 1718(c)(2). These provisions authorize OFHEO to administer certain capital requirements for the Enterprises, to classify the capital of the Enterprises based on capital levels specified in the 1992 Act, and, in appropriate circumstances, to exercise discretion to reclassify an Enterprise into a lower capital category. Under these provisions, there are also automatic consequences for an Enterprise that is not classified as adequately capitalized, as well as discretionary authority for OFHEO to require an Enterprise to take remedial actions.

As discussed in § 1777.1(d), the 1992 Act directs OFHEO to determine capital classifications for the Enterprises by reference to three capital ''triggers'' (the minimum capital level, the critical capital level, and the risk-based capital level). Notably, however, 12 U.S.C. 4614(d) delays consideration of the risk-based capital level until one year after OFHEO's risk-based capital rule becomes effective, that is, September 13, 2001. Section 4615 of Title 12, which sets out the supervisory actions to be taken as applicable to an Enterprise that is classified as undercapitalized, similarly provides that its provisions will not take effect until one year after OFHEO's risk-based capital rule becomes effective. Section 4614(d) provides that, until that time, an Enterprise shall be classified as adequately capitalized if the Enterprise maintains an amount of capital that equals or exceeds the minimum capital level.

Therefore, under subpart B of the final rule at § 1777.20, different sets of capital classifications will apply before and after September 13, 2002. Section 1777.20(a) contains the ''permanent'' set of capital classifications taking the risk-based capital level into account as well as the minimum capital level and critical capital level. This set of capital classifications will apply any time after September 13, 2002.

The currently applicable ''temporary'' set of capital classifications is contained in § 1777.20(c) as an exception to § 1777.20(a) that applies until September 13, 2002. This currently applicable set of classifications is based on an Enterprise's minimum capital level and critical capital level, reflecting the classification criteria presently used by OFHEO. Section 4614(a) of Title 12, when read together with 12 U.S.C. 4616(c) [18] and 12 U.S.C. 4617(d),[19] indicates that Congress intended OFHEO to classify the Enterprises for prompt corrective action purposes by reference to minimum capital and critical capital levels, pending expiration of the one-year post-effectiveness period for the risk-based capital test.

Preservation of Other Authority

As set forth in § 1777.2(b) through (c), the prompt corrective action provisions are but one aspect of OFHEO's broad supervisory authority to ensure that each Enterprise maintains capital that is adequate for its safe and sound operation. In their comments, the Enterprises objected to language in § 1777.2(b) that states OFHEO has authority to require an Enterprise to hold capital in addition to that necessary to comply with the minimum and risk-based capital levels, when in OFHEO's judgment circumstances indicate additional capital is necessary or appropriate in light of the overall strength of the Enterprise and market conditions. The Enterprises argue that the minimum and risk-based capital levels defined by the statute are exclusive, and OFHEO is not vested under law with discretion to require the Enterprises to hold additional capital.

OFHEO disagrees and has adopted § 1777.2(b) without change. Subtitle B of the 1992 Act, establishing the minimum and risk-based capital levels, contains no language to the effect that such levels are exclusive. The 1992 Act taken as a whole demonstrates congressional understanding that capital by itself is but one indicator of the financial health or weakness of an Enterprise. All circumstances must be weighed in determining the capital adequacy of an Enterprise. That is, differing conditions may warrant greater capital to ensure the strength and viability of an Enterprise. Thus, under 12 U.S.C. 4513(a), it is the supervisory responsibility of OFHEO to ensure that the Enterprises are adequately capitalized and operating safely. Under 12 U.S.C. 4513(b), OFHEO has exclusive authority to take such actions as it determines necessary regarding the safety and soundness of the Enterprises.

An Enterprise's maintenance of capital sufficient to meet the minimum capital level and risk-based capital level does not alone establish that the Enterprise possesses sufficient capital to operate safely and soundly in all circumstances. The legislative history of the 1992 Act indicates that Congress specifically debated whether subtitle B established the exclusive capital levels for the Enterprises or instead represented a minimum ''floor'' level. In the end, Congress concluded that subtitle B takes the ''floor'' approach, and that OFHEO's safety and soundness authority includes the ability to require an Enterprise to hold additional capital whenever circumstances indicate supplementary capital is appropriate in consideration of the Enterprise's overall safety and soundness.[20] Similarly, the language of 12 U.S.C. 4614(a)(1) provides that, for an Enterprise to be classified as adequately capitalized, the Enterprise should ''meet or exceed'' the minimum and risk-based capital levels (emphasis added).

In addition to its authority to require the Enterprises to maintain additional capital as a safety and soundness matter, OFHEO is authorized, as reflected in § 1777.2(c) of the final rule, to take various kinds of supervisory action to deal with capital deficiencies at an Enterprise, other than or in addition to the prompt corrective action provisions. The 1992 Act grants OFHEO broad discretion to take other supervisory

[18] 12 U.S.C. 4616(c) provides that statutory provisions requiring prompt corrective action with regard to a significantly undercapitalized Enterprise are to be effective from the time the Enterprise is first classified under 12 U.S.C. 4614.

[19] 12 U.S.C. 4617(d) provides that statutory provisions requiring prompt corrective action with regard to a critically undercapitalized Enterprise are to be effective from the time the Enterprise is first classified under 12 U.S.C. 4614.

[20] *See, e.g.,* 138 Cong. Rec. S9353–54 (July 1, 1992)(colloquy between Senator Metzenbaum and Senator Reigle concerning the effect of section 202 of S. 2733, which is substantially the same as 12 U.S.C. 1362); 138 Cong. Rec. H11102 (Oct. 3, 1992)(colloquy between Mr. Gonzalez, Mr. Frank, and Mr. Leach).

actions as may be deemed by OFHEO to be appropriate, including issuing temporary and permanent cease and desist orders, imposing civil money penalties, appointing a conservator, entering into a written agreement the violation of which is actionable through enforcement proceedings, or entering into any other formal or informal agreement with an Enterprise. Moreover, the initiation of a particular action or a combination of actions does not foreclose OFHEO from pursuing any other action.

Definitions

The definitions in § 1777.3 cross-reference to OFHEO's capital rules at 12 CFR part 1750 in defining core and total capital. Section 1777.3 defines the minimum capital level as the minimum amount of core capital specified for an Enterprise pursuant to 12 U.S.C. 4612, as determined under OFHEO's capital rules at § 1750.4. The definition of the critical capital level in § 1777.3 refers to the calculation of core capital required to meet the minimum capital level under § 1750.4 of OFHEO's capital rules, making the appropriate adjustments thereto in order to implement the lower percentages specified in 12 U.S.C. 4613 as compared to 12 U.S.C. 4612. Thus, § 1777.3 defines the critical capital level as the amount of core capital that is equal to the sum of one half of the amount determined under § 1750.4(a)(1) and five-ninths of the amounts determined under § 1750.4(a)(2) through § 1750.4(a)(7). Section 1777.3 defines the risk-based capital level to mean the amount of total capital specified for an Enterprise pursuant to 12 U.S.C. 4611, as determined under OFHEO's risk-based capital regulations in 12 CFR part 1750.[21]

The definitions of ''affiliate'' and ''Enterprise'' are taken from 12 U.S.C. 4502(1) and 4502(6), respectively. The 1992 Act, in defining an Enterprise to include the Enterprise's affiliates, vests OFHEO with the same broad jurisdiction over the supervision and regulation of such affiliates as the agency has over the operations and activities of the federally chartered entity. Section 4502(1) defines an affiliate to be any entity that controls, is controlled by, or is under common control with an Enterprise. The 1992 Act does not, however, define control, thereby leaving the term to be interpreted by OFHEO in light of the context in which the term is to be used and the particular provision of the 1992 Act at issue.[22] In its comments, Freddie Mac disagreed with OFHEO's statement to this effect in the preamble to the proposed rule, and instead asserted that the term should be interpreted to have a single meaning throughout the 1992 Act. However, as seen in other laws, when Congress intends that an agency use a single definition of ''control'' throughout an entire act in connection with an ''affiliate'' definition, Congress enacts a statutory definition of ''control,'' including language in the definition that specifies the test to be applied. *See, e.g.,* 12 U.S.C. 1813(w)(5); 12 U.S.C. 1841(a)(2). Where, as is the case in the 1992 Act, the term is not defined, Congress leaves the term to be defined by the expert agency in light of the particular context in which it is to be used and the particular substantive provision at issue.

The term ''capital distribution'' as defined in the rule is taken from 12 U.S.C. 4502(2). Both Enterprises' comments included objections to one aspect of OFHEO's proposed definition, under which an Enterprise's payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401 *et seq.*) or any substantially equivalent plan would not be treated as a capital distribution so long as it was approved in writing by OFHEO in advance. The Enterprises argue that, under 12 U.S.C. 4502(2)(B), OFHEO's only proper approval function goes to the issue of whether an employee stock ownership plan is substantially equivalent to a plan that is qualified under section 401 of the Internal Revenue Code, and the Enterprises are not required to obtain OFHEO's approval of payments made to fulfill the Enterprises' repurchase obligations under the plan.

The language of 12 U.S.C. 4502(2)(B) is susceptible to either the proposed or the subsequently suggested interpretation. Upon further review, OFHEO has modified the final version of § 1777.3 to eliminate the requirement that the Enterprises obtain OFHEO's prior written approval for stock repurchases by employee stock ownership plans and such substantially equivalent plans. Under the revised language, payments made by an Enterprise to repurchase its shares for the purpose of fulfilling the Enterprise's obligation under an ESOP that is qualified under IRC 401 will not be defined as capital distributions. The same types of payments made to ESOPs that are substantially equivalent to 401-qualified ESOPs will also enjoy the exception, so long as OFHEO determines that the plan in question is substantially equivalent to a 401-qualified ESOP.

Section 4502(2) authorizes OFHEO to define additional transactions as capital distributions by regulation for these purposes. OFHEO has at this time identified no other transactions to be deemed capital distributions beyond those listed in the statutory definition.

Capital Classifications and Discretionary Reclassification

Section 1777.20(a) sets out the capital classifications that, as discussed above, will be applicable to the Enterprises after September 13, 2002, taking the risk-based capital level into account as well as the minimum and critical capital levels. Until then, the classifications under § 1777.20(c), discussed below, apply to the Enterprises. Section 1777.20(a) sets out the capital classifications as follows:

- *Adequately capitalized:* An Enterprise will be classified as adequately capitalized if the Enterprise meets the risk-based capital level and the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise into a lower capital classification;
- *Undercapitalized:* An Enterprise will be classified as undercapitalized if it meets the minimum capital level but does not meet the risk-based capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise into a lower capital classification;
- *Significantly undercapitalized:* An Enterprise will be classified as significantly undercapitalized if the Enterprise meets the critical capital level but fails to meet the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise as critically undercapitalized;
- *Critically undercapitalized:* An Enterprise will be classified as critically undercapitalized if the Enterprise does not meet the critical capital level; and
- *Discretionary reclassification:* As is set out in more detail below, 12 U.S.C. 4614(b) authorizes OFHEO to reclassify an Enterprise into the next lower capital classification at any time, in the

[21] OFHEO has recently published such rules at 66 FR 47729 (Sept. 13, 2001).

[22] In determining whether control exists for the purposes of exercising jurisdiction over an affiliate of an Enterprise under any particular provision of the 1992 Act, OFHEO considers the nature of the particular provision and the facts and circumstances involved. Among other things, OFHEO considers whether an Enterprise or other entity exercises a controlling influence over the management and policies of a particular entity, by ownership of, or the power to vote, a substantial percentage of any class of voting securities, by the ability to elect or appoint members of the board of directors or officers of the entity, or by other means.

discretion of the Director of OFHEO. Appropriate grounds for reclassification include a finding by the Director that the Enterprise is either engaging in conduct that could result in a rapid depletion of the Enterprise's core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly. Other reclassifications, based on other sections of subtitle B of the 1992 Act pertaining to failure to submit an acceptable capital restoration plan or implement it, are located in § 1777.7, the section addressing capital restoration plans.

Under § 1777.20(a), the minimum and critical capital levels are the determinative standards for assessing whether an Enterprise falls into the significantly undercapitalized or critically undercapitalized classification based on capital, without regard to whether the Enterprise maintains total capital at or above its risk-based capital level. Under the 1992 Act, the minimum and critical capital levels act as the ''tripwires'' for the prompt corrective actions specified in 12 U.S.C. 4616 and 4617. The amount of capital an Enterprise is required to hold to meet its risk-based capital level could be either less or more than the amount of the capital required to meet its minimum capital level or even its critical capital level. The rule therefore avoids a result under which an Enterprise that fails to meet its minimum capital level or critical capital level might avoid classification as significantly undercapitalized or critically undercapitalized by maintaining total capital in compliance with its risk-based capital level.

The final version of § 1777.20(a)(5) sets forth the grounds for reclassification of an Enterprise. Under section 4614(b), grounds for reclassification include a finding by the Director that the Enterprise is either engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result in a rapid depletion of the Enterprise's core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly. In their comments, the Enterprises objected to language proposed in § 1777.20(a)(5) to the effect that OFHEO could also issue a discretionary reclassification if OFHEO deems it to be necessary to ensure that the Enterprise holds adequate capital and operates safely. OFHEO disagrees. Section 4614(b) recites that OFHEO may issue a discretionary reclassification if the Director determines that an Enterprise is engaging in conduct that could result in a rapid depletion of core capital, or that the value of the Enterprise's mortgage collateral has decreased significantly. Notably, section 4614(b) is silent with regard to whether the statutorily recited grounds for reclassification are exclusive. Section 4513(b) empowers the Director of OFHEO to make other determinations, including those necessary to determine the capital classification of an Enterprise and those necessary for other matters that the Enterprises are adequately capitalized and operating safely.

Taken together, the above-referenced statutory provisions evidence a Congressional purpose that the Director of OFHEO have the discretionary authority to reclassify Enterprise if the Director determines that the Enterprise's capital position is not deemed by the Director to be sufficient to ensure its safety and soundness. OFHEO is therefore adopting § 1777.20 (a)(5) as proposed.

For purposes of OFHEO's discretionary authority to reclassify an Enterprise based on ''conduct that could result in a rapid depletion of core capital'' under 12 U.S.C. 4614(b), OFHEO interprets the term ''conduct'' to include action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events). In its comments, Fannie Mae objected to inclusion of this language in proposed § 1777.20(a)(5)(i). However, the regulatory language is well within the ordinary meaning of the term ''conduct,'' and OFHEO has included it in the final version of § 1777.20(a)(5) without change. Freddie Mac also objected to OFHEO's assertion in the preamble to the proposed rule that the rapid depletion of core capital referred to in section 4614(b) and § 1777.20(a)(5) need only be a possible consequence of the conduct in question. Freddie Mac argues that OFHEO appears to be implementing too liberal a standard in light of the more extreme formulation contained in section 4614(b) itself. OFHEO reiterates the point, as stated in the preamble to the proposed rule, that the statutory language under section 4614(b) does not require OFHEO to find that the rapid depletion is underway or imminent, but requires only that OFHEO determine that such rapid depletion ''could result,'' i.e., that it is a possible outcome or result of the conduct in question, or that the conduct could contribute significantly to deepening losses. Congress, having already established the capital classifications based on capital levels to address cases in which an Enterprise's capital has already declined, established a broad standard for discretionary reclassification, to authorize early intervention by OFHEO when appropriate.

Section 1777.20(d) of the final rule provides that OFHEO will not reclassify an Enterprise for conduct that was previously approved by the Director of OFHEO in connection with the Director's approval of the Enterprise's capital restoration plan or of a written agreement that is enforceable in accordance with 12 U.S.C. 4631. The Enterprises argued in their comments that OFHEO proposal impermissibly would narrow section 4614(b), and that the statutory language thereunder immunizes any conduct however approved by the Director.

Section 4614(b) provides that OFHEO may reclassify an Enterprise that engages in conduct ''not approved by the Director'' that could result in a rapid depletion of core capital. However, the statute is silent as to what constitutes an approval for these purposes, leaving OFHEO to define the term by regulation pursuant to the authority granted by section 4513(b). An administrative agency is entitled under law to establish reasonable procedures in such manner as to enable the agency to channel and manage its approval processes.

The Enterprises suggest that the only reasonable interpretation of section 4614(b) is that it immunizes all conduct ''approved by the Director'' of OFHEO in any context or manner. However, such interpretation is so open-ended as to be unreasonable. In light of the significance of an approval for purposes of section 4614(b), the statute can be reasonably read to require an approval to be made through a formal mechanism, in a context in which OFHEO can evaluate the consequences thereof for purposes of capital classification. Thus, it is reasonable to define the approvals exception under section 4614(b) as referring to approvals made as part of a capital restoration plan under subtitle B and to formal supervisory agreements. The inclusion of formal written agreements serves the underlying purpose of fairness to the Enterprise, particularly since such written agreements may be used simultaneously with a capital restoration plan.

As provided in § 1777.20(b), if an Enterprise is reclassified by OFHEO on grounds that the Enterprise is engaging in action or inaction that could result in a rapid depletion of core capital, OFHEO will continue to take such conduct into account for each subsequent determination of the Enterprise's capital classification, until

OFHEO determines that the action, inaction, or condition in question has ceased and been remedied to OFHEO's satisfaction. For example, if OFHEO reclassified an Enterprise from adequately capitalized to undercapitalized based on such conduct, and during the pendency of such conduct, the Enterprise's total capital declined below the risk based capital level (which, standing alone, would result in classification in the undercapitalized category), the resulting classification could be to the significantly undercapitalized category. In addition, as provided in § 1777.20(b), nothing in 12 U.S.C. 4614(b) prohibits OFHEO from subsequently reclassifying an Enterprise again if the action, inaction or condition has not ceased or been eliminated and remedied to OFHEO's satisfaction within a reasonable time. The foregoing would also apply for a discretionary reclassification under § 1777.20(a)(5), based on a decline in collateral values.

The Enterprises also objected to proposed § 1777.20(b), on various grounds. Freddie Mac argues that once OFHEO has issued a reclassification based on conduct and the Enterprise has submitted an acceptable capital restoration plan, OFHEO may not subsequently reclassify the Enterprise for failure to eliminate the objectionable conduct within a reasonable time, so long as the Enterprise continues to make good faith reasonable efforts to comply with the capital restoration plan. However, section 4614(b) contains no explicit restriction or limitation on reasonable successive reclassifications, and such a limit could inhibit OFHEO's ability to meet its supervisory obligations under evolving circumstances. Thus, OFHEO is adopting the text of § 1777.20(b)(2) without change.

Fannie Mae suggests § 1777.20(b)(2) should be revised to ensure the Enterprises are given advance notice of what constitutes a reasonable period to remedy or eliminate conduct or conditions forming the basis of a discretionary reclassification. However, this issue is too fact-driven for OFHEO to specify by rule. The question of timing will be resolved as it arises. OFHEO would specify such timing matters reasonably and fairly, in light of relevant circumstances.

Fannie Mae further suggests that it would be unfair that OFHEO might attempt to exercise unbridled discretion over so significant a question as to when a discretionary reclassification should be terminated. Fannie Mae suggests discretionary reclassifications should be presumptively terminated fifteen days after an executive officer certifies that the condition that led to reclassification has been corrected for at least one calendar quarter. However, given that initiation of a reclassification under section 4614(b) is vested in OFHEO's discretion, as is approval of the capital restoration plan designed to restore the Enterprise to a secure condition, OFHEO rejects Fannie Mae's assertion that OFHEO's discretion over termination of such reclassification is somehow unfair, or of such significance to be beyond the agency's supervisory authority. Moreover, the quarterly classification process gives the Enterprise formal written notice of OFHEO's intention with regard to continuation or termination of a discretionary reclassification; provides the Enterprise with an opportunity to submit information that OFHEO might take into consideration; and provides the Enterprise with the opportunity for judicial review (if the Enterprise is not classified as critically undercapitalized). The Enterprises are thus adequately insulated from possible unfair treatment by the agency.

As noted above, § 1777.20(c) contains a set of capital classifications based on an Enterprise's minimum capital level and critical capital level, reflecting the classification criteria presently used by OFHEO. These classifications apply until September 13, 2002, which is one year following the initial effective date of OFHEO's regulations establishing the risk-based test:

- *Adequately capitalized:* Until September 13, 2002, an Enterprise is deemed to be classified as adequately capitalized so long as it meets the minimum capital level, as required by 12 U.S.C. 4614(d);
- *Undercapitalized:* Until September 13, 2002, 12 U.S.C. 4614(d) provides that an Enterprise that meets the minimum capital level is to be classified as adequately classified, notwithstanding whether the Enterprise maintains an amount of total capital that equals or exceeds the risk-based capital level as otherwise required by 12 U.S.C. 4614(a)(2)(A);
- *Significantly undercapitalized:* An Enterprise will be classified as significantly undercapitalized if it meets the critical capital level but fails to meet the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise as critically undercapitalized;
- *Critically undercapitalized:* An Enterprise will be classified as critically undercapitalized if it does not meet the critical capital level; and
- *Discretionary reclassification:* As set out above, 12 U.S.C. 4614(b) authorizes OFHEO to reclassify an Enterprise into a lower capital classification in certain circumstances, in the discretion of the Director of OFHEO.

The Enterprises specifically objected to proposed § 1777.20(c)(5)(i)(A) and (B), under which OFHEO notes that the agency can reclassify an Enterprise that otherwise meets the minimum capital requirement. The Enterprises assert that, during the one-year transition period following the effective date of OFHEO's risk-based capital rules, OFHEO may not make a discretionary reclassification of an Enterprise otherwise classified as ''adequately capitalized,'' because 12 U.S.C. 4614(d) and 4615(c) prohibit OHFEO from issuing such a reclassification.

OFHEO disagrees. Sections 4614(d) and 4615(c) are merely transition provisions designed to give the Enterprises one year to optimize their operations in light of the new risk-based capital rules before OFHEO begins periodically issuing capital classifications based on risk-based capital as well as minimum capital. Nothing in the law or its legislative history indicates a Congressional intention to make the OFHEO powerless to confront circumstances that might threaten the viability of the Enterprises during the transition period. Nor were the referenced sections intended by Congress to immunize an Enterprise engaged in conduct that might result in rapid depletion of core capital. OFHEO is therefore adopting § 1777.20(c)(5) as proposed.

The Enterprises' comments on proposed § 1777.20(a)(5)(i), concerning the scope of the conduct included therein, and on proposed § 1777.20(a)(5)(ii), concerning the scope of conduct approved by the Director, as well as OFHEO's responses to those comments as discussed above, apply equally to § 1777.20(c)(5) of the final rule. The Enterprise's comments on § 1777.20(b), concerning successive reclassifications, specification of reasonable periods to remedy conduct upon which reclassification was based, and OFHEO's discretion over termination of reclassifications, as well as OFHEO's response to these comments as discussed above, apply equally to reclassifications under § 1777.20(a)(5) as they do to reclassifications under § 1777.20(c)(5) of the final rule.

Classification Procedures

Section 1777.21, implementing 12 U.S.C. 4618, sets out the procedure by which OFHEO classifies the Enterprises. These procedures apply to routine classifications that OFHEO issues for

each Enterprise at least once a quarter based on capital reports from the Enterprise and any other additional relevant information. These procedures would also be used by OFHEO to reclassify an Enterprise pursuant to its discretionary authority to do so under subtitle B of the 1992 Act, or if OFHEO otherwise determines that a new classification would be appropriate. OFHEO's current classification procedures at 12 CFR 1750.5 are terminated as part of this rulemaking, but procedures for submitting capital reports to OFHEO will continue to be addressed in part 1750.

OFHEO may determine capital classifications using different ''as of'' dates for the Enterprise's risk-based capital level and minimum and critical capital levels. The respective ''as of'' dates will be specifically identified in the proposed and final capital classifications. Thus, OFHEO may assess compliance by an Enterprise with the minimum capital level more often than it would calculate the Enterprise's risk-based capital level.

As § 1777.21(a)(4) provides, OFHEO may initiate a capital classification proceeding at any time. If another proposed capital classification is pending at such time, OFHEO will advise the Enterprise whether the later proposed classification supersedes the pending one.

Under the classification procedure in 12 U.S.C. 4618, OFHEO is to deliver written information to the Enterprise describing the proposed capital classification and the agency's basis for such classification, as described in § 1777.21(a)(1) of the final rule. In their comments, the Enterprises argued that OFHEO's proposed procedure in § 1777.21(a)(1)(ii), for reclassifying an Enterprise for failure to file an acceptable capital plan, without additional notice, is inconsistent with 12 U.S.C. 4618(a) and (b), under which an Enterprise is entitled to additional notice when OFHEO takes new action. The Enterprises assert that OFHEO may not combine notices in this way.

OFHEO disagrees. 12 U.S.C. 4618(b) evidences Congress' express authorization that the notice required under 12 U.S.C. 4618(a) may be a combined notice. Section 4618(b) states that, in providing notice under 12 U.S.C. 4618(a), OFHEO may combine a notice of classification or reclassification under 12 U.S.C. 4614 (classifications based on capital levels or discretionary reclassification based on conduct or housing prices) with a notice of discretionary supervisory action under 12 U.S.C. 4615 (reclassification from undercapitalized to significantly undercapitalized for failure to file an acceptable capital plan or to comply with an approved plan). The statute's language can be given meaning only if a notice of proposed classification as undercapitalized is permitted to be combined with a notice of proposing to reclassify the Enterprise as significantly undercapitalized in the event the Enterprise fails to submit an acceptable capital plan. Similarly, 12 U.S.C. 4618(b) provides that OFHEO may combine notice of discretionary supervisory action under 12 U.S.C. 4616 (issuance of certain orders to the Enterprise, as well as reclassification from significantly undercapitalized to critically undercapitalized based on failure to file an acceptable plan or comply with an approved plan) with notices of classification or reclassification under 12 U.S.C. 4614.

Contrary to Freddie Mac's comments, such a notice is also consistent with the remainder of 12 U.S.C. 4618. It satisfies the requirements of 12 U.S.C. 4618(a), since the combined notice describes both proposed actions, the reasons therefore, and the information upon which they are based. During the Enterprise's response period under 12 U.S.C. 4618(c), the Enterprise has an opportunity to submit information and arguments as to why the Enterprise should not be further reclassified. OFHEO's notice to Congress under 12 U.S.C. 4618(d) will provide all information required therein. OFHEO is therefore adopting proposed § 1777.21(a)(1)(ii), as well as § 1777.23(c)(1) and § 1777.23(c)(3), without change.

As described in § 1777.21(a)(2), an Enterprise is to have thirty days from the date it is provided notice of capital classification to submit any relevant information in response to a notice. 12 U.S.C. 4618 authorizes OFHEO to extend the response period up to an additional thirty days for good cause or to reduce the response period if the condition of the Enterprise so requires; the Enterprise may also consent to an abbreviated response period. In exigent circumstances, the response period afforded to an Enterprise may be quite brief. In its comments, Fannie Mae objected to proposed § 1777.21(a)(2)(i), to the extent the proposed rule suggests that OFHEO can shorten an Enterprise's response period to less than thirty days as OFHEO determines to be appropriate. Fannie Mae points out that the statutory standard, at 12 U.S.C. 4618(c)(3), is that the condition of the Enterprise requires the period to be shortened. OFHEO's determination as to whether an curtailment is ''appropriate,'' as under the language of proposed § 1777.21(a)(2)(i), is to be made in consideration of the statutory standard under 12 U.S.C. 4618(c)(3). In light of the comment, OFHEO has changed the language of the final version of § 1777.21(a)(2)(i) to reflect the language of 12 U.S.C. 4618(c)(3).

An Enterprise's failure to respond within the applicable period waives the opportunity to comment on the proposed classification. Once the response period has closed, OFHEO will make a final determination of the Enterprise's capital classification. OFHEO will take into consideration any relevant information submitted by the Enterprise during the response period in reaching the final decision. The final capital classification is to be provided to the Enterprise in writing, including a description of OFHEO's basis for the classification.

OFHEO proposed a requirement under § 1777.21(b)(1) that the Enterprise notify OFHEO of any material event that may reasonably be expected to cause the Enterprise's minimum, critical, or risk-based capital level to fall to a point that could result in a capital classification lower than the Enterprise's existing or proposed capital classifications. In their comments, the Enterprises objected to this requirement as being overly vague. Freddie Mac suggested it be narrowed, to require notice only when the Enterprise has reason to believe it has failed to meet a capital requirement. Fannie Mae called for elimination of any such notice requirement. In response to the Enterprises' expressed concerns about vagueness, OFHEO has decided to model its standard on a similar standard successfully used by the Federal bank regulatory agencies under their PCA system. *See, e.g.*, 12 CFR 325.102(c)(1). Thus, OFHEO has revised final § 1777.21(b)(1) to require notice of any material development that would cause the Enterprise's core or total capital to fall to a point that would cause the Enterprise to be placed in a lower capital classification.

As suggested by one commenter, OFHEO has deleted the words ''as appropriate'' from the proposed version of § 1777.21(a)(1)(i), as unnecessary. In addition, various erroneous citations and cross-references have been corrected in the final rule.[23]

[23] Freddie Mac's comments on the prompt corrective action proposal also expressly incorporated by reference certain comments Freddie Mac made to OFHEO in a submission dated March 10, 2000, as to OFHEO's second risk-based capital proposal. Those comments addressed the proposed risk-based capital reporting procedure and other matters unrelated to the classification procedure, and have been responded to in the

Continued

Capital Distribution Restrictions

Section 1777.22 sets forth statutory capital distribution restrictions, including those provisions of the Enterprise's respective charter acts [24] prohibiting, without regard to capital classification, an Enterprise from making a capital distribution that would decrease the capital of the Enterprise to an amount less than the risk-based capital level or the minimum capital level, except as explicitly approved by OFHEO. Section 1777.22(a) reflects these statutory restrictions.[25] Under § 1777.22(b)(1), any Enterprise that is not classified as adequately capitalized is prohibited from making a capital distribution that would result in classification into a lower capital classification as provided by 12 U.S.C. 4615(a)(2) and 4616(a)(2). Under § 1777.22(b)(2), a significantly undercapitalized Enterprise is prohibited from making a capital distribution absent OFHEO's prior approval, as provided by 12 U.S.C. 4616(a)(2). Section 1777.22(b)(2) also applies in the case of an Enterprise classified as critically undercapitalized. The final rule recites, in a manner consistent with 12 U.S.C. 4617(b) through (c), OFHEO's authority to take actions authorized by 12 U.S.C. 4616 in the case of a critically undercapitalized Enterprise. Under the same authority, § 1777.23 requires an Enterprise classified as critically undercapitalized to submit a complete and acceptable capital restoration plan to OFHEO.

Capital Restoration Plans

Under § 1777.23(a)(1), an Enterprise is required to file a complete capital restoration plan with OFHEO within ten days of receiving final notice of capital classification indicating that the Enterprise is classified as undercapitalized, significantly undercapitalized, or critically undercapitalized, unless OFHEO extends the period. In its comments, Fannie Mae objected to this ten-day period as being too short. However, the time period is consistent with 12 U.S.C. 4622(b). OFHEO has set the deadline at ten days as a general rule to allow sufficient time for the Enterprise to articulate its responsive business plans, which, absent catastrophe, would likely have been developed over some time before a written submission is required. At the very least, the Enterprise and OFHEO will likely be aware of any impending threat and need for a capital restoration strategy by the time a notice of proposed classification is issued. In light of the serious implications of an adverse classification under subtitle B of the 1992 Act, swift implementation of a required capital plan is crucial. If it appears to OFHEO that additional time is appropriate under the particular circumstances, § 1777.23(a)(1) provides that OFHEO may extend the timeframe.

Under § 1777.23(a)(2), an Enterprise that is already operating under an approved capital restoration plan need not submit a new plan each time the Enterprise receives subsequent notices of capital classification, unless OFHEO notifies the Enterprise to the contrary. As a general matter, OFHEO would likely direct an Enterprise to submit a new or amended plan if subsequent notices of capital classification are on grounds different from or in addition to the grounds underlying previous notices, or if changes in circumstances underlying the original plan necessitate a revised plan, or if the original plan is not effective within a reasonable period.

Section 1777.23(b) requires an Enterprise's capital restoration plan to include the information specified in by 12 U.S.C. 4622(a) and such other information as directed by OFHEO. If the Enterprise does not submit a complete plan by the specified deadline, OFHEO may in its discretion lower the Enterprise's capital classification, as set forth in § 1777.23(c). If a complete and timely capital restoration plan is not filed by an Enterprise, OFHEO may reclassify the Enterprise under § 1777.21(a)(3) immediately upon expiration of the filing deadline, without further notice. As further provided in § 1777.23(c), an Enterprise's failure to submit a complete and timely plan may be considered in the determination of each subsequent capital classification of the Enterprise, until the Enterprise files a plan that obtains OFHEO's approval. If the Enterprise has not corrected its failure to file an acceptable plan after a reasonable period, OFHEO may reclassify the Enterprise, without further written notice.[26]

As specified in § 1777.23(d), OFHEO is to review the Enterprise's capital plan and issue an order within thirty days either approving or disapproving the plan, subject to extension for an additional thirty days as OFHEO deems necessary. If the plan is disapproved, the Enterprise must then submit an amended plan acceptable to OFHEO within thirty days or such longer period as OFHEO specifies. Notably, the thirty-day period is longer than the ten-day period for submission of the initial plan in order to facilitate dialogue with the Enterprise as to how the Enterprise may rehabilitate a disapproved plan. However, as provided in § 1777.23(c), OFHEO may reclassify the Enterprise into a lower capital classification, without additional notice, at any time before the Enterprise files an amended capital plan and OFHEO approves it.

Once a capital plan is approved, it may be amended only with the prior written approval of OFHEO, as provided in § 1777.23(f). As that section provides, the Enterprise's obligations under an approved plan remain in place except to the extent the plan itself identifies dates, events, or conditions upon which the obligations terminate. To the extent the plan is silent in regard to a particular obligation, the obligation remains in place until OFHEO issues an order terminating the obligation. An Enterprise may seek such termination orders from OFHEO under § 1777.23(g)(2).

In its comments, Fannie Mae objected to proposed § 1777.23(g), on the grounds that leaving a decision as significant as termination of a capital plan to the unlimited discretion of OFHEO would be fundamentally unfair.[27] Fannie Mae asserted that the plan should terminate upon the Enterprise's certification that the measures in the plan have been fulfilled, absent specific written findings to the contrary by OFHEO.

agency's disposition of the final risk-based capital rule at 66 FR 47730 (September 13, 2001).

[24] The Federal Home Loan Mortgage Corporation Act at 12 U.S.C. 1452(b)(2), and the Federal National Mortgage Association Charter Act at 12 U.S.C. 1718(c)(2).

[25] The proposed rule contained § 1777.22(c), implementing these statutory provisions prior to the initial date of OFHEO's risk-based capital rules. With the publication of such rules on September 13, 2001, § 1777.22(c) is unnecessary and has been dropped from the final rule.

[26] As is discussed above in connection with § 1777.21(a)(1)(ii), the Enterprises object to this combined notice under § 1777.23(c)(1) and § 1777.23(c)(3), but this approach is specifically authorized under 12 U.S.C. 4618(b).

[27] Fannie Mae also requested, under similar arguments of potential unfairness, that OFHEO create an ombudsman function within OFHEO, and that OFHEO also establish a formal appeals process whereby the Enterprises would have an avenue to appeal any significant supervisory decision to a senior agency official who was not involved in the original decision making process. Fannie Mae notes that the Federal bank regulatory agencies are required by the FDI Act to maintain such an appellate procedure. OFHEO has not implemented these suggestions because key differences between OFHEO and the bank regulatory agencies render such functions superfluous. Among such differences, because OFHEO supervises only two entities it lacks a large, decentralized supervisory structure, common among the banking agencies. The significantly smaller size of OFHEO makes it impracticable to provide a senior supervisory officer to act as ombudsman in such matters. The Enterprises have greater opportunities to provide input into the prompt corrective action classification and order process under the 1992 Act than is provided for insured depository institutions under the Federal Deposit Insurance Act.

OFHEO disagrees. The initial approval of the capital restoration plan (including its duration) is vested wholly in OFHEO's discretion. No reason supports a contention that OFHEO's parallel discretion over termination of a capital restoration plan is somehow otherwise unfair, or of such significance as to be beyond the agency's supervisory purview. Furthermore, an Enterprise can request that its obligations under an approved plan be terminated. In addition, as noted in § 1777.23(g)(1), to the extent particular provisions of a particular plan may be appropriately subject to termination by reference to specified dates, events, or conditions, the plan may be structured accordingly.

If an Enterprise fails to take timely action reasonably necessary to comply with an approved plan, OFHEO may exercise its authority under 12 U.S.C. 4615(b)(2) and 4616(b)(5) to reclassify the Enterprise. In their comments, the Enterprises objected to the language of proposed § 1777.23(h)(1), under which an Enterprise must make efforts reasonably necessary to comply with the capital restoration plan and to fulfill the schedule thereunder, as not being consistent with the statutory standard. OFHEO interprets the ''good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan'' language in sections 4615(b) and 4616(b) to mean that the Enterprise must make all reasonable efforts as are necessary to comply with the plan. OFHEO would consider it a demonstration of a lack of good faith if an Enterprise fails to attempt to carry out one or more efforts contemplated by an approved capital restoration plan. OFHEO would not deem an Enterprise's efforts to be in bad faith simply because such efforts fail to effect a desired result.

In light of the Enterprise's comments that OFHEO's proposed formulation does not adequately express the statutory standard, § 1777.23(h)(1)(i) has been revised to expressly refer to good faith, and to note that it is incumbent upon the Enterprise to make all reasonable efforts necessary to comply with an approved plan. The final rule provides that OFHEO may reclassify the Enterprise if, in the agency's discretion, the Enterprise has failed to make, in good faith, reasonable efforts necessary to comply with a capital restoration plan and to fulfill the schedule thereunder.

As is provided in § 1777.23(h)(1)(ii) through (iii), an Enterprise's failure to implement an approved capital plan may be considered in the determination of each subsequent capital classification of the Enterprise until OFHEO determines the Enterprise is making reasonable efforts. The Enterprise may face successive reclassifications for failure to make such efforts after a reasonable period.

As is noted in § 1777.23(h)(2), a capital plan that has received an approval order by OFHEO shall be deemed an order under the 1992 Act for enforcement purposes, and an Enterprise in any capital classification, its executive officers, and directors may be subject to action by OFHEO under 12 U.S.C. 4631, 4632, and 4636 and 12 CFR part 1780 for failure to comply with an approved plan. In its comments, Fannie Mae objects to such characterization. Fannie Mae asserts that the terms of an approved capital plan are not enforceable under OFHEO's cease and desist authority or civil money penalties, and that such an action by OFHEO would exceed its authority under the 1992 Act.

OFHEO disagrees and is adopting § 1777.23(h)(2) without change. Fannie Mae improperly infers that the only ''orders'' susceptible to enforcement action under these statutes are OFHEO determinations that are designated as ''orders'' by the 1992 Act itself. However, the 1992 Act does not designate any particular OFHEO determination with respect to an Enterprise or its directors or executive officers as an ''order,'' thereby begging the question under Fannie Mae's reasoning as to what would constitute an ''order'' for purposes of sections 4631, 4632, and 4636. While the 1992 Act describes OFHEO's decisions under sections 4631, 4632, and 4636 as ''orders,'' to argue that these are the exclusive ''orders'' to which such sections refer is not convincing. It would be circular to interpret these sections to mean that the only order the violation of which is redressable by a cease and desist order is another cease and desist order or an order imposing civil money penalties. While circumstances may occur in which a regulatory agency that is faced with noncompliance with a formal enforcement order may appropriately resort to further administrative enforcement action, more often a judicial enforcement of the enforcement order is likely to be sought. *Cf.* 12 U.S.C. 4635(a) (judicial actions to enforce orders and notice issued under subtitles B and C of the 1992 Act). Moreover, the statutory language in section 4361(a)(3)(A) and section 4636(a)(1) broadly refers to any order under the 1992 Act or the charter acts, without restriction as to particular sections of such acts.

Orders Under Section 4616

Section 1777.24 of the final rule implements OFHEO's discretionary authority under 12 U.S.C. 4616(b)(1) through (4), to issue orders requiring a significantly undercapitalized Enterprise to take remedial and corrective actions. OFHEO may fashion such remedy or require supervisory action as appropriate including, but not limited to, any of the following:

- Limit an increase in, or require a reduction of, any borrowings and other types of obligations of an Enterprise, including off-balance sheet obligations;
- Limit or prohibit the growth of assets of an Enterprise or require reduction of its assets;
- Require an Enterprise to obtain additional capital in such form and amount as specified by OFHEO; and
- Require an Enterprise to terminate, reduce, or modify a program or activity that entails excessive risk to the Enterprise.

As indicated by § 1777.24, OFHEO may also issue orders to an Enterprise that has been classified as critically undercapitalized under authority provided by 12 U.S.C. 4617(b) through (c).

The procedures under which such orders may be issued are similar to the procedures for issuance of capital classifications, and are set out in §§ 1777.24 through 1777.26. Similar to the treatment of approved capital plans discussed above, the provisions contained in these orders will bind the Enterprise until such provisions terminate under the terms of the order or OFHEO modifies the order, as discussed in § 1777.26(b). As indicated in § 1777.26(c), such orders constitute orders under the 1992 Act, and an Enterprise in any capital classification, its executive officers, and directors may be subject to administrative enforcement action by OFHEO under 12 U.S.C. 4631, 4632, and 4636 and 12 CFR part 1780 for failure to comply with such orders. Moreover, 12 U.S.C. 4635 provides jurisdiction in the United States District Court of the District of Columbia for direct enforcement of such orders.

Administrative Exhaustion

Section 1777.27 summarizes 12 U.S.C. 4623, which provides that an Enterprise not classified as critically undercapitalized may seek judicial review of OFHEO's final notice of its capital classification, or a final notice of order issued under 12 U.S.C. 4616(b)(1) through (4). For any issue raised by such Enterprise in connection with such review, the Enterprise must have first exhausted its administrative remedies,

by presenting its objections, arguments, and information relating to such issue for OFHEO's consideration in the Enterprise's response to OFHEO's notice of capital classification or notice of intent to issue an order. The Enterprise's judicial action will not operate as a stay of a capital classification or order by OFHEO.

In its comments, Freddie Mac asserted that OFHEO's requirement in proposed § 1777.27(b) that the Enterprise assert its objections concerning a classification to OFHEO before raising them before the D.C. Circuit would be inconsistent with applicable judicial doctrine. OFHEO disagrees. Section 1777.27 is consistent with controlling judicial precedent on exhaustion and review, and has been adopted in the final rule without change.

Appointment of a Conservator for a Significantly or Critically Undercapitalized Enterprise

Section 1777.28 addresses appointment of a conservator for a significantly undercapitalized or critically undercapitalized Enterprise.[28] As is described in § 1777.28(a), 12 U.S.C. 4616 empowers OFHEO to appoint a conservator for a significantly undercapitalized Enterprise, if OFHEO determines the Enterprise's core capital is less than the minimum capital level and the alternative remedies available to OFHEO under the 1992 Act are not satisfactory. As is described in § 1777.28(b), 12 U.S.C. 4617 requires the Director to appoint a conservator for a critically undercapitalized Enterprise, unless the Director makes a written determination, and the Secretary of the Treasury concurs in writing, that the appointment of a conservator is likely to have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market, and that the public interest would be better served by taking some other enforcement action authorized by the 1992 Act. In response to a comment, OFHEO has revised the final version of § 1777.28(b)(2), to clarify that the written determination described therein is to be in support of the agency's determination not to appoint a conservator.

Under 12 U.S.C. 4619(e)(2), a conservatorship appointment under either § 1777.28(a) or 1777.28(b) is to be terminated by OFHEO upon determining that the Enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level. OFHEO is also vested with discretion, under 12 U.S.C. 4619(e)(1), to terminate such a conservatorship appointment based upon determining that such termination is in the public interest and may safely be accomplished. These termination provisions are reflected in § 1777.28(d).

[28] OFHEO also has authority under 12 U.S.C. 4619(a)(1) through (2) to appoint conservators on various grounds, regardless of an Enterprise's capital classification.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The final rule is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

Unfunded Mandates Reform Act of 1995

This final rule does not include a Federal mandate that could result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the final rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the final rule under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the rule only affects the Enterprises, their executive officers, and their directors.

Paperwork Reduction Act of 1995

This final rule contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1777

Administrative practice and procedure, Capital classification, Mortgages.

Accordingly, for the reasons set out in the preamble, OFHEO adds part 1777 to subchapter C of 12 CFR chapter XVII, to read as follows:

PART 1777—PROMPT CORRECTIVE ACTION

Sec.
1777.1 Authority, purpose, scope, and implementation dates.
1777.2 Preservation of other authority.
1777.3 Definitions.

Subpart A—Prompt Supervisory Response

1777.10 Developments prompting supervisory response.
1777.11 Supervisory response.
1777.12 Other supervisory action.

Subpart B—Capital Classifications and Orders Under Section 1366 of the 1992 Act

1777.20 Capital classifications.
1777.21 Notice of capital category, and adjustments.
1777.22 Limitation on capital distributions.
1777.23 Capital restoration plans.
1777.24 Notice of intent to issue an order.
1777.25 Response to notice.
1777.26 Final notice of order.
1777.27 Exhaustion and review.
1777.28 Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

Authority: 12 U.S.C. 1452(b)(2), 1456(c), 1718(c)(2), 1723a(k), 4513(a), 4513(b), 4514, 4517, 4611–4619, 4622, 4623, 4631, 4635.

§ 1777.1 Authority, purpose, scope, and implementation dates.

(a) *Authority.* This part is issued by the Office of Federal Housing Enterprise Oversight (OFHEO) pursuant to sections 1313, 1371, 1372, and 1376 of the Federal Housing Enterprises Financial Safety and Soundness Act (1992 Act) (12 U.S.C. 4513, 4631, 4632, and 4636). These provisions broadly authorize OFHEO to take such actions as are deemed appropriate by the Director of OFHEO to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the

Enterprises) maintain adequate capital and operate in a safe and sound manner.

(b) *Authority, purpose and scope of subpart A.* In addition to the authority set forth in paragraph (a) of this section, subpart A of this part is also issued pursuant to section 1314 of the 1992 Act (12 U.S.C. 4514), section 307(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and section 309(k) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(k)), requiring each Enterprise to submit such reports to OFHEO as the Director of OFHEO determines, in his or her judgment, are necessary to carry out the purposes of the 1992 Act. Subpart A of this part is also issued in reliance on section 1317 of the 1992 Act (12 U.S.C. 4517) authorizing OFHEO to conduct examinations of the Enterprises. The purpose of subpart A of this part is to set forth a framework of early intervention supervisory measures, other than formal enforcement actions, that OFHEO may take to address emerging developments that merit supervisory review to ensure they do not pose a current or future threat to the safety and soundness of an Enterprise. OFHEO's initiation of procedures under subpart A does not necessarily indicate that any unsound condition exists. The supervisory responses enumerated in § 1777.11 do not constitute orders under the 1992 Act for purposes of sections 1371 and 1376 thereof (12 U.S.C. 4631 and 4636).

(c) *Authority, purpose, and scope of subpart B.* In addition to the authority set forth in paragraph (a) of this section, subpart B of this part is also issued pursuant to subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623), section 303(b)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)(2)), and section 303(c)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1718(c)(2)). These provisions authorize OFHEO to administer certain capital requirements for the Enterprises, to classify the capital of the Enterprises based on capital levels specified in the 1992 Act, and, in appropriate circumstances, to exercise discretion to reclassify an Enterprise into a lower capital category. Under these provisions, there are also automatic consequences for an Enterprise that is not classified as adequately capitalized, as well as discretionary authority for OFHEO to require an Enterprise to take remedial actions. Subpart B implements the provisions of sections 1364 through 1368, 1369(b) through (e), 1369C, and 1369D of the 1992 Act as they apply to the Enterprises (12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623). The principal purposes of subpart B are to identify the capital measures and capital levels that OFHEO uses in determining the capital classification of an Enterprise; to set out the procedures OFHEO uses in determining such capital classifications; to establish procedures for submission and review of capital restoration plans of an Enterprise that is not classified as adequately capitalized; and to establish procedures under which OFHEO issues orders pursuant to section 1366(b)(1) through (4) of the 1992 Act (12 U.S.C. 4616(b)(1) through (4)).

(d) *Effective dates of capital classifications.* Section 1364 of the 1992 Act (12 U.S.C. 4614(d)) directs OFHEO to determine capital classifications for the Enterprises by reference to two capital standards, consisting of the minimum or critical capital level on the one hand, and the risk-based capital level on the other. Section 1364(d) of the 1992 Act (12 U.S.C. 4614(d)) excludes consideration of whether the Enterprises meet the risk-based capital level in determining capital classifications or reclassifications under 1364, until one year after the effective date of OFHEO's regulation implementing OFHEO's risk-based capital test (issued under section 1361(e) of the 1992 Act (12 U.S.C. 4611(e)), until such time, section 1364(d) provides that an Enterprise is to be classified as adequately capitalized so long as it meets the minimum capital level. Subpart B contains a currently effective set of capital classifications omitting consideration of the risk-based capital level, as well as another set of capital classifications which will take effect, and displace the current set of capital classifications, on September 13, 2002 that is, one year after the effective date of OFHEO's risk-based capital rule published at 66 FR 47730, September 13, 2001.

§ 1777.2 Preservation of other authority.

(a) *Supervisory standards.* Notwithstanding the existence of procedures in § 1777.10 for the Director of OFHEO to designate certain developments for supervisory response under subpart A of this part, nothing in this part in any way limits the authority of OFHEO otherwise to take such actions with respect to any issue as is deemed appropriate by the Director of OFHEO to ensure that the Enterprises maintain adequate capital, operate in a safe and sound manner, and comply with the 1992 Act and regulations, orders, and agreements thereunder.

(b) *Capital floor.* Classification of an Enterprise as adequately capitalized in accordance with subtitle B of the 1992 Act and subpart B of this part indicates that the Enterprise meets the capital levels under sections 1361 and 1362 of the 1992 Act (12 U.S.C. 4611 and 4612) and regulations promulgated thereunder as of the times specified in the classification determination. Nothing in subpart B of this part or subtitle B of the 1992 Act limits OFHEO's authority otherwise to address circumstances that would require additional capital through regulations, orders, notices, guidance, or other actions.

(c) *Form of supervisory action or response.* In addition to the supervisory responses contemplated under subpart A of this part, and the authority to classify and reclassify the Enterprises, to issue orders, and to appoint conservators under subpart B of this part, the 1992 Act grants OFHEO broad discretion to take such other supervisory actions as may be deemed by OFHEO to be appropriate, including issuing temporary and permanent cease and desist orders, imposing civil money penalties, appointing a conservator under section 1369(a)(1) through (2) of the 1992 Act (12 U.S.C. 4619(a)(1) through (2)), entering into a written agreement the violation of which is actionable through enforcement proceedings, or entering into any other formal or informal agreement with an Enterprise. Neither the 1992 Act nor this part in any way limit OFHEO's discretion over the selection of the type of these actions, and the selection of one type of action under this part or under these other statutory authorities, or a combination thereof, does not foreclose OFHEO from pursuing any other action.

§ 1777.3 Definitions.

For purposes of this part, the following definitions will apply:

1992 Act means the Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*

Affiliate means an entity that controls an Enterprise, is controlled by an Enterprise, or is under common control with an Enterprise.

Capital distribution means:

(1) Any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an Enterprise, except a dividend consisting only of shares of the Enterprise; and

(2) Any payment made by an Enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit made to finance an acquisition by the Enterprise of such shares or other ownership interests, except to the extent the Enterprise

makes a payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401 *et seq.*) or any substantially equivalent plan as determined by the Director of OFHEO in writing in advance.

Core capital has the same meaning as provided in 12 CFR 1750.2.

Critical capital level means the amount of core capital that is equal to the sum of one half of the amount determined under 12 CFR 1750.4(a)(1) and five-ninths of the amounts determined under 12 CFR 1750.4(a)(2) through 1750.4(a)(7).

Enterprise means the Federal National Mortgage Association and any affiliate thereof, and the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Minimum capital level means the minimum amount of core capital specified for an Enterprise pursuant to section 1362 of the 1992 Act (12 U.S.C. 4612), as determined under 12 CFR 1750.4.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Risk-based capital level means the amount of total capital specified for an Enterprise pursuant to section 1361 of the 1992 Act (12 U.S.C. 4611), as determined under OFHEO's regulations implementing section 1361.

Total capital has the same meaning as provided at 12 CFR 1750.11(n).

Subpart A—Prompt Supervisory Response

§ 1777.10 Developments prompting supervisory response.

In the event of any of the following developments, OFHEO shall undertake one of the supervisory responses enumerated in § 1777.11, or a combination thereof:

(a) OFHEO's national House Price Index (HPI) for the most recent quarter is more than two percent less than the national HPI four quarters previously, or for any Census Division or Divisions in which are located properties securing more than 25 percent of single-family mortgages owned or securing securities guaranteed by an enterprise, the HPI for the most recent quarter for such Division or Divisions is more than five percent less than the HPI for that Division or Divisions four quarters previously;

(b) An Enterprise's publicly reported net income for the most recent calendar quarter is less than one-half of its average quarterly net income for any four-quarter period during the prior eight quarters;

(c) An Enterprise's publicly reported net interest margin (NIM) for the most recent quarter is less than one-half of its average NIM for any four-quarter period during the prior eight quarters;

(d) For single-family mortgage loans owned or securities by an Enterprise that are delinquent ninety days or more or in foreclosure, the proportion of such loans in the most recent quarter has increased more than one percentage point compared to the lowest proportion of such loans in any of the prior four quarters; or

(e) Any other development, including conduct of an activity by an Enterprise, that OFHEO determines in its discretion presents a risk to the safety and soundness of the Enterprise or a possible violation of applicable law, regulation, or order.

§ 1777.11 Supervisory response.

(a) *Level I supervisory response*—(1) *Supervisory letter.* Not later than five business days after OFHEO determines that a development enumerated in § 1777.10 has transpired, OFHEO shall deliver a supervisory letter alerting the chief executive officer or the board of directors of the Enterprise to OFHEO's determination.

(2) *Contents of supervisory letter.* The supervisory letter shall notify the Enterprise that, pursuant to this subpart, OFHEO is commencing review of a potentially adverse development. As is appropriate under the particular circumstances and the nature of the potentially adverse development, the letter may direct the Enterprise to undertake one or more of the following actions, as of such time as OFHEO directs:

(i) Provide OFHEO with any relevant information known to the Enterprise about the potentially adverse development, in such format as OFHEO directs;

(ii) Respond to specific questions and concerns that OFHEO poses about the potentially adverse development; and

(iii) Take appropriate action.

(3) *Review; further action.* Based on the Enterprise's response to the supervisory letter and consideration of other relevant factors, OFHEO shall promptly determine whether the Level I supervisory response is adequate to resolve any supervisory issues implicated by the potentially adverse development, or whether additional supervisory response under this section is warranted.

(4) *Sequence of supervisory responses.* The Level II through Level IV supervisory responses in paragraphs (b) through (d) of this section may be carried out in any sequence, including simultaneous performance of two or more such responses. OFHEO may also carry out one or more such responses simultaneously with a Level I supervisory response pursuant to this paragraph (a).

(b) *Level II supervisory response*—(1) *Special review.* In addition to any other supervisory response described in this section, OFHEO may conduct a special review of an Enterprise in order to assess the impact of the potentially adverse development on the Enterprise.

(2) *Review; further action.* Based on the results of the special review and consideration of other factors deemed by OFHEO to be relevant, OFHEO shall promptly determine whether additional supervisory response under this section is warranted.

(c) *Level III supervisory response*—(1) *Action plan.* In addition to any other supervisory response described in this section, OFHEO may direct the Enterprise to prepare and submit an action plan to OFHEO, in such format and at such time as OFHEO directs.

(2) *Contents of action plan.* Such action plan shall include, subject to additional direction by OFHEO, the following:

(i) In the case of any potentially adverse development arising from conditions or practices internal to the Enterprise, any relevant information known to the Enterprise about the circumstances that led to the potentially adverse development;

(ii) An assessment of likely consequences that the potentially adverse development may have for the Enterprise; and

(iii) The proposed course of action the Enterprise will undertake in response to the potentially adverse development, including an explanation as to why such approach is preferred to any other alternative actions by the Enterprise and how such approach will address the concerns of OFHEO.

(3) *Review; further action.* If OFHEO in its discretion determines that the information, assessment, or proposed course of action contained in the action plan is incomplete or inadequate, OFHEO shall promptly direct the Enterprise to correct such deficiencies to the extent OFHEO determines such corrections will aid in resolving supervisory issues implicated by the potentially adverse development, and will promptly determine whether additional supervisory response under this section is warranted.

(d) *Level IV supervisory response*—(1) *Notice to show cause.* In addition to any other supervisory response described in

this section, OFHEO may issue written notice to the chief executive officer or the board of directors of the Enterprise directing the Enterprise to show cause, on or before the date specified in the notice, why OFHEO should not issue one or more of the following:

(i) A notice of charges to the Enterprise under section 1371 of the 1992 Act (12 U.S.C. 4631) and the procedures in 12 CFR part 1780 commencing an action to order the Enterprise to cease and desist conduct, conditions, or violations specified in the notice to show cause;

(ii) A temporary order to the Enterprise under section 1372 of the 1992 Act (12 U.S.C. 4632) and the procedures in 12 CFR part 1780 to cease and desist from, and take affirmative actions to prevent or remedy harm from, conduct, conditions, or violations specified in the notice to show cause;

(iii) A notice of charges under section 1376 of the 1992 Act (12 U.S.C. 4636) and the procedures in 12 CFR part 1780 commencing imposition of a civil money penalty against the Enterprise; or

(iv) A notice of discretionary reclassification of the Enterprise's capital classification under section 1364(b) of the 1992 Act (12 U.S.C. 4614(b)) and subpart B of this part.

(2) *Review; further action.* Based on the Enterprise's response to the notice to show cause and consideration of other relevant factors, OFHEO shall promptly determine whether to commence the actions described in the notice, and whether additional supervisory response under this section is warranted.

§ 1777.12 Other supervisory action.

Notwithstanding the pendency or completion of one or more supervisory responses described in § 1777.11, OFHEO may at any time undertake additional supervisory steps and actions in the form of any informal or formal supervisory tool available to OFHEO under the 1992 Act, including, but not limited to, issuing guidance or directives under section 1313 (12 U.S.C. 4513), requiring reports under section 1314 (12 U.S.C. 4514), conducting other examinations under section 1317 (12 U.S.C. 4517), issuing discretionary reclassification under section 1364 (12 U.S.C. 4614), initiating discretionary action under section 1366(b) (12 U.S.C. 4616(b)), appointing a conservator under section 1369(a) (12 U.S.C. 4619(a)), or initiating administrative enforcement action under sections 1371, 1372, and 1376 (12 U.S.C. 4631, 4632 and 4636). In addition, OFHEO may take any such steps or actions with respect to an Enterprise that fails to make a submission or comply with a directive as required by § 1777.11, or to address an Enterprise's failure to implement an appropriate action in response to a supervisory letter or under an action plan under § 1777.11.

Subpart B—Capital Classifications and Orders Under Section 1366 of the 1992 Act

§ 1777.20 Capital classifications.

(a) *Capital classifications after the effective date of section 1365 of the 1992 Act.* The capital classification of an Enterprise for purposes of subpart B of this part is as follows:

(1) *Adequately capitalized.* Except as otherwise provided under paragraph (a)(5) of this section, an Enterprise will be classified as adequately capitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds total capital equaling or exceeding the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(2) *Undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds total capital less than the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(3) *Significantly undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as significantly undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the critical capital level.

(4) *Critically undercapitalized.* An Enterprise will be classified as critically undercapitalized if, as of the date specified in the notice of proposed capital classification, the Enterprise holds core capital less than the critical capital level.

(5) *Discretionary reclassification—determination to reclassify.* If OFHEO determines in writing that an Enterprise is engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result in a rapid depletion of core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly, or that reclassification is otherwise deemed necessary to ensure that the Enterprise holds adequate capital and operates safely, OFHEO may reclassify the Enterprise as:

(i) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized;

(ii) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized; or

(iii) Critically undercapitalized if the Enterprise is otherwise classified as significantly undercapitalized.

(b) *Duration of reclassification; successive reclassifications.* (1) A reclassification of an Enterprise based on action, inaction, or conditions under paragraph (a)(5) or (c)(5) of this section shall be considered in the determination of each subsequent capital classification of the Enterprise, and shall only cease being considered in the determination of the Enterprise's capital classification after OFHEO determines that the action, inaction or condition upon which the reclassification was based has ceased or been eliminated and remedied to OFHEO's satisfaction.

(2) If the action, inaction, or condition upon which a reclassification was based under paragraph (a)(5) or (c)(5) of this section has not ceased or been eliminated and remedied to OFHEO's satisfaction within such reasonable time as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under such paragraph (a)(5) or (c)(5) of this section into a lower capital classification.

(c) *Capital classifications before the effective date of section 1365 of the 1992 Act.* Notwithstanding paragraph (a) of this section, until September 13, 2002, the capital classification of an Enterprise for purposes of subpart B of this part is as follows:

(1) *Adequately capitalized.* Except as otherwise provided in paragraph (c)(5) of this section, an Enterprise will be classified as adequately capitalized if the Enterprise, as of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level.

(2) *Undercapitalized.* An Enterprise will be classified as undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, holds core capital equaling or exceeding the minimum capital level; and

(ii) Is reclassified as undercapitalized by OFHEO under paragraph (c)(5) of this section.

(3) *Significantly undercapitalized.* Except as otherwise provided under paragraph (c)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as significantly undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, held core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the critical capital level.

(4) *Critically undercapitalized.* An Enterprise will be classified as critically undercapitalized if, as of the date specified in the notice of proposed capital classification, the Enterprise held core capital less than the critical capital level.

(5) *Discretionary reclassification.* If OFHEO determines in writing that an Enterprise is engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result a rapid depletion of core capital, or that the value of the property subject to mortgages held or securitized by the Enterprise has decreased significantly or that reclassification is deemed necessary to ensure that the Enterprise holds adequate capital and operates safely, OFHEO may reclassify the Enterprise as:

(i) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized:

(ii) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized; or

(iii) Critically undercapitalized if the Enterprise is otherwise classified as significantly undercapitalized.

(d) *Prior approvals.* In making a determination to reclassify an Enterprise under paragraph (a)(5) or (c)(5) of this section, OFHEO will not base its decision to reclassify solely on action or inaction that previously was given specific approval by the Director of OFHEO in connection with the Director's approval of the Enterprise's capital restoration plan under section 1369C of the 1992 Act (12 U.S.C. 4622), or of a written agreement with the Enterprise that is enforceable in accordance with section 1371 of the 1992 Act.

§ 1777.21 Notice of capital category, and adjustments.

(a) *Notice of capital classification.* OFHEO will classify each Enterprise according to the capital classifications in § 1777.20(a) or § 1777.20(c) on at least a quarterly basis. OFHEO may classify an Enterprise according to the capital classifications in § 1777.20(a) or § 1777.20(c), or reclassify an Enterprise as set out in § 1777.20(a)(5), § 1777.20(c)(5), § 1777.23(c), or § 1777.23(h), at such other times as OFHEO deems appropriate.

(1) *Notice of proposed capital classification.*—(i) Before OFHEO classifies or reclassifies an Enterprise, OFHEO will provide the Enterprise with written notice containing the proposed capital classification, the information upon which the proposed classification is based, and the reason for the proposed classification.

(ii) Notices proposing to classify or reclassify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice that OFHEO may further reclassify the Enterprise under § 1777.23(c), without additional notice.

(iii) Notices proposing to classify or reclassify an Enterprise as significantly undercapitalized or critically undercapitalized may be combined with a notice under § 1777.24 that OFHEO intends to issue an order under section 1366 of the 1992 Act (12 U.S.C. 4616).

(iv) Notices proposing to classify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice proposing to simultaneously reclassify the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5).

(2) *Response by the Enterprise.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in classifying or reclassifying the Enterprise.

(i) The Enterprise may, within thirty calendar days from receipt of a notice of proposed capital classification, submit a response to OFHEO, unless OFHEO determines the condition of the Enterprise requires a shorter period or the Enterprise consents to a shorter period.

(ii) The Enterprise's response period may be extended for up to an additional thirty calendar days if OFHEO determines there is good cause for such extension.

(iii) The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed capital classification.

(3) *Classification determination and written notice of capital classification.* After the Enterprise has submitted its response under paragraph (a)(2) of this section or the response period (as extended or shortened, if applicable) has expired, whichever occurs first, OFHEO will make its determination of the Enterprise's capital classification, taking into consideration such relevant information as is provided by the Enterprise in its response, if any, under paragraph (a)(2) of this section. OFHEO will provide the Enterprise with a written notice of capital classification, which shall include a description of the basis for OFHEO's determination.

(4) *Timing.* OFHEO may, in its discretion, issue a notice of proposed capital classification to an Enterprise at any time. If a notice of proposed classification is pending (under the process set out in paragraphs (a)(1) through (3) of this section) at that time, OFHEO may, in its discretion, specify whether the subsequent notice of proposed capital classification supersedes the pending notice.

(b) *Developments warranting possible change to capital classification*—(1) *Notice to OFHEO.* An Enterprise shall promptly provide OFHEO with written notice of any material development that would result in the Enterprise's core or total capital to fall to a point causing the Enterprise to be placed in a lower capital classification than the capital classification assigned to the Enterprise in its most recent notice of capital classification from OFHEO, or than is proposed to be assigned in the Enterprise's most recent notice of proposed capital classification from OFHEO. The Enterprise shall deliver such notice to OFHEO no later than ten calendar days after the Enterprise becomes aware of such development.

(2) OFHEO, in its discretion, will determine whether to issue a new notice of proposed capital classification under paragraph (a) of this section, based on OFHEO's review of the notice under paragraph (b)(1) of this section from the Enterprise and any other information deemed relevant by OFHEO.

§ 1777.22 Limitation on capital distributions.

(a) *Capital distributions in general.* An Enterprise shall make no capital distribution that would decrease the total capital of the Enterprise to an amount less than the risk-based capital level or the core capital of the Enterprise to an amount less than the minimum capital level without the prior written approval of OFHEO.

(b) *Capital distributions by an Enterprise that is not adequately capitalized*—(1) *Prohibited distributions.* An Enterprise that is not

classified as adequately capitalized shall make no capital distribution that would result in the Enterprise being classified into a lower capital classification than the one to which it is classified at the time of such distribution.

(2) *Restricted distributions.* An Enterprise classified as significantly or critically undercapitalized shall make no capital distribution without the prior written approval of OFHEO. OFHEO may grant a request for such a capital distribution only if OFHEO determines, in its discretion, that the distribution:

(i) Will enhance the ability of the Enterprise to meet the risk-based capital level and the minimum capital level promptly;

(ii) Will contribute to the long-term financial safety and soundness of the Enterprise; or

(iii) Is otherwise in the public interest.

§ 1777.23 Capital restoration plans.

(a) *Schedule for filing plans*—(1) *In general.* An Enterprise shall file a capital restoration plan in writing with OFHEO within ten days of receiving a notice of capital classification under § 1777.21(a)(3) stating that the Enterprise is classified as undercapitalized, significantly undercapitalized, or critically undercapitalized, unless OFHEO in its discretion determines an extension of the ten-day period is necessary and provides the Enterprise with written notice of the date the plan is due.

(2) *Successive capital classifications.* Notwithstanding paragraph (a)(1) of this section, an Enterprise that has already submitted and is operating under a capital restoration plan approved by OFHEO under this part is not required to submit an additional capital restoration plan based on a subsequent notice of capital classification, unless OFHEO notifies the Enterprise that it must submit a new or amended capital restoration plan. An Enterprise that receives such a notice to submit a new or amended capital restoration plan shall file in writing with OFHEO a complete plan that is responsive to the terms of and within the deadline specified in such notice.

(b) *Contents of capital restoration plan.* (1) The capital restoration plan submitted under paragraph (a)(1) or (2) of this section shall:

(i) Specify the level of capital the Enterprise will achieve and maintain;

(ii) Describe the actions that the Enterprise will take to become classified as adequately capitalized;

(iii) Establish a schedule for completing the actions set forth in the plan;

(iv) Specify the types and levels of activities (including existing and new programs) in which the Enterprise will engage during the term of the plan;

(v) Describe the actions that the Enterprise will take to comply with any mandatory or discretionary requirements to be imposed under Subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623) or subpart B of this part;

(vi) To the extent the Enterprise is required to submit or revise a capital restoration plan as the result of a reclassification of the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5), describe the steps the Enterprise will take to cease or eliminate and remedy the action, inaction, or conditions that caused the reclassification; and

(vii) Provide any other information or discuss any other issues as instructed by OFHEO.

(2) The plan shall include a declaration by the chief executive officer, treasurer, or other officer designated by the Board of Directors of the Enterprise to make such declaration, that the material contained in the plan is true and correct to the best of such officer's knowledge and belief.

(c) *Failure to submit*—(1) *Failure to submit; submission of unacceptable plan.* If, upon the expiration of the period provided in paragraph (a)(1) or (2) of this section for an Enterprise to submit a capital restoration plan, an Enterprise fails to comply with the requirement to file a complete capital restoration plan, or if the capital restoration plan is disapproved after review under paragraph (d) of this section, OFHEO may, in accordance with § 1777.21(a)(1)(ii) without additional notice, reclassify the Enterprise:

(i) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(ii) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(2) *Duration of reclassification.* An Enterprise's failure to submit an approved capital restoration plan as described in paragraph (c)(1) of this section shall continue to be grounds for reclassification at each subsequent capital classification of the Enterprise, and shall only cease being considered grounds for reclassification after the Enterprise files a capital restoration plan that receives OFHEO's approval under paragraph (d) of this section.

(3) *Successive reclassifications.* If an Enterprise has not remedied its failure to file a complete capital restoration plan or an acceptable capital restoration plan within such period as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under paragraph (c)(1) of this section into a lower capital classification. Such reclassification may be made without additional notice in accordance with § 1777.21(a)(1)(ii).

(d) *Order approving or disapproving plan.* Not later than thirty calendar days after receipt of the Enterprise's complete or amended capital restoration plan under this section (subject to extension upon written notice to the Enterprise for an additional thirty calendar days as OFHEO deems necessary), OFHEO shall issue an order to the Enterprise approving or disapproving the plan. An order disapproving a plan shall include the reasons therefore.

(e) *Resubmission.* An Enterprise that receives an order disapproving its capital restoration plan shall submit an amended capital plan acceptable to OFHEO within thirty calendar days of the date of such order, or a longer period if OFHEO determines an extension is in the public interest.

(f) *Amendment.* An Enterprise that has received an order approving its capital restoration plan may amend the capital restoration plan only after written notice to OFHEO and OFHEO's written approval of the modification. Pending OFHEO's review and approval of the amendment in OFHEO's discretion, the Enterprise shall continue to implement the capital restoration plan under the original approval order.

(g) *Termination*—(1) *Termination under the terms of the plan.* An Enterprise that has received an order approving its capital restoration plan remains bound by each of its obligations under the plan until each such obligation terminates under express terms of the plan itself identifying a date, event, or condition upon which such obligation shall terminate.

(2) *Termination orders.* To the extent the plan does not include such express terms for any obligation thereunder, the Enterprise's obligation continues until OFHEO issues an order terminating such obligation under the plan. The Enterprise may also submit a written request to OFHEO seeking termination of such obligations. OFHEO will approve termination of such obligation to the extent that OFHEO determines, in its discretion, that the obligation's purpose under the plan has been fulfilled and that termination of the obligation is consistent with the overall safety and soundness of the Enterprise.

(h) *Implementation*—(1) An Enterprise that has received an order approving its capital restoration plan is required to implement the plan.

(i) If OFHEO determines, in its discretion, that an Enterprise has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule thereunder, OFHEO may reclassify the Enterprise:

(A) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(B) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(ii) *Duration of reclassification.* An Enterprise's failure to implement an approved capital restoration plan as described in paragraph (h)(1)(i) of this section shall continue to be grounds for reclassification at each subsequent capital classification of the Enterprise, and shall only cease being considered grounds for reclassification after OFHEO determines, in its discretion, that the Enterprise is making such efforts as are reasonably necessary to comply with the capital restoration plan and fulfill the schedule thereunder.

(iii) *Successive reclassifications.* If an Enterprise has not remedied its failure to implement an approved capital restoration plan within such period as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under paragraph (h)(1)(i) of this section into a lower capital classification.

(2) *Administrative enforcement action.* A capital plan that has received an approval order from OFHEO under this section shall constitute an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers, and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such plan.

§ 1777.24 Notice of intent to issue an order.

(a) *Orders under section 1366 of the 1992 Act (12 U.S.C. 4616).* In addition to any other action taken under this part, part 1780 of this chapter, or any other applicable authority, OFHEO may, in its discretion, issue an order to an Enterprise that is classified as significantly undercapitalized or critically undercapitalized, or is in conservatorship, directing the Enterprise to take one or more of the following actions:

(1) Limit any increase in, or reduce, any obligations of the Enterprise, including off-balance sheet obligations;

(2) Limit or eliminate growth of the Enterprise's assets or reduce the amount of the Enterprise's assets;

(3) Acquire new capital, in such form and amount as determined by OFHEO; or

(4) Terminate, reduce, or modify any activity of the Enterprise that OFHEO determines creates excessive risk to the Enterprise.

(b) *Notice of intent to issue an order.* Before OFHEO issues an order to an Enterprise pursuant to section 1366 of the 1992 Act (12 U.S.C. 4616), OFHEO will provide the Enterprise with written notice containing the proposed order.

(c) *Contents of notice.* A notice of intent to issue an order under this subpart shall include:

(1) A statement of the Enterprise's capital classification and its minimum capital level or critical capital level, and its risk-based capital level;

(2) A description of the restrictions, prohibitions, or affirmative actions that OFHEO proposes to impose or require; and

(3) The proposed date when such restrictions or prohibitions would become effective or the proposed date for the commencement and/or completion of the affirmative actions.

§ 1777.25 Response to notice.

(a) *Content of response.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in connection with the proposed order. The response should include, but is in no way limited to, the following:

(1) Any relevant information, mitigating circumstances, documentation, or other information the Enterprise wishes OFHEO to consider in support of the Enterprise's position regarding the proposed order; and

(2) Any recommended modification to the proposed order, and justification thereof.

(b) *Time to respond.* The Enterprise may, within thirty calendar days after receipt of the notice of proposed order, submit a response to OFHEO, unless OFHEO determines a shorter period to be appropriate or the Enterprise consents to a shorter period. OFHEO may extend the Enterprise's response period for up to an additional thirty calendar days if OFHEO determines, in its discretion, that there is good cause for such extension.

(c) *Waiver and consent.* The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed order.

§ 1777.26 Final notice of order.

(a) *Determination and notice.* After the Enterprise has submitted its response under § 1777.25 or the response period (as extended or shortened, if applicable) has expired, whichever occurs first, OFHEO will determine, in its discretion, whether to take into consideration such relevant information as is provided by the Enterprise in its response, if any, under § 1777.25. OFHEO will provide the Enterprise with a written final notice of any order issued by OFHEO under this subpart, which is to include a description of the basis for OFHEO's determination.

(b) *Termination or modification.* An Enterprise that has received an order under paragraph (a) of this section remains subject to each provision of the order until each such provision terminates under the express terms of the order. The Enterprise may submit a written request to OFHEO seeking modification or termination of one or more provisions of the order. Pending OFHEO's review and approval, in OFHEO's discretion of the Enterprise's request, the Enterprise shall remain subject to the provisions of the order.

(c) *Enforcement of order*—(1) *Judicial enforcement.* An order issued under paragraph (a) of this section is an order for purposes of section 1375 of the 1992 Act (12 U.S.C. 4635). An Enterprise in any capital classification may be subject to enforcement of such order in the United States District Court for the District of Columbia pursuant to such section.

(2) *Administrative enforcement.* An order issued under paragraph (a) of this section constitutes an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such order.

§ 1777.27 Exhaustion and review.

(a) *Judicial review*—(1) *Review of certain actions.* An Enterprise that is not classified as critically undercapitalized may seek judicial review of a final notice of capital classification issued pursuant to § 1777.21(a)(3) or a final notice of order issued pursuant to § 1777.26(a) in accordance with section 1369D of the 1992 Act (12 U.S.C. 4623)

(2) *Other review barred.* Except as set out in paragraph (a)(1) of this section, or review of conservatorship appointments to the limited extent provided in section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)) and § 1777.28(c), no court shall

have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of a capital classification or any other action of OFHEO pursuant to this subpart B, as provided in section 1369D of the 1992 Act (12 U.S.C. 4623).

(b) *Exhaustion of administrative remedies.* In connection with any issue for which an Enterprise seeks judicial review in connection with an action described in paragraph (a)(1) of this section, the Enterprise must have first exhausted its administrative remedies, by presenting all its objections, arguments, and information relating to such issue for OFHEO's consideration pursuant to § 1777.21(a)(2), as part of the Enterprise's response to OFHEO's notice of capital classification, or pursuant to § 1777.25, as part of the Enterprise's response to OFHEO's notice of intent to issue an order.

(c) *No stay pending review.* The commencement of proceedings for judicial review of a final capital classification or order as described in paragraph (a)(1) of this section shall not operate as a stay thereof.

§ 1777.28 Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

(a) *Significantly undercapitalized Enterprise.* At any time after an Enterprise is classified as significantly undercapitalized, OFHEO may issue an order appointing a conservator for the Enterprise upon determining that:

(1) The amount of core capital of the Enterprise is less than the minimum capital level; and

(2) The alternative remedies available to OFHEO under the 1992 Act are not satisfactory.

(b) *Critically undercapitalized Enterprise*—(1) *Appointment upon classification.* Not later than thirty days after issuing a final notice of capital classification pursuant to § 1777.21(a)(3) classifying an Enterprise as significantly undercapitalized, OFHEO shall issue an order appointing a conservator for the Enterprise.

(2) *Exception.* Notwithstanding paragraph (b)(1) of this section, OFHEO may determine not to appoint a conservator if OFHEO makes a written finding, with the written concurrence of the Secretary of the Treasury, that:

(i) The appointment of a conservator would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market; and

(ii) The public interest would be better served by taking some other enforcement action authorized under this title.

(c) *Judicial review.* An Enterprise for which a conservator has been appointed pursuant to paragraph (a) or (b) of this section may seek judicial review of the appointment in accordance with section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)). Except as provided therein, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of the powers or functions of a conservator.

(d) *Termination*—(1) *Upon reaching the minimum capital level.* OFHEO will issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that the Enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level.

(2) *In OFHEO's discretion.* OFHEO may, in its discretion, issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that such termination order is in the public interest and may safely be accomplished.

Dated: January 18, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–1842 Filed 1–24–02; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–198–AD; Amendment 39–12607; AD 2002–01–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires inspections to detect cracking and corrosion of the aft trunnion of the outer cylinder of the main landing gear (MLG) and various follow-on actions. That AD also currently requires termination of the inspections by repairing the outer cylinder and installing new aft trunnion bushings. This amendment prohibits the use of a particular corrosion inhibiting compound during accomplishment of the terminating action. This action is necessary to prevent the collapse of the MLG due to stress corrosion cracking of the aft trunnion of the outer cylinder. This action is intended to address the identified unsafe condition.

DATES: Effective March 1, 2002.

The incorporation by reference of Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of March 1, 2002.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 16, 1996 (61 FR 3552, February 1, 1996).

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 29, 1996 (61 FR 55080, October 24, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–21–06, amendment 39–9783 (61 FR 55080, October 24, 1996), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on August 24, 2001 (66 FR 44553). The action proposed to continue to require inspections and various follow-on actions to detect cracking and corrosion of the aft trunnion of the outer cylinder of the main landing gear (MLG). The action also proposed to continue to require termination of the inspections by repairing the outer cylinder and installing new aft trunnion bushings. Finally, the action proposed to prohibit the use of a particular corrosion inhibiting compound during accomplishment of the terminating action.

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.

Request To Supersede Multiple ADs

One commenter requests that the FAA revise the proposed AD to supersede AD 96–21–06, AD 95–19–10, amendment 39–9372 (60 FR 47689, September 14, 1995), and AD 95–20–51, amendment 39–9398 (60 FR 53109, October 12, 1995), with one AD. The commenter sees no benefit in having four ADs (i.e., the three listed previously and the proposed AD) that address the same area of the aft trunnion of the MLG on Model 767 series airplanes. The commenter states that superseding all of the ADs related to the aft trunnion would ease the administrative burden and simplify the recordkeeping associated with these ADs.

The FAA does not concur with the commenter's request. We note that this AD does supersede AD 96–21–06, one of the ADs to which the commenter refers. We also note that the applicability statements of all three ADs differ; that is, all three ADs apply to different groups of airplanes. With this in mind, combining the three ADs into one superseding AD would result in a lengthy, highly complex AD, which may be confusing for operators. For this reason, we find that a combined AD would be likely to impose more of an administrative and recordkeeping burden, rather than less of one, as the commenter suggests, and could increase the potential for recordkeeping mistakes. For these reasons, we find it inappropriate to supersede the three ADs listed above with a single AD action. No change to the final rule is needed in this regard.

Refer to Alternative Terminating Action

The same commenter presents an alternative if we do not agree to supersede the three ADs identified previously. It asks that we revise paragraph (e) of the proposed AD to refer to Part 4 of Boeing Service Bulletin 767–32A0192, dated May 31, 2001, as an acceptable terminating action for paragraph (e) of the proposed AD. The commenter states that the actions in Part 4 of that service bulletin are equivalent to those in Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, which is identified in paragraph (e) of the proposed AD as the appropriate source of service information for the actions in that paragraph.

We concur with the intent of the commenter's request. We agree that accomplishment of ''Part 4—Terminating Action'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192 terminates paragraph (e) of this AD. We note that we have previously issued another notice of proposed rulemaking (NPRM), Rules Docket Number 2001–NM–189–AD, which, if adopted, would apply to all Boeing Model 767–200, –300, and –300F series airplanes. Paragraph (i) of that NPRM specifies accomplishment of the terminating action in Boeing Alert Service Bulletin 767–32A0192. In addition, paragraph (j) of that NPRM states, ''Accomplishment of the actions specified in paragraph (i) of this AD is considered acceptable for compliance with the requirements of paragraph (e) of AD 96–21–06, amendment 39–9783.'' The provision of paragraph (j) of that NPRM applies to paragraph (e) of this AD because this AD supersedes AD 96–21–06. Therefore, for clarification, we have added a new paragraph (h) to this AD to state that accomplishment of ''Part 4—Terminating Action'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192 constitutes terminating action for paragraph (e) of this AD. Paragraphs subsequent to this new paragraph (h) have been reordered accordingly.

Limit Area of Prohibition

One commenter recommends that the proposed AD prohibit the application of the corrosion inhibiting compound Desoto 823E508 (Titanine JC5A) only on the aft trunnion of the MLG. The commenter notes that the wording of paragraph (h) of the proposed rule prohibits application of that compound anywhere on an airplane. The commenter states that service history and laboratory test data have shown that typical usage of this corrosion inhibiting compound in thin layers (such as on fasteners and faying surfaces) does not promote corrosion.

While we neither accept nor reject the commenter's argument, we agree that the unsafe condition associated with this AD relates specifically to the aft trunnion of the MLG. Therefore, it is appropriate to limit the prohibition of the application of the subject corrosion inhibiting compound to the aft trunnion of the MLG. Due to the addition of a paragraph described previously, paragraph (h) of the proposed AD has been reordered as paragraph (i) in this final rule, and we have revised that paragraph accordingly.

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 605 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 200 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–21–06 take approximately 252 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $9,510 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $4,926,000, or $24,630 per airplane.

The prohibition of a certain corrosion inhibiting compound, which is the only new requirement of this AD, will not change the cost impact on U.S. operators from that associated with AD 96–21–06.

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 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 final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9783 (61 FR 55080, October 24, 1996), and by adding a new airworthiness directive (AD), amendment 39–12607, to read as follows:

2002–01–13 Boeing: Amendment 39–12607. Docket 2001–NM–198–AD. Supersedes AD 96–21–06, Amendment 39–9783.

Applicability: Model 767 series airplanes having line numbers 001 through 605 inclusive, on which the terminating action required by paragraph (e) of this AD has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 (j)(1) 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 collapse of the main landing gear (MLG) due to stress corrosion cracking of the aft trunnion of the outer cylinder, accomplish the following:

Note 2: This AD is merely a restatement of the requirements of AD 96–21–06, amendment 39–9783, with one exception: Only Revision 2, dated November 30, 2000, of Boeing Service Bulletin 767–32A0148, which disallows the use of Desoto 823E508 (Titanine JC5A) corrosion inhibiting compound, may be used after the effective date of this new AD. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 96–21–06 have already been accomplished prior to the effective date of this AD in accordance with prior versions of that service bulletin, this AD does not require that those actions be repeated. However, the FAA is considering the issuance of a separate rulemaking action to further address the identified unsafe condition on airplanes on which Desoto 823E508 (Titanine JC5A) was used.

Restatement of the Requirements of AD 96–21–06

Inspections and Various Follow-On Actions

(a) Perform the inspections described in paragraph III, Accomplishment Instructions, of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996, to detect cracking and corrosion of the aft trunnion of the outer cylinder of the MLG at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. These inspections are to be accomplished in accordance with Figure 1 of the service bulletin. Repeat these inspections thereafter at the intervals specified in that service bulletin. To determine the category in which an airplane falls, the age of the outer cylinder of the MLG is to be calculated as of February 16, 1996 (the effective date of AD 96–03–02 R1, amendment 39–9526). For airplanes on which the age of the right MLG differs from the age of the left MLG, an operator may place the airplane into a category that is the higher (numerically) of the two categories to ease its administrative burden, and to simplify the recordkeeping requirements imposed by this AD. Once the category into which an airplane falls is determined, operators must obtain approval from the Manager, Seattle Aircraft Certification Office (ACO), FAA, to move that airplane into another category.

Note 3: The broken (dash) lines used in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, and Revision 1, dated October 10, 1996, denote ''go to'' actions for findings of discrepancies detected during any of the inspections required by this AD.

Note 4: Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, and Revision 1, dated October 10, 1996, refer to Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995, and Revision 1, dated October 10, 1996, for procedures to repair the outer cylinder and replace the bushings in the outer cylinder of the MLG with new bushings.

(1) For airplanes identified as Category 3 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Perform the initial inspections within 30 days after February 16, 1996 (the effective date of AD 96–03–02 R1, amendment 39–9526).

(2) For airplanes identified as Category 2 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Perform the initial inspections within 90 days after February 16, 1996.

(3) For airplanes identified as Category 1 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Perform the initial inspections prior to the accumulation of 2½ years since the MLG outer cylinder was new or last overhauled, or within 150 days after February 16, 1996, whichever occurs later.

(b) If no cracking or corrosion is detected during the inspections required by paragraph (a) of this AD, accomplish the follow-on actions described in Boeing Alert Service Bulletin 767–32A0151, November 30, 1995, or Revision 1, dated October 10, 1996, at the time specified in the service bulletin. These follow-on actions are to be accomplished in accordance with that service bulletin.

(c) If any cracking is detected during the inspections required by paragraph (a) of this AD, prior to further flight, replace the outer cylinder with a new or serviceable outer cylinder in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996.

(d) If any corrosion is detected during the inspections required by paragraph (a) of this AD, accomplish the follow-on actions at the time specified in the ''Corrosion Flowchart,'' in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996. The follow-on actions are to be accomplished in accordance with that service bulletin.

Terminating Action

(e) Unless previously accomplished in accordance with paragraph (e) of AD 96–21–06, at the time specified in either paragraph (e)(1) or (e)(2) of this AD, as applicable, repair the outer cylinder and replace the bushings in the aft trunnion and crossbolt of the MLG with new bushings, in accordance with Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000. Accomplishment of this repair and replacement constitutes terminating action for this AD, and for the requirements of AD 95–19–10, amendment 39–9372; and AD 95–20–51, amendment 39–9398.

Note 5: Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, refers to Boeing Component Maintenance Manual (CMM) 32–11–40 for certain procedures.

(1) For airplanes identified as Category 3 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996: Accomplish the repair and replacement within 18 months after November 29, 1996 (the effective date of AD 96–21–06, amendment 39–9783).

(2) For airplanes identified as either Category 1 or Category 2 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151,

dated November 30, 1995, or Revision 1, dated October 10, 1996: Accomplish the repair and replacement at the time specified in either paragraph (e)(2)(i) or (e)(2)(ii) of this AD:

(i) Prior to the accumulation of 5½ years since the MLG outer cylinders were new or last overhauled, or within 18 months after November 29, 1996, whichever occurs later; or

(ii) Prior to the accumulation of 7 years since the MLG outer cylinders were new or last overhauled, provided that accomplishment of visual and non-destructive testing (NDT) inspections at the times specified in Figure 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996, are repeated until the repair and replacement are accomplished.

(f) Accomplishment of the inspection requirements of this AD (in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, or Revision 1, dated October 10, 1996) is considered acceptable for compliance with AD 95–19–10, amendment 39–9372; and AD 95–20–51, amendment 39–9398.

New Requirements of This AD

(g) Except as provided by paragraph (h) of this AD: As of the effective date of this AD, only Revision 2, dated November 30, 2000, of Boeing Service Bulletin 767–32A0148 shall be used to accomplish the actions required by paragraph (e) of this AD.

(h) Accomplishment of the terminating action (including removal of the existing bushings, repair of the aft trunnion area of the outer cylinder, and machining and installation of new bushings) in accordance with ''Part 4—Terminating Action'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0192, dated May 31, 2001, constitutes terminating action for the requirements of paragraph (e) of this AD.

Use of Titanine JC5A Prohibited

(i) As of the effective date of this AD, no person shall use the corrosion inhibiting compound Desoto 823E508 (Titanine JC5A) on the aft trunnion of the MLG on any airplane.

Alternative Methods of Compliance

(j)(1) 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 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(2) Alternative methods of compliance, approved in accordance with AD 96–03–02, amendment 39–9497; AD 96–03–02 R1, amendment 39–9526; AD 95–19–10, amendment 39–9372; or AD 95–20–51, amendment 39–9398; are approved as alternative methods of compliance with this AD except as required in paragraph (i) of this AD.

Special Flight Permits

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

Incorporation by Reference

(l) Except as provided by paragraphs (a) and (h) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995; Boeing Service Bulletin 767–32A0151, Revision 1, dated October 10, 1996; or Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 767–32A0148, Revision 2, dated November 30, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995; was approved previously by the Director of the Federal Register as of February 16, 1996 (61 FR 3552, February 1, 1996).

(3) The incorporation by reference of Boeing Service Bulletin 767–32A0151, Revision 1, dated October 10, 1996; was approved previously by the Director of the Federal Register as of November 29, 1996 (61 FR 55080, October 24, 1996).

(4) 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

(m) This amendment becomes effective on March 1, 2002.

Issued in Renton, Washington, on January 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1452 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30292; Amdt. No. 2090]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal

Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS or FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or FMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

Effective February 21, 2002

Sacramento, CA, Sacramento Mather, VOR or GPS RWY 4R, Orig-C, CANCELLED
Sacramento, CA, Sacramento Mather, VOR RWY 4R, Orig-C
Sacramento, CA, Sacramento Mather, VOR/DME or GPS RWY 22L, Orig-C, CANCELLED
Sacramento, CA, Sacramento Mather, VOR/DME RWY 22L, Orig-C
Santa Ana, CA, John Wayne Airport-Orange County, NDB or GPS RWY 1L, Amdt 1A, CANCELLED
Santa Ana, CA, John Wayne Airport-Orange County, NDB RWY 1L, Amdt 1A
Santa Ana, CA, John Wayne Airport-Orange County, NDB or GPS RWY 19R, Amdt 1, CANCELLED
Santa Ana, CA, John Wayne Airport-Orange County, NDB RWY 19R, Amdt 1
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, NDB or GPS RWY 13, Amdt 15, CANCELLED
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, NDB RWY 13, Amdt 15
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, VOR or GPS RWY 27R, Amdt 11, CANCELLED
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, VOR RWY 27R, Amdt 11
Atlanta, GA, The William B. Hartsfield Atlanta Intl, VOR or GPS RWY 27L, Amdt 4A, CANCELLED
Atlanta, GA, The William B. Hartsfield Atlanta Intl, VOR RWY 27L, Amdt 4A
Kahului, HI, Kahului, NDB/DME or GPS RWY 2, Amdt 2A, CANCELLED
Kahului, HI, Kahului, NDB/DME RWY 2, Amdt 2A
Pella, IA, Pella Muni, NDB or GPS RWY 34, Amdt 7, CANCELLED
Pella, IA, Pella Muni, NDB RWY 34, Amdt 7
Chicago, IL, Chicago Midway, NDB or GPS RWY 4R, Amdt 12C, CANCELLED
Chicago, IL, Chicago Midway, NDB RWY 4R, Amdt 12C
Marks, MS, Selfs, NDB or GPS RWY 2, Amdt 4, CANCELLED
Marks, MS, Selfs, NDB RWY 2, Amdt 4
West Point, MS, McCharen Field, VOR/DME RNAV or GPS RWY 36, Amdt 3A, CANCELLED
West Point, MS, McCharen Field, VOR/DME RNAV RWY 36, Amdt 3A
Kalispell, MT, Glacier Park Intl, VOR or GPS RWY 30, Amdt 9A, CANCELLED
Kalispell, MT, Glacier Park Intl, VOR RWY 30, Amdt 9A
Asheville, NC, Asheville Regional, NDB or GPS RWY 16, Amdt 15B, CANCELLED
Asheville, NC, Asheville Regional, NDB RWY 16, Amdt 15B
Asheville, NC, Asheville Regional, NDB or GPS RWY 34, Amdt 18C, CANCELLED

Asheville, NC, Asheville Regional, NDB RWY 34, Amdt 18C
Monroe, NC, Monroe, NDB or GPS RWY 5, Amdt 2C, CANCELLED
Monroe, NC, Monroe, NDB RWY 5, Amdt 2C
Newark, NJ, Newark Intl, NDB or GPS RWY 4L, Amdt 10A, CANCELLED
Newark, NJ, Newark Intl, NDB RWY 4L, Amdt 10A
Newark, NJ, Newark Intl, NDB or GPS RWY 4R, Amdt 6A, CANCELLED
Newark, NJ, Newark Intl, NDB RWY 4R, Amdt 6A
Albuquerque, NM, Albuquerque Intl Sunport, NDB or GPS RWY 35, Amdt 7B, CANCELLED
Albuquerque, NM, Albuquerque Intl Sunport, NDB RWY 35, Amdt 7B
Medford, OR, Medford/Rouge Valley Intl-Medford, VOR/DME or GPS RWY 14, Amdt 4, CANCELLED
Medford, OR, Medford/Rouge Valley Intl-Medford, VOR/DME RWY 14, Amdt 4
Harrisburg, PA, Harrisburg Intl, VOR or GPS RWY 31, Amdt 1, CANCELLED
Harrisburg, PA, Harrisburg Intl, VOR RWY 31, Amdt 1
Madisonville, TX, Madisonville Muni, VOR/DME or GPS RWY 18, Amdt 1, CANCELLED
Madisonville, TX, Madisonville Muni, VOR/DME RWY 18, Amdt 1
Roanoke, VA, Roanoke Regional/ Woodrum Field, NDB or GPS RWY 33, Amdt 9, CANCELLED
Roanoke, VA, Roanoke Regional/ Woodrum Field, NDB RWY 33, Amdt 9

[FR Doc. 02–1866 Filed 1–24–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30291; Amdt. No. 2089]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC) /Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion of FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the

public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January, 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
12/26/01	GA	Atlanta	The William B. Hartsfield Atlanta Intl	1/3457	RNAV (GPS) Rwy 27R, Orig.
01/03/02	NC	Greensboro	Piedmont Triad Intl	2/0074	RADAR-1, Amdt 9B.
01/03/02	AK	Fairbanks	Fairbanks Intl	2/0076	ILS Rwy 19R, Amdt 21.
01/03/02	UT	Salt Lake City	Salt Lake City Intl	2/0088	ILS Rwy 35, Amdt 1C.
01/04/02	AK	Petersburg	James A. Johnson	2/0096	LDA/DME-D, Amdt 5C.
01/04/02	TN	Hohenwald	John A. Baker Field	2/0105	NDB Rwy 2, Orig.
01/04/02	UT	Cedar City	Cedar City Regional	2/0107	ILS Rwy 20, Amdt 3A.
01/04/02	UT	Cedar City	Cedar City Regional	2/0108	VOR Rwy 20, Amdt 6A
01/04/02	UT	Cedar City	Cedar City Regional	2/0109	NDB Rwy 20, Amdt 2A.
01/07/02	LA	Bastrop	Morehouse Memorial	2/0173	NDB or GPS Rwy 34, Amdt 5.
01/07/02	LA	Bastrop	Morehouse Memorial	2/0174	VOR/DME-A, Amdt 8.
01/08/02	AL	Gadsen	Gadsden Muni	2/0192	GPS Rwy 24, Orig.
01/08/02	TX	Houston	William P. Hobby	2/0193	VOR/DME Rwy 30L, Amdt 17.
01/10/02	UT	Salt Lake City	Salt Lake City Muni	2/0277	RNAV (GPS) Rwy 34, Orig.
01/11/02	FL	Gainesville	Gainesville Regional	2/0308	VOR/DME Rwy 6, Orig-A.
01/11/02	GA	Tifton	Henry Tift Myers	2/0309	ILS Rwy 33, Orig-B.
01/11/02	FL	Gainesville	Gainesville Regional	2/0311	VOR Rwy 28, Orig-A.
01/11/02	FL	Gainesville	Gainesville Regional	2/0314	VOR Rwy 24, Orig-A.

[FR Doc. 02–1865 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30290; Amdt. No. 2088]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the national Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR), sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identified and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective February 21, 2002

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, ILS RWY 27R, Amdt 7
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 27R, Orig
Fort Mead (Odenton), MD, Tipton, VOR–A, Orig
Fort Mead (Odenton), MD, Tipton, RNAV (GPS) RWY 10, Orig
Fort Mead (Odenton), MD, Tipton, RNAV (GPS) RWY 28, Orig
Marks, MS, Selfs, RNAV (GPS) RWY 2, Orig
Marks, MS, Selfs, RNAV (GPS) RWY 20, Orig
Union, SC, Union County, Troy Shelton Field, NDB RWY 5, Orig
Hohenwald, TN, John A. Baker Field, RNAV (GPS) RWY 2, Orig

Effective April 18, 2002

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 26, Orig
Harrisburg, IL, Harrisburg-Raleigh, RNAV (GPS) RWY 24, Orig
Harrisburg, IL, Harrisburg-Raleigh, GPS RWY 24, Orig-A CANCELLED
Tecumseh, MI, Meyers-Diver's, VOR OR GPS–A, Amdt 7 CANCELLED
Duluth, MN, Duluth Intl, NDB RWY 9, Amdt 24
Duluth, MN, Duluth Intl, RNAV (GPS) RWY 9, Orig
Ely, MN, Ely Muni, RNAV (GPS) RWY 12, Orig
Ely, MN, Ely Muni, RNAV (GPS) RWY 30, Orig
Longville, MN, Longville Muni, RNAV (GPS) RWY 31, Orig
Rice Lake, WI, Rice Lake Regional-Carl's Field, RNAV (GPS) RWY 1, Orig
Rice Lake, WI, Rice Lake Regional-Carl's Field, RNAV (GPS) RWY 19, Orig

[FR Doc. 02–1864 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK64

Diseases Specific to Radiation-Exposed Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning presumptive service connection for certain diseases for veterans who participated in radiation-risk activities during active service or while members of reserve components during active duty for training or inactive duty training. This amendment adds cancers of the bone, brain, colon, lung, and ovary to the list of diseases which may be presumptively service connected and amends the definition of the term ''radiation-risk activity.'' The intended effect of this amendment is to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes.

DATES: Effective Date: March 26, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 8, 2001 (66 FR 41483–41485), VA proposed to amend its adjudication regulations concerning presumptive service connection for veterans who participated in radiation-risk activities during active service. VA proposed to add cancers of the bone, brain, colon, lung, and ovary to the list of diseases which may be presumptively service connected and amend the definition of the term ''radiation-risk activity.'' The intended effect of this amendment was to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes.

I. Comments on the Proposed Rule

The comment period ended October 9, 2001. We received written comments from the American Legion, the National Association of Atomic Veterans, the Honorable Patsy T. Mink (HI) and 14 individuals. Ten of the comments expressed support of the proposed rule.

Definition of Radiation-Risk Activity

Current law defines ''radiation-risk activity'' for purposes of presuming that specified diseases are the result of radiation exposure during military service to mean (1) onsite participation in a test involving the atmospheric detonation of a nuclear device; (2) the occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946; or (3) internment as a prisoner of war in Japan or service on active duty in Japan following such internment during World War II which resulted in an opportunity for exposure to ionizing radiation. (See 38 U.S.C. 1112(c)(3)(B) and 38 CFR 3.309(d)).

As stated in the preamble to the proposed rule, recent legislation authorized benefits for certain Department of Energy (DOE) employees and persons employed by DOE contractors, subcontractors, and vendors who were involved in DOE nuclear weapons-related programs. This includes those who worked on Amchitka Island, Alaska prior to January 1, 1974, who were exposed to ionizing radiation in the performance of duty related to certain underground nuclear tests. It also includes certain persons who worked at gaseous diffusion plants in Paducah, Kentucky; Portsmouth, Ohio; and Oak Ridge, Tennessee before February 1, 1992. Our rulemaking proposed to add these exposures to the list of radiation-risk activities in 38 CFR 3.309(d).

One commenter stated that VA's definition of radiation-risk activity, even as expanded by this rulemaking, does not cover all veterans exposed to radiation while in the service of their country, and urged VA to expand its definition to include veterans exposed to ''residual contamination'' of nuclear tests. Another commenter urged VA to include veterans who may have been exposed to radiation during various activities involving the development, maintenance and handling of nuclear weapons, as well as clean up operations following nuclear testing. Another commenter specifically asked that VA expand the definition to include all military personnel who participated in the clean up of Enewetak Atoll from 1977 to 1980. Another commenter suggested that the definition of ''radiation-risk'' activity should include military duty at all DOE nuclear weapons development, testing, and manufacturing facilities.

Congress created certain presumptions for veterans in the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, section 2(a), 102 Stat. 485–86 (codified as amended at 38 U.S.C. 1112(c)). Congress has also created presumptions for certain civilians in the Radiation Exposure Compensation Act (RECA), Pub. L. 101–426, 104 Stat. 920 (1990) (codified as amended at 42 U.S.C. 2210 note), the RECA Amendments of 2000, Public Law 106–245, section 3, 114 Stat. 501, 502, and title XXXVI of the Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106–398, 114 Stat. 1654A–1232. Under the Energy Employees Occupational Illness Compensation Program Act of 2000, if a member of the Special Exposure Cohort develops a ''specified'' cancer after beginning employment at a DOE facility or at an atomic weapons facility for an atomic weapons contractor, the cancer is presumed to have been sustained in the performance of duty and is compensable. The burden of proof for the Special Exposure Cohort is similar to that under 38 CFR 3.309(d). Congress has not created any presumptions for veterans or civilians based on ''residual contamination'' of nuclear tests, service at Enewetak Atoll, or any of the other types of duties suggested by the commenters.

This rulemaking was only intended to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes. We proposed to expand the definition of radiation-risk activity in § 3.309(d)(3)(ii) to include only the relevant activities listed in these civilian statutes. We therefore make no change based on these comments.

One commenter noted that the ''Radiation Compensation Act of 1990'' was recently amended to include civilian employees assigned to DOE nuclear weapons-related programs who were exposed to radiation, beryllium or silica. The commenter also stated that veterans involved in these programs are effectively precluded from being compensated for diseases related to such duty. The commenter urged that, in order to achieve true equity between radiation-exposed veterans and civilians, VA regulations should be amended to include veterans who were exposed to beryllium and silica during service.

We are aware that the RECA Amendments of 2000, Public Law 106–245, section (2)(A)(ii) and 3(c)(1), 114 Stat. at 501, 502, authorized compensation for above-ground uranium miners, millers and persons who transported ore and have a ''nonmalignant respiratory disease,'' which the statute defines as fibrosis of the lung, pulmonary fibrosis, cor pulmonale related to fibrosis of the

lung, silicosis, and pneumoconiosis. The Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106–398, tit. xxxvi, 114 Stat. 1654A–1232, authorized compensation for employees exposed to beryllium in the performance of duty for a DOE contractor, subcontractor, beryllium vendor, or subcontractor of a vendor.

However, under these statutes, beryllium-related diseases and silica-related diseases are clearly classified separately from radiogenic diseases. The purpose of this rulemaking is only to amend VA's presumptions for radiation exposure and radiogenic diseases.

In addition, we believe that existing regulations allow a sufficient basis to grant service connection, on a direct basis, for veterans exposed to beryllium or silica during military service who later suffer from these diseases. For these reasons, we do not revise the regulation to include diseases related to beryllium or silica exposure in this rulemaking, and we therefore make no change based on these comments.

Dose Reconstruction

One commenter stated that he opposed the current dose estimate requirement in 38 CFR 3.311, as being arbitrary, unreliable and inaccurate. Another commenter urged that VA should not rely on dose reconstruction estimates because they are based on lab tests, not on data collected at the atomic test sites. Another commenter also asked VA to eliminate the use of dose estimates since they are inaccurate.

Dose reconstruction is required only under 38 CFR 3.311, which is a separate and distinct basis for service connection from 38 CFR 3.309(d). The purpose of the rulemaking is only to amend VA's presumption for radiation exposure and radiogenic diseases (found in 3.309(d)), which does not require a dose estimate to establish entitlement to service connection. Therefore, these comments are outside the scope of this rulemaking and we make no change based on these comments.

Radiogenic Diseases

Several commenters urged VA to add certain diseases to 3.309(d)(2), in addition to those we proposed to add in this rulemaking. One commenter stated that radiation is a ''complete carcinogen'' and therefore we should list all cancers. Another commenter urged VA to add certain non-cancer diseases, such as cardiovascular disease, chronic hepatitis, and liver cirrhosis, which have been linked to radiation exposure by the Radiation Effects Research Foundation.

The basis for enactment of the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000 was scientific data resulting from enactment of the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, and obtained from the President's Advisory Committee on Human Radiation Experiments. Based on data from these sources, Congress authorized compensation for persons suffering from these cancers who lived downwind from Government above-ground nuclear tests, were underground uranium miners, participated onsite in a test involving the atmospheric detonation of a nuclear device, or were employed at certain locations by DOE contractors or subcontractors or an atomic weapons employer. We believe this data also supports compensation for veterans suffering from the same cancers, some of whom participated in the same activities as persons entitled to be compensated under the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000. We therefore proposed to amend 38 CFR 3.309(d)(2) to include the cancers for which compensation is payable under these other statutes.

As explained above and in the notice of proposed rulemaking, this rulemaking was only intended to ensure equity between veterans who may have been exposed to radiation during military service and civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes, including RECA. The Federal statutes referenced above do not presume that the diseases that the commenters asked VA to add to this rulemaking are due to radiation exposures in civilian occupations. Therefore, veterans do not have a higher burden of proof than civilians do, and we are making no change based on this comment.

Public Laws 98–542 and 102–578

One commenter stated that, because VA submitted a report to Congress containing its response to a report submitted to VA by the Veterans' Advisory Committee on Environmental Hazards on May 26, 1994, rather than December 1, 1993, as required by the Veterans' Radiation Exposure Amendments of 1992, Public Law 102–578, section 3, 106 Stat. 4774, 4775, radiation exposure by naval nuclear propulsion workers, those involved in weapons development for the Department of Defense, nuclear weapons maintenance workers and handlers and others have never been considered under the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98–542, 98 Stat. 2725 (1984), or the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, 102 Stat. 485.

This rulemaking does not involve VA's compliance with Public Law 102–578 and these comments are outside the scope of this rulemaking. We therefore make no change based on these comments.

Effective Dates

One commenter stated that the effective date for claims that VA previously denied but are now granted under these new regulations should be the date of the original claim. The commenter urged that veterans exposed to radiation be given the same consideration as veterans exposed to Agent Orange under *Nehmer* v. *United States Veterans Admin.*, C.A. No. C–86–6160 TEH (N.D. Cal.).

Section 5110 of title 38 United States Code and 38 CFR 3.114 establish effective date requirements that are binding on VA. Those requirements limit retroactive awards to no earlier than the effective date of a liberalizing statute or regulation, such as this rulemaking. The *Nehmer* lawsuit and court rulings do create an exception to these effective date rules, but the Nehmer case is limited to only diseases linked to herbicide exposure under 38 CFR 3.309(e). We have no authority to expand the exceptions established by the *Nehmer* court to include claims filed under 3.309(d). We therefore make no change based on this comment.

Opposition to Proposed Rule

One commenter asserted that it is very unlikely that any of the cancers developed by veterans are caused by their radiation exposure during military service. He stated that many of the premises contained in the preamble to the proposed rule are not based on valid scientific information. This commenter urged VA not to promulgate this proposed rule.

As we explained above, the basis for enactment of the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000 was scientific data resulting from enactment of the Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, and obtained from the President's Advisory Committee on Human Radiation Experiments. We believe this data equally supports adding these same cancers to the list of diseases that may be presumptively

service connected for radiation-exposed veterans, some of whom participated in the same activities as persons entitled to be compensated under the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000.

This rulemaking was only intended to ensure that veterans who may have been exposed to radiation during military service do not have a higher burden of proof than civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes, including RECA. If we do not adopt this rule, veterans will have a higher burden of proof than civilians do. Therefore, we make no change based on this comment.

Medical Benefits

One commenter suggested that atomic veterans should be given a special priority for VA medical services, which should be provided without means testing and co-payments. The commenter also suggested that VA should focus on preventive measures to reduce the risk of cancer, appropriate medical treatment to keep atomic veterans healthy, and programs to educate veterans on dietary and lifestyle changes to prevent cancer. The commenter also suggested VA should work with Congress to determine if an arrangement for financial cost sharing between VA and Medicare is possible.

These comments are beyond the scope of the rulemaking. Also, some of the comments would require an amendment to title 38, United States Code, which cannot be accomplished by rulemaking. We therefore make no changes based on these comments.

II. Compliance With the Congressional Review Act, the Regulatory Flexibility Act, and Executive Order 12866

We estimate that the ten-year benefits cost of this rule from appropriated funds will be $769 million in benefits costs. We estimate that during several of these years, the annual benefits costs will be more than $100 million. We also estimate that the ten-year cost in government operating expenses will be $34 million. Since we estimate that the adoption of the rule will have an annual effect on the economy of $100 million or more, the Office of Management and Budget has designated this rule as a major rule under the Congressional Review Act, 5 U.S.C. 802, and a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The following information is provided pursuant to E.O. 12866.

The Secretary has made this regulatory amendment to ensure that veterans exposed to radiation during military service receive the same consideration for the risks of this exposure as DOE employees, contractors and subcontractors. There are no feasible alternatives to this proposed rule, since it is needed to provide fairness and equity for veterans and their survivors. This rule will not interfere with state, local or tribal governments in the exercise of their governmental functions.

Benefits Costs

Over the next ten years, VA expects to process 91,567 service-connected disability compensation claims (living veterans) and 48,050 Dependency and Indemnity Compensation (DIC) claims (veterans' survivors claims for service connection for cause of death) filed as a result of this proposed rule. Historically, about 12% of all radiation related claims have been granted. If past experience proves a reliable indicator of future events, VA expects to grant approximately 10,988 of those disability compensation claims and approximately 5,766 of those DIC claims.

We estimate that the cumulative totals of benefits awards to claimants over the next ten years will be as follows: $8,040,630; $26,248,947; $44,265,910; $61,126,347; $76,565,137; $90,329,734; $102,328,198; $112,436,560; $120,555,709; and $126,704,527, for a total benefits cost of $768,601,698 over ten years.

Administrative Costs

Based on the administrative workload projected to result from this rule (discussed above), VA estimates that full time employee (FTE) resources devoted to processing claims in years one through ten will be 77, 113, 69, 64, 51, 40, 39, 35, 35, and 33 respectively. Estimated government operating expenses (GOE) costs for the next 10 years are as follows: $3,910,578; $5,047,838; $3,584,683; $4,127,798; $3,419,862; $2,817,402; $2,825,825; $2,669,755; $2,780,414; and $2,750,142, for a total GOE cost of $33,934,297 over ten years.

Unfunded Mandates

The Unfunded Mandates Reform Act requires , at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing 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 or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

OMB Review

This rule is economically significant under Executive Order 12866 and major under the Congressional Review Act. This rule has been reviewed by OMB.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments will not directly affect any small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: December 10, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.309 is amended by:

A. Adding new paragraphs (d)(2)(xvii) through (d)(2)(xxi).

B. Adding new paragraph (d)(3)(ii)(D).

The additions read as follows:

§ 3.309 Diseases subject to presumptive service connection.

* * * * *

(d) *Diseases specific to radiation-exposed veterans.****

(2) * * *
(xvii) Cancer of the bone.
(xviii) Cancer of the brain.
(xix) Cancer of the colon.
(xx) Cancer of the lung.
(xxi) Cancer of the ovary.
(3) * * *
(ii) * * *
(D)(*1*) Service in which the service member was, as part of his or her official military duties, present during a total of at least 250 days before February 1, 1992, on the grounds of a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or the area identified as K25 at Oak Ridge, Tennessee, if, during such service the veteran:

(i) Was monitored for each of the 250 days of such service through the use of dosimetry badges for exposure at the plant of the external parts of veteran's body to radiation; or

(ii) Served for each of the 250 days of such service in a position that had exposures comparable to a job that is or was monitored through the use of dosimetry badges; or

(*2*) Service before January 1, 1974, on Amchitka Island, Alaska, if, during such service, the veteran was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(*3*) For purposes of paragraph (d)(3)(ii)(D)(1) of this section, the term ''day'' refers to all or any portion of a calendar day.

* * * * *

[FR Doc. 02–1839 Filed 1–24–02; 8:45 am]
BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[FCC 02–3]

Termination of Rulemaking Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination of rulemaking proceedings.

SUMMARY: The Federal Communications Commission has terminated the rulemaking proceedings as set forth in the Order adopted by the Commission on January 9, 2002, and released January 11, 2002. The Commission has determined that no further action by the Commission is required in the proceedings.

DATES: These docket proceedings are terminated effective January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Consumer Information Bureau, (202) 418–0294

SUPPLEMENTARY INFORMATION: 1. We have reviewed the open rulemaking proceedings listed in the Appendix, and have determined that the proceedings should be terminated. The matters at issue in these rulemaking proceedings are either moot or stale due to the passage of time or other regulatory and industry changes. Therefore, no further action by the Commission is required in the proceedings listed in the attached Appendix, and they are hereby closed.

2. Accordingly, pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j), *it is ordered* that the rulemaking proceedings set forth in the Appendix *are closed and terminated,* effective on January 11, 2002.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

APPENDIX

Docket No.	Subject matter	Action	Cite
CC 84–490	Amendment of the rules to permit registration of terminal equipment for connection to voiceband private line channels; petition for rule making filed by AT&T.	NPRM	FCC 84–230
CC 90–629	Order To Show Cause; Nevada Bell Tariff F.C.C. No. 1; Transmittal No. 113	OSC	6 FCC Rcd 48
CC 91–377	U.S. Communications of Westchester Tocsia Informational Tariffs	OR	DA 91–1612
CC 92–275	New Service Reporting Requirements Under Price Cap Regulation	NPRM	8 FCC Rcd 2150
CC 94–139	AT&T Communications F.C.C. Tariff No. 1, Transmittal No. 7322	OR	DA 95–2407
CC 94–18	Establishment of a Federal Advisory Committee To Assist the Common Carrier Bureau in the Development and Implementation of an Electronic Filing System.	PN	59 FR 11604
CS 94–42	Amendment of the Commission's Rules To Include Decatur, Texas in the Dallas-Fort Worth, Texas, Television.	NPRM	59 FR 26615
CS 94–43	Amendment of the Commission's Rules To Include Kenosha and Racine, Wisconsin, in the Milwaukee, Wisconsin, Television Market.	NPRM	59 FR 26617
CS 94–99	Amendment of Section 76.51 of the Rules To Include Sanger, California in the Fresno-Visalia-Hanford-Clovis, California Television Market.	NPRM	59 FR 50538
CS 95–143	Amendment of Section 76.51 of the Commission's Rules To Include Greensburg, Pennsylvania in the Pittsburgh, Pennsylvania Television Market.	NPRM	60 FR 46805
CS 96–119	Amendment of Section of the Commission's Rules To Include Dubuque, Iowa in the Cedar Rapids-Waterloo, Iowa Television Market.	NPRM	61 FR 29336
CS 96–139	Amendment of Section 76.51 of the Commission's Rules To Include Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe, Texas in the Houston, Texas Television Market.	NPRM	61 FR 34408
ET 93–59	Amendment of Section 2.106 of the Rules to Allocate Spectrum for Wind Profiler Radar Systems.	NPRM	58 FR 19644
ET 99–300	Information Sought on Methods for Verifying Compliance With E911 Accuracy Standards	PN	DA 99–2130
ET 99–34	In the Matter of An Industry Coordination Committee System for Broadcast Digital Television Service.	NPRM	64 FR 6296
GN 84–361	Federal Communications Commission's List of Rules To Be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1983–1984.	OR	49 FR 27179
GN 85–75	Federal Communications Commission's List of Rules To Be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1985–1986.	FN	50 FR 26593
GN 86–367	In the Matter of Private Sector Preparation and Administration of Commission Commercial Radio Operator Examinations.	NOI	51 FR 36415
MM 89–77	Transfers of Control of Certain Licensed Non-Stock Entities	NOI	54 FR 15957
MM 91–214	Station KROQ–FM	LT	6 FCC Rcd 7262
MM 93–225	Amendment of Part 73 of the Rules To Clarify the Definition and Measurement of Aural Modulation Limits in the Broadcast Services.	NOI	58 FR 44483
MM 93–226	Revision of 47 CFR 73.208, Reference Points and Distance Computations	NPRM	58 FR 49278

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
MM 93–232	Amendment of Section 76.51 of the Rules To Include Concord, California, in the San Francisco-Oakland-San Jose, California, Television Market.	NPRM	58 FR 45312
MM 93–260	Amendment of Section 76.51 of the Rules To Include Marion, Indiana, in the Indianapolis-Bloomington, Indiana, Television Market.	NPRM	58 FR 53696
MM 93–303	Amendment of Section 76.51 of the Rules To Include Hazelton and Williamsport, Pennsylvania in the Wilkes-Barre-Scranton, Pennsylvania Television Market.	NPRM	58 FR 68844
PP 96–17	Improving Commission Processes	NOI	11 FCC Rcd 14006
PR 93–199	Amendment of Part 90 Concerning the Commission's Finder's Preference Rules	NPRM	58 FR 38722

Action: FN Further Notice of Proposed Rulemaking.
LT Letter.
NOI Notice of Inquiry.
NPRM Notice of Proposed Rulemaking.
OR Order.
OS Order to Show Cause.
PN Public Notice.

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BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[FCC 01–385]

Termination of Stale or Moot Docketed Proceedings

AGENCY: Federal Communications Commission

ACTION: Final rule; termination of docketed proceedings.

SUMMARY: The Federal Communications Commission has terminated the stale or moot docketed proceedings as set forth in the Order adopted by the Commission on December 21, 2001, and released January 11, 2002. The Commission has determined that no further action by the Commission is required in the proceedings.

DATES: These docket proceedings are terminated effective on January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Consumer Information Bureau, (202) 418–0294.

SUPPLEMENTARY INFORMATION: 1. We have reviewed the docket proceedings listed in the Appendix, and have determined that the dockets should be terminated. None of the dockets have any outstanding issues. The matters at issue in these proceedings were resolved by the issuance of final orders that were not subject to judicial review, or if subject to judicial review, were affirmed and the court's mandate was issued. Therefore, no further action by the Commission is required in the dockets listed in the attached Appendix, and they are hereby deemed terminated.

2. Accordingly, pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j), *it is ordered* that the docketed proceedings set forth in the Appendix are terminated, effective on January 11, 2002.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

APPENDIX

Docket No.	Subject matter	Action	Cite
CC 85–89	Preemption of State Entry Regulation in the Public Land Mobile Service	MO	2 FCC Rcd 6434
CC 85–93	Tariff FCC No. 3 (Transmittal Nos. 197, 208 & 209); Tariff FCC No. 38 (Transmittal Nos. 445 and 455); Tariff FCC No. 41 (Transmittal Nos. 742 and 753).	MO	5 FCC Rcd 2573
CC 86–1	WATS-Related and Other Amendments of Part 69 of the Commission's Rules	MO	7 FCC Rcd 5644
CC 86–164	Amendment of the Commission's Rules To Simplify Individual Licensing Procedures in the Domestic Public Air-Ground Radiotelephone Service.	RO	51 FR 39754
CC 86–165	Amendment of the Commission's Rules To Simplify the Separate Subsidiary Reporting Requirement in the Domestic Public Cellular Radio Telecommunications Service.	RO	51 FR 37022
CC 87–120	In the Matter of Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services.	OR	57 FR 37105
CC 87–274	Amendment of Section 22.901(D) of the Commission's Rules To Eliminate Commission Review of Capitalization Plans for Mobile Radio Cellular Systems.	RO	53 FR 23765
CC 88–326	In the Matter of Access Tariff Filing Schedules	RO	55 FR 6989
CC 88–471	In the Matter of Tariff F.C.C. No. 15—Competitive Pricing Plans; Holiday Rate Plan. (Transmittal No. 1215).	ON	5 FCC Rcd 7504
CC 91–141	Expanded Interconnection With Local Telephone Company Facilities	ON	13 FCC Rcd 16102
CC 91–213	MTS and WATS Market Structure/Transport Rate Structure and Pricing	RO	13 FCC Rcd 6332
CC 91–328	CPS Operator Services, Inc. TOCSIA Informational Tariffs	OR	DA 91–1548
CC 91–64	Amendment of Equal Access Balloting and Carrier Selection Rules To Require That Interexchange Carriers Obtain Written Customer Authorization Before Submitting Primary Interchange Carrier Selections.	OR	8 FCC Rcd 3215
CC 92–135	Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation	ON	12 FCC Rcd 2259
CC 92–24	Local Exchange Carrier Line Information Database—Open Network Architecture	OR	8 FCC Rcd 8118
CC 93–162	Ameritech Operating Companies Revisions to Tariff FCC No. 2; Bell Atlantic Telephone Companies Revisions to Tariff FCC No. 1; Bellsouth Telecommunications Inc. Revisions to Tariff FCC No. 1, etc.	OR	14 FCC Rcd 987
CC 93–179	Price Cap Regulation of Local Exchange Carriers; Rate of Return Sharing and Lower Formula Adjustment.	OR	10 FCC Rcd 11979

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
CC 94–157	Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690; NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328.	OR	12 FCC Rcd 18724
CC 95–133	AT&T Contract Tariff No. 374	OR	DA 95–2142
CC 95–146	AT&T Communications Contract Tariff No. 360	OR	10 FCC Rcd 1379
CC 95–80	AT&T Communications Contract Tariff No. 360	OR	11 FCC Rcd 3194
CC 96–150	Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.	ON	15 FCC Rcd 1161
CC 96–152	Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services.	OR	14 FCC Rcd 19259
CC 96–187	Implementation of a Section of the Telecommunications Act of 1996	RO	62 FR 5757
CC 96–22	Responsible Accounting Officer Letter 20, Uniform Accounting for Postretirement Benefits Other Than Pensions in Part 32 Amendments to Part 65, Interstate Rate of Return Precription Procedures A.	RO	62 FR 15117
CC 96–23	Revision of Filing Requirements	RO	62 FR 5160
CC 96–237	Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996	OR	65 FR 26203
CC 97–11	Implementation of Section 402(B)(2)(A) of the Telecommunications Act of 1996	RO	64 FR 39938
CC 98–103	In the Matter of SBC Communications Inc. Pacific Bell Telephone Company Pacific Transmittal No. 1986.	MO	13 FCC Rcd 23667
CC 98–108	In the Matter of Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada	ON	14 FCC Rcd 8077
CC 98–117	In the Matter of 1998 Biennial Regulatory Review—Review of Armis Reporting Requirements	RO	14 FCC Rcd 11443
CC 98–131	1998 Biennial Regulatory Review—Part 61 of the Commission's Rules and Related Tariffing Requirements.	RO	64 FR 46584
CC 98–137	In the Matter of 1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers.	ON	66 FR 13690
CC 98–14	In the Matter of Number Portability Query Services	MO	14 FCC Rcd 1664
CC 98–157	In the Matter of Petition of US West Communications, Inc. for Forbearance From Regulation ASA Dominant Carrier in the Phoenix, Arizona MS.	MO	14 FCC Rcd 19947
CC 98–161	In the Matter of BellSouth Telecommunications, Inc	MO	13 FCC Rcd 23667
CC 98–199	In the Matter of BellSouth Telecommunications, Inc. F.C.C. Tariff No. 1 for Provision of Local Number Portability Database Services.	OR	14 FCC Rcd 1320
CC 98–210	Fidelity Telephone Company and Bourbeuse Telephone Company Joint Applications for Consent to Assignment of Authority Under Section 214 of the Communications Act.	MO	13 FCC Rcd 22899
CC 98–25	Application for Authority, Pursuant to Part of the Commission's Rules, to Transfer Control of Licenses Controlled By Southern New England.	MO	13 FCC Rcd 21292
CC 98–81	In the Matter of 1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements.	RO	13 FCC Rcd 21625
CC 98–91	Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief From Regulation Pursuant to Section of the Telecommunications Act of 1996 and 47 U.S.C. for ADSL Infrastructure and Service.	OR	66 FR 2336
CC 98–92	Petition for Preemption of Tennessee Code Annotated and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority To Provide Service in Tennessee Rural LEC Service Areas.	MO	16 FCC Rcd 1247
CC 98–94	In the Matter of 1998 Biennial Regulatory Review—Testing New Technology	ST	14 FCC Rcd 6065
CC 99–249	In the Matter of Low-Volume Long-Distance Users	OR	15 FCC Rcd 23614
CC 99–316	In the Matter of National Exchange Carrier Association, Inc	OR	65 FR 64892
CS 94–48	Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992.	RT	59 FR 64657
CS 95–61	Implementation of Section of the Cable Television Consumer Protection and Competition of 1992—Annual Assessment of the Status of Competition in the Market for Delivery of Video Prog.	RT	61 FR 1932
CS 96–46	Implementation of Section 302 of the Telecommunications Act of 1996	OR	65 FR 375
CS 98–201	In the Matter of Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.	ON	64 FR 73429
CS 98–61	In the Matter of 1998 Biennial Regulatory Review—Annual Report of Cable Television System, Form 325, Filed Pursuant to Section of the Commission's Rules.	OR	15 FCC Rcd 9707
ET 93–40	Allocation of the 219–220 Band for Use by the Amateur Radio Service	MO	61 FR 15382
ET 94–124	Amendment of Part 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHZ for New Radio Applications.	MO	65 FR 38431
ET 96–20	Amendment of Parts 2 and 25 of the Commission's Rules to Allocate the 13.75–14.0 GHZ Band to the Fixed-Satelite Service.	RO	61 FR 52301
ET 96–256	Amendment of the Commission's Rules to Revise the Experimental Radio Service Regulations.	RO	63 FR 64199
ET 97–206	In the Matter of Technical Requirements To Enable Blocking of Video Programming Based on Program Ratings.	RO	63 FR 20131
ET 98–197	Amendment of Parts of the Commission's Rules Regarding the Radionavigation Service at 31.8–32.3 GHz.	RO	65 FR 60108
ET 99–254	In the Matter of Closed Captioning Requirements for Digital Television Receivers	RO	65 FR 58467
ET 99–261	In the Matter of Amendment of Part of the Commission's Rules to Allocate Additional Spectrum to the Inter-Satellite, Fixed, and Mobile Services and to Permit Unlicensed Devices to Use Certain Segments in the 50.2–50.4 GHz and 51.4–71.0.	RO	66 FR 7402
FO 91–171	Inquiry into Possible Technical Improvements in the Emergency Broadcasting System	RO	64 FR 5950

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
FO 91–301	Amendment of Part 73, Subpart G. of the Commission's Rules Regarding the Emergency Broadcast System.	RO	64 FR 5950
GC 91–119	Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in Which the Commission is a Party.	MO	57 FR 32180
GC 97–113	Electronic Filing of Documents in Rulemaking Proceedings	MO	63 FR 56090
GN 84–467	In the Matter of Preparation for an International Telecommunications Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605–1705 kHz Band.	OR	53 FR 26612
GN 85–172	In the Matter of Further Sharing of the UHF Television Band by Private Land Mobile Radio Services.	OR	52 FR 43205
GN 88–441	In the Matter of Technical compatibility protocol standards for equipment operating in the 800 MHz public safety bands.	OR	55 FR 4888
GN 89–554	In the Matter of an Inquiry Relating to Preparation for the International Telecommunication Union World Administrative Radio Conference for Dealing With Frequency Allocations in Certain parts of the Spectrum.	RT	56 FR 31095
GN 90–357	Amendment of the Rules With Regard to the Establishment and Regulation of New Digital Audio Radio Services.	MO	63 FR 24126
GN 93–252	Implementaiton of Sections 3(N) and 332 of the Communications Act—Regulatory Treatment of Mobile Services.	ON	66 FR 13022
GN 94–90	Eligibility for Specialized Mobile Radio Services and Radio Services in the 220–222 MHZ Land Mobile Band and Use of Radio Dispatch Communications.	MO	12 FCC Rcd 9962
IB 97–142	Rules and Policies on Foreign Participation in the U.S. Telecommunications Market	PN; OR	15 FCC Rcd 21945; 65 FR 60113
IB 98–212	AT&T Corporation and British Telecommunications PLC	MO	14 FCC Rcd 19140
MD 92–92	Establishment of Systems of Records Exempt Under the Privacy Act	RO	58 FR 11549
MD 94–19	Implementation of Section 9 of the Communications Act—Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year.	MO	62 FR 39450
MD 96–186	Amendment of Part 1 of the Commission's Rules, Pertaining to the Schedule of Annual Regulatory Fees for Mass Media Services.	RO	62 FR 59822
MD 98–200	In the Matter of Assessment and Collection of Regulatory Fees For Fiscal year 1999	MO	65 FR 78989
MM 85–91	Amendment of the Commission's Rules To Expand the Use of Automatic Transmission Systems at AM, FM and Television Broadcast Stations.	RO	51 FR 1374
MM 85–126	Review of Technical and Operational Requirements: Broadcast Remote Pickup Service; and Low Power Auxiliary Stations.	RO	51 FR 4599
MM 86–110	Amendment of Part 73 of the Commission's Rules Regarding Telecommunications Transmissions in the Vertical Blanking Interval.	RO	51 FR 34620
MM 87–267	Review of Technical Assignment Criteria for AM Broadcast Service	MO	65 FR 59751
MM 87–268	Institute Inquiry on Issues Relating to the Introduction of Advanced Television Technologies (e.g., HDTV).	OR	FCC 00–59
MM 91–122	Commission Policies Regarding Spousal Attribution	ST	57 FR 8845
MM 91–168	Codification of the Commission's Political Programming Policies	MO	9 FCC Rcd 7919
MM 91–204	For Renewal of License of Station KUCB(FM); for Construction Permit for a New FM Station Des Moines, IA.	MO	FCC 92M–264
MM 92–304	Renewal Reporting Requirements for Full Power, Commercial AM, FM and TV Broadcast Stations.	OR	58 FR 48323
MM 94–149	Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities	MO	64 FR 56974
MM 94–34	Implementation of Commission's Equal Employment Opportunity Rules	RT	59 FR 53363
MM 95–176	Closed Captioning and Video Description of Video Programming	OR	16 FCC Rcd 5067
PR 84–232	In the Matter of Future Public Safety Telecommunications	OR	50 FR 42573
PR 87–5	Amendment of Footnote 3 of the Rules To Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625–952.8375 MHZ Band.	MO	54 FR 19836
PR 89–552	Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220–222 MHZ Band by the Private Land Mobile Radio Services.	MO	15 FCC Rcd 13924
PR 89–553	Modification of the Rules Governing Multiple Sites for Specialized Mobile Radio Service Systems in Rural Markets.	MO	65 FR 24419
PR 90–315	Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations	MO	8 FCC Rcd 3156
PR 91–111	Miscellaneous Amendments to Part 80 of the Rules Governing the Maritime Radio Services	OR	57 FR 26778
PR 91–167	Amendment of the Maritime Services Rules (Part 80) To Permit VHF Marine Channel 9 To Be Used as a Second Calling Channel.	RO	57 FR 19552
PR 93–61	Amendment of Part 90 of the Rules To Adopt Regulations for Automatic 16 Vehicle Monitoring Systems.	ON	14 FCC Rcd 1339
PR 94–103	Petition for Authority To Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii.	RO	10 FCC Rcd 7872
PR 94–104	Petition To Extend State Authority Over Rate and Entry Regulation of All Commerical Mobile Radio Services.	RO	10 FCC Rcd 7824
PR 94–105	Petition To Retain Regulatory Authority Over Intrastate Cellular Service Rates (Accompanied by Request for Proprietary Treatment of Documents Used in Support of Petition To Retain Regulatory Authority Over Intrastate.	OR	11 FCC Rcd 796
PR 94–106	Petition To Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut.	OR	11 FCC Rcd 848

APPENDIX—Continued

Docket No.	Subject matter	Action	Cite
PR 94–107	Petition for Authority To Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana.	RO	10 FCC Rcd 7898
PR 94–108	Petition To Extend Rate Regulation	RO	10 FCC Rcd 8187
PR 94–109	Statement of Intention To Preserve Its Right for Future Rate and Market Entry Regulation of the Commercial Mobile Radio Services.	OR	10 FCC Rcd 12427
PR 94–110	Petition for Authority To Maintain Current Regulation of Rates and Market Entry	PN	DA 94–1043
WT 00–130	Request Amendment of the Commission's Rules to seek consent to Transfer Control of, or Assign,Broadband PCS and LMDS Licenses.	MO	DA 00–2443
WT 00–81	Application of Southwestern Bell Mobile Systems, Inc. and Alloy LLC for Authority, Pursuant to Part of the Commission's Rules, To Transfer Control of a License Controlled by SBC Communications Inc.	MO	15 FCC Rcd 25459
WT 95–11	In the Matter of the Application of Herbert L. Schoenbohm for Amateur Station and Operator License, Kingshill, Virgin Islands.	OR	13 FCC Rcd 23774
WT 95–35	Applications of George E. Rodgers for Amateur Station and Operator Licenses	MO	FCC 94M–121
WT 95–5	Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures.	MO	65 FR 43349
WT 95–56	Amendment of the Commission's Rules Concerning Low Power and Automated Maritime Telecommunications System Operations in the 216–217 MHZ Band.	MO	63 FR 24126
WT 96–148	Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees.	SRO	FCC 00–141
WT 96–162	Amendment of the Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commerical Mobile Radio Services.	OR	14 FCC Rcd 414
WT 97–150	Commission Opens Inquiry on Competitive Bidding Process for Report to Congress	RT	13 FCC Rcd 9601
WT 98–228	Commission Opens Filing Window For Commercial Operator License Examination Managers	PN	DA 98–2537
WT 99–263	Petition of the Wireless Consumers Alliance, Inc. for a Declaratory Ruling concerning the provisions of the Communications Act of 1934.	ON	16 FCC Rcd 5618
WT 99–355	SBC Communications Inc. and RadioFone, Inc. seek FCC Consent to Transfer Control or Assign RadioFone's Licenses to SBC.	PN	15 FCC Rcd 4441
WT 99–364	Triton Communications, L.L.C. and RCC Holdings, Inc. Seek Consent For Assignment	PN	DA 00–309
WT 99–365	In the Matter of Paging Network, Inc. and Arch Communications Group, Inc. for Transfers of Control of Their Radio Licenses Location.	OR	16 FCC Rcd 1026
WT 00–207	In the Matter of Petition for Determination of the Public Interest Under Section of the Communications Act 1934, As Amended.	PN	DA 00–2397
WT 00–38	Bell Atlantic, GTE, and ALLTEL Seek FCC Consent For Assignment and Transfer of Control of Wireless Licenses to Comply with Sopectrum Cap Rules and Department of Justice Consent Decree Regarding Pending Applications of Bell Atlantic, GTE, and Vodafone Airt.	PN	DA 00–502

Action: ET Order Granting Extention of. Time .
MO Memorandum Opinion and Order.
ON Order on Reconsideration.
OR Order.
PN Public Notice.
RO Report and Order.
RT Report.
SRO Second Report and Order.
ST Statement.

[FR Doc. 02–1859 Filed 1–24–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[CC 96–45; FCC 01–376]

Implementation of Interim Filing Procedures for Filings of Requests for Review

AGENCY: Federal Communications Commission.

ACTION: Temporary waiver of procedural requirements.

SUMMARY: In this document, the Commission waives its procedures for filing requests for review from decisions of the Universal Service Administrative Company (Administrator) and petitions for reconsideration and applications for review that arise from such proceedings on an emergency, interim basis. We extend the period for filing a request for review, or applications for review arising from such proceedings, from the current 30 day period to 60 days, provide applicants with the option of electronic filing (via either electronic mail or facsimile) for requests for review and petitions for reconsideration or applications for review that arise from such proceedings, and provide parties that have mailed such pleadings on or after September 12, 2001 with an opportunity to refile their pleadings electronically. These measures will help to ensure continued timely processing of such filings and to avoid prejudice to parties as a result of the recent disruptions in mail service.

EFFECTIVE DATE: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, (202) 418–7369.

SUPPLEMENTARY INFORMATION: This Order, adopted December 20, 2001, and released December 26, 2001, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. The complete text is available through 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 at qualexint@aol.com.

Synopsis of Order

1. Effective upon publication in the **Federal Register** and until further notice, we waive our rules as follows. First, requests for review filed pursuant to §§ 54.719 through 54.725, 47 CFR 54.719 through 54.725, and any applications for review arising from such proceedings shall be filed within 60 days of the issuance of the decision being reviewed. This 60-day period will be applicable to all such pleadings that were required to be filed on or after September 12, 2001 and were received by the Commission on or after September 12, 2001. Second, parties filing requests for review, or petitions for reconsideration or applications for review of decisions on requests for review, may, at their option, file their pleadings electronically, either by electronic mail or facsimile.

2. If filed by electronic mail, pleadings shall be filed at the following e-mail address: *CCBSecretary@fcc.gov.* Documents filed via electronic mail may be submitted in Adobe Portable Document Format (PDF), Word, WordPerfect, or any other widely used word processing format. The Commission will automatically reply to all incoming e-mails to confirm receipt. If filed by facsimile, pleadings shall be faxed to 202–418–0187. The fax transmission should include a cover sheet listing contact name, phone number, and, if available, an e-mail address. Pleadings submitted by electronic mail will be considered filed on a business day if they are received at the Commission on that day at any time up to 12 a.m. Pleadings received after that time will be considered received on the next business day. Similarly, facsimile transmissions will be considered filed on a business day if the complete transmission is received by any time up to 12 a.m.

3. We further provide that pleadings of the type described in paragraph 1 above that were due on or after September 12, 2001 and that were submitted by non-electronic means between September 12, 2001 and the effective date of this order may be refiled electronically within 30 days of the effective date of this order in accordance with the procedures specified in the preceding paragraph. Pleadings filed electronically pursuant to this paragraph shall be accompanied by a signed affidavit or a declaration pursuant to Commission rule § 1.16 stating that the previously filed pleading was timely filed, and providing the date the pleading was originally mailed to the Commission, and by what means. For this purpose only, the original pleading will be considered filed as of the date that it was mailed.

4. Accordingly, *it is ordered* that, pursuant to the authority of sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), the Commission ADOPTS the procedural requirements set forth in this order and waives any contrary requirements.

5. *It is further ordered* that the waiver shall become effective upon publication in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–873 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–105, WT Docket No. 00–110; FCC 01–351]

Public Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the public information collection contained in the Commission's decision regarding the use of N11 codes and other abbreviated emergency dialing arrangements. Therefore, the Commission announces that those regulations containing public information collections, including 47 CFR 64.3002, are effective February 13, 2002.

DATES: Section 64.3002, published at 67 FR 1649, January 14, 2002, is effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: David Siel and Susan Kimmel, 202–418–1310.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for the reporting requirement in its Fifth Report and Order in CC Docket No. 92–105, First Report and Order in WT Docket No. 00–110, and Memorandum Opinion and Order in CC docket No. 92–105, and WT Docket No. 00–110 (known collectively as the Order), which appears at 67 FR 1643, January 14, 2002. The effective date of the rules and regulations adopted in that decision was published as February 13, 2002, except for § 64.3002, which contains modified information collection requirements that will not be effective until approved by the Office of Management and Budget. Through this document, the Commission announces that it has received this approval (OMB Control No.: 3060–0954, Expiration Date: 06/30/02) and that § 64.3002 and other non-codified requirements adopted in the Order will also be effective on February 13, 2002. Pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1693 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 01–344]

The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses the rules regarding per-call compensation for payphone calls to ensure that payphone service providers (PSPs) are fairly compensated for all completed, coinless calls made from payphones. The Commission addresses the key issues raised in the petitions for declaratory ruling, reconsideration and/or clarification, and clarifies, on its own motion, certain aspects of the per-call compensation rules.

DATES: Effective February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Tania Cho, (202) 418–2320; fax (202)

418–2345; TTY (202) 418–0484; email at *tcho@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Order on Reconsideration and Order on Clarification* in CC Docket No. 96–128, FCC 01–344, adopted and released on November 21, 2001. The full text of the item is available for inspection and copying during the hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, or copies may be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Suite CY–B402, Washington, DC 20554, phone (202) 863–2893. This Order contains no new or modified information collection subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

Synopsis of the Third Order on Reconsideration and Order on Clarification

To implement Section 276 of the Telecommunications Act of 1996, the Commission has adopted several rules that define the relationship between PSPs and carriers in the call path in order to ensure that PSPs are adequately compensated for calls placed from payphones. In the *First Payphone Order,* 61 FR 52309, October 7, 1996, the Commission concluded that the interexchange carrier (IXC), as the primary beneficiary of payphone calls, should compensate the PSP. The Commission also recognized that a reseller lacking its own facilities does not have the ability to track calls, and that the facilities-based carrier should therefore pay compensation to the PSP. A requirement to track, or arrange for tracking of, compensable calls was also established for the underlying IXC, and the IXC was permitted to recover the cost of such tracking from the reseller. In the *Payphone Order on Reconsideration,* 61 FR 65341, December 12, 1996, the Commission modified its rules to provide that switch-based resellers (SBRs) are responsible for paying compensation directly to PSPs. In the *Coding Digit Waiver Order,* 63 FR 26497, May 13, 1998, the Common Carrier Bureau responded to PSP complaints that IXCs refused to identify SBRs by clarifying that when SBRs identified themselves to the first facilities-based IXC as responsible for paying compensation, the IXC was obligated to provide this information to the PSP.

On April 5, 2001, the Commission released the *Second Order on Reconsideration,* 66 FR 21105, April 27, 2001, which modified the payphone compensation rules. The modified rules provided that the first facilities-based IXC to which a LEC routes a coinless payphone call must (1) Compensate the PSP for the completed call; (2) track or arrange for tracking of all compensable calls; and (3) send to the PSP call completion information to enable the PSP to verify the accuracy of compensation it receives for coinless, compensable calls and/or to bill the underlying facilities-based carrier. The first IXC may then seek reimbursement from the switchless or switch-based reseller ultimately responsible for the compensation.

In this *Third Order on Reconsideration and Order on Clarification,* we decline to modify the rules as established in the *Second Order on Reconsideration.* We also reaffirm that, for purposes of payphone compensation, only calls that are answered by the called party are ''completed'' and thus compensable. Further, we clarify that the Commission supports the preservation and establishment of direct relationships and agreements between PSPs and SBRs for tracking and payment of payphone compensation, and that the liability of the first facilities-based IXC is limited to the extent that SBRs enter into such direct relationships. We also reiterate that the Commission did not, by revising the payphone compensation rules, intend to nullify any current or future contractual arrangements. Finally, we clarify that carriers are only required to report to PSPs calls that are completed, and thus compensable.

Ordering Clause

Pursuant to the authority contained in Sections 1, 4(i), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 276, the Bulletins Petition for Clarification is denied to the extent described herein; WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration is granted in part and denied in part to the extent described herein; AT&T Petition for Clarification and/or Reconsideration is denied to the extent described herein; and Global Crossing Telecommunications, Inc. Petition for Reconsideration and Clarification is denied, to the extent described herein.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1810 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–203; FCC 01–306]

RIN 4213

The Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the Commission's amended rules to require that noncommercial educational (''NCE'') television licensees provide a nonprofit, noncommercial educational service. We hope that this clarifies the manner in which NCE licensees may use their excess DTV capacity for remunerative purposes.

DATES: Sections 73.621(i); 73.624(g) introductory text and (g)(2)(ii); 73.642(a), (b) and (e); and 73.644(a) became effective on December 26, 2001. Section 73.624(g)(2)(i) is not yet effective. The Commission will release a document in the **Federal Register** announcing the effective date of this section.

FOR FURTHER INFORMATION CONTACT: Jane Gross, Policy and Rules Division, Mass Media Bureau (202) 418–2130, or *jgross@fcc.gov.*

SUPPLEMENTARY INFORMATION: 1. On October 17, 2001, the Commission released Report & Order (''*R&O*'') clarifying the manner in which noncommercial educational (''NCE'') television licensees may use their excess digital television (''DTV'') capacity for remunerative purposes. In the Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees, MM Docket No. 98–203, 66 FR 58973 (November 26, 2001). Among other things, the Commission amended § 73.621 of its rules to apply to the entire digital bitstream, including ancillary or supplementary services, thereby requiring NCE licensees to use their digital capacity primarily for a noncommercial, nonprofit, educational broadcast service. The Commission also amended §§ 73.642 (a), (b), (e) and § 73.644(a) of its rules to clarify that NCE licenses may offer subscription services on their excess digital capacity. When it amended these rules, the Commission ordered that the amended rules would ''be effective the later of

either thirty days after publication in the **Federal Register**, or upon receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Public Law 104–121'' (summary of *R&O* paragraph 49).

2. Under current General Accounting Office (''GAO'') procedures, submission to the GAO or publication in the **Federal Register** is sufficient to satisfy the requirements of the Congressional Review Act (formerly known as the Contract with America Advancement Act). The amendments to §§ 73.621, 73.642 and 73.644 of the Commission's rules were submitted to the GAO and to Congress on November 26, 2001, the same day that they were published in the **Federal Register**. Thus, pursuant to the Administrative Procedure Act, the amended §§ 73.621, 73.642 and 73.644 of the Commission's rules will be effective on December 26, 2001, thirty days after publication in the **Federal Register**.

3. Finally, in the same proceeding the Commission amended §§ 73.624(g)(1), (g)(2)(i), and (g)(2)(ii) of its rules to apply to NCE licensees the program for assessing and collecting fees upon feeable ancillary or supplementary services provided on their DTV capacity that it had previously established for commercial licensees, as required by the Telecommunications Act of 1996 (''1996 Act''). Public Law 104–104, 110 Stat. 56 section 201 (1996), codified at 47 U.S.C. 336. In addition, NCE licensees will be required to maintain documentation sufficient to show, at renewal time and in response to any complaint, compliance with the requirement to use their entire bitstream primarily for nonprofit, noncommercial, educational broadcast services on a weekly basis (summary of *R&O* paragraph 16). These requirements were analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Thus, implementation of these requirements is subject to approval by the Office of Management and Budget as prescribed by the PRA (summary of *R&O* paragraphs 46, 50 and 66). The Commission will publish a notice in the **Federal Register** when this approval is received.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1811 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005244–2011–02; I.D. No. 092401D]

RIN 0648–AP08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2002 Specifications and Foreign Fishing Restrictions

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

ACTION: Final rule; specifications for 2002.

SUMMARY: NMFS announces final initial specifications for the 2002 fishing year for Atlantic mackerel, squid, and butterfish (MSB); including an in-season adjustment provision for the 2002 mackerel joint venture processing (JVP) annual specification. This action also specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III. The intent of this final rule is to promote the development and conservation of the MSB resource.

DATES: This rule is effective January 25, 2002. The quotas in Tables 1 and 2 for *Loligo* and *Illex* squid, Atlantic mackerel, and butterfish are effective January 25, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Essential Fish Habitat Assessment, are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is accessible via the Internet at *http://www.nero.nmfs.gov.*

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of quota set-asides to be used for research purposes.

Proposed 2002 initial specifications were published on October 23, 2001 (66 FR 53575). Public comments were accepted through November 23, 2001. The final specifications are unchanged from those that were proposed except that they reflect the research set-aside (RSA) allocations that have been recommended to the NOAA Grants Office for funding. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

2002 Final Initial Specifications

The following table contains the final initial specifications and RSA for the 2002 MSB fisheries as recommended by the Mid-Atlantic Fishery Management Council (Council).

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
Max OY	26,000	24,000	N/A[1]	16,000
ABC	17,000	24,000	347,000	7,200
IOY	16,898[5]	24,000	85,000[2]	5,900
DAH	16,898[5]	24,000	85,000[3]	5,900

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2002—Continued

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	*Illex*		
DAP	16,898[5]	24,000	50,000	5,900
JVP	0	0	20,000[4]	0
TALFF	0	0	0	0
RSA	102	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 30,000 mt at discretion of Regional Administrator.
[5] Excludes 102 mt for RSA.

Atlantic Mackerel

This final rule specifies an Atlantic mackerel JVP of 20,000 mt for the 2002 fishery, with a possible increase of up to 10,000 mt (for a total JVP of up to 30,000 mt) later in the fishing year, should additional applications for JVP be received. This adjustment would be made by NMFS, through publication of notification in the **Federal Register**, following consultation with the Council. The action also specifies an Atlantic mackerel DAP of 50,000 mt and a DAH of 85,000 mt, which includes a 15,000–mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2002 Atlantic mackerel fishery, as follows: (1) JVPs would be allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but it should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JVP allocation for 2002 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Research Set-Asides

Framework Adjustment 1 to the FMP allows the specification of quota set-asides to be used for research purposes. The Council recommended that up to 2 percent of the 2002 IOY be set aside for scientific research purposes for each of the species in the FMP. A Request for Proposals was published to solicit proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001. On November 8, 2001, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panelist comments, two *Loligo* squid project proposals were recommended for approval and forwarded to the NOAA Grants Office for award. Consistent with the recommendations, the quotas in this final rule have been adjusted to reflect the projects recommended for approval. If the awards are not made by the NOAA Grants Office for any reason, NMFS will publish an additional rule to restore the unused set-aside amount to the annual quota.

Distribution of the Annual *Loligo* Squid Quota

Due to the recommendation of two research projects that would utilize *Loligo* squid RSA, this final rule adjusts the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2002 quarterly allocations are as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons (mt)	Research Set-aside (mt)
I (Jan—Mar)	33.23	5,615	N/A
II (Apr—Jun)	17.61	2,976	N/A
III (Jul—Sep)	17.3	2,923	N/A
IV (Oct—Dec)	31.86	5,384	N/A
Total	100	16,898	102

Carry-over of *Loligo* Squid Quarterly Quota Underages

For the 2001 fishing year, by default, quarterly underages carry over into Quarter IV because the directed fishery in Quarter IV does not close until 95 percent of the total annual quota has been harvested. This final rule modifies the method for carrying over *Loligo* squid quarterly underages for 2002 and subsequent fishing years by adding a provision stating that, in the event that the Quarter I landings for *Loligo* squid are less than 70 percent of the Quarter I allocation, the underage below 70 percent would be applied to Quarter III. Underages from Quarters II and III would continue to be added to Quarter IV by default, based on the 95–percent closure rule mentioned above.

Comments and Responses

Three commenters made five comments on the proposed specifications.

Comment 1: One commenter supported the proposed allocation of Atlantic mackerel JVP.

Response 1: This final rule implements the proposed allocation of Atlantic mackerel JVP.

Comment 2: One commenter supported the proposed zero allocation of Atlantic mackerel TALFF.

Response 2: This final rule implements the proposed zero allocation of Atlantic mackerel TALFF.

Comment 3: Two commenters instead proposed specifying TALFF at 5,000 mt and a possible JVP increase of up to 20,000 mt (for a total JVP of up to 40,000 mt) later in the fishing year.

Response 3: The question of whether or not to recommend a level of optimum yield that provided for an allocation of TALFF, other than zero, was reviewed and discussed by the Council at length before it made its final recommendation to the National Marine Fisheries Service. After extended debate, the Council recommended a level of OY that was a reduction of the maximum sustainable yield based upon all relevant social, economic, and ecological factors. The Council firmly believed that the specification of the OY at a level that resulted in a zero TALFF would provide the greatest overall benefit to the Nation, because it would enhance development of the U.S. domestic mackerel fishery, which is one of the principal objectives of the Magnuson-Stevens Fishery Conservation and Management Act. Even though a zero TALFF would result in an economic loss to the Nation from the loss of any poundage fees collected from foreign fishing vessel owners for allocations of TALFF, the Council was concerned that allocations of TALFF would compete directly with mackerel produced by United States processors for foreign markets. Such competition would impede the expansion of domestic mackerel processing facilities. The expansion of domestic mackerel processing facilities would enable the domestic fleet to use more of their harvesting capacity to land mackerel at shoreside facilities.

Comment 4: One commenter opposed the Atlantic mackerel JVP specification of 20,000 mt for the 2002 fishery because he believes shore-based processors would be negatively affected by foreign joint ventures. The commenter believes the foreign at-sea processors can operate at lower cost than U.S. shoreside plants in part due to U.S. legal requirements such as Hazard Analysis Critical Control Point standards.

Response 4: The Council's annual processor survey indicates that the capacity of the domestic fleet to harvest mackerel greatly exceeds the domestic processors' capacity to process mackerel. As a result, the Council recommended, and NMFS is implementing, the 20,000–mt JVP allocation to provide additional opportunity for U.S. vessels to sell mackerel.

Comment 5: One commenter stated that NMFS was utilizing outdated data to set the 2002 *Loligo* squid quota specification. The commenter recommended a *Loligo* quota increase, either in this rule or through an in-season adjustment to the annual specifications.

Response 5: The commenter is correct that the most recent stock assessment for *Loligo* squid (29th Northeast Regional Stock Assessment Workshop (SAW–29)) was completed some time ago, in August 1999. However, the Council and NMFS did not rely solely on that information in recommending the 2002 quota. The Council and NMFS also utilized the most recent survey data for *Loligo* squid, which indicates that abundance of this species has increased significantly since SAW–29 was conducted. Estimates of biomass based on NMFS' Northeast Fisheries Science Center fall 1999, spring 2000, and fall 2000 survey indices for *Loligo* squid indicate that the stock is currently at or near the biomass level that would produce maximum sustainable yield (B_{msy}). Based on the assumption that the stock would be at or near B_{msy} in 2001, the Council recommended, and NMFS implemented, an ABC specification for 2001 that is the yield associated with 75 percent of F_{msy} at B_{msy}, or 17,000 mt. Given the high survey index observed in the fall 2000 survey, the quota is being maintained at that level in 2002. The Council and NMFS may adjust the specifications through an in-season adjustment during the 2002 fishing year should the results of the 34th Northeast Regional Stock Assessment Workshop warrant that change.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA for this action. The FRFA includes comments on the IRFA, responses contained herein, and a summary of the analyses done in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

The reasons why action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Three comments were submitted on the proposed rule, but none of them were specific to the initial regulatory flexibility analysis. However, two individuals commented on the economic impacts of the measures on the fishing industry; NMFS has responded to those comments (3 and 4) in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

The numbers of potential fishing vessels in the 2002 fisheries are 395 for *Loligo* squid/butterfish, 77 for *Illex* squid, and 2,098 for Atlantic mackerel. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed ABC specifications of 347,000 mt and DAH of 95,000 mt for Atlantic mackerel, the DAH specifications of 24,000 mt for *Illex* squid, and the DAH specifications of 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The levels of landings allowed under the specifications for 2002 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of this action.

From 1996–2000, *Loligo* squid landings averaged 16,548 mt. If the 2002 DAH specification of 16,898 mt for *Loligo* squid is achieved, there would be a slight increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1996–2000.

This action modifies the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 70 percent of the Quarter I allocation would be applied to Quarter III. Previously, all underages from Quarter I were applied to Quarter IV because the directed *Loligo* fishery in Quarter IV does not close until 95 percent of the total annual quota is harvested. However, by making the underage available during Quarter III, *Loligo* squid permit holders will be able to fish during a time when the quarter may have otherwise been closed. This could potentially provide an added economic benefit to fishers during Quarter III. This provision will only shift a limited amount of quota from one period to another and does not modify the *Loligo* squid annual quota, so no overall change in revenue is expected.

Three non-selected alternatives were considered for the Atlantic mackerel fishery. The first was to set the 2002

specifications at the same level as 2001. The specifications under this alternative are the same as those established by this action, with the exception of IOY and TALFF. Under this alternative, the IOY specification would be slightly higher than the specification in the preferred alternative (88,000 mt) because TALFF would be specified at 3,000 mt. However, specifying TALFF at 3,000 mt would be inconsistent with the goal of further developing the U.S. domestic fishery for Atlantic mackerel. This alternative would have had no constraints and consequently no revenue impacts on the fishery because the proposed levels of harvest for Atlantic mackerel under this alternative have not been attained in recent years.

The second alternative for Atlantic mackerel was to set ABC at the long-term potential catch, or 134,000 mt. This alternative was found inconsistent with the FMP because it did not consider the variations in the status of the stock. The current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at 134,000 mt would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The potential level of foregone yield under this alternative was considered unacceptable.

The third alternative considered for mackerel eliminated the JVP allocation for 2002, which would lower the specification of IOY to 68,000 mt, also far in excess of recent landings. This alternative was rejected because JVPs allow U.S. harvesters to take Atlantic mackerel at levels in excess of current U.S. processing capacity. None of these alternatives were expected to constrain the mackerel fishery and they all were determined to have no impact on the revenues of participants in this fishery.

Two non-selected alternatives were considered for *Loligo* squid. The first would have set the ABC, DAH, DAP, and IOY at 13,000 mt, a 23.3–percent reduction from the 2001 level. This was the same level initially specified for the 2000 fishing year (an in-season adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt (65 FR 60118, October 10, 2000). If the 13,000–mt alternative were adopted for the 2002 fishing year, 132 of the 497 impacted vessels would experience a total gross revenue reduction of greater than 6 percent (all species combined). The remaining 365 vessels would experience a 4–percent or less reduction in revenue or an increase in revenue. The second alternative would have set ABC, DAH, DAP, and IOY at 11,700 mt. This would represent a 31–percent reduction in landings relative to 2000. Under this scenario, 170 of the 497 impacted vessels would experience a gross revenue reduction of greater than 6 percent (all species combined). The remaining 327 vessels would experience a 4–percent or less reduction in revenue, or an increase in revenue.

Two non-selected alternatives were considered for *Illex* squid. The first would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt and the second alternative would have set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. These specifications would be far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these non-selected specifications.

Two non-selected alternatives were considered for butterfish. The first would have set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second alternative set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed the specifications implemented by this final rule. Recent harvests in the butterfish fishery have been well below the level allowed by this final rule, so none of the alternatives would constrain or impact the industry. However, the non-selected alternatives could lead to overfishing of the stock and, thus, were rejected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides''. The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the mackerel, squid, and butterfish fisheries. The guide and this final rule will be available upon request (see **ADDRESSES**).

This final rule establishes annual and seasonal quotas for the managed species, which are used for the purpose of closing the fishery when the quotas are reached and which serve as the basis for issuing joint venture permits. The mackerel specifications have a foreign fishing component. Until the specifications are final, no foreign fishing permits to authorize joint ventures may be issued. A number of foreign fishing vessels operated in the EEZ in 2001. Some of these foreign vessels have remained in U.S. waters in anticipation of receiving foreign fishing permits authorizing joint ventures for Atlantic mackerel in 2002. Until the mackerel specification are finalized and these foreign vessels are permitted, domestic fishermen cannot deliver mackerel to these foreign vessels. This will have a negative economic impact on domestic fishermen. Therefore, with respect to the mackerel fishery, this final rule relieves a restriction and pursuant to 5 U.S.C. 553(d)(1) the 30–day delay in effectiveness does not apply.

In addition, if implementation of the quota provisions and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of the loligo squid fishery. The loligo squid fishery covered by this action is already underway. Landings data for loligo squid in previous years reflect that landings are highly variable and largely dependent on availability. Since the loligo squid fishery is now managed on a quarterly quota basis, the unpredictable nature of loligo squid landing could compromise the initial quarterly quota if no closure mechanism is in place due to a delay in the effectiveness of the loligo squid specification. Failure to implement timely closures could result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for the mackerel and loligo squid specifications and other management measures.

This final rule does not contain policies with federalism implications under Executive Order 13132.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 22, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.21, paragraph (f)(3) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2002, if commercial landings in Quarter I are determined to be less than 70 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 70 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 70 percent, or 20,000 lb (44,092 kg), would be reallocated to Quarter III. A balance of 30 percent, or 30,000 lb (66,139 kg), would remain in Quarter I).

* * * * *

[FR Doc. 02–1997 Filed 1–23–02; 1:26 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 17
Friday, January 25, 2002

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

RIN 3150–AG91

Specification of a Probability for Unlikely Features, Events and Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada, to define the term ''unlikely'' in quantitative terms. That is, it would be defined as a range of numerical values for use in determining whether a feature, event, or process (FEP) or sequence of events and processes should be excluded from certain required assessments. The NRC is proposing this amendment to clarify how it plans to implement two of the final environmental standards for Yucca Mountain issued by the U.S. Environmental Protection Agency (EPA). Specifically, EPA's final standards require the exclusion of ''unlikely'' FEPs, or sequences of events and processes, from the required assessments for the human intrusion and ground-water protection standards. In accordance with the Energy Policy Act of 1992, the NRC has adopted EPA's final standards in its recently published technical requirements for a potential geologic repository at Yucca Mountain.

DATES: The comment period expires April 10, 2002. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via NRC's interactive rulemaking website http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail cag@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room (PDR), Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737; or by email to: *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7285, e-mail: tjm3@nrc.gov; or Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203, e-mail: cwp@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2001 (66 FR 55732), the U.S. Nuclear Regulatory Commission (NRC) published its final rule, 10 CFR Part 63, governing disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada. These are the regulations that the U.S. Department of Energy (DOE) must meet in any license application for construction and operation of a potential repository. As mandated by the Energy Policy Act of 1992, Public Law 102–486 (EnPA), NRC's final rule adopts the radiation protection standards established by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 197 (66 FR 32074; June 13, 2001). EPA's standards for disposal include an individual protection standard (40 CFR 197.20); a human intrusion standard (40 CFR 197.25); and ground-water protection standards (40 CFR 197.30). These EPA standards have been incorporated into NRC's regulations at 10 CFR 63.311, 63.321, and 63.331, respectively.

DOE's performance assessments are required to consider the naturally occurring features, events, and processes (FEPs) that could affect the performance of a geologic repository (i.e., specific conditions or attributes of the geologic setting; degradation, deterioration, or alteration processes of engineered barriers; and interactions between natural and engineered barriers). EPA's standards include limits on what DOE must consider in performance assessments undertaken to determine whether the repository will perform in compliance with the standards (40 CFR 197.36). DOE's performance assessments shall not include consideration of ''very unlikely'' features, events or processes (FEPs), which EPA defines to be those FEPs that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. In addition, EPA's standards require NRC to exclude ''unlikely'' FEPs, or sequences of events and processes, from the required assessments for demonstrating compliance with the human intrusion and ground-water protection standards. EPA did not define unlikely FEPs in its standards, but, rather, left the specific probability of the unlikely FEPs for NRC to define.

The Commission explained in its rulemaking establishing Part 63 that it ''* * * fully supports excluding unlikely FEPs from analyses for estimating compliance with the standards for human intrusion and ground-water protection * * *,'' and that it ''* * * considers a frequency for unlikely FEPs would fall somewhere between 10^{-8} to 10^{-4} per year * * *,'' but that it had decided not to provide a specific quantitative value for defining unlikely FEPs in the final rule (66 FR 55734; November 2, 2001). Instead, the Commission stated that it ''* * *

plan[ned] to conduct an expedited rulemaking to quantitatively define the term ''unlikely.'' Consideration will be given to whether a range of values or a single specific value should be used as well as the appropriate numerical value(s). The expedited rulemaking will provide an opportunity for public comment to assist the Commission in determining an appropriate approach'' (66 FR 55734; November 2, 2001). This proposed rule initiates the rulemaking to quantitatively define the term ''unlikely'' promised by the Commission.

II. Discussion

EPA's standards for disposal include an individual protection standard; a human intrusion standard; and ground-water protection standards. EPA's standards also prescribe that DOE should exclude ''very unlikely'' FEPs from the performance assessments used to determine compliance with the three postclosure standards (i.e., individual protection, human intrusion, and ground-water protection). Unlike the broader purposes served by the performance assessment for the all-pathway individual protection standard, the performance assessments used to determine compliance with the human intrusion standard and the ground-water protection standards serve narrow, focused objectives. In the case of the performance assessment for human intrusion, the purpose is to evaluate the robustness of the repository system to the consequences of human intrusion. In the case of the performance assessment for ground-water protection, the purpose is to evaluate the degradation of the ground-water resource. Consistent with the specific purposes of these two standards, EPA prescribed specific conditions to be used in determining compliance with the human intrusion standard and the ground-water protection standards. For these two standards, EPA prescribed the exclusion of not only ''very unlikely'' FEPs, but also ''unlikely'' FEPs. Although EPA's final standards did not specify a numerical value to define unlikely FEPs in quantitative terms, the preamble to the standards stated that the exclusion of unlikely FEPs is intended to focus these assessments on the ''expected'' or ''likely'' performance of the repository.[1] This intent is consistent with the NRC approach of requiring the use of reasonable and prudently conservative assumptions in modeling exposure scenarios.

Under 10 CFR 63.321(b)(1), DOE must demonstrate the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion could occur without recognition by the drillers and ''* * * demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual receives no more than an annual dose of 0.15 mSv (15 mrem) as a result of a human intrusion, at or before 10,000 years after disposal.'' The elements of the stylized human intrusion scenario are specified by 10 CFR 63.322 and specifically direct DOE to assume that no releases are included which are caused by unlikely natural processes and events. With respect to the ground-water standards (10 CFR 63.331), DOE must demonstrate that there is a reasonable expectation that, for 10,000 years of undisturbed performance (i.e., 10,000 years during which the occurrence of unlikely FEPs do not disturb the repository) after disposal, releases of radionuclides from waste in the Yucca Mountain disposal system into the accessible environment will not cause the level of radioactivity in the representative volume of ground water to exceed the limits specified in a table attached to 10 CFR 63.331.

In assessing compliance with both the human intrusion standard and ground-water protection standards, 10 CFR 63.342 provides that unlikely FEPs, or sequences of events and processes, shall be excluded ''* * * upon prior Commission approval for the probability limit used for unlikely FEPs.'' Although the Commission could review and approve a probability limit in the context of its review of a potential DOE license application, it is proposing to set this limit in advance, through the rulemaking process, so that it will have the advantage of public views on this question, and so that DOE, interested participants, and the public will have knowledge, before the license application, of what probability the Commission would find acceptable.

The Commission has considered whether the probability for unlikely FEPs should be defined as a single value or a range of values. A single value would be used as a probability limit such that each FEP with a probability less than the specified limit should be considered unlikely. A probability range would be used to define the spread of probability (i.e., upper and lower values) that represents unlikely FEPs. Although both approaches specify an upper value for probability, a probability range provides a more complete description of the spread of probability that is identified with unlikely FEPs. The Commission is not aware of any disadvantages to using a range and therefore is specifying a probability range because it provides a better characterization of the range of probabilities associated with FEPs than what would be provided by a single number.

Assigning specific numerical values to a qualitative term such as ''unlikely'' is complicated by the subjective nature of this term. As a first step, the Commission found it useful to describe three broad categories to represent the entire probability range for what could occur at the Yucca Mountain repository site. These three categories are: (1) Very unlikely; (2) unlikely; and (3) likely. As a practical matter, the rationale for the quantitative range defining unlikely FEPs is easier to describe in terms of the categories of likely and very unlikely, because unlikely is bounded by these two categories. Very unlikely FEPs have been described in the EPA standards as FEPs with such low probability of occurrence that they need not be considered in any performance assessments for Yucca Mountain. As mentioned previously, the EPA standards quantitatively define very unlikely FEPs as those FEPs with less than a 0.01 percent chance of occurring within the 10,000 year compliance period (i.e., annual probability less than 10^{-8}). In a qualitative sense, likely FEPs are those FEPs that can be reasonably expected to occur during the 10,000 year compliance period. From a probabilistic perspective, any FEP with an annual probability of 10^{-4} or higher would have a high probability of occurring within the 10,000 year compliance period.[2] However, likely FEPs should include not only FEPs very likely to occur but also those reasonably likely to occur. Given uncertainties in estimating the occurrence of FEPs over a 10,000 year time period, the Commission believes a prudent decision is to consider FEPs with 10 percent or greater chance of occurring within the 10,000 year compliance period as likely FEPs. Thus, unlikely FEPs are defined as those FEPs with less than a 10

[1] For example, the preamble states: (1) ''[t]he assessment of resource pollution potential is based upon the engineered design of the repository being sufficiently robust under expected conditions to prevent unacceptable degradation of the ground-water resources over time'' (66 FR 32114; June 12, 2001); and (2) the term ''undisturbed,'' which is used in connection with demonstrating compliance with the ground-water protection standards, means the ''disposal system is not disturbed by human intrustion but that other processes or events that are likely to occur could disturb the system'' (66 FR 32104; June 13, 2001).

[2] Estimating a high probability of occurrence for an FEP creates an expectation than an FEP will occur, however, it does not guarantee such an occurence; there is a chance that even high probability FEPs will not occur.

percent chance but greater than or equal to a 0.01 percent chance, of occurring within the 10,000 year compliance period (i.e., annual probability less than 10^{-5} but greater than or equal to 10^{-8} which is the upper boundary for very unlikely events).

In light of the foregoing discussion, the Commission seeks comment on the appropriateness of using an annual probability range of greater than or equal to 10^{-8} and less than 10^{-5} to define unlikely FEPs. As a matter of reference, current understanding of FEPs relevant to Yucca Mountain indicates that this designation would allow exclusion of igneous activity as an unlikely FEP, whereas a wide range of seismic events, fault movement, and rock fall would have higher probabilities than the upper bound for unlikely FEPs and would be included in the performance assessments for human intrusion and ground-water protection.

In arriving at this decision, the Commission considered the merits of using a lower value for the demarcation between likely and unlikely FEPs. For example, a 1 percent chance of occurring over the 10,000 year compliance period (i.e., annual probability of 10^{-6}) would also be considered unlikely. It is somewhat subjective whether a qualitative term such as ''unlikely'' should be quantitatively defined as less than a 1 or a 10 percent chance of occurring. Selection of an appropriate value needs to consider the context of the performance assessments (i.e., robustness of the repository system to the consequences of human intrusion and the degradation of the ground-water resource). As mentioned previously, the focus of the performance assessments for human intrusion and ground-water protection is to be on expected conditions. The Commission considers that an FEP having a 1 percent chance of occurring is neither expected nor likely and, therefore, an inappropriate value for the lower bound for likely events. The Commission believes a lower bound for likely FEPs of a 10 percent chance of occurring within the compliance period is consistent with the intended focus for these two standards. Although ''unlikely'' FEPs would not be considered in the performance assessments for human intrusion and ground-water protection, these FEPs are required to be considered in the performance assessment for the individual protection standard.

This rulemaking is proposing a probability range for unlikely FEPs as part of NRC's implementation of EPA's final standards for Yucca Mountain, in accordance with EnPA. Specification of the probability for unlikely FEPs is in the context of assessments of compliance with the human intrusion standard and ground-water protection standards, which have a regulatory compliance period of 10,000 years. The Commission made clear in its final regulations in Part 63 that the ''[C]riteria set out in this final rule apply specifically and exclusively to the proposed repository at Yucca Mountain'' (66 FR 55732; November 2, 2001). Similarly, the proposed definition for the term ''unlikely'' in this rulemaking is intended to apply specifically and exclusively to the potential repository at Yucca Mountain and is not intended to suggest or imply precedent for NRC regulations in other parts of this Chapter that use the term ''unlikely'' in significantly different contexts (e.g., compliance periods of tens of years, higher dose limits, different facilities, and different activities).

III. Section-by-Section Analysis

Section 63.342 Limits on Performance Assessments

This section specifies how DOE will determine which features, events, and processes will be considered in the performance assessments described in Subpart L of Part 63.

IV. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is establishing probability limits for unlikely features, events, and processes at a potential geologic repository for high-level radioactive waste at Yucca Mountain, Nevada. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Finding of No Significant Environmental Impact: Availability

Pursuant to Section 121(c) of the Nuclear Waste Policy Act, this proposed rule does not require the preparation of an environmental impact statement under Section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of Section 102(2) of such act.

VII. Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995. (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0199.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. It is available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203, e-mail: cwp@ nrc.gov.

IX. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule relates to the licensing of only one entity, DOE, which does not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act.

X. Backfit Analysis

NRC has determined that the backfit rule does not apply to this proposed

rule and, therefore, that a backfit analysis is not required, because this proposed rule does not involve any provisions that would impose backfits as defined in 10 CFR Chapter 1.

List of Subjects in 10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553, NRC is proposing to adopt the following amendments to 10 CFR Part 63.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

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

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat.1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141); and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. Section 63.342 is revised to read as follows:

§ 63.342 Limits on performance assessments.

DOE's performance assessments should not include consideration of very unlikely features, events, or processes, i.e., those that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. DOE's assessments for the human intrusion and ground-water protection standards should not include consideration of unlikely features, events, and processes, or sequences of events and processes, i.e., those that are estimated to have less than one chance in 10 and at least one chance in 10,000 of occurring within 10,000 years of disposal. In addition, DOE's performance assessments need not evaluate the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurrence if the results of the performance assessments would not be changed significantly.

Dated at Rockville, Maryland, this 18th day of January, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–1891 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 70

[Docket Number 020103004–2004–01]

Cutoff Dates for Recognition of Boundary Changes for Census 2000 and for the Intercensal Period

AGENCY: Bureau of the Census, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) is establishing cutoff dates for recognition of boundary changes to geographic entities for which the Census Bureau reports data in various surveys, estimates, censuses, programs, compilations, and publications throughout the period between decennial censuses (years 2001 through 2009). These operations include, but are not limited to, the American Community Survey, the Population Estimates Program, and the 2002 and 2007 Economic Censuses. The Census Bureau establishes cutoff dates for including boundary changes to be used in tabulating data from these operations; such cutoff dates were last established for Census 2000. For the tabulation and dissemination of data from its intercensal operations, the Census Bureau will recognize only those boundaries legally in effect on January 1 of the survey, estimate, or census year that have been reported officially to the Census Bureau no later than April 1 of the same year.

DATES: Any comments, suggestions, or recommendations concerning this proposed rule should be submitted in writing by February 25, 2002.

ADDRESSES: Address all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington DC 20233–0001.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, 4700 Silver Hill Road, Stop 7400, U.S. Census Bureau, Washington, DC 20233–7400, telephone (301) 457–2131, or e-mail *(rmarx@geo.census.gov).*

SUPPLEMENTARY INFORMATION: The Census Bureau proposes to amend Title 15, Code of Federal Regulations (CFR), part 70, to establish cutoff dates for recognition of boundary changes for all geographic data operations throughout the intercensal period (years 2001 through 2009). This amendment is necessary because the dates established for Census 2000 on March 3, 1998, (63 FR 10303) do not cover the intercensal period. For the intercensal period, the Census Bureau will recognize only those boundaries legally in effect on January 1 of the survey, estimate, or census year that have been reported officially to the Census Bureau no later than April 1 of the same year.

Administrative Procedure Act

Because this rule makes only procedural changes to Title 15, CFR, part 70, the Administrative Procedure Act does not require the Census Bureau to issue a proposed rule and request for comments (Title 5, United States Code (U.S.C.), section 553(b)(3)(A)). Nevertheless, the Census Bureau is doing so in order to ensure that the public is given a forum to provide any comments or raise any issues.

Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by 5 U.S.C. 553, or any other law, so a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

List of Subjects in 15 CFR Part 70

Census data.

For the reasons set forth in the preamble, Part 70 is amended as follows:

PART 70—CUTOFF DATES FOR RECOGNITION OF BOUNDARY CHANGES FOR CENSUS 2000 AND FOR THE INTERCENSAL PERIOD

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

Authority: 13 U.S.C. 4 and Department of Commerce Organization Order 35–2A (40 FR 42765).

2. Revise the heading of Part 70 to read as set forth above.

3. Amend §70.1 by revising the second sentence and by adding a third sentence to read as follows:

§ 70.1 Cutoff dates and effect on enumeration and data tabulation.

* * * The Bureau of the Census enumerates respondents on the date of the decennial census as residing within the legal limits of municipalities, county subdivisions, counties, states, federal and state American Indian reservations and federal off-reservation trust land, Alaska Native Regional Corporations, Hawaiian home lands, and equivalent entities as those limits legally exist on January 1, 2000. For the tabulation and publication of data from its surveys, estimates, censuses, and other operations during the intercensal period (years 2001 through 2009), the Bureau of the Census will recognize only those boundaries legally in effect on January 1 of the survey, estimate, or census year that have been reported officially to the Bureau of the Census no later than April 1 of the same year.

4. Amend § 70.2 by revising the second sentence and by adding a third sentence to read as follows:

§ 70.2 ''Municipality and ''county subdivision'' defined for census purposes.

* * * A more complete description appears on pages A–13, A–14, A–18 and A–19 of Appendix A, Geographic Terms and Concepts, which appear in the Census 2000 printed reports (PHC–1, Summary Population and Housing Characteristics; PHC–2, Summary Social, Economic, and Housing Characteristics; and PHC–3, Population and Housing Unit Totals). The same text (Appendix A, Geographic Terms and Concepts) also is available online under Technical Documentation, Summary File 1, 2000 Census of Population and Housing.

5. Amend §70.3 by adding both a third and fourth sentence to read as follows:

§ 70.3 Effect of boundary changes occurring or reported after the cutoff dates.

* * * For the tabulation and publication of data from surveys, estimates, censuses, and other operations during the intercensal period (years 2001 through 2009), the Census Bureau will not recognize changes in boundaries that become effective after January 1 of the survey, estimate, or census year. The Census Bureau will not recognize changes in boundaries occurring on or before January 1 of the survey, estimate, or census year, if reported officially to the Census Bureau after April 1 of the same year.

Dated: January 8, 2002.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–1815 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–000]

Standardizing Generator Interconnection Agreements and Procedures; Notice of Extension of Time

January 16, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: On October 25, 2001, the Federal Energy Regulatory Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) seeking comments on a standard generator interconnection agreement and procedures that would be applicable to all public utilities that own, operate or control transmission facilities under the Federal Power Act, 66 FR 55140 (November 1, 2001). The date for filing comments is being extended at the request of various interested parties.

DATES: Comments on issues posed by the ANOPR published at 66 FR 55140 (November 1, 2001) shall be filed on or before February 1, 2002.

ADDRESSES: Federal Energy Regulatory Commission,888 First Street, NE.,Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Linwood A. Watson, Jr.,Acting Secretary,888 First Street, NE.,Washington, DC 20426,(202) 208–0400.

SUPPLEMENTARY INFORMATION: On January 16, 2002, the American Public Power Association, the American Wind Energy Association, the Edison Electric Institute, the Electric Power Supply Association, the National Association of Regulatory Utility Commissioners, the National Rural Electric Cooperative Association, and the Project for Sustainable FERC Policy (collectively, Petitioners) filed a joint motion for an extension of time for the filing of comments on the issues posed by the Commission's Advance Notice of Proposed Rulemaking (ANOPR), as directed by the Notice issued by the Commission on December 14, 2001, in the above-docketed proceeding.

In its motion, Petitioners state that due to the voluminous nature of the documents involved in this proceeding to date, additional time is needed for industry personnel to prepare and file comments. The motion also states that an extension will not unduly delay the Commission's process and will lead to more thoughtful and well-developed comments in the effort to enhance the ANOPR process.

Upon consideration, notice is hereby given that an extension of time for the filing of comments on issues posed by the ANOPR is granted to and including February 1, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1823 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC92

Oil and Gas and Sulphur Operations on the Outer Continental Shelf-Suspension of Operations for Exploration Under Salt Sheets; Correction

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; correction.

SUMMARY: MMS proposed to modify regulations that govern suspension of operations for oil and gas leases on the Outer Continental Shelf (OCS) in the **Federal Register** of January 9, 2002 (67 FR 1171). The title of the signer of that document was in error. This action corrects that error.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, 703/787–1598.

SUPPLEMENTARY INFORMATION: In the **Federal Register** document published on January 9, 2002, there was an error in the title of the signer of the document. While the authority of the signer was not diminished by the erroneous title, the Department wishes that an accurate title be indicated on the document. The Department is correcting the documents as follows:

In proposed rule document (Federal Register document 02–521) make the following correction:

On page 1173, in the second column, 3 lines from the top of the column, the

title for James C. Cason is corrected to read ''Acting Deputy Secretary.''

Dated: January 21, 2002.

Timothy S. Elliott,

Acting Deputy Solicitor.

[FR Doc. 02–1918 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–135–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposes revisions to rules about surface and ground water monitoring in order to satisfy a required program amendment at 30 CFR 938.16(hh), and revisions to rules about coal refuse disposal to satisfy required program amendments at 30 CFR 938.16(vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb). Additionally, Pennsylvania is submitting new rules concerning coal refuse disposal operations. Pennsylvania intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and provide additional safeguards.

Finally, Pennsylvania requested we remove the required regulatory program amendment at 30 CFR 938.16(kk) (1) and (2). In this program amendment, we required Pennsylvania to correct cross-section references within the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA).

This document gives the times and locations that the Pennsylvania program and proposed amendments to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.s.t., February 25, 2002. If requested, we will hold a public hearing on the amendment on February 19, 2002. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on February 11, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Beverly Brock, Acting Director, Harrisburg Field Office at the address listed below.

You may review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Harrisburg Field Office.

Beverly Brock, Acting Director,Harrisburg Field Office,Office of Surface Mining Reclamation and Enforcement,Harrisburg Transportation Center, Third Floor, Suite 3C,4th and Market Streets,Harrisburg, Pennsylvania 17101,Telephone: (717) 782–4036.

J. Scott Roberts, Director,Bureau of Mining and Reclamation,Pennsylvania Department of Environmental Protection,Rachel Carson State Office Building,PO Box 8461,Harrisburg, Pennsylvania 17105–8461,Telephone: (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Telephone: 717–782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By two letters, both dated December 20, 2001, Pennsylvania sent us proposed amendments to its program (administrative record Nos. PA 881.00 and 837.101) under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania sent the amendments in response to the required program amendments at 30 CFR 938.16(hh), (vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb) and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**. In a third letter dated November 16, 2001, (administrative record No. PA 880.00) Pennsylvania sent us an explanation regarding citation of cross-references in PA SMCRA required by the program amendment at 30 CFR 938.16(kk). This letter is also available for you to read at the locations listed under **ADDRESSES**.

In the first letter dated December 20, 2001, (administrative record No. PA 881.00) Pennsylvania notes that 30 CFR 938.16(hh) required it to amend 25 Pa. Code 89.59(a)(1) and (2) to be no less effective than 30 CFR 784.14(h)(1), relating to ground water monitoring plans. Specifically, 30 CFR 938.16(hh) required ground water monitoring plans to specify that, at a minimum, the total dissolved solids or specific conductance, pH, total iron, total manganese and water levels shall be monitored and data submitted to Pennsylvania at least every three months for each monitoring location.

In response to 30 CFR 938.16(hh) Pennsylvania submitted changes made to its regulations at 25 Pa. Code 89.59(a)(2), (3) and (b). The change in 25 Pa. Code 89.59(a)(2) was to delete the word ''periodically'' from the first sentence and to add the following phrase to the end to the section:

> At a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, acidity, alkalinity, total iron, total manganese, sulfates and water levels shall be monitored and reported to the Department at least every 3 months for each monitoring location.

The change Pennsylvania is proposing to 25 Pa. Code 89.59(a)(3) is to delete the last sentence from the section that reads, ''The Department will approve

the nature of data, frequency of collection, reporting requirements and the duration of the monitoring programs.'' Pennsylvania is proposing to add the following to the end of the section:

Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 89.36 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, total iron, total manganese, acidity, alkalinity, pH, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

Pennsylvania is also proposing to change 25 Pa. Code 89.59(b) by adding a sentence to the end of the section that reads, ''The Department may also require the operator to conduct monitoring and reporting more frequently than every 3 months and to monitor additional parameters beyond the minimum specified in this section.''

In the second letter of December 20, 2001, (administrative record No. PA 837.101) Pennsylvania submitted changes to various sections of its rules in 25 Pa. Code Chapters 88 and 90. Some of the proposed changes were to respond to required amendments at 30 CFR 938.16(vvv), (www), (xxx), (yyy), (zzz), (aaaa) and (bbbb). Other changes included adding 25 Pa. Code 90.116(a) to clarify that the water supply replacement requirements of 25 Pa. Code 87.119, relating to water rights and replacement for surface mining activities, are applicable to coal refuse disposal activities and adding subchapters E, F, and G to Chapter 90.

Changes to 25 Pa. Code Chapter 88 include the addition of references to 25 Pa. Code Chapter 90 to the first paragraph of 25 Pa. Code 88.281, replacing the word ''full'' with the phrase, ''the fill,'' in 25 Pa. Code 88.310(e), and the addition of subsections 25 Pa. Code 88.310(j) and (k). The full text of subsections (j) and (k) is:

(j) The system to prevent adverse impacts to the surface water and groundwater shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(k) The system to prevent precipitation from coming in contact with the coal refuse shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles and cross-sections approved in the permit and shall function to prevent precipitation from contacting the coal refuse.

(1) The system shall be installed as phases of the disposal area reach capacity, as specified in the permit, when the operation temporarily ceases for a period in excess of 90 days (unless the department approves a longer period, not to exceed 1 year) or when the operation permanently ceases.

(2) The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 88.330 (relating to revegetation: standards for successful revegetation) and for prevention of erosion.

In addition, Pennsylvania is proposing to amend 25 Pa. Code 88.332 by adding the following sentences to the end of subsection (a):

The system for preventing precipitation from contacting the coal refuse shall be installed when the temporary cessation exceeds 90 days. The department may approve a longer period, not to exceed 1 year, under subsection (b).

Numerous changes were proposed for 25 Pa. Code Chapter 90. Definitions for the terms ''coal refuse disposal,'' ''operator,'' and ''public recreational impoundment'' were to 25 Pa. Code 90.1. The proposed definitions are:

Coal refuse disposal—The storage, placement or disposal of coal refuse. The term includes engineered features integral to the placement of the coal refuse including relocations or diversions of stream segments contained within the proposed fill area and the construction of required systems to prevent adverse impacts to surface water and groundwater and to prevent precipitation from contacting the coal refuse.

Operator—A person operating a coal refuse disposal area, or part thereof.

Public recreational impoundment—A closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water and which is owned, rented or leased by the federal government, the commonwealth or a political subdivision of the commonwealth and which is used for swimming, boating, water skiing, hunting, fishing, skating or other similar activities.

Section 90.5 titled, ''Site Selection and Permitting'' is proposed to be added. The full text of this section, as proposed, is:

90.5. Site Selection and Permitting

(a) Prior to applying for a permit to conduct coal refuse disposal activities, the applicant shall comply with Subchapter E (relating to site selection). The department's technical guidance document number 563–2113–660, titled Coal Refuse Disposal—Site Selection, shall be used as guidance for selecting a coal refuse disposal site.

(b) After the department has approved a site in accordance with Subchapter E, the applicant may apply for a permit for coal refuse disposal activities in accordance with Chapters 86 and 88 (relating to Surface and Underground Coal Mining: General; and Anthracite Coal) and this chapter.

Pennsylvania is proposing numerous changes to section 25 Pa. Code 90.12 including organizational changes, deletion of some portions of existing regulations and addition of new regulations. The section as proposed to be changed now reads:

90.12. Geology

(a) The application shall include a description of the areal and structural geology within the proposed permit and adjacent area, including the lithology of the strata that influence the occurrence, availability, movement and quality of groundwater that may be affected by the coal refuse disposal. For lands within the proposed permit and adjacent areas, the applicant shall provide a description of the geology with complementing maps and cross sections and the results of test borings. The description shall include the strata down to and including any aquifer that may be affected. At a minimum, the description shall include:

(1) Location and quality of subsurface water.

(2) Depth, lithology and structure of near-surface bedrock.

(3) Location, identification and status of mining and coal refuse disposal operations within or adjacent to the proposed permit area.

(4) A description of any glacial, alluvial, or colluvial deposits or other unconsolidated deposits that are present within or beneath the proposed permit area, including their thickness and location.

(5) A description of any mine workings that are present beneath the proposed permit area.

(6) The attitude and characteristics of joints, cleats, fracture zones, and faults within the permit and adjacent areas.

(7) The location and identification of all coal seam croplines within the permit area.

(8) A description of the physical characteristics of soils within the permit area.

(9) A description of aquifers that are present beneath the proposed permit area.

(b) Maps, cross-sections, and geologic descriptions required by this section shall be prepared and certified by a qualified registered professional geologist.

Pennsylvania is proposing to revise section 90.13(2) to read as follows:

(2) Other information on the baseline hydrogeologic properties of the groundwater system shall be included with the application. The Department may require information on indicator parameters such as pumping test, lithologic and piezometer data or that other appropriate information be provided. The application shall include a description of the groundwater flow system as it relates to the design and operation of the proposed groundwater and surface water protection system as described in § 90.50 (relating to Design Criteria: Groundwater and Surface Water Protection System).

Pennsylvania is proposing some organizational changes to 25 Pa. Code 90.34(a). The section, as proposed, reads:

(a) An application shall contain a description of the proposed land use, following reclamation, of the lands to be affected within the proposed permit area by coal refuse disposal activities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain the following:

(1) How the proposed postdisposal land use is to be achieved, and the necessary support activities which may be needed to achieve the proposed land use.

(2) The detailed management plan to be implemented when pastureland is the postdisposal land use.

(3) Materials needed for approval of the alternative use under § 90.166 (relating to postdisposal land use).

(4) The consideration given to making all of the proposed coal refuse disposal activities consistent with surface owner plans and applicable Commonwealth and local land use plans and programs.

Pennsylvania is proposing to add a phrase to the first sentence of section 25 Pa. Code 90.45. The sentence now reads, ''A person who conducts, or intends to conduct, coal refuse disposal activities on prime farmlands historically used for cropland, in accordance with Subchapter E (relating to site selection), shall submit a plan, as part of the permit application, for the disposal and restoration of the land.''

Pennsylvania is proposing to add section 25 Pa. Code 90.49. The section, as proposed, reads:

90.49. Stream Buffer Zone Variance

(a) Stream buffer zone restriction. Coal refuse disposal may not occur within 100 feet (30.48 meters) of the bank of a stream. The department may grant a variance for disposal of coal refuse under subsection (c) if consistent with subchapter E (relating to site selection).

(b) Compliance required. Surface mining operations supporting coal refuse disposal shall comply with § 86.102(12) (relating to areas where mining is prohibited or limited).

(c) Variance. The department may grant a variance from the 100-foot (30.48-meter) stream buffer zone to dispose of coal refuse and to relocate or divert streams in the 100-foot (30.48-meter) stream buffer zone. The stream buffer zone is the area within 100 feet (30.48 meters) measured horizontally from the bank of any stream.

(1) Stream buffer zone variances will only be granted if the operator demonstrates to the satisfaction of the department that, as a result of the variance, coal refuse disposal will not adversely affect water quality and quantity, or other environmental resources of the stream and will not cause or contribute to the violation of applicable state or federal water quality standards.

(2) Prior to granting a variance, the operator shall be required to give public notice of the application in two newspapers of general circulation in the area once a week for two successive weeks.

(i) If a person files an exception to the proposed variance within 20 days of the last publication of the notice, the department will conduct a public hearing with respect to the application within 30 days of receipt of the exception.

(ii) The department will also consider information or comments submitted by the Fish and Boat Commission prior to taking action on a variance request.

(3) The variance will be issued as a written order specifying the methods and techniques that shall be employed to prevent or mitigate adverse impacts. Mitigation can include, but is not limited to, compensatory restoration and enhancements of nearby streams or stream segments.

Pennsylvania is proposing to add 25 Pa. Code 90.5. The full text of the section, as proposed, is:

90.50. Design Criteria: Groundwater and Surface Water Protection System

(a) The application shall include a description of the system that will be installed to prevent adverse impacts to groundwater and surface water. The description shall include maps, plans, and other information necessary to evaluate the design of the system.

(b) The application shall include a description of the system that will be installed to prevent precipitation from coming into contact with the coal refuse. The description shall include maps, plans, and other information necessary to evaluate the design of the system. The coal refuse disposal operation shall be designed in phases to minimize the amount of time the entire coal refuse area is exposed to precipitation prior to the installation of the system to prevent precipitation from contacting the coal refuse. The application shall describe the design of the system for preventing precipitation from contacting coal refuse and how the system will be installed in accordance with the following:

(1) During routine coal refuse disposal as phases of the coal refuse disposal area reach capacity.

(2) During periods of temporary cessation as directed under § 90.167(d) (relating to cessation of operations: temporary).

(3) When the operation permanently ceases.

(c) The department's technical guidance document number 563–2112–656, titled Liners—Impoundments, Stockpiles, and Coal Refuse Disposal Areas, shall be used as guidance for designing coal refuse disposal sites incorporating earthen, admixed or synthetic liners or caps for preventing adverse impacts to groundwater and surface water and for preventing precipitation from contacting coal refuse.

(d) The application shall include a description of the measures to be taken to ensure the long-term functionality of the systems described in subsections (a) and (b). The description shall address the site's susceptibility to mine subsidence and the potential impacts of mine subsidence on the systems described in subsections (a) and (b). The description shall also address the potential for deterioration of components of the systems described in subsections (a) and (b) due to other physical or chemical processes including but not limited to attack from sulfate-laden or acidic groundwater and/or leachate.

In section 25 Pa. Code 90.101(b), Pennsylvania is proposing to replace the phrase, ''the water,'' with the phrase, ''groundwater and surface water.''

Pennsylvania is proposing to add section 25 Pa. Code 90.116a. This section reads:

90.116a. Hydrologic Balance: Water Rights and Replacement

An operator who conducts coal refuse disposal and adversely affects a water supply by contamination, pollution, diminution, or interruption shall comply with § 87.119 (relating to water rights and replacement).

In 25 Pa. Code 90.122, Pennsylvania is proposing to delete former subsections (e) and (g). Under the proposed amendment, former subsection (f) is now subsection (e) and former subsection (h) is now subsection (f). In addition, Pennsylvania has submitted new subsections (g) and (h). The new subsections are:

(g) The disposal area shall be provided with a system to prevent adverse impacts to the surface water and groundwater. The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(h) When a phase of the coal refuse disposal area reaches capacity, the operator shall install a system to prevent precipitation from coming in contact with the coal refuse in the completed phase.

(1) The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit.

(2) During normal coal refuse disposal, the system is not required to prevent precipitation from coming in contact with the coal refuse being placed in phases of the operation that have not reached capacity.

(3) The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 90.159 (relating to revegetation: standards for successful revegetation) and for the prevention of erosion.

(4) If the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of 90 days (unless the department, for reasons of labor strike or business necessity, approves a longer period not to exceed one year) or when the operation permanently ceases, the operator shall install the system for preventing precipitation from contacting the coal refuse.

In 25 Pa. Code 90.167, Pennsylvania is proposing to change ''shall'' to ''may'' in section (b) and to add new subsection (d). Subsection (d) reads:

The operator shall install the system for preventing precipitation from contacting the

coal refuse when the temporary cessation exceeds 90 days. The department may approve a longer period, not to exceed 1 year, for reasons of a labor strike or business necessity.

Finally, Pennsylvania is proposing to add three new subchapters to 25 Pa. Code Chapter 90. The new subchapters are E. Site Selection, F. Coal Refuse Disposal Activities on Areas With Preexisting Pollutional Discharges, and G. Experimental Practices. The full text of these new subchapters follow:

Subchapter E. Site Selection

Section 90.201. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

Preferred Site—A watershed polluted by acid mine drainage; a watershed containing an unreclaimed surface mine but which has no mining discharge; a watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation; unreclaimed coal refuse disposal piles that could be improved by the proposed coal refuse disposal operation; or other unreclaimed areas previously affected by mining activities.

Search area—The geographic area within a 1-mile radius of an existing coal preparation facility or the 25-square-mile geographic area encompassing a proposed coal preparation facility

Selected Site—A location selected by the applicant and approved by the Department under this Subchapter for which the applicant can then apply for a permit to conduct coal refuse disposal activities.

Section 90.202. General Requirements

(a) A preferred site shall be used for coal refuse disposal unless the applicant demonstrates to the Department that an alternate site is more suitable based upon engineering, geology, economics, transportation systems, and social factors and is not adverse to the public interest.

(b) The applicant is required to determine whether the search area contains a preferred site.

(1) For a new coal refuse disposal area that will support an existing coal preparation facility, the applicant shall examine the geographic area within a 1-mile radius of the existing coal preparation facility.

(2) For a proposed coal refuse disposal area that will support a proposed coal preparation facility, the applicant shall examine a 25-square-mile geographic area encompassing the proposed coal preparation facility. In defining the 25-square-mile area, consideration shall be given to environmental, technical, transportation, economic, and social factors where applicable.

(c) If there are no preferred sites located within the search area, the applicant must conduct a comparative analysis of the potential coal refuse disposal sites in accordance with § 90.204(b) (relating to proposing an alternate site).

(d) The Department will not approve a site proposed by the applicant for coal refuse disposal activities when the Department finds that the adverse environmental impacts of using the site for coal refuse disposal activities would clearly outweigh the public benefits.

(e) Except on preferred sites, the Department shall not approve coal refuse disposal on or within any of the following areas:

(1) Prime Farmlands.

(2) An exceptional value watershed as defined under Chapter 93 (relating to water quality standards).

(3) Sites known to contain threatened or endangered animals listed exclusively under the Commonwealth's protection programs.

(4) An area that is hydrologically connected to and contributes at least 5% of the drainage to wetlands designated as exceptional value under Chapter 105 (relating to dam safety and waterway management) unless a larger percentage contribution is authorized by the Department after consultation with the Fish and Boat Commission.

(5) A watershed less than 4 square miles in area upstream of the intake of a public water supply.

(6) A watershed less than 4 square miles in area upstream of the upstream limit of a public recreational impoundment.

(7) Sites known to contain Federally listed threatened or endangered plants or animals. At preferred sites known to contain Federally listed threatened or endangered species, approval will be granted only where the Department concludes and the United States Fish and Wildlife Service concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the take of Federally listed threatened or endangered species in violation of section 9 of the Endangered Species Act of 1973 (16 U.S.C.A. 1538).

(f) As part of the site selection process, an applicant may request approval for more than one site. The Department will evaluate each site proposed for coal refuse disposal and, if the Department finds that a proposed site meets the requirements of this subchapter, it will designate it as an approved site. The applicant will then have the option of choosing a selected site from among the approved sites and submitting an application for coal refuse disposal for that site.

Section 90.203. Proposing a Preferred Site

If the applicant proposes to use a preferred site, the Department will approve the proposed site subject to § 90.202(c) (relating to general requirements) provided the applicant demonstrates that the attendant adverse environmental impacts will not clearly outweigh the public benefits.

Section 90.204. Proposing an Alternate Site

(a) Where a preferred site(s) exists within the search area, but the applicant proposes an alternate site, the applicant shall:

(1) Demonstrate that the alternate site is more suitable, using criteria in § 90.202(a) (relating to general requirements), than all preferred sites within the search area.

(2) Identify other alternate sites considered and provide the basis for the rejection of these sites.

(3) Based on reasonably available data, demonstrate that it is the most suitable site based on environmental, economic, technical, transportation and social factors.

(b) If a preferred site does not exist within the search area, the applicant shall:

(1) Identify all the sites considered within the search area and provide the basis for their consideration.

(2) Provide the basis for the rejection of considered sites.

(3) Based on reasonably available data, demonstrate to the Department that the proposed site is the most suitable based on environmental, economic, technical, transportation, and social factors.

Section 90.205. Alternatives Analysis

The alternatives analysis required by §§ 90.202(b) and 90.204 (relating to general requirements; and proposing an alternate site) satisfies the requirement for an alternatives analysis under the Dam Safety and Encroachments Act (32 P.S. 693.1–693.27) and regulations promulgated thereunder. See Chapter 105 (relating to dam safety and waterway management).

Section 90.206. Disapproval of a Proposed Site

If the Department disapproves the applicant's proposed site, the applicant may submit a new proposal supporting the selection of another site located either within or outside of the search area.

Section 90.207. Approval of a Selected Site

Department approval of a selected site does not indicate the Department will approve an application for coal refuse disposal activities for the selected site.

Subchapter F. Coal Refuse Disposal Activities on Areas With Preexisting Pollutional Discharges

Section 90.301. Scope

(a) This subchapter specifies procedures and rules applicable to those who seek authorization to engage in coal refuse disposal activities on an area on which there are preexisting pollutional discharges resulting from previous mining and describes the terms and conditions under which the Department may release bonds to operators who have received authorization.

(b) Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A–D apply to authorizations to mine areas with preexisting pollutional discharges except as specifically modified by this subchapter.

Section 90.302. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Abatement Plan—Any individual technique or combination of techniques, the implementation of which will result in reduction of the base line pollution load. Abatement techniques include but are not limited to: Addition of alkaline material, special plans for managing toxic and acid-

forming material, regrading, revegetation and relocating coal refuse to a coal refuse disposal area that includes systems to prevent adverse impacts to surface and groundwater and to prevent precipitation from contacting the coal refuse.

Actual Improvement—The reduction of the baseline pollution load resulting from the implementation of the approved abatement plan; except that any reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement provided, however, that treatment approved by the Department of the coal refuse before, during or after placement in the coal refuse disposal area shall not be considered to be water treatment.

Baseline Pollution Load—The characterization of the pollutional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the Department, including seasonal variations and variations in response to precipitation events. The Department will establish in each authorization the specific parameters it deems relevant for the baseline pollution load, including, at a minimum, iron and acid loadings.

Best Professional Judgment—The highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Department under sections 301 and 402 of the Federal Water Pollution Control Act (33 U.S.C.A. 1311 and 1342).

Best Technology—Measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

Coal Refuse Disposal Activities—The storage, dumping or disposal of any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, underground development wastes, coal processing wastes, excess soil and related materials, associated with or near a coal seam, that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or are separated from coal during the cleaning or preparation operations. The term shall not include the removal or storage of overburden from surface mining activities.

Excess Soil and Related Material—Rock, clay or other material located immediately above or below a coal seam and which are extracted from a coal mine during the process of mining coal. The term does not include topsoil or subsoil.

Pollution Abatement Area—The part of the permit area that is causing or contributing to the baseline pollution load. It shall include adjacent and nearby areas that must be affected to bring about significant improvements of the baseline pollution load and may include the immediate locations of the discharges.

Section 90.303. Applicability

(a) Authorization may be granted under this subchapter when the authorization is part of the following:

(1) A permit issued after February 6, 1995, but only if the authorization request is made during one of the following periods:

(i) At the time of the submittal of the permit application for the coal refuse disposal activities, including the proposed pollution abatement area.

(ii) Prior to a Department decision to issue or deny that permit.

(2) A permit revision under § 86.52 (relating to permit revisions), but only if the operator affirmatively demonstrates to the satisfaction of the Department that:

(i) The operator has discovered pollutional discharges within the permit area that came into existence after its permit application was approved.

(ii) The operator has not caused or contributed to the pollutional discharges.

(iii) The proposed pollution abatement area is not hydrologically connected to an area where coal refuse disposal activities have been conducted under the permit.

(iv) The operator has not affected the proposed pollution abatement area by coal refuse disposal activities.

(v) The Department has not granted a bonding authorization and mining approval for the area under § 86.37(b) (relating to criteria for permit approval or denial).

(b) Notwithstanding subsection (a), no authorization may be granted under this subchapter for repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements) or permit transfers under § 86.56 (relating to transfer of permit).

Section 90.304. Application for Authorization

(a) An operator who requests authorization under this Subchapter shall comply with the permit application requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A–D, except as specifically modified by this subchapter. The operator shall also:

(1) Delineate on a map the proposed pollution abatement area, including the location of the preexisting discharges.

(2) Provide a description of the hydrologic balance for the proposed pollution abatement area that includes:

(i) Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events and modeled baseline pollution loads using this monitoring program.

(ii) Monitoring for pH, alkalinity, acidity, total iron, total manganese, aluminum, sulfates, total suspended solids and other water quality parameters the Department deems relevant.

(3) Provide a description of the abatement plan that represents best technology and includes the following:

(i) Plans, cross-sections and schematic drawings describing the abatement plan proposed to be implemented.

(ii) A description and explanation of the range of abatement level that is anticipated to be achieved, costs and each step in the proposed abatement plan.

(iii) A description of the standard of success for revegetation necessary to ensure success of the abatement plan.

(b) The operator seeking this authorization shall continue the water quality and quantity monitoring program required by subsection (a)(2) after making the authorization request. The operator shall submit the results of this continuing monitoring program to the Department on a monthly basis until a decision on the authorization request is made.

Section 90.305. Application Approval or Denial

(a) Authorization may not be granted under this subchapter unless the operator seeking the authorization affirmatively demonstrates the following to the satisfaction of the Department on the basis of information set forth in the application:

(1) Neither the operator, nor an officer, principal shareholder, agent, partner, associate, parent corporation, subsidiary or affiliate, sister corporation, contractor or subcontractor, or a related party as defined in § 86.1 (relating to definitions) has either of the following:

(i) Legal responsibility or liability as an operator for treating the water pollution discharges from or on the proposed pollution abatement area.

(ii) Statutory responsibility or liability for reclaiming the proposed pollution abatement area.

(2) The proposed abatement plan will result in significant reduction of the baseline pollution load and represents best technology.

(3) The land within the proposed pollution abatement area can be reclaimed.

(4) The coal refuse disposal activities on the proposed pollution abatement area will not cause additional surface water pollution or groundwater degradation.

(5) The standard of success for revegetation will be achieved. The standard of success for revegetation for sites previously reclaimed to the standards of Chapters 87, 88 and 90 shall be the standards set forth in § 90.159 (relating to revegetation: standards for successful revegetation). The standard of success for revegetation for sites not previously reclaimed to the standards of Chapters 87, 88 and 90 shall be, at a minimum, the following, provided the site is not a bond forfeiture site where the forfeited money paid into the fund is sufficient to reclaim the forfeited site to the applicable standards:

(i) A ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(ii) A ground cover no less than that existing before disturbance of the area by coal refuse disposal activities.

(iii) Adequate vegetation to control erosion. Vegetation may be no less than that necessary to ensure the success of the abatement plan.

(6) The coal refuse disposal activities on permitted areas other than the proposed pollution abatement area will not cause surface water pollution or groundwater degradation.

(7) Requirements of § 86.37(a) (relating to criteria for permit approval or denial) that are consistent with this section have been met.

(b) An authorization may be denied under this subchapter if granting the authorization will, or is likely to, affect a legal responsibility or liability under The Clean Streams Law (35 P.S. 691.1–691.1001), the Surface Mining Conservation and Reclamation Act (52 P.S. 1396.1–1396.19a), Chapter 86 (relating to surface and underground coal mining: general) or Subchapters A–D, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

(c) Authorization may not be granted under this subchapter unless there are one or more preexisting discharges from or on the pollution abatement area.

(d) The authorization allowed under this subchapter is only for the pollution abatement area and does not apply to other areas of the permit.

Section 90.306. Operational Requirements

(a) An operator who receives an authorization under this subchapter shall comply with the requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A–D except as specifically modified by this subchapter. The operator shall also:

(1) Implement the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas) are met.

(2) Implement the approved abatement plan.

(3) Notify the Department immediately prior to the completion of each step of the abatement plan.

(4) Provide a progress report to the Department within 30 days after the completion of each step of the abatement program that includes a statement signed by the operator, and if required by the Department, a statement signed by the supervising engineer, that all work has been performed in accordance with the terms and conditions of the pollution abatement authorization, the approved maps, plans, profiles and specifications.

Section 90.307. Treatment of Discharges

(a) Except for preexisting discharges that are not encountered during coal refuse disposal activities or the implementation of the abatement plan, the operator shall comply with § 90.102 (relating to hydrologic balance: effluent standards).

(b) The operator shall treat the preexisting discharges that are not encountered during coal refuse disposal activities or implementation of the abatement plan to comply with the effluent limitations established by best professional judgment. The effluent limitations established by best professional judgment may not be less than the baseline pollution load. If the baseline pollution load, when expressed as a concentration for a specific parameter, satisfies the effluent limitation in § 90.102 for that parameter, the operator shall treat the preexisting discharge for that parameter to comply with either effluent limitations established by best professional judgment or the effluent limitations in § 90.102.

(c) For purposes of subsections (a) and (b), the term encountered may not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the abatement plan that would otherwise drain into the affected area, as long as the diversions are designed, operated and maintained under § 90.104 (b)–(h) (relating to hydrologic balance: diversions).

(d) An operator required to treat preexisting discharges will be allowed to discontinue treating the discharges under subsection (b) when the operator affirmatively demonstrates the following to the Department's satisfaction:

(1) The preexisting discharges are meeting the effluent limitations established by subsection (b) as shown by groundwater and surface water monitoring conducted by the operator or the Department.

(2) Coal refuse disposal activities under the permit—including the pollution abatement area—are being or were conducted under the requirements of the permit and the authorization, and Chapter 86 (relating to surface and underground mining: general) and this chapter except as specifically modified by this subchapter.

(3) The operator has implemented each step of the abatement plan as approved in the authorization.

(4) The operator did not cause or allow additional surface water pollution or groundwater degradation by reaffecting the pollution abatement area.

(e) If after discontinuance of treatment of discharges under subsection (d) the discharges fail to meet the effluent limitations established by subsection (b), the operator shall reinstitute treatment of the discharges under subsection (b). An operator who reinstitutes treatment under this subsection will be allowed to discontinue treatment if the requirements of subsection (d) are met.

(f) Discontinuance of treatment under subsection (d) may not be deemed or construed to be or to authorize a release of bond under § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas).

Section 90.308. Request for Bond Release

Sections 86.172(c) and 90.309 (relating to criteria for release of bond; and criteria and schedule for release of bonds on pollution abatement areas) apply to the release of bonds for pollution abatement areas authorized by this subchapter. Section 86.172(a), (b) and (d) shall not be applicable to the release of bonds.

Section 90.309. Criteria and Schedule for Release of Bonds on Pollution Abatement Areas

(a) The Department will release up to 50% of the amount of bond for the authorized pollution abatement area if the applicant demonstrates and the Department finds the following:

(1) The coal refuse disposal activities were conducted on the permit area, including the pollution abatement area, under the requirements of the permit and the authorization, Chapter 86 (relating to surface and underground mining: general) and this chapter except as specifically modified by this subchapter.

(2) The operator has satisfactorily completed backfilling, grading, installing the water impermeable cover and drainage control in accordance with the approved reclamation plan.

(3) The operator has properly implemented each step of the pollution abatement plan approved and authorized under this subchapter.

(4) The operator has not caused degradation of the baseline pollution load at any time during the 6 months prior to the submittal of the request for bond release under this subsection and until the bond release is approved as shown by all groundwater and surface water monitoring conducted by the permittee under § 90.306(a)(1) (relating to operational requirements) or conducted by the Department.

(5) The operator has not caused or contributed to surface water pollution or groundwater degradation by reaffecting the pollution abatement area.

(b) The Department will release up to an additional 35% of the amount of bond for the authorized pollution abatement area but retain an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party if the operator demonstrates and the Department finds the following:

(1) The operator has replaced the topsoil or material conserved under § 90.97 (relating to topsoil: removal), completed final grading, planting and established revegetation under the approved reclamation plan and achieved the standards of success for revegetation in § 90.305(a)(5) (relating to application approval or denial).

(2) The operator has not caused or contributed to groundwater or surface water pollution by reaffecting the pollution abatement area.

(3) The operator has achieved the following standards:

(i) Achieved the actual improvement of the baseline pollution load described in the approved abatement plan as shown by groundwater and surface water monitoring conducted by the permittee for the time provided in the abatement plan after completion of backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard for success in § 90.305(a)(5).

(ii) Achieved the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by groundwater and surface water monitoring conducted by the operator or the Department for one of the following:

(I) For a period of 12 months from the date of initial bond release under subsection (a), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.305(a)(5) have been completed.

(II) If treatment has been initiated at any time after initial bond release under subsection (a) and § 90.307(e) (relating to treatment of discharges), for 12 months from the date of discontinuance of treatment under

§ 90.307(d), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.305(a)(5) have been completed.

(B) Conducted all the measures provided in the approved abatement plan and additional measures specified by the Department in writing at the time of initial bond release under subsection (a) of this section for the area requested for bond release.

(C) Caused aesthetic or other environmental improvements and the elimination of public health and safety problems by engaging in coal refuse disposal activities and reaffecting the pollution abatement area.

(D) Stabilized the pollution abatement area.

(c) The Department will release the remaining portion of the amount of bond on the authorized pollution abatement area if the operator demonstrates and the Department finds the following:

(1) The operator has successfully completed the approved abatement and reclamation plans, and the pollution abatement area is capable of supporting the postdisposal land use approved under § 90.166 (relating to postdisposal land use).

(2) The operator has complied with the permit and the authorization, Chapter 86 and this chapter, except as specifically modified by this subchapter.

(3) The operator has not caused degradation of the baseline pollution load from the time of bond release under subsection (b) or, if treatment has been initiated after bond release under subsection (b) in accordance with § 90.307(e) for 5 years from the discontinuance of treatment under § 90.307(d).

(4) The applicable liability period has expired under § 86.151 (relating to period of liability).

Subchapter G. Experimental Practices

Section 90.401. General

(a) To encourage advances in coal refuse disposal practices, coal refuse site reclamation, and advances in technology or practices that will enhance environmental protection with respect to coal refuse disposal activities, the Department may grant permits approving experimental practices and demonstration projects. The Department may grant these permits under the following circumstances:

(1) The environmental protection provided will be potentially more protective or at least as protective as required by this chapter, the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51 30.66) and Chapter 86 (relating to surface and underground coal mining: general).

(2) The coal refuse disposal activities approved under the permits are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices or demonstration projects.

(3) The experimental practices or demonstration projects do not reduce the protection afforded public health and safety below that provided by this chapter, the Coal Refuse Disposal Control Act and Chapter 86.

(b) Experimental practice permits issued under this subchapter shall meet all the provisions, standards, and information requirements of the 30 CFR 785.13 (relating to experimental practices mining).

In the letter of November 16, 2001, (administrative record No. PA 880.00) Pennsylvania notes that 30 CFR 938.16(kk) required it to amend the references contained in sections 3.1(c) and 3.1(d) of PA SMCRA. The condition requires the cross-reference to section 4.2(f) in section 3.1(c) be replaced with section 4b(f) and the cross reference to section 18.6 in section 3.1(d) be replaced with section 24.

Pennsylvania explained that sections 3.1(c) and 3.1(d) of PA SMCRA are part of a numbering system used by the Pennsylvania Legislative Reference Bureau. Likewise the cross-referenced sections 4.2(f) and 18.6 are also Legislative Reference Bureau numbering. Section 4b(f) is part of a numbering system used in Purdon's Pennsylvania Statutes Annotated (Purdon's). The complete number for section 4(b)(f) in Purdon's is 52 P.S. 1396.4b(f). Purdon's 52 P.S. 1396.4b(f) is the Legislative Reference Bureau's Section 4.2(f). Section 24 was formerly a Purdon's number. The complete number for section 24 in Purdon's was 52 P.S. 1396.24. Section 1396.24 was renumbered to 1396.18f in 1993 as a result of amendments to PA SMCRA. Purdon's section 1396.18f is the Legislative Reference Bureau's Section 18.6. Pennsylvania believes that since the cross-references in sections 3.1(c) and 3.1(d) of SMCRA are the appropriate Legislative Reference Bureau Numbers that should be referenced, 30 CFR 938.16(kk) should be removed.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on February 11, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C)Of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804 (2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–1945 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7132–8]

RIN 2060–AJ73

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Proposed Non-Conformance Penalties for 2004 and Later Model Year Emission Standards for Heavy-Duty Diesel Engines and Heavy-Duty Diesel Vehicles; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of January 16, 2002, regarding non-conformance penalties for heavy-duty diesel engines and vehicles. This correction provides the correct EPA docket number for the submission of comments on the proposed rule.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; Fax:

(734) 214–4816; e-mail: *borushko.margaret@epa.gov.*

Correction

In the **Federal Register** of January 16, 2002, in FR Doc. 02–1109, on page 2159, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: *Comments:* We must receive your comments by the date indicated under **DATES** above. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. In your correspondence, refer to Docket A–2001–25. See Section VI.B for more information on comment procedures.

Public hearing: We will hold a public hearing on February 15, 2002 at the Washington Dulles Airport Marriott, 45020 Aviation Drive, Dulles, Virginia 20166. Phone: (703–471–9500). If you want to testify at the hearing, notify the contact person listed below at least ten days before the date of the hearing. See Section VI.B for more information on the public-hearing procedures.

Public docket: EPA's Air Docket makes materials related to this rulemaking available for review in Docket No. A–2001–25 located at U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M. Street, SW., Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Dated: January 18, 2002.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–1880 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–9877–P]

RIN 0938–AH53

Medicare and Medicaid Programs; Terms, Definitions, and Addresses: Technical Amendments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This technical regulation would amend CMS rules—

To simplify and rationalize the system of definitions and increase uniformity in the use of terms;

To clarify which steps of the appeals process are ''final'' and which are ''binding'';

To correct outdated addresses and organizational unit names;

To remove content that is outdated or duplicative; and

To make other editorial changes and technical corrections.

These revisions are necessary to preclude confusion regarding our regulations and to better ensure uniform understanding and application. By updating and removing content that is outdated, unnecessary, or duplicative, these changes would also shorten our rules and make them easier to use.

DATES: *Comment date:* We will consider all comments received at one of the addresses indicated below no later than 5 p.m. on March 26, 2002.

ADDRESSES: Please 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: HCF–9877–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received in the event of delivery delays.

If you prefer, you may deliver your written comments by courier (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 indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–9877–FC. 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 C5–12–08 of the headquarters Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on 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) 786–7197.

FOR FURTHER INFORMATION CONTACT: Margaret Teeters, (410) 786–4678.

SUPPLEMENTARY INFORMATION:

A Simplification and Rationalization of the System of Definitions

In revising the definitions system, we aim to ensure that each definition would meet the following conditions:

1. Is worded so as to preclude confusion or misinterpretation.
2. Is not duplicated.
3. Does not include requirements or prohibitions (which belong in the text of the rules); or personnel qualifications (which need to be identified as such).
4. If it is of general applicability, is located at the beginning of chapter IV.
5. If it is of limited applicability, is presented as a basic definition in that part of the regulations to which it is most pertinent or in which it is most frequently used. (When the term is used elsewhere, with the same meaning it has in the basic definition, we cite that basic definition and do not duplicate it. A separate definition of that term would be presented only if it is used with a special, different meaning (for example, in a broader or more limited sense).

We do not include definitions of terms that are not used in the text, are used in their ordinary, usual sense, or are used only once or twice. (In the latter case, the word is explained where used, not placed in a definitions section.)

We would keep all the acronyms for both programs in § 400.200.

Because of the great number of definitions in CMS's regulations, attempting to deal with all of them now would unduly delay issuance of this rule. That would not be desirable for a rule that includes content (updating and correcting) that must be made available promptly to those who implement our regulations and to the general public. We will be developing another technical rule to deal with the remaining definitions.

With respect to personnel qualifications, which have sometimes been presented as ''definitions,'' our goal has been to include in a new § 400.210, the qualifications for the practitioners whose services are most frequently used in the Medicare program. The personnel qualifications for practitioners who furnish less frequently used services would be retained in their current locations.

Qualifications that are different from the basic qualifications set forth in the new section would also be retained where they have been.

A proposed rule identified as BPD–819–P was published on March 10, 1997 at 62 FR 11005. The final rule, identified as CMS–3819–F, will revise part 484 of the CMS regulations, which

sets forth the conditions of participation for home health agencies. The revision includes changes to the personnel qualifications for speech language pathologists, physical and occupational therapists and their assistants, and social workers and social work assistants. For that reason, this rule proposes no changes in part 484, and does not include in the new § 400.210 the qualifications for the above-noted skilled professionals.

B. Effect of Appeals Decisions

Several sections in part 417 pertaining to the appeals process would be revised to clarify which steps in the process are ''binding'' but not ''final.'' The aim is to make clear that the last step in the administrative appeals process must be completed before the appellant has any right to judicial review.

C. Correction of Addresses

We would revise the following sections of the regulations to reflect CMS's new address and any applicable name changes that result from the reorganization of CMS: 401.128, 401.148, 412.63, 412.210, 430.62, 483.102, 485.623.

D. Conforming Amendments

We would correct or remove cross-references to reflect removal or transfer of definitions and personnel qualifications, and outdated or duplicative rules.

E. Clarifying Editorial Revisions

The editorial revisions would—

1. Shorten the regulations and, in order to improve clarity, make the following kinds of changes:

• Eliminate repetition and highlight the similarities and differences among rules that apply to different types of providers or practitioners. Part 456 (Utilization Control) currently includes 3 subparts that repeat all the requirements that apply equally to hospitals, mental hospitals, and intermediate care facilities for the mentally retarded (ICFs/MR).

• Shorten the content and highlight the similarities and differences by presenting the common requirements once in subpart C (''Utilization Control: All Hospitals'') and revising subparts D and F to set forth only the additional requirements that apply to mental hospitals and to ICFs/MR, respectively.

• Remove undesignated centered headings and either substitute designated subparts, or incorporate the content of the undesignated heading into the section headings. Undesignated centered headings, unlike designated subparts, cannot be used to refer to the whole group of sections they encompass. They are usually followed by incomplete section headings because the writer depends too much on the centered heading language—even when the section may appear many pages after the centered heading. This kind of change would be made in part 456 and also in part 447 (Payments for Services).

• Provide an overview of disclosure of information rules set forth in several sections. A single section lists and designates the kinds of information that must be disclosed and the entities that must make disclosure. (Part 420—Program Integrity: Medicare)

2. Make numerous minor modifications to—

• Reflect the fact that the nursing home reform amendments identify Medicaid facilities as ''nursing facilities'' (NFs) rather than ''skilled nursing facilities'' (SNFs); and

• Limit ''intermediate care facilities'' (ICFs) to those that serve persons with mental retardation and related conditions.

3. In part 498, which establishes rules for appeals from CMS determinations, we are proposing to—

• Remove references to the Office of the Inspector General (OIG) because the OIG now has its own appeals regulations in part 1005 of chapter V of this title; and

• In § 498.3(d), restore a sentence removed by a previous technical amendment. That sentence makes absolutely clear that the only administrative actions that qualify as ''initial determinations'' are those listed in paragraph (b) of the section.

4. Remove regulations that are no longer in effect.

Subpart E of part 417 would be removed because the requirements applicable to employer group health plans that include HMOs have become outdated.

Subpart I of part 456 would be removed because section 4751 of the Balanced Budget Act (BBA) of 1997 amended sections 1902(a)(26) and 1902(a)(31) of the Social Security Act to remove the requirement for States to perform Inspection of Care (IoC) reviews in institutions for mental diseases and ICFs/MR.

5. Correct cross-references that have become outdated through changes made by other regulations, as in parts 410 and 424.

F. Deferred Changes

The definitions in subpart J of part 411 and parts 435 and 436 would not be revised because those rules are undergoing extensive changes included in other **Federal Register** documents.

Other Required Information

A. 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 major comments in the preamble to that document.

B. Paperwork Reduction Act

This rule contains no information collection requirements subject to review by the Office of Management and Budget.

C. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA), Public Law 96–354. Executive Order 12866 directs agencies to assess the 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 rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have reviewed this rule and have determined that it is not a major rule. Therefore, we are not required to perform an assessment of the costs and savings.

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed rule and a final rule that has been preceded by a proposed rule. 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 a small entity. We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule or a final rule preceded by a proposed 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 sections 603 and 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. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandate Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any proposed rule and a final rule preceded by a proposed rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This rule would have no consequential effect on the governments mentioned 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 reviewed this proposed rule and have determined that it would not have a substantial effect on State or local governments.

We have reviewed this rule and determined that, under the provisions of Public Law 104–121, the Contract with America Act, it is not a major rule.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMOs), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 402

Administrative practice and procedure, Health facilities, Health Professions, Medicaid, Medicare, Penalties.

42 CFR Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-ray.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney disease, Medicare, Reporting and record keeping requirements, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMOs), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 420

Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Health maintenance organizations (HMO), Medicare+Choice, Provider sponsored organizations (PSO).

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 430

Administrative practice and procedure, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirement.

42 CFR Part 434

Grant programs—health, Health maintenance organizations (HMOs), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 441

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting and record keeping requirements.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Medicaid, Nursing homes, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 456

Administrative practice and procedure, Grant programs—health,

Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 475

Grant programs—health, Health care, Health professions, Peer Review Organizations (PROs).

42 CFR Part 476

Grant programs—health, Health care, Health facilities, Health professions, Peer Review organizations (PROs), Reporting and record keeping requirements.

42 CFR Part 478

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PROs), Reporting and record keeping requirements.

42 CFR Part 480

Health care, Health professionals, Health records, Peer Review Organizations (PROs), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR 482

Grant programs—health, Hospitals, Medicare, Medicaid, Reporting and record keeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Health facilities, Medicare, Reporting and record keeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 491

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 493

Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirement.

For the reasons set forth in the preamble, 42 CFR Chapter IV would be amended as follows:

PART 400—INTRODUCTION: DEFINITIONS; PERSONNEL QUALIFICATIONS; COLLECTIONS OF INFORMATION

A. Part 400 is amended as set forth below.

1. The heading of part 400 is revised to read as set forth above.

2. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C.1302 and 1395hh) and 44 U.S.C. Chapter 35.

Subpart B—Definitions and Personnel Qualifications

3. The heading of subpart B is revised to read as set forth above.

4. In § 400.200, the following changes are made:

a. The definitions of ''Area'', DAB'', ''ICF'', and ''United States'' are removed.

b. In the definition of ''FQCH'', ''means'' is revised to read ''stands for:''.

c. The following definitions are added in alphabetical order to read as follows:

§ 400.200 General definitions.

* * * * *

Anesthetist means a physician anesthetist, an anesthesiologist assistant, or a certified registered nurse anesthetist.

* * * * *

CAH stands for critical access hospital.

* * * * *

Departmental Appeals Board means either of the following:

(1) A panel of members of a Board established in the office of the Secretary to provide impartial review of disputed decisions made by the operating components of the Department or by ALJs.

(2) The Medicare Appeals Council designated by the Board Chair to review ALJ decisions under part 405, subparts G and H; part 417, subpart Q; part 422, subpart M; and part 478, subpart B.

EACH stands for essential access community hospital.

* * * * *

FMAP stands for Federal medical assistance percentage.

* * * * *

HIO stands for health insuring organization.

* * * * *

Hospital means an institution that meets the requirements of section 1861(e) of the Act.

ICD–9–CM stands for International Classification of Diseases, Ninth Revision, Clinical Modification.

* * * * *

IMD stands for institution for mental diseases.

* * * * *

MCO stands for managed care organization.

* * * * *

NF stands for nursing facility.

* * * * *

PHP stands for prepaid health plan.

PHS stands for Public Health Service, and PHS Act means the Public Health Service Act.

Practitioner means a physician or any other individual who has the credentials to practice within a recognized health care discipline and who furnishes the services of that discipline to patients.

* * * * *

Qualified practitioner means a practitioner who meets the personnel qualification requirements set forth in the statute, or in this part or elsewhere in this chapter, as a condition for coverage of his or her services under Medicare or Medicaid, or both.

* * * * *

Religious nonmedical health care institution means an institution that meets the requirements of section 1861(ss)(1) of the Act.

* * * * *

RNHCI stands for religious nonmedical health care institution.

* * * * *

Significant business transaction means a business transaction or series of transactions carried out by an entity involved in the furnishing of health care services, the total of which, during any fiscal year, exceeds 5 per cent of the facility's total operating expenses or $25,000, whichever is less.

* * * * *

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands.

State survey agency means the State health agency or other appropriate State or local agency that—

(1) Has an agreement with CMS under section 1864 of the Act, under which it performs surveys and inspections of health care facilities and recommends to CMS whether they meet the applicable requirements of section 1819, section 1832, section 1861, or subpart C of title XVIII of the Act; and

(2) Is used by the State to determine, on the basis of surveys and inspections,

whether health care facilities meet the requirements for participation in Medicaid.

* * * * *

5. In § 400.202, the following changes are made:

a. In the definition of ''Carrier'', the phrase ''payable on a charge basis'' is removed.

b. In the definition of ''Intermediary'', ''(or under any Prospective Payment System)'' is added immediately after ''payable on a cost basis''.

c. The following definitions are added in alphabetical order to read as follows:

§ 400.202 Definitions specific to Medicare.

* * * * *

Assignment means that the beneficiary transfers the right to claim payment for a service to the physician or other supplier of the service.

* * * * *

Covered services means services for which payment may be made to or on behalf of a Medicare beneficiary, subject to all requirements and limitations imposed by title XVIII of the Act and by this chapter.

* * * * *

Deductible means any of the following:

(1) The fixed amount for which the beneficiary is liable when he or she receives inpatient services in a hospital or CAH for the first time in a benefit period.

(2) The specified amount of expenses that a beneficiary must incur for covered Part B services in a calendar year before Medicare payment may be made, on his or her behalf, for additional Part B services (other than those specifically exempted under section 1833(b) of the Act and elsewhere in this chapter) furnished in that year.

(3) The expenses incurred for the first three pints of whole blood or units of packed red cells furnished to a beneficiary during a calendar year under Medicare Part A or Part B.

* * * * *

Medicare enrollee means a beneficiary who has elected to have his or her Medicare coverage provided through an HMO, CMP, HCPP, or M+C organization that participates in Medicare.

* * * * *

Physician means—

(1) A doctor of medicine or osteopathy authorized to practice medicine and surgery in the State in which he or she performs the function; and

(2) For certain specified services, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, and a chiropractor. (The specific services are set forth in subpart B of part 410 of this chapter.)

* * * * *

Skilled nursing facility (SNF) means a facility that meets the requirements of sections 1819(a) through 1819(d) of the Act.

* * * * *

6. In § 400.203, the following changes are made:

a. The definition of ''State'' is removed.

b. A definition of ''Institution for mental diseases'' is added in alphabetical order.

c. The definitions of ''FMAP'' and ''Nursing facility'' are revised to read as set forth below.

§ 400.203 Definitions specific to Medicaid.

* * * * *

Federal medical assistance percentage (FMAP) means the percentage used to calculate the amount of the Federal share of State expenditures under the Medicaid program in accordance with section 1905(b) of the Act.

* * * * *

Institution for mental diseases (IMD) means a facility that meets the requirements of section 1905(i) of the Act and the definition in § 435.1009 of this chapter.

* * * * *

Nursing facility (NF) means a facility that meets the requirements of sections 1919(a) through 1919(d) of the Act.

* * * * *

7. A new § 400.210 is added to read as follows:

§ 400.210 Personnel qualifications for Medicare.

(a) *Basis and scope.* (1) *Basis.* In order to participate in the Medicare program, providers and certain suppliers must use qualified staff. In order to be paid for the services they furnish to Medicare beneficiaries, physicians and other practitioners must meet specified qualifications.

(2) *Scope.* (i) This section sets forth the specific qualifications that must be met by those practitioners whose services are most frequently and widely used in the Medicare program.

(ii) Qualifications required of practitioners whose services are less frequently used or that are different for a particular program aspect are set forth in the subparts or sections that deal with those program aspects.

(b) *Specific requirements.* As a condition for Medicare payment to the providers and suppliers that employ them, or for the services that they furnish in independent practice, practitioners must meet the requirements for State licensing, certification, or approval, and the additional qualifications set forth in this section.

(c) An *anesthesiologist assistant* must meet the following requirements:

(1) Work under the direction of an anesthesiologist.

(2) Be in compliance with all applicable requirements of State law, including any licensure requirements the State imposes on anesthetists who are not physicians.

(3) Be a graduate of a medical school-based anesthesiologist's assistant educational program that—

(i) Is accredited by the Committee on Allied Health Education and Accreditation; and

(ii) Includes approximately 2 years of specialized basic science and clinical education in anesthesia at a level that builds on a premedical undergraduate science background.

(d) A *certified registered nurse anesthetist* must meet the following requirements:

(1) Be licensed as a registered professional nurse by the State in which he or she practices.

(2) Meet any licensure requirements the State imposes on anesthetists who are not physicians.

(3) Be a graduate of a nurse anesthesia educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Programs or any other accreditation organization that CMS designates.

(4) Meet one of the following conditions:

(i) Have passed a certification examination of the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, or any other certification organization that CMS designates.

(ii) Be a graduate of a program described in the qualification in paragraph (d)(3) of this section and, within 24 months after that graduation, meet the condition in paragraph (d)(4)(i) of this section.

(e) A *nurse-midwife* must meet the requirements in paragraphs (e)(1) and (2) of this section, and the requirement in paragraph (e)(3) or the requirement in paragraph (e)(4):

(1) Be currently licensed to practice in the State as a registered professional nurse.

(2) Be legally authorized under State law or regulations to practice as a nurse-midwife.

(3) Have completed a State-specified program of study and clinical experience for nurse-midwives.

(4) If there is no State-specified program of study and clinical experience for nurse-midwives, meet one of the following conditions:

(i) Be currently certified as a nurse-midwife by the American College of Nurse-Midwives.

(ii) Have successfully completed a formal educational program (of a least 1 academic year) that, upon completion, qualifies the nurse to take the certification examination offered by the American College of Nurse-Midwives.

(iii) Have successfully completed a formal educational program for preparing registered nurses to furnish gynecological and obstetrical care to women during pregnancy, delivery, and the post-partum period and care to normal newborns; and have practiced as a nurse-midwife for a total of 12 months during any 18-month period between August 8, 1976 and July 16, 1982.

(f) A *nurse practitioner* must meet one of the following requirements:

(1) Be a registered professional nurse who—

(i) Is authorized by the State in which he or she furnishes the services to practice as a nurse practitioner in accordance with State law; and

(ii) Is certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners.

(2) Be a registered professional nurse who—

(i) Is authorized by the State in which he or she furnishes the services to practice as a nurse practitioner under State law; and

(ii) Has been granted a Medicare billing number as a nurse practitioner by December 31, 2000.

(3) Be a nurse practitioner who—

(i) On or after January 1, 2001, applies for a Medicare billing number for the first time; and

(ii) Meets the requirements specified in paragraph (f)(1) of this section

(4) Be a nurse practitioner who—

(i) On or after January 1, 2003, applies for a Medicare billing number for the first time;

(ii) Has a master's degree in nursing; and

(iii) Meets the requirements specified in paragraph (f)(1) of this section.

(g) A *physician assistant* must meet all of the following requirements:

(1) Have graduated from a physician assistant educational program that is accredited by the National Commission on Accreditation of Allied Health Education Programs;

(2) Have passed the national certification examination of the National Commission on Certification of Physician Assistants; and

(3) Be licensed by the State to practice as a physician assistant.

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

B. Part 401 is amended as set forth below.

1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh). Subpart F is also issued under the authority of the Federal Claims Collection Act (31 U.S.C. 3711).

§ 401.128 [Amended]

2. In paragraph (a)(3), under ''Region IX'', ''Trust Territory of Pacific Islands'' is removed, and ''Northern Mariana Islands'' is added after ''American Samoa''.

3. In paragraph (b), the address ''Director, Office of Research, Demonstrations, and Statistics, CMS, Baltimore, Maryland 21235'' is revised to read ''Privacy Officer, CMS, 7500 Security Boulevard, Baltimore, MD 21244–1850'', and '', Office of Research, Demonstrations and Statistics'', the second time it appears, is removed.

§ 401.148 [Amended]

4. In § 401.148, the address ''CMS, 700 East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235,'' is revised to read ''Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850''.

PART 402—CIVIL MONEY PENALTIES, ASSESSMENTS, AND EXCLUSIONS

C. Part 402 is amended as set forth below.

1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 402.113 [Amended]

2. In § 402.113, in paragraph (c), ''DAB'' is revised to read ''Departmental Appeals Board (the Board).''.

PART 403—SPECIAL PROGRAMS AND PROJECTS

D. 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).

§ 403.300 [Amended]

2. In § 403.300, the section heading is revised to read ''Basis and scope'' and the heading of paragraph (b) is revised to read ''Scope''.

§ 403.302 [Amended]

3. In § 403.302, the following changes are made:

a. The definition of ''Chief executive officer of a State'' is removed.

b. The definition of ''State system or system'' is amended by placing a period after ''control system'' and removing all that follows.

4. In § 403.304, the following changes are made:

a. The section heading is revised.

b. Paragraph (a) is revised.

c. Paragraph (b)(1) is revised.

The changes read as follows:

§ 403.304 Minimum requirements for approval of a State system.

(a) *Application and submission of documentation.* The State Governor or his or her designee is responsible for submitting the application for system approval and any assurances and other documentation required under this subpart.

(b) *Basis for approval: Specific requirements.* (1) CMS may approve the making of Medicare payments under a State reimbursement control system if CMS determines that the system meets the requirements of paragraphs (b) and (c) and, if applicable, paragraph (d), of this section.

(i) CMS evaluates any application for approval of a State system and gives the State notice of its determination within 60 days.

(ii) CMS may reconsider a denied application in accordance with § 403.316.

* * * * *

§§ 403.312 and 403.314 [Removed]

5. §§ 403.312 and 403.314 are removed.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

E. Part 405 is amended as set forth below.

1. In subpart C, the authority citation is revised to read as follows:

Authority: Secs. 1102, 1870, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395gg, and 1395hh), and 31 U.S.C. 3711.

2. In § 405.400, the definition of ''Emergency care services'' is removed, and the definition of ''Emergency services'' is added to read as follows:

§ 405.400 Definitions.

* * * * *

Emergency services has the meaning given the term in § 422.113 of this chapter.

* * * * *

3. In subparts G and H, the authority citations are revised to read as follows:

Authority: Secs. 1102, 1869 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395ff and 1395hh).

4. In § 405.802, the definition of ''Assignment'' is removed.

§ 405.855 [Amended]

5. In § 405.855, in paragraph (c)(1)(i), ''DAB'' is revised to read ''Departmental Appeals Board''.

§ 405.857 [Amended]

6. In § 405.857, in paragraph (a), ''DAB'', the first time it appears, is revised to read ''Departmental Appeals Board''.

§ 405.1875 [Corrected]

7. In § 405.1875, in paragraph (a)(2), ''Attorney Advisory'' is corrected to read ''Attorney Advisor''.

§ 405.1877 [Amended]

8. In § 405.1877, the following changes are made:

a. In paragraph (b) ''must file its appeal'' is revised to read ''must file the civil action''.

b. The heading of paragraph (e) is revised to read ''*Group actions.*''.

c. The heading of paragraph (f) is revised to read ''*Venue for group actions.*''.

Subpart U [Amended]

9. In subpart U, the authority citation is revised to read as follows:

Authority: Secs. 1102, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395qq).

10. In § 405.2401, the definitions of ''Act'', ''Beneficiary'', ''Carrier'', ''CMS'', ''Covered services'', ''Deductible'', ''Nurse-midwife'', ''Nurse practitioner and physician assistant'', ''Reporting period'', and ''Secretary'' are removed, and the definition of ''Physician'' is revised to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

Physician includes residents who meet the definition of § 415.152 of this chapter and meet the requirements of § 415.206(b) of this chapter for payment under the physician fee schedule.

* * * * *

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

F. Part 406 is amended as set forth below.

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 406.21, paragraph (f)(1) is revised to read as follows:

§ 406.21 Individual enrollment.

* * * * *

(f) *Transfer enrollment period for HMO and CMP enrollees.* (1) *Applicability.* This paragraph applies to an enrollee of an HMO or CMP that has a contract with CMS under subpart L of part 417 of this chapter.

* * * * *

PART 409—HOSPITAL INSURANCE BENEFITS

G. Part 409 is amended as set forth below.

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 409.3 [Amended]

2. In § 409.3, the definition of ''Covered'' is removed.

§ 409.60 [Amended]

3. In § 409.60, in paragraph (c), ''405.330'', wherever it appears, is revised to read ''§ 411.400''.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

H. Part 410 is amended as set forth below.

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh unless otherwise indicated).

§ 410.1 [Amended]

2. In § 410.1, paragraph (b), ''copayment'' is revised to read ''coinsurance'', and ''subpart C of part 405'' is revised to read ''part 411''.

3. In § 410.2, the definition of ''nominal charge provider'' is revised to read as follows:

§ 410.2 Definitions.

* * * * *

Nominal charge provider has the meaning given the term in § 409.3 of this chapter.

* * * * *

§ 410.32 [Amended]

4. In § 410.32, in paragraph (d)(1), ''RPCH'' is revised to read ''CAH''.

§ 410.50 [Amended]

5. In § 410.50, in paragraph (b), the word ''independent'' is removed and ''subpart M of part 405 of this chapter.'' is revised to read ''part 493 of this chapter.''.

§ 410.58 [Amended]

6. In § 410.58, the following changes are made:

a. In paragraph (a)(1), ''as defined in § 491.2 of this chapter,'' is removed.

b. In paragraph (a)(2), ''as defined in § 417.416'' is revised to read ''who has the qualifications specified in § 417.416(d)(2)''.

7. In § 410.62, the following changes are made:

a. Paragraph (a)(2)(i) is revised to read as set forth below.

b. In paragraph (a)(2)(iii), ''§ 410.63'' is revised to read ''§ 424.24''.

§ 410.62 Outpatient speech pathology services: Conditions and exclusions.

(a) * * *

(2) * * *

(i) Is established either by a physician or by the speech pathologist who will provide the services to the particular individual;

* * * * *

8. Section 410.69 is revised to read as follows:

§ 410.69 Services of a certified registered nurse anesthetist or an anesthesiologist assistant.

Medicare Part B pays for anesthesia services and related care furnished by a certified registered nurse anesthetist or an anesthesiologist assistant who—

(a) Is legally authorized to perform the services by the State in which he or she performs them; and

(b) Meets the qualifications specified in § 400.210 of this chapter.

§ 410.74 [Amended]

9. In § 410.74, the following changes are made:

a. In paragraph (a)(2)(i), ''paragraph (c) of this section'' is revised to read ''§ 400.210 of this chapter''.

b. Paragraph (c) is removed and reserved.

10. In § 410.75, paragraph (b) is revised to read as follows:

§ 410.75 Nurse practitioner's services.

* * * * *

(b) *Qualifications.* For Medicare Part B coverage of his or her services, a nurse practitioner must meet one of the requirements specified in § 400.210(f) of this chapter.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

I. Part 411 is amended as set forth below.

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 411.6 [Amended]

2. In § 411.6, in paragraph (b)(4), ''(as defined in § 409.3 of this chapter)'' is removed.

§ 411.15 [Amended]

3. In § 411.15, the following changes are made:

a. In paragraph (m)(1), ''(as defined in § 409.3 of this chapter)'' is removed.

b. Paragraph (m)(3)(vi) is revised to read ''Services of a certified registered nurse anesthetist or of an anesthesiologist's assistant.''.

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

J. Part 412 is amended as set forth below.

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 412.50 [Amended]

2. In § 412.50, in paragraph (c), ''(as defined in § 409.3 of this chapter)'' is removed.

§§ 412.63 and 412.210 [Amended]

3. In § 412.63(b)(3) and § 412.210(b)(2), the address ''CMS, East High Rise Building, Room 132, 6325 Security Boulevard, Baltimore, Maryland, 21207'' is revised to read ''Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850''.

§ 412.108 [Amended]

4. In § 412.108, paragraph (a)(1)(i), ''as defined in'' is revised to read ''as determined under''.

5. In § 412.113, in paragraph (c)(2)(i)(B), the first sentence is revised to read as follows:

§ 412.113 Other payments.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) The hospital must, as of January 1, 1988, have employed or contracted with a certified registered nurse anesthetist or an anesthesiologist's assistant to perform anesthesia services in that hospital.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

K. Part 413 is amended as set forth below.

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

§ 413.20 [Amended]

2. In § 413.20, in paragraph (c) introductory text, ''provider of services (as defined in § 400.202 of this chapter)'' is revised to read ''provider''.

§ 413.53 [Amended]

3. In § 413.53, in the table for Hospital K, ''ICF-type'', wherever it appears, is revised to read ''NF-type''.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

L. Part 414 is amended as set forth below.

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

§ 414.2 [Amended]

2. In § 414.2, the following changes are made:

a. The definitions for *CY* and *FY* are removed.

b. In paragraph (3) of the definition of ''Physician services'', remove ''of services as defined in § 400.202 of this chapter''.

PART 416—AMBULATORY SURGICAL SERVICES

M. 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).

§ 416.42 [Amended]

2. In § 416.42, in paragraph(b)(2), ''as defined in § 410.68(b) of this chapter'' is removed.

§ 416.61 [Amended]

3. In § 416.61, in paragraph (b), ''include items and services'' is revised to read ''include services'', and ''of part 405'' is removed.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

N. Part 417 is amended as set forth below.

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e-5, and 300e-9); and 31 U.S.C. 9701.

§ 417.1 [Amended]

2. In § 417.1, the following changes are made:

a. The definitions of ''Secretary'' and ''Significant business transaction'' are removed.

b. In the definition of ''Furnished'', ''maid'' is corrected to read ''made'', and ''dierctly'' is corrected to read ''directly''.

§ 417.101 [Amended]

3. In § 417.101, in paragraph (c), ''§§ 417.168 and 417.169,'' is revised to read

''§ 417.142(g) and (h),''.

4. In § 417.126, the following changes are made:

a. In paragraph (b)(1), ''(as defined in paragraph (c) of this section)'' is revised to read ''(as defined in § 400.200 of this chapter)''.

b. Paragraph (c) is revised to read as set forth below.

c. Paragraphs (d) and (e), the first time they appear, are removed.

§ 417.126 Recordkeeping and reporting requirements.

* * * * *

(c) *Business transaction defined.* As used in paragraph (b) of this section, a business transaction is any of the following kinds of transactions:

(1) Sale, exchange, or lease of property.

(2) Goods, services, or facilities furnished for a monetary consideration, including management services but not including—

(i) Salaries paid to employees for services performed in the normal course of their employment; or

(ii) Health services furnished to the HMO's enrollees by hospitals and other providers and by HMO staff, medical groups, IPAs, or any combination of these entities.

* * * * *

§ 417.143 [Amended]

5. In § 417.143, in paragraph (b)(2), ''417.168 and 427.169 of subpart F.'' is revised to read ''§ 417.142(g) and (h).''.

Subpart E [Removed]

6. Subpart E, consisting of §§ 417.150 through 417.159, is removed and reserved.

§ 417.404 [Amended]

7. In § 417.404, in paragraph (a)(1), ''§ 117.142'' is revised to read ''§ 417.142''.

§ 417.416 [Amended]

8. In § 417.416, in paragraph (d)(1),''(as defined in § 491.2 of this chapter)'' is removed.

§ 417.602 [Removed]

9. § 417.602 is removed.

§ 417.604 [Amended]

10. In § 417.604, in paragraph (b)(3), the parenthesis preceding ''§ 427.440(b)(2)'' is moved to precede ''under''.

§§ 417.646, 417.658, and 417.690 [Amended]

11. in § 417.646 introductory text, § 417.658, and § 417.690(c), ''final and binding'' is revised to read ''binding''.

§ 417.800 [Amended]

12. In § 417.800, the definition of ''Medicare enrollee'' is removed.

PART 418—HOSPICE CARE

O. 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).

§ 418.3 [Amended]

2. In § 418.3, the definition of ''Physician'' is removed.

§ 418.98 [Amended]

3. In 418.98(b)(2), ''An ICF'' is revised to read ''An NF''.

§ 418.202 [Amended]

4. In § 418.202, in paragraph (c), ''as defined in § 410.20 of this chapter'' is removed.

PART 420—PROGRAM INTEGRITY: MEDICARE

P. Part 420 is amended as set forth below.

1. The authority citation for part 420 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. § 420.200 is revised to read as follows:

§ 420.200 Basis, scope, and applicability.

(a) *Basis and scope.* This subpart is based on sections 1124, 1124A, 1126, and 1861(v)(1)(I) of the Act. It sets forth requirements for providers, Part B suppliers, health maintenance organizations, and intermediaries and carriers to disclose information about the following matters and persons.

(1) The hiring of an intermediary's former employees by a provider.

(2) Any person who—

(i) Has an ownership or control interest in the provider or supplier or serves as the agent or managing employee of the provider or supplier;

(ii) Has been convicted of a criminal offense, subjected to a civil money penalty, or excluded from the program, as a result of any activities related to involvement in Medicare, Medicaid, the Maternal and Child Health program under title V of the Act, or the Social Services program under title XX of the Act, at any time since the inception of these programs; or

(iii) Has an ownership or control interest in, or is the agent or managing employee of, an entity that has been sanctioned as described in paragraph (a)(2)(ii) of this section.

(3) Significant business transactions between the provider or supplier and any subcontractor or wholly owned supplier.

(b) *Applicability.* The following are subject to the requirements of this subpart as disclosing entities:

(1) A provider of services as defined in section 1861(u) of the Act or a Part B supplier.

(2) A clinical laboratory.

(3) A renal disease facility.

(4) A rural health clinic.

(5) A Federally qualified health center.

(6) A health maintenance organization as defined in section 1301(a) of the PHS Act.

(7) A Medicare intermediary or carrier.

(8) A Medicare+Choice organization, as defined in section 1859 of the Act.

(9) A managed care entity as defined in section 1932 of the Act.

3. In § 420.201, the following changes are made:

a. The definition of ''Significant business transaction'' is removed.

b. The definitions of ''Disclosing entity'', ''Other disclosing entity'', ''Indirect ownership interest'' and ''Ownership interest'' are revised and the newly revised definition of *Other disclosing entity* is transferred to proper alphabetical order, to read as follows:

§ 420.201 Definitions.

* * * * *

Disclosing entity means any of the entities specified in § 420.200(b).

Indirect ownership interest means an ownership interest in an entity that has a direct or indirect ownership interest in a disclosing entity.

* * * * *

Other disclosing entity means any entity (other than an individual practitioner or group of practitioners) that—

(1) Is not listed in § 420.200 (b) and does not participate in Medicare; but

(2) Is required to disclose ownership and control information because it furnishes health-related services under any of the programs established under title V, XIX, or XX of the Act, or serves as a Medicaid fiscal agent.

* * * * *

Ownership interest means the possession of equity in the capital, the stock, or the profits of a disclosing entity.

* * * * *

§ 420.301 [Amended]

4. In § 420.301, the definition of ''Provider'' is removed.

PART 421—INTERMEDIARIES AND CARRIERS

Q. Part 421 is amended as set forth below.

1. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§§ 421.1 and 421.3 [Revised]

2. §§ 421.1 and 421.3 are revised to read as follows:

§ 421.1 Basis and scope.

(a) *Basis.* (1) This part is based on the indicated provisions of the following sections of the Act:

1124—Requirements for disclosure of certain information.

1816 and 1842—Use of organizations and agencies to make Medicare payments to providers and suppliers of covered services.

(2) Section 421.118 is also based on 42 U.S.C. 1395b-1(a)(1)(F), which authorizes demonstration projects involving intermediary agreements and carrier contracts.

(b) *Scope.* This part sets forth—

(1) The procedures for selecting intermediaries and carriers;

(2) The requirements for approval of intermediary agreements and carrier contracts;

(3) The functions that intermediaries and carriers are required to perform;

(4) The criteria for—

(i) Evaluating intermediary and carrier performance;

(ii) Designating intermediaries and carriers to serve a class of providers on a regional or national basis; and

(iii) Assigning and reassigning providers or suppliers to particular intermediaries.

(5) CMS's authority to perform certain functions directly or by contract; and

(6) The appeal rights of intermediaries and carriers dissatisfied with specified adverse actions.

§ 421.3 Definition.

For purposes of designation of intermediaries (§ 421.117) and application of performance criteria and standards (§§ 421.120 and 421.122) ''intermediary'' includes a Blue Cross plan that has entered into a CMS-approved subcontract with the Blue Cross and Blue Shield Association to perform intermediary functions.

PART 422—MEDICARE+CHOICE PROGRAM

R. Part 422 is amended as set forth below.

1. The authority citation for part 422 continues to read as follows:

Authority: Secs.1102, 1851 through 1857, 1859, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–21 through 1395w–27, and 1395hh).

§ 422.500 [Amended]

2. In § 422.500, the definition of ''Significant business transaction'' is removed.

§ 422.562 [Amended]

3. In paragraph (b)(3)(v), ''DAB'' is revised to read ''Departmental Appeals Board''.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

S. Part 424 is amended as set forth below.

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 424.3 [Amended]

2. In § 424.3, the definition of ''ICD–9-CM'' is removed.

§ 424.20 [Amended]

3. In § 424.20(e)(2), ''neither of whom has'' is revised to read ''who does not have''.

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

Part 430 is amended as set forth below.

1. The authority citation for part 430 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 430.25 [Amended]

2. In § 430.25(c)(2), ''SNF, ICF, or ICF/MR'' is revised to read ''NF or ICF/MR''.

§ 430.30 [Amended]

3. In § 430.30(e), the language following ''under this subpart:'' is revised to read as follows:

§ 430.30 Grants procedures.

* * * * *

(e) * * *

§ 74.12—Forms for applying for HHS financial assistance.

§ 74.23—Cost sharing or matching.

§ 74.25—Revision of budget and program plans.

§ 74.52—Financial reporting.

§ 430.62 [Amended]

4. In § 430.62, the name and address ''Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement, and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Telephone: (301) 594–8261'' is revised to read ''Centers for Medicare & Medicaid Services, Office of Hearings, 7500 Security Boulevard, Baltimore, MD 21244–1850''.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

U. Part 431 is amended as set forth below.

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Throughout this subpart E, all references to ''skilled nursing facility'' are removed.

§ 431.57 [Amended]

3. In § 431.57, the following changes are made:

a. In paragraphs (b) and (c),''subchapter'' is revised to read ''chapter''.

b. In paragraph (e), ''of this part'' is removed.

§ 431.200 [Amended]

4. In § 431.200, remove ''skilled nursing facilities and''.

§ 431.201 [Amended]

5. In § 431.201:

a. In the definition of ''Action'', remove ''skilled nursing facilities and''.

b. The definition of ''Date of action'' is removed.

§ 431.206 [Amended]

6. In § 431.206, in paragraph (c)(3), remove ''a skilled nusring facility or''.

§ 431.210 [Amended]

7. In § 431.210, in paragraph (a), remove ''State, skilled nursing facility, or nursing facility'' and add in its place ''State or nursing facility''.

8. Section 431.211 is revised to read as follows:

§ 431.211 Advance notice.

Except as permitted under §§ 431.213 and 431.214, the State or local agency must mail the notice required under § 431.206(c)(2) through (c)(4) at least 10 days before the intended effective date of the action.

9. In § 431.213, the following changes are made:

a. The introductory text and paragraph (h) are revised to read as set forth below.

b. Remove the semicolons at the end of paragraphs (a) through (g) and add periods in their place, and remove the ''or'' after paragraph (g).

§ 431.213 Exceptions to advance notice requirements.

The agency may mail the notice no later than the effective date of the action or the date of the determination, as applicable, under any of the following circumstances:

* * * * *

(h) The discharge or transfer of the recipient will be effective in less that 10 days and the timing exception of § 483.12(a)(5)(ii) of this chapter applies.

10. In § 431.214, the introductory text is revised to read as follows:

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the effective date of the action or the date of the determination, as applicable, if—

* * * * *

§ 431.220 [Amended]

11. In § 431.220, in paragraph (a)(3), remove ''skilled nursing facility or''.

§ 431.241 [Amended]

12. In § 431.241, in paragraph (c), remove ''skilled nursing facility or''.

§ 431.242 [Amended]

13. In § 431.242, in paragraph (a)(2), remove ''skilled nursing facility''.

14. In § 431.610, the following changes are made:

a. In paragraph (g)(1), ''subchapter'' is revised to read ''chapter''.

b. Paragraph (g)(3) is revised to read as follows:

§ 431.610 Relations with standard-setting and survey agencies.

* * * * *

(g) * * *

(3) Have qualified personnel perform on-site inspections at least once during each certification period, or more often if there is a compliance question.

* * * * *

15. In § 431.620, paragraph (b) is revised to read as follows:

§ 431.620 Agreement with State mental health authority or mental institutions.

* * * * *

(b) *Definition. Institution for mental diseases (IMD)* has the meaning given the term in § 400.203 of this chapter.

* * * * *

§ 431.701 [Amended]

16. In § 431.701, the following changes are made:

a. Under the definition of ''Nursing home'', paragraphs (a) and (b) are redesignated as paragraphs (1) and (2).

b. In newly designated paragraph (2), ''subchapter'' is revised to read ''chapter''.

17. In § 431.804, the definitions of ''active case'' and ''administrative period'' are revised to read as follows:

§ 431.804 Definitions.

* * * * *

Active case means an individual or family that the State agency has determined to be currently eligible for Medicaid.

Administrative period means the 2-month period (review month and preceding month) during which a case error is not cited for the State agency's failure to take any action required by a change in case circumstances.

* * * * *

PART 433—STATE FISCAL ADMINISTRATION

V. Part 433 is amended as set forth below.

1. The authority citation for part 433 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 433.1 [Removed]

2. § 433.1 is removed.

3. In subpart A, a new § 433.5 is added, to read as follows:

§ 433.5 Basis and scope.

(a) *Basis.* Most of the sections in this subpart identify the statutory provisions on which the rules are based. Certain portions of section 1902(a) of the Act are the basis for general administrative requirements such as those for accounting systems, cost allocation, reporting, and the handling of checks that are uncashed or canceled.

(b) *Scope.* This subpart sets forth the conditions for, and the rates of, FFP and the general administrative requirements related to the State's fiscal activities.

4. Section 433.111 is amended to revise the section heading and paragraph (b) to read as follows:

§ 433.111 Terminology.

* * * * *

(b) *Mechanized claims processing and information retrieval system* or *system* means the system of hardware and software used to process Medicaid claims and to produce and retrieve services utilization and management information required by the Medicaid single State agency and the Federal Government for program administration and auditing.

(1) The claims are from providers of medical care and services furnished to recipients under the Medicaid program.

(2) The system consists of the following:

(i) Required subsystems specified in the State Medicaid Manual.

(ii) Required changes to the required system or subsystem, published in accordance with § 433.123, and specified in the State Medicaid Manual.

(iii) System enhancements approved by CMS.

(3) Eligibility determination systems are not part of the claims processing and information retrieval system or enhancements to that system.

5. In § 433.304, the following changes are made:

a. The definitions of ''Provider'' and ''Recoupment'' are removed.

b. The definitions of ''Abuse'', ''Fraud'', ''Overpayment'', and ''Third party'' are revised; and a definition of ''Sixty-day period'' is added to read as set forth below.

§ 433.304 Definitions.

Abuse has the meaning given the term in § 455.2 of this chapter.

* * * * *

Fraud has the meaning given the term in § 455.2 of this chapter.

Overpayment means the portion of a Medicaid payment to a provider—

(1) That is in excess of the amount allowable for the services under section 1902 of the Act and implementing regulations; and

(2) That must be refunded to CMS by the State under section 1903 of the Act and this subpart.

* * * * *

Sixty-day period means the 60 calendar days immediately following discovery of an overpayment, allowed for the State agency to recover or seek to recover the overpayment.

Third party has the meaning given the term in § 433.136.

PART 434—CONTRACTS

W. Part 434 is amended as set forth below.

1. The authority citation for part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 434.2 [Corrected]

2. In § 434.2, the definition of ''Prepaid health plan'', ''Medical agency'' is corrected to read ''Medicaid agency''.

§ 434.6 [Amended]

3. In § 434.6(a)(1), ''appendix G;'' is revised to read ''appendix A;''.

§ 434.21 [Amended]

4. In § 434.21(b)(3), ''Skilled nursing facility (SNF) services'' is revised to read ''Nursing facility services''.

PART 440—SERVICES: GENERAL PROVISIONS

X. Part 440 is amended as set forth below.

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.10 [Amended]

2. In § 440.10(b), ''SNF and ICF services'' is revised to read ''NF services''.

3. In § 440.20, the following changes are made:

a. The introductory text of paragraph (b) and paragraph (b)(1) are revised to read as set forth below.

b. In paragraph (b)(2), ''(as defined in §§ 405.2401 and 491.2 of this chapter)'' is removed.

c. In paragraph (c), second sentence, ''furnishd'' is corrected to read ''furnished''.

§ 440.20 Outpatient hospital services and rural health clinic services.

* * * * *

(b) *Rural health clinic services* means the following services when they are furnished by a rural health clinic that has been certified in accordance with part 491 of this chapter, and by practitioners who are acting within the scope of their practice under State law and who meet the conditions specified in this paragraph:

(1) Services furnished by a physician in the clinic and services furnished away from the clinic if the physician's contract with the clinic so provides.

4. In § 440.40, paragraph (a) is revised to read as follows:

§ 440.40 Nursing facility services for individuals age 21 or older (other than services in institutions for mental diseases), EPSDT, and family planning services and supplies.

(a) *Nursing facility services.* (1) ''Nursing facility services for individuals age 21 or older other than services in an institution for mental disease'' means inpatient care that meets the requirements of paragraphs (a)(2) and (a)(3) of this section and includes the following:

(i) Skilled nursing care and related services for residents who require medical or nursing care.

(ii) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(iii) Health related care and services for individuals who, because of their mental or physical condition, require, on a regular basis, services that—

(A) Are above the level of room and board; and

(B) Must be made available on an inpatient basis.

(2) The services must be ordered by, and furnished under the direction of, a physician.

(3) The services must be provided by one of the following:

(i) A facility or distinct part of a facility that is certified as meeting the requirements for participation that are set forth in subpart B of part 483 of this chapter.

(ii) If specified in the State plan, a swing-bed hospital that has CMS approval to furnish SNF services under Medicare.

(iii) Any facility located on an Indian reservation if the facility is certified by the Secretary as meeting the requirements of subpart B of part 483 of this chapter.

* * * * *

§ 440.50 [Amended]

5. In paragraph (a) introductory text, ''skilled'' and ''by a physician'' are removed.

6. In § 440.70. paragraph (c) is revised to read as follows:

§ 440.70 Home health services.

* * * * *

(c) Services furnished to a recipient whose place of residence is a hospital or a nursing facility are not ''home health services''. However, home health services may be furnished to residents of an ICF/MR if they are services other than those required under subpart I of part 483 of this chapter. For example, a registered nurse may provide short-term care for a recipient in an ICF/MR to avoid having to transfer the recipient to a nursing facility.

* * * * *

§ 440.80 [Amended]

7. In § 440.80(c)(3), ''A skilled nursing facility'' is revised to read ''A nursing facility''.

8. In § 440.140, the following changes are made:

a. The section heading is revised to read as follows: ''§ 440.140 Inpatient hospital services and nursing facility services for individuals age 65 or older in institutions for mental diseases.''

b. In paragraph (a), introductory text, ''(b), (c), and (e)'' is removed.

c. In paragraph (a)(2), ''subpart H of'' is removed.

§ 440.165 [Amended]

9. Section 440.165 is amended by revising paragraph (b) to read as follows:

§ 440.165 Nurse-midwife service.

* * * * *

(b) ''Nurse-midwife'' means a registered professional nurse who meets the applicable qualifications set forth in § 400.210(b) of this chapter.

§ 440.166 [Amended]

10. In § 440.166, in paragraph (d), ''this subchapter.'' is revised to read ''this chapter.''.

§ 440.220 [Amended]

11. In § 440.220, in paragraph (a)(3), ''skilled'' is removed.

§ 440.250 [Amended]

12. In § 440.250, the following changes are made:

a. In paragraph (a), ''skilled nursing facility services'' is revised to read ''nursing facility services''.

b. In paragraph (m), ''(as defined in § 440.255)'' is removed.

13. Paragraph (b)(1) is revised to read as follows:

§ 440.255 Limited services available to certain aliens.

* * * * *

(b) * * *

(1) Emergency services as defined in § 447.53(b) of this chapter.

* * * * *

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

Y. Part 441 is amended as set forth below.

1. The authority citation for part 441 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

§ 441.1 [Amended]

2. In § 441.1, the following changes are made:

a. The word ''subchapter'', wherever it appears, is revised to read ''chapter''.

b. Revise ''intermediate care facility services for the mentally retarded'' to read ''nursing facilities and intermediate care facilities for persons with mental retardation''.

§ 441.15 [Amended]

3. In § 441.15, the following changes are made:

a. In the introductory text, the word ''subchapter'' is revised to read ''chapter''.

b. In paragraph (b)(2), ''skilled'' and ''individuals;'' are removed.

c. In paragraph (b)(3), ''skilled nursing facility'' is revised to read ''nursing facility''.

4. Section 441.17 is revised to read as follows:

§ 441.17 Laboratory services.

(a) The plan must provide for payment for laboratory services as defined in § 440.30 of this chapter, if they are furnished by entities that meet the following additional requirements, as appropriate:

(1) For hospital-based laboratories, the requirements of § 482.27 of this chapter.

(2) For services furnished by rural health clinics, the requirements of § 491.9(c)(2) of this chapter.

(3) For NF-based laboratories, the requirements of § 483.75(j) of this chapter

(b) Laboratory records must contain the name (or other identifier approved by the Medicaid agency) of the person from whom the specimen was taken.

§ 441.100 [Amended]

5. In § 441.100, '', skilled nursing services, and intermediate care facility services'' is revised to read ''and nursing facility services''.

§ 441.150 [Amended]

6. In § 441.150, ''subchapter'' is revised to read ''chapter''.

§ 441.152 [Amended]

7. In § 441.152, the following changes are made:

a. The designation ''(a)'' is removed and ''§ 441.154'' is revised to read''§ 441.153''.

b. The designations ''(1)'', ''(2)'', and ''(3)'' are revised to read ''(a)'', ''(b)'', and ''(c)'', respectively.

c. Paragraph (b) is removed.

§ 441.155 [Amended]

8. In § 441.155, the following changes are made:

a. In paragraph (a), ''to the extent that'' is revised to read ''to the point at which''.

b. Paragraph (d) is removed.

§ 441.181 [Amended]

9. In paragraph (a)(2), the parenthetical statement at the end is removed.

§ 441.302 [Amended]

10. In § 441.302, the following changes are made:

a. Throughout § 441.302, ''a NF'' is revised to read ''an NF''.

b. In § 441.302(d), ''an SNF, ICF, or ICF/MR'' is revised to read ''an NF or ICF/MR''.

§ 441.354 [Amended]

11. In § 441.354, the following changes are made:

a. In paragraph (b)(1), ''an SNF or ICF'' is revised to read ''an NF'', and ''(NF effective October 1, 1990)'' is removed.

b. In paragraph (c), in the ''P'' and ''Q'' factors of the formula, ''for SNF and ICF'' is revised to read ''for NF'', and ''(NF effective October 1, 1990)'' is removed.

PART 442—STANDARDS FOR PAYMENT TO NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

Z. Part 442 is amended as set forth below.

1. The authority citation for part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 442.2 [Amended]

2. In § 442.2, the definition of ''Immediate jeopardy'' is revised to read as follows:

§ 442.2 Terms.

* * * * *

Immediate jeopardy has the meaning given that term in § 488.1 of this chapter.

* * * * *

PART 447—PAYMENT FOR SERVICES

AA. Part 447 is amended as set forth below.

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Subparts B and C are redesignated as subparts C and D, respectively.

3. The undesignated centered heading ''Cost Sharing'' is removed and the following is added in its place:

* * * * *

Subpart B—Cost Sharing

* * * * *

§ 447.50 [Amended]

4. In § 447.50, the following changes are made:

a. The heading of § 447.50 is revised to read ''Basis and purpose.''.

b. The designation ''(a)'' is removed.

c. ''§§ 447.51 through 447.59 prescribe '' is revised to read ''this subpart prescribes''.

5. The undesignated centered heading immediately preceding § 447.51 is removed.

§ 447.51 [Amended]

6. In § 447.51, the following changes are made:

a. The heading of § 447.51 is revised to read ''Enrollment fees and premiums or similar charges: Requirements and options.''.

b. In paragraph (a), ''subchapter'' is revised to read ''chapter''.

§ 447.52 [Amended]

7. In § 447.52, the heading is revised to read ''Enrollment fees and premiums or similar charges: Minimum and maximum income-related charges.''.

8. The undesignated centered heading immediately preceding § 447.53 is removed.

9. In § 447.53, the following changes are made:

a. The heading of § 447.53 is revised to read as set forth below.

b. The heading for paragraph (a) is revised to read ''Basic rule.''.

c. Paragraphs (b) and (c) are revised to read as follows:

§ 447.53 Deductibles, coinsurance, and copayment, or similar charges: General rules.

* * * * *

(b) *Exceptions.* The plan may not provide for imposition of a deductible, coinsurance, copayment, or similar charge for the following services furnished to categorically needy or medically needy individuals:

(1) *Services to children.* This means services to individuals under 18 years of age or (at State option) to individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over but under 21.

(2) *Services related to pregnancy.* This means services furnished to pregnant women if the services are related to the pregnancy or to any other condition that may complicate the pregnancy. These services include the following:

(i) Routine prenatal care.

(ii) Labor and delivery.

(iii) Routine postpartum care.

(iv) Family planning services.

(v) Services for complications likely to affect pregnancy or delivery, such as hypertension, diabetes, or urinary tract infection.

(vi) Services furnished during the postpartum period for conditions or complications related to the pregnancy.(The postpartum period begins on the last day of the pregnancy and ends on the last day of the month in which the subsequent 60-day period ends.)

(3) *Services to individuals in institutions.* This means services furnished to any individual who—

(i) Is an inpatient of a hospital, NF, other medical institution, or ICF/MR; and

(ii) Is required, as a condition for receiving services in the institution, to contribute to the medical care costs all but the minimum amount of income he or she needs for personal expenses. (Sections 435.725, 435.733, 435.832, and 436.832 of this chapter specify the groups to which this requirement applies.)

(4) *Emergency services.* This means services furnished in a hospital, clinic, office, or other facility that is equipped to furnish emergency services, that is, services that are required after the sudden onset of a medical condition manifesting itself by acute symptoms so severe (including severe pain) that failure to provide immediate medical attention could reasonably be expected to result in—

(i) Serious jeopardy to the patient's health;

(ii) Serious impairment of bodily functions; or

(iii) Serious dysfunction of any bodily organ or part.

(5) *Family planning services.* This means family planning services furnished to individuals of child-bearing age.

(6) *Hospice care.* This means hospice care as defined in section 1905(o) of the Act.

(c) *Optional exclusions.* States may, at their option—

(1) Exempt from cost sharing all services furnished to pregnant women; and

(2) Exempt from copayment charges any HMO services furnished to medically needy Medicaid enrollees.

* * * * *

§ 447.54 [Amended]

10. In § 447.54, the section heading is revised to read: ''Maximum allowable cost sharing amounts.''.

11. The undesignated center heading immediately preceding § 447.59 is removed.

12. § 447.59 is revised to read as follows:

§ 447.59 Federal financial participation (FFP): Limits related to cost sharing.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, FFP is not available for expenditures for cost sharing amounts (enrollment fees or premiums, deductibles, coinsurance, copayment, or similar charges) that a recipient should have paid.

(b) *Exception.* FFP is available for the amounts that the agency pays as bad debts of providers under § 447.57. (We note that FFP is not available for payments the agency makes on behalf of an ineligible individual even if he or she has paid any required premium or enrollment fee.)

13. The undesignated center headings immediately preceding §§ 447.251, 447.257, 447.271, and 447.280 are removed.

14. Section 447.253 is amended to revise paragraph (b)(1)(ii)(B) to read as follows:

§ 447.253 Other requirements.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) If a State elects to cover services furnished at an inappropriate level of care (hospital inpatient services furnished to patients who require nursing facility level of care), the State's methods and standards specify that payment for this type of care is at the lower rates appropriate for nursing facility care, consistent with section 1861(v)(1)(G) of the Act; and

* * * * *

§ 447.257 [Amended]

15. The heading of § 447.257 is revised to read ''Limits on FFP.''.

§ 447.272 [Amended]

16. In § 447.272, paragraph (c), ''§§ 447.296 through 447.299.'' is revised to read ''subpart E.''.

§ 447.280 [Amended]

17. The heading of § 447.280 is revised to read ''Special rules for swing-bed hospitals.''.

Subpart F [Amended]

18. All undesignated center headings in subpart F are removed.

§ 447.331 [Amended]

19. In § 447.331, in paragraph (a), ''set forth in paragraph (b)'' is revised to read ''set forth in paragraph (b) of this section''.

20. In § 447.332, the following changes are made:

a. In paragraph (a)(1) introductory text, ''will establish'' is revised to read ''establishes''.

b. In paragraph (a)(3), ''will identify'' is revised to read ''identifies''.

c. Paragraph (b) is revised to read as follows:

§ 447.332 Upper limits for multiple source drugs.

* * * * *

(b) *Specific upper limits.* (1) The agency's payments for multiple source drugs identified and listed in accordance with paragraph (a) of this section may not exceed, in the aggregate, payment levels determined by applying, for each drug entity—

(i) A reasonable dispensing fee established by the agency; plus

(ii) An amount established by CMS that is equal to 150 percent of the published price at which the least costly therapeutic equivalent can be purchased by pharmacists.

(2) In selecting the size of the drug entity, the agency must—

(i) For non-liquids commonly available in quantities of 100 tablets or capsules, use that size;

(ii) For non-liquids not commonly available in quantities of 100 tablets or capsules, use the commonly listed package size; and

(iii) For liquids, use the commonly listed package size.

(3) In determining the least costly equivalent, the agency must use all available national compendia.

§ 447.333 [Amended]

21. In § 447.333, in paragraphs (b)(1)(i) and (b)(1)(ii), ''this subpart'' is revised to read ''this part''.

§ 447.334 [Amended]

22. In § 447.334, the following changes are made:

a. ''skilled nursing facility services'' is revised to read ''nursing facility services''.

b. ''and intermediate care facility services'' is removed.

PART 455—PROGRAM INTEGRITY: MEDICAID

BB. Part 455 is amended as set forth below.

1. The authority citation for part 455 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 455.2 [Amended]

2. In § 455.2, the following changes are made:

a. The definitions of ''Practitioner'' and ''Suspension'' are removed.

b. The definition of ''Exclusion'' is revised to read as follows:

§ 455.2 Definitions.

* * * * *

Exclusion means denial of participation in the Medicaid program for a provider that has defrauded or abused the program, or been convicted of a program-related offense under a Federal, State, or local law.

* * * * *

3. In § 455.3, the following changes are made:

a. The introductory text is republished and paragraph (a) is revised to read as set forth below.

b. In paragraph (b), ''or suspended practitioners'' is removed.

c. In paragraph (c), ''or suspension'' is removed.

§ 455.3 Other applicable regulations.

Part 1002 of this title sets forth the following:

(a) State plan requirements for excluding providers for fraud or abuse or for conviction of program-related crimes.

* * * * *

4. Section 455.100 is revised to read as follows:

§ 455.100 Basis and scope.

(a) This subpart implements sections 1124, 1126, 1902(a)(38), and 1903(i)(2) of the Act.

(b) It sets forth State plan requirements for disclosure of information regarding—

(1) Ownership and control of providers and fiscal agents, and their subcontractors;

(2) Persons convicted of criminal offenses related to their involvement in any program under Medicare, Medicaid, or the social services program under title XX of the Act; and

(3) Business transactions between providers and their subcontractors or wholly owned suppliers.

(c) It also provides instructions for determining ownership or control percentages, and specifies the penalties for failure to furnish the required information timely.

§ 455.101 [Amended]

5. In § 455.101, the definition of ''Significant business transaction'' is removed, and the definitions of ''Indirect ownership interest'' and ''Ownership interest'' are revised to read as follows:

§ 455.101 Definitions.

* * * * *

Indirect ownership interest has the meaning given the term in § 420.201 of this chapter.

* * * * *

Ownership interest has the meaning given the term in § 420.201 of this chapter.

* * * * *

PART 456—UTILIZATION CONTROL

CC. Part 456 is amended as set forth below.

1. The authority citation for part 456 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

Subpart A [Amended]

2. In subpart A, the following changes are made:

§ 456.1 [Amended]

a. In § 456.1, the following changes are made:

1. In paragraph (b)(2), in the last full sentence of the introductory text, ''and intermediate care facilities (ICF's).'' is revised to read ''and ICFs/MR.''.

2. In paragraph (b)(5), ''(IMD's)'' is revised to read ''(IMDs)'', and ''ICF's'' is revised to read ''ICFs/MR''.

b. § 456.5 is revised to read as follows:

§ 456.5 Evaluation criteria.

(a) The agency must establish and use written criteria for evaluating the quality and appropriateness of Medicaid services.

(b) The utilization review (UR) plan must provide that the UR committee—

(1) Develops written criteria for assessment of the need for admission and the need for continued stay; and

(2) Develops more extensive written criteria for cases that its experience shows are—

(i) Associated with high costs;

(ii) Associated, frequently, with the furnishing of excessive services; or

(iii) Attended by physicians whose patterns of care are frequently found to be questionable.

c. A new § 456.10 is added, to read as follows:

§ 456.10 Definitions.

As used in this part—

Medical care appraisal norms or *norms* means numerical or statistical measures of usually observed performance; and

Medical care criteria or *criteria* means predetermined elements against which aspects of the quality of a medical service may be compared.

Subpart C—Utilization Control: All Hospitals

3. In subpart C, the following changes are made:

a. The heading of subpart C is revised to read as set forth above.

b. All undesignated centered headings in subpart C are removed.

c. § 456.50 is revised to read as follows:

§ 456.50 Scope.

This subpart sets forth the requirements that all hospitals must meet for certification of need for care, plan of care, and utilization review (UR) plans.

§ 456.51 [Removed]

d. Section 456.51 is removed.

456.60 [Amended]

e. In § 456.60, in paragraph (b)(1), ''(as defined in § 491.2 of this chapter)'' is removed.

f. § 456.100 is revised to read as follows:

§ 456.100 UR plan: Basic requirement.

The State plan must provide that each hospital furnishing inpatient services under the plan has in effect a written UR plan that meets the requirements of this subpart.

§ 456.101 [Removed]

g. § 456.101 is removed.

§ 456.111 [Amended]

h. In § 456.111, the following changes are made:

1. In paragraph (d), ''§ 456.70.'' is revised to read ''§ 456.80.''.

2. In paragraph (h), ''(or, in an ICF/MR, the mental retardation professional)'' is inserted immediately before ''believes continued stay is necessary.''.

i. Section 456.133 is revised to read as follows:

§ 456.133 Subsequent continued stay review dates.

The UR plan must provide as follows:

(a) The committee assigns subsequent continued stay review dates in accordance with §§ 456.128 and 456.134(a).

(b) The committee assigns a subsequent review date each time it decides that the continued stay is needed and, for a mental hospital patient, it schedules subsequent reviews for at least every 90 days.

(c) The committee ensures that each continued stay review date it assigns is entered in the recipient's record.

j. Section 456.135 is amended to revise paragraphs (f), (g), and (h) to read as follows:

§ 456.135 Continued stay review process.

* * * * *

(f) If the committee, subgroup, or designee finds that a continued stay is not needed, it notifies the recipient's attending physician (in the case of a mental hospital patient, it may be the attending or staff physician) and provides an opportunity for the physician to present his or her views before it makes a final decision.

(g) If the attending or staff physician does not present additional information or clarification of the need for continued stay, the decision of the committee, subgroup, or designees is final.

(h) If the attending or staff physician presents additional information or clarification, at least two physician members of the committee (at least one of which is knowledgeable about mental diseases) review the need for continued stay. If they find that the patient no longer needs inpatient care, their decision is final.

k. Section 456.136 is amended to revise paragraph (b), to read as follows:

§ 456.136 Notification of adverse decision.

* * * * *

(b) The attending physician (or the attending or staff physician in a mental hospital);

* * * * *

§ 456.141 Medical care evaluation studies: Purpose and general description.

l. The section heading is revised to read as set forth above.

Subpart D—Utilization Control: Additional Requirements for Mental Hospitals

4. In subpart D, the following changes are made:

a. The subpart heading is revised to read as set forth above.

b. All undesignated center headings are removed.

c. Section 456.150 is revised to read as follows:

§ 456.150 Scope.

This subpart sets forth the utilization control requirements that mental hospitals must meet in addition to those required of all hospitals as set forth in subpart C of this part.

§§ 456.151 and 456.160 [Removed]

d. §§ 456.151 and 456.160 are removed.

e. § 456.180 is revised to read as follows:

§ 456.180 Individual written plan of care.

For mental hospital patients, the following rules apply:

(a) The plan of care required under § 456.80 must be expanded to include—

(1) Objectives;

(2) Any orders for therapies or for special procedures recommended for the patient's health and safety; and

(3) Provision for modifying the plan of care as needed.

(b) The attending or staff physician must participate in reviewing the plan at least every 90 days (rather than every 60 days as is required for all other hospitals).

§§ 456.200, 456.201, and 456.205 [Removed]

f. Sections 456.200, 456.201, and 456.205 are removed.

g. Section 456.206 is revised to read as follows:

§ 456.206 Organization of UR committee; disqualification from UR committee membership.

The rules for mental hospitals differ from those set forth in § 456.106 only in that—

(a) One of the physician members of the UR committee must be knowledgeable in the diagnosis and treatment of mental diseases; and

(b) A member is disqualified on the basis of financial interest only if it is an interest in a mental hospital.

§§ 456.211 through 456.213 [Removed]

h. Sections 456.211 through 456.213 are removed.

i. § 456.231 is revised to read as follows:

§ 456.231 Continued stay review: Basic requirement.

The UR plan must provide for a review of each recipient's continued stay in a mental hospital to decide whether it is needed, in accordance with the applicable requirements of subpart C of this part and this subpart.

§ 456.232 [Removed]

j. Section 456.232 is removed.

k. Section 456.233 is revised to read as follows:

§ 456.233 Date of initial continued stay review.

(a) For mental hospital patients, the following rules apply, in addition to those set forth in § 456.128.

(b) If an individual applies for Medicaid while a patient in a mental hospital—

(1) The committee sets the date for initial continued stay review within 1 working day after the hospital receives notice of the application; and

(2) That date may not be later than 30 days after admission of the patient or 30 days after receipt of notice of his or her application for Medicaid, whichever is earlier.

§§ 456.234 through 456.245 [Removed]

l. Sections 456.234 through 456.245 are removed.

Subpart F—Utilization Control: Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR)

5. In subpart F, the following changes are made:

a. The heading of subpart F is revised as set forth above.

b. All undesignated center headings in subpart F are removed.

c. Section 456.350 is revised to read as follows:

§ 456.350 Scope.

This subpart sets forth the requirements that ICFs/MR must meet in addition to those specified, for hospitals, in subparts C and D of this part. In applying the rules of those subparts, references to ''hospitals'' must be read as references to ''ICF/MR''.

d. § 456.351 is revised to read as follows:

§ 456.351 Definition.

ICF/MR services means services that meet the conditions specified in § 440.150 of this chapter, but exclude services furnished in a religious nonmedical health care institution as defined in § 440.170(b) of this chapter.

e. Section 456.360 is revised to read as follows:

§ 456.360 Certification and recertification of need for inpatient care.

The rules of § 456.60 apply, except that recertification is required every 12 months rather than every 60 days.

f. In § 456.370, the following changes are made:

1. Paragraphs (a) and (b) are revised to read as set forth below.

2. In paragraph (c)(8), ''ICF'', wherever it appears, is revised to read ''ICF/MR''.

§ 456.370 Medical, social, and psychological evaluations.

(a) Before admission to an ICF/MR, or before authorization of payment, an interdisciplinary team of health professionals must make a comprehensive medical and social evaluation, and if appropriate, a psychological evaluation, of each applicant's or recipient's need for care in an ICF/MR.

(b) The psychological evaluation must be made not more than 3 months before admission.

* * * * *

§ 456.371 [Amended]

g. In § 456.371, ''ICF services'' is revised to read ''ICF/MR services''.

h. § 456.380 is revised to read as follows:

§ 456.380 Individual written plan of care.

The plan of care must meet the requirements set forth in § 456.180 for a plan of care for a mental hospital patient.

i. Section 456.381 is revised to read as follows:

§ 456.381 Reports and evaluations of plans of care.

The rules for mental hospitals, as set forth in § 456.181, also apply to ICFs/MR.

j. § 456.400 is revised to read as follows:

§ 456.400 Utilization review plan: General requirements.

The State plan must—

(a) Provide that each ICF/MR has on file and implements a written UR plan that provides for review of each recipient's need for the services the ICF/MR furnishes, and meets the requirements of this subpart; and

(b) Specify the method used to perform UR, which may be any of the following:

(1) Review conducted by the facility.

(2) Direct review in the facility by individuals who are—

(i) Employed by the medical assistance unit of the Medicaid agency; or

(ii) Under contract to the Medicaid agency.

(3) Any other method.

§ 456.401 [Removed]

k. § 456.401 is removed.

l. Section 456.405 is revised to read as follows:

§ 456.405 UR plan: Administrative requirements.

The UR plan must meet the following requirements:

(a) Specify how and when UR review is performed.

(b) Provide that review is performed by a group of professional personnel that—

(1) Includes at least one physician and one mental retardation professional; and

(2) Does not include any individual who—

(i) Is responsible for the care of the individual being reviewed;

(ii) Is employed by the ICF/MR; or

(iii) Has a financial interest in any ICF/MR.

(c) Describe the UR support responsibilities of the ICF/MR's administrative staff and the procedures used by that staff to take corrective action.

§§ 456.406 and 456.407 [Removed]

m. §§ 456.406 and 456.407 are removed.

n. § 456.411 is revised to read as follows:

§ 456.411 UR plan: Information requirements.

(a) *Recipient records.* The UR plan must provide that each recipient's record contains the information specified in § 456.111 and also the name of the qualified mental retardation professional. (The qualifications for this professional are set forth in § 483.430 of this chapter.)

(b) *Other records and reports, and confidentiality.* The requirements set forth in §§ 456.112 and 456.113 apply also to ICFs/MR.

§§ 456.412 and 456.413 [Removed]

o. §§ 456.412 and 456.413 are removed.

p. In § 456.431, the following changes are made:

1. In paragraph (a), ''recipients'' is revised to read ''recipient's''.

2. The section heading and paragraphs (b) introductory text, (b)(1), and (b)(2) are revised to read as follows:

§ 456.431 Continued stay review.

* * * * *

(b) The UR plan requirement for continued stay review may be met by either of the following:

(1) Reviews that apply the criteria specified in § 456.5(b) and are performed in accordance with this subpart.

(2) Reviews that meet the onsite inspection requirements of subpart I of this part provided—

(i) The composition of the independent professional review team meets the requirements of § 456.405; and

(ii) The reviews are conducted at least every 6 months.

§ 456.432 [Removed]

q. § 456.432 is removed.

r. § 456.433 is revised to read as follows:

§ 456.433 Initial continued stay review date.

The UR plan must—

(a) Provide that, when a recipient is admitted to an ICF/MR, the UR committee assigns, for the initial continued stay review, a specific date that is—

(1) Not later than 6 months after admission; and

(2) May be earlier than 6 months after admission if indicated at the time of admission.

(b) Describe the methods and criteria that are the basis for assigning the date; and

(c) Ensure that the date is entered in the recipient's record.

§ 456.434 [Amended]

s. In § 456.434, in paragraph (a), ''§ 456.435.'' is revised to read ''the methods and criteria required to be described under § 456.433(b).''.

§ 456.435 [Removed]

t. § 456.435 is removed.

u. In § 456.436, the following changes are made:

1. In paragraph (c), ''ICF'' is revised to read ''ICF/MR'', ''§ 456.411'' is revised to read ''§ 456.411(a)'', ''§ 456.432'' is revised to read ''§ 456.5(b)(1)'', and ''§ 456.432(b)'' is revised to read ''§ 456.5(b)(2)''.

2. Paragraph (f) is revised to read as set forth below.

3. In paragraphs (g) and (h), ''attending physician or'' is removed.

4. In paragraph (i), ''ICF services'' is revised to read ''ICF/MR services''.

§ 456.436 Continued stay review process.

* * * * *

(f) If the group or subgroup making the review under paragraph (e) of this section finds that a continued stay is not needed, it notifies the recipient's qualified mental retardation professional within one working day of its decision and allows 2 working days from the date of notice for the professional to present his or her views before it makes a final decision.

* * * * *

v. § 456.437 is revised to read as follows:

§ 456.437 Notification of adverse decision.

The UR plan must provide that the UR committee gives written notice of any adverse decision on the need for continued stay—

(a) Not later than 2 days after the final decision; and

(b) To the following:

(1) The administrator of the ICF/MR.

(2) The qualified mental retardation professional.

(3) The Medicaid agency.

(4) The recipient.

(5) If possible, the next of kin or sponsor.

§ 456.438 [Removed]

w. § 456.438 is removed.

Subpart H [Amended]

6. In subpart H, the following changes are made:

a. The undesignated center heading immediately preceding § 456.505 is removed.

b. The heading of § 456.505 is revised to read as follows:

§ 456.505 Basis for waiver of UR requirements.

* * * * *

Subpart I [Removed]

7. Subpart I, consisting of §§ 456.600 through 456.614, is removed and reserved.

§ 456.722 [Amended]

8. In § 456.722(c)(1), in the second sentence, ''subpart P and appendix G–O of OMB circular A–102'' is removed.

PART 475—PEER REVIEW ORGANIZATIONS

DD. Part 475 is amended as set forth below.

1. The authority citation for part 475 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 475.1 [Amended]

2. In § 475.1, the following changes are made:

a. The introductory text is revised to read ''As used in this subchapter—''.

b. Definitions of ''Affiliate of a payor organization'', ''Non-facility organization'', and ''PRO area'' are added, in alphabetical order.

c. The heading *Health care facility* is revised to read *Health care facility or facility.*

d. The definitions of ''Payor organization'' and ''Physician'' are revised to read as set forth below.

§ 475.1 Definitions.

* * * * *

Affiliate of a payor organization means an organization with a governing body, two or more members of which are—

(1) Governing body members, officers, partners, or 5 percent or more owners of the payor organization; or

(2) Managing employees of an HMO or CMP.

* * * * *

Non-facility organization means a corporate entity that—

(1) Is not a health care facility;

(2) Is not a 5 percent or more owner of a health care facility; and

(3) Is not owned by one or more health care facilities or any association of facilities in the PRO area.

Payor organization means any organization (other than a self-insured employer) that pays providers or practitioners (directly or indirectly) for services that the organization reviews,

or would review if it entered into a PRO contract.

Physician includes—

(1) An intern, resident, or Federal Government employee authorized under State or Federal law to practice medicine, surgery, or osteopathy in the PRO area; and

(2) An individual licensed to practice medicine in American Samoa or the Northern Mariana Islands.

PRO area means the geographic area designated as the area within which a designated PRO performs utilization and quality control review under its PRO contract with CMS.

§ 475.100 [Amended]

3. In § 475.100, ''Social Security'' and ''as amended by the Peer Review Improvement Act of 1982 (Pub. L. 97–248)'' are removed.

§ 475.105 [Amended]

4. In paragraph (b) of § 475.105, ''Effective November 15, 1984, the'' is removed, and ''The'' is added in its place, and ''will not apply'' is revised to read ''does not apply''.

5. Section 475.106 is revised to read as follows:

§ 475.106 Prohibition against contracting with payor organizations and affiliates of payor organizations.

Payor organizations and their affiliates are not eligible to become PROs for the area in which they make payments unless CMS determines, on the basis of lack of response to an appropriate Request for Proposal, that there is not available any eligible organization that is not a payor organization or affiliate of a payor organization.

§ 475.107 [Amended]

6. In § 475.107, the following changes are made:

a. In the introductory text, ''will take'' is revised to read ''takes''.

b. In paragraphs (a) and (b), ''Identify'' is revised to read ''Identifies''.

c. In paragraph (c), ''Assign'' is revised to read ''Assigns''.

d. In paragraph (d), ''award'' is revised to read ''awards''.

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

EE. Part 476 is amended as set forth below.

1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 476.1 [Amended]

2. In § 476.1, the following changes are made:

a. The definitions of ''Five percent or more owner'', ''Health care facility or facility'', ''Health care practitioners other than physicians'', ''Hospital'', ''Non-facility organization'', ''Physician'', ''Practitioner'', ''Preadmission certification'', ''Review responsibility'' and ''Skilled nursing facility'' are removed.

b. The following definitions are revised to read as follows:

§ 476.1 Definitions.

* * * * *

Active staff privileges means authorization, on a regular, rather than an infrequent or courtesy basis—

(1) For a physician or other health care practitioner to order the admission of patients to a facility; and

(2) For a physician to perform diagnostic and treatment services in the facility.

* * * * *

Diagnosis related group (DRG) means a system for classifying inpatient hospital discharges as a basis for Medicare payment under the prospective payment system.

DRG validation means PRO validation to the effect that the DRG classification assigned to a discharge is based on the correct diagnostic and procedural information.

* * * * *

Hospital means a health care institution or distinct part of an institution as defined in section 1861(e) through (g) of the Act, including a religious nonmedical health care institution as defined in section 1861(ss)(1) of the Act.

* * * * *

Peer review means review of services by health care practitioners in the same professional field as the practitioner who ordered or furnished the services.

* * * * *

3. § 476.74 is revised to read as follows:

§ 476.74 General requirements for the assumption of review.

In assuming review responsibility, a PRO must comply with the following conditions:

(a) Assume review responsibility in accordance with the schedule, functions, and negotiated objectives specified in its contract with CMS.

(b) Notify the appropriate Medicare fiscal intermediary or carrier of its assumption of review in particular health care facilities no later than 5 working days after the day it assumes review in the facility.

(c) Maintain and make available for public inspection at its principal business office—

(1) A copy of each agreement with a Medicare intermediary or carrier;

(2) A copy of its current approved review plan, including its method for implementing review; and

(3) Copies of all subcontracts for the conduct of review.

(d) Limit subcontracts for review by health care facilities to review of quality of care. (There is no limit to the types of review that the PRO may subcontract to organizations that are not health care facilities.)

(e) If required by CMS—

(1) Compile statistics based on the criteria specified in § 411.402 of this chapter;

(2) Make limitation of liability determinations in accordance with subpart K of part 411 of this chapter; and

(3) Notify providers regarding these determinations. (Appeals from these determinations are subject to the rules set forth in part 405 of this chapter—subpart G for Part A services, and subpart H for Part B services.)

(f) Make its responsibilities under its contract with CMS primary to all its other interests and activities.

§ 476.86 [Amended]

4. In § 476.86(b), ''or SNF care'' is removed and''§§ 405.1035, 405.1042, and 405.1137 of this chapter.'' is revised to read ''§ 482.30 of this chapter.''.

PART 478—RECONSIDERATIONS AND APPEALS

FF. Part 478 is amended as set forth below.

1. The authority citation for part 478 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 478.46 [Revised]

2. Section 478.46 is revised to read as follows:

§ 478.46 Departmental Appeals Board review and judicial review.

(a) *Board review.* The circumstances under which the Departmental Appeals Board (the ''Board'') will review an ALJ hearing decision or dismissal are the same as those set forth at 20 CFR 404.970 for Appeals Council review.

(b) *Basis for seeking judicial review.* (1) The affected party may seek judicial review of the Board's decision, or of the ALJ's hearing decision if the Board denies review, if the amount in controversy is $2,000 or more.

(2) The party must file the civil action within 60 days from the date of receipt

of the notice of the Board's determination or denial of review.

PART 480—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

GG. Part 480 is amended as set forth below.

1. The authority citation for part 480 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—PRO Information: General Provisions

2. The heading of subpart B is revised to read as set forth above.

3. The undesignated centered heading immediately preceding § 480.101 is removed.

§ 480.101 [Amended]

4. In § 480.101, the following changes are made:

a. The definitions of ''Health care facility or facility'', ''Non-facility organization'', and ''practitioner'' are removed.

b. The definition of *Implicitly identify (ies)* is removed and a new definition of *Implicitly identifies* is added in its place to read as follows:

§ 480.101 Scope and definitions.

* * * * *

(b) * * *

Implicitly identifies refers to data so unique, or to numbers so small, that the identity of a particular patient, practitioner, or reviewer would be obvious.

5. § 480.103 is amended to revise paragraph (b) to read as follows:

§ 480.103 Statutory bases for disclosure of information.

* * * * *

(b) Section 1160 of the Act provides that PRO information must be held in confidence and not disclosed to any person except—

(1) To the extent necessary to carry out the purposes of title XI, part B, of the Act;

(2) In cases and circumstances specified by regulation to ensure adequate protection of the rights and interests of patients, practitioners, and providers of health care; and

(3) As necessary to assist the following agencies in the performance of their duties:

(i) Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse.

(ii) Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health.

(iii) Appropriate State agencies responsible for licensing or certifying providers or practitioners.

(iv) Federal or State health planning agencies that need PROs to furnish them aggregate statistical data on a geographical, institutional, or other basis.

Subpart C—PRO Access to Information and PRO Responsibilities

6. The heading of subpart C is revised to read as set forth above.

7. The undesignated center heading immediately preceding § 480.115 is removed.

Subpart D—Disclosure of Nonconfidential Information

8. The heading of subpart D is revised to read as set forth above.

Subpart E—Disclosure of Confidential Information

9. The heading of subpart E is revised to read as set forth above.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

HH. 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).

§ 482.30 [Amended]

2. In § 482.30(a)(2), ''§ 456.50 through 456.245 of this chapter.'' is revised to read ''part 456 of this chapter.''.

§ 482.52 [Amended]

3. In § 482.52, in paragraphs (a)(4) and (a)(5), '', as defined in § 410.69(b) of this chapter,'' is removed.

PART 483—REQUIREMENTS FOR STATES AND FOR LONG TERM CARE FACILITIES

II. 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).

§ 483.40 [Amended]

2. In § 483.40, in paragraph (e)(1)(i), ''the applicable definition in § 491.2 of this chapter'' is revised to read ''the qualifications set forth in § 400.210 of this chapter''.

§ 483.102 Applicability and evaluation criteria.

3. In § 483.102, the following changes are made:

a. The section heading is revised to read as set forth above.

b. The paragraph heading *Applicability* is inserted immediately after the designation (a).

c. The heading of paragraph (b) is revised to read *Evaluation criteria*.

d. Footnotes 1 and 2 are revised to read as set forth below.

* * * * *

[1] The Diagnostic and Statistical Manual of Mental Disorders is available for inspection at the Centers for Medicare & Medicaid Services, CMS Library, Room C2–07–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, or at the Office of the Federal Register, suite 700, 800 North Capitol St., NW., Washington, DC. Copies may be obtained from the American Psychiatric Association, Division of Publications and Marketing, 4100 K Street, NW., Washington, DC 20005.

* * * * *

[2] The American Association on Mental Retardation's Manual on Classification in Mental Retardation is available for inspection at the Centers for Medicare & Medicaid Services, CMS Library, Room C2–07–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, or at the Office of the Federal Register, suite 700, 800 North Capitol St., NW., Washington, DC. Copies may be obtained from the American Association on Mental Retardation, 1719 Kalorama Rd., NW., Washington, DC 20009.

§ 483.460 [Amended]

4. In § 483.460—

a. In paragraph (b)(1), ''that specified plan of care requirements for ICFs'' is removed.

b. In paragraph (b)(2), the phrase ''physicians must participate in'' is removed.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

JJ. Part 485 is amended as set forth below.

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 485.51 is revised to read as follows:

§ 485.51 Definition.

As used in this subpart, unless the context indicates otherwise, *Comprehensive outpatient rehabilitation facility, CORF,* or *facility* means a nonresidential facility that is established and operated, at a single fixed location, exclusively for the purpose of providing outpatient diagnostic, therapeutic, and restorative services that are for the rehabilitation of injured, disabled, or sick persons, and that are furnished by, or under the supervision of, a physician.

§ 485.70 [Amended]

3. In § 485.70, the following changes are made:

a. In paragraph (c), ''§ 405.1202(f) and (g) of this chapter.'' is revised to read''§ 484.4 of this chapter.''

b. In paragraph (m),''§ 485.705(f) of this chapter.'' is revised to read ''§ 484.4 of this chapter.''.

4. In § 485.604, paragraphs (b) and (c) are removed, and a new paragraph (b) is added, to read as follows:

§ 485.604 Personnel qualifications.

* * * * *

(b) A nurse practitioner and a physician assistant must meet the qualifications specified in § 400.210(f) and (g) of this chapter.

* * * * *

§ 485.639 [Amended]

5. In § 485.639, in paragraphs (c)(1)(v) and (c)(1)(vi), '', as defined in § 410.69(b) of this chapter'' is removed.

§ 485.705 [Amended]

6. In § 485.705, paragraphs (b)(2) and (c)(8) are revised to read as set forth below.

§ 485.705 Personnel qualifications.

* * * * *

(b) * * *

(2) For a speech/language pathologist, the qualifications set forth in § 484.4 of this chapter.

* * * * *

(c) * * *

(8) A nurse practitioner is a person who must meet one of the requirements specified in § 400.210(f) of this chapter.

* * * * *

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

KK. Part 488 is amended as set forth below.

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 488.1 [Amended]

2. In § 488.1, the following changes are made:

a. The definitions of ''Act'', ''Provider of services or provider'', and ''State'' are removed.

b. The following definition is added in alphabetical order:

§ 488.1 Definitions.

* * * * *

Immediate jeopardy means a situation in which the provider's noncompliance with one or more of the requirements for participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a patient or resident.

* * * * *

c. In the definition of ''Substantial allegation of noncompliance'', ''raises doubts as to a provider's or supplier's noncompliance'' is revised to read ''raises doubts as to a provider's or supplier's compliance''.

§ 488.56 [Amended]

3. In § 488.56, in paragraph (b) introductory text and paragraph (b)(2), ''§ 488.75(i)'' is corrected to read ''§ 483.75''.

4. In § 488.64, the following changes are made:

a. Paragraph (b) is revised to read as set forth below.

b. In paragraphs (c), and (d), ''§ 405.1137 of this chapter, or § 482.30 of this chapter, as applicable.'' is revised to read ''§ 482.30 of this chapter.''.

c. In paragraph (g), ''pursuant to § 405.1137 of this chapter or § 482.30'' is revised to read ''in accordance with § 482.30 of this chapter''.

§ 488.64 Remote facility variances for utilization review requirements.

* * * * *

(b) The Secretary may grant a facility a variance from the utilization review time-frames set forth in § 482.30 of this chapter if the requesting facility can show, to CMS's satisfaction, that it has been unable to comply with those time-frames by reason of lack of sufficient professional personnel available to conduct the reviews.

* * * * *

§ 488.301 [Amended]

5. In § 488.301, the following changes are made:

a. In the definition of ''Validation survey'', ''Secretary'' is revised to read ''CMS''.

b. The definition of ''Immediate jeopardy'' is removed.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVALS

LL. Part 489 is amended as set forth below.

1. The authority citation for part 489 is revised to read as follows:

Authority: Secs. 1102, 1819, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, and 1395hh).

§ 489.3 [Amended]

2. In § 489.3, the definition of ''Immediate jeopardy'' is revised and a definition of ''Supplier approval'' is added, in alphabetical order, to read as follows:

§ 489.3 Definitions.

Immediate jeopardy has the meaning given the term in § 488.1 of this chapter.

* * * * *

Supplier approval means approval by CMS for a supplier to receive payment for Medicare covered services it furnishes to Medicare beneficiaries.

PART 491—CERTIFICATION OF CERTAIN FACILITIES

MM. Part 491 is amended as set forth below.

1. The authority citation for part 491 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), and sec. 332 of the Public Health Service Act (42 U.S.C. 254e).

§ 491.2 [Amended]

2. In § 491.2, the following changes are made:

a. The definitions of ''Nurse practitioner'', ''Physician'', ''Physician assistant'', and ''Secretary'' are removed.

b. The definition of ''FQHC'' is removed and a new definition of *Federally qualified health center (FQHC)* is added in its place to read as follows:

§ 491.2 Definitions.

* * * * *

Federally qualified health center (FQHC) has the meaning given the term in § 405.2401(b) of this chapter.

* * * * *

§ 491.3 [Amended]

3. In § 491.3, ''subpart S of 42 CFR part 405'' is revised to read ''subparts A through C of part 488 of this chapter.''.

PART 493—LABORATORY REQUIREMENTS

NN. Part 493 is amended as set forth below.

1. The authority citation for part 493 is revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act and secs. 1102 and 1871 of the

Social Security Act (42 U.S.C. 263a, 1302, and 1395hh).

§ 493.1 [Corrected]

2. In § 493.1, ''the sentence following section 1861(s)(13),'' is removed.

§ 493.2 [Amended]

3. In § 493.2, the following changes are made:

a. The statements and definitions for ''HHS'', ''Physician'', and ''State survey agency'' are removed.

b. The definition of ''immediate jeopardy'' is revised to read as set forth below.

c. In the definition of ''party'', the word ''imposed'' is inserted immediately before ''by CMS''.

d. The definitions of ''sample'', ''State'' and ''Substantial allegation of noncompliance'' are revised to read as follows:

§ 493.2 Definitions.

* * * * *

Immediate jeopardy has the meaning given that term in § 488.1 of this chapter.

* * * * *

Sample, in relation to proficiency testing, means the material that is to be tested by the participants in the proficiency testing program.

State includes any political subdivision to which the State has expressly delegated powers sufficient to enable it to enforce requirements equal to, or more stringent than, CLIA requirements.

* * * * *

Substantial allegation of noncompliance has the meaning given that term in § 488.1 of this chapter.

* * * * *

§ 493.57 [Amended]

4. In § 493.57, in paragraph (e)(2), ''as defined in subpart C of this part;'' is revised to read ''as set forth in subpart C of this part;''.

§ 493.61 [Amended]

5. In § 493.61, the following changes are made:

a. In paragraph (e)(2), ''for a certificate as defined in subpart C of this part; and'' is revised to read ''for one of the certificates specified in subpart C of this part; and''.

b. In paragraph (i)(2), ''for a certificate as defined in subpart C of this part; '' is revised to read ''for any of the certificates specified in subpart C of this part;''

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

OO. Part 498 is amended as set forth below.

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 498.2 [Amended]

2. In § 498.2, the definitions of ''Departmental Appeals Board'', ''OHA'', and ''OIG'' are removed.

§ 498.3 [Amended]

3. In § 498.3:

a. Paragraph (a)(1) is revised to read as set forth below.

b. In paragraph (c), the introductory text is designated as ''(1)'', paragraph designations ''(1)'', ''(2)'', and ''(3)'' are revised to read ''(i)'', ''(ii)'', and ''(iii)'', respectively.

c. A new paragraph (c)(2) is added to read as set forth below.

d. Paragraph (d) introductory text is revised as set forth below.

§ 498.3 Scope and applicability.

(a) *Scope.* (1) This part sets forth procedures for reviewing initial determinations that CMS makes with respect to the matters specified in paragraph (b) of this section, and identifies, in paragraph (c) of this section, matters for which the OIG makes initial determinations and provides appeals procedures. It also specifies, in paragraph (d) of this section, administrative actions that are not subject to appeal under this part.

* * * * *

(c) * * *

(2) Appeals procedures for OIG determinations are set forth in part 1005 of this chapter.

* * * * *

(d) *CMS Administrative actions that are not initial determinations.* CMS administrative actions other than those specified in paragraph (b) of this section are not initial determinations and thus are not subject to appeal under this part. Administrative actions that are not initial determinations (and therefore not subject to appeal under this part) include but are not limited to the following:

* * * * *

§ 498.5 [Amended]

4. In § 498.5(j)(2)(i), ''the SNF or ICF'' is revised to read ''the ICF/MR'', and ''patients'' is revised to read ''residents''.

§ 498.22 [Amended]

5. In § 498.22, in paragraph (a), the parenthetical statement at the end of the paragraph is removed.

§ 498.40 [Amended]

6. In § 498.40, in paragraph (a)(1), ''or the OIG, as appropriate, or with OHA.'' is removed and ''or the Departmental Appeals Board.'' is added in its place.

§ 498.42 [Amended]

7. In § 498.42, insert a period after ''CMS'', and remove the remainder of the sentence.

8. Section 498.44 is revised to read as follows:

§ 498.44 Designation of hearing official.

(a) The Chair of the Departmental Appeals Board (the Board) or his or her delegate designates an ALJ or a member or members of the Board to conduct the hearing.

(b) If appropriate, the Chair or the delegate may substitute a different ALJ or member or members of the Board to conduct the hearing.

(c) As used in this part, ''ALJ'' includes a member or members of the Board who are designated to conduct a hearing.

§ 498.56 [Amended]

9. In § 498.56, in paragraph (b)(5), ''SNFs or ICFs'' is revised to read ''ICFs/MR''.

§ 498.82 [Amended]

10. In § 498.82, paragraph (a)(2), the following changes are made:

a. The term ''the OHA'' is revised to read ''the Board''.

b. ''Departmental Appeals Board'' is revised to read ''Board''.

c. ''§ 98.22(c)(3)'' is corrected to read ''§ 498.22(b)(3)''.

11. In § 498.83, paragraph (d) is revised to read as follows:

§ 498.83 Departmental Appeals Board action on request for review.

* * * * *

(d) *Review panel.* If the Board grants a request for review of the ALJ decision, the review is conducted by a panel of three members of the Board designated by the Chair or Deputy Chair.

PP. Nomenclature changes.

1. Throughout this chapter IV:

a. ''DAB'', wherever it appears, is revised to read ''Board''.

b. ''DAB's'', wherever it appears, is revised to read ''Board's''.

c. ''(DAB)'', wherever it appears, is removed.

2. Throughout this chapter IV, ''a SNF'', and ''a NF'', wherever they appear, are revised to read ''an SNF'' and ''an NF'', respectively.

3. Throughout chapter IV, ''intermediate care facility for the mentally retarded'' wherever it appears, is revised to read ''intermediate care facility for persons with mental retardation and related conditions''.

4. In the following locations, ''co-payment'' wherever it appears, is revised to read ''copayment'': §§ 447.54(a)(3) (table heading), 447.55(a) and (b), 447.56, and 447.58.

5. In § 447.54(a)(3) text, ''co-payments'' is revised to read ''copayments''.

6. In the following locations, ''the OIG, as appropriate,'' is removed: § 498.20(a)(1), § 498.25(b)(1), and § 498.32(a)(1).

7. In the following locations, ''or the OIG'' is removed:§ 498.32(b)(2), § 498.56(a)(2), § 498.56(d), heading and text, § 498.66(b)(2),§ 498.78(a), and § 498.83(a), heading and text.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance; Program No. 93.778, Medical Assistance)

Dated: August 8, 2001.

Ruben J. King-Shaw, Jr.,

Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Dated: September 9, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1065 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 401

[CMS–6011–P]

RIN 0938–AK45

Medicare Program; Reporting and Repayment of Overpayments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would supplement and modify the notice of proposed rulemaking that was published on March 25, 1998 (63 FR 14506). That notice proposed to amend the Medicare regulations governing liability for overpayments from the Centers for Medicare & Medicaid services (CMS) to providers, suppliers, and individuals to eliminate application of certain regulations of the Social Security Administration and to replace them with regulations more specific to circumstances involving Medicare overpayments.

This proposed regulation would supplement and modify that notice in order to establish, in regulations, the longstanding resp[onsibility of providers, suppliers, individuals and also managed care organizations contracting with us to report and return overpayments to us. This proposed would establish the timeframe and process for making the reports and returning the overpayments.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 26, 2002.

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–6011–P, PO 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 & 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–6011–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: Paul Reed (410) 786–4001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 1998 we published in the **Federal Register** (63 FR 14506) a notice of proposed rulemaking that would amend the Medicare regulations governing liability for overpayments to eliminate application of certain regulations of the Social Security Administration and to replace them with regulations more specific to circumstances involving Medicare overpayments.

Section 401.310 of those proposed regulations defined overpayment as those Medicare funds that a provider, supplier, or individual has received in excess of amounts payable under the Medicare statute and regulations. The notice of proposed rulemaking described the types of overpayments, and gave examples of causes of overpayments, such as payments made by Medicare for noncovered services, Medicare payments in excess of the allowable amount for an identified covered service, errors and nonreimbursable expenditures in cost reports, duplicate payments, and Medicare payment when another entity had the primary responsibility for payment (63 FR 14517). It also stated that once a determination and any adjustments in the amount of the overpayments have been made, the remaining amount is a debt owed to the United States Government. After publishing that notice of proposed rulemaking, we received several comments on their provisions. In addition, on June 26, 1998, we published the Medicare+Choice (M+C) interim final rules (63 FR 34968) in which we addressed a process for reporting to us violations of the law, including overpayments. We stated that we wanted M+C organizations to self identify when they had been overpaid. While the amount of estimated overpayments has decreased in recent years, the number and amount of overpayments continue to be a significant issue in the Medicare program.

The June 29, 2000 final M+C regulation (65 FR 40170) eliminated any requirement for self-reporting of overpayments on the basis that it was arguably unfair to impose a self-reporting requirement on M+C organizations, but not on other types of providers and suppliers participating in the Medicare program. The preamble to that regulation stated:

''While we are withdrawing all requirements for self-reporting in this rule, we believe that the required reporting of overpayments is an effective tool for promoting Medicare

program integrity generally. Accordingly, HCFA intends to develop policies through separate notice and comment rulemaking in cooperation with the HHS Office of Inspector General that would require all Medicare providers, suppliers, and contractors to report overpayments to HCFA.'' (65 FR 40265)

With this proposed modification to the March 25, 1998 notice of proposed rulemaking, we intend to issue one comprehensive rule on this subject.

The obligation to report and return overpayments is derived from sections 1870, 1871, and 1102 of the Social Security Act (the Act). Section 1870 of the Act establishes that providers and suppliers are liable for overpayments unless determined to be without fault, as defined in proposed § 401.323, with respect to the overpayments. Individuals may be liable in certain circumstances unless the individual is determined to be without fault, as defined in proposed § 401.355, and the recovery of the overpayment would either defeat the purposes of the statute or be against equity and good conscience.

Section 1102 of the Act requires that the Secretary make and publish such rules and regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is charged under the Act. Under section 1871 of the Act, the Secretary must prescribe such regulations as may be necessary to carry out the administration of the insurance programs under the Medicare statute. In certain contexts, formal guidance requires providers to report overpayments through our Medicare Credit Balance Report, and suppliers to report overpayments through their reporting mechanisms. This proposed rule would further memorialize the longstanding responsibility for all providers, suppliers, individuals, and other entities, including managed care organizations contracting with us, to report overpayments and establish the time frame and process for making those reports.

In addition, section 1128B(a)(3) of the Act establishes that persons are under a legal duty to disclose the occurrence of events affecting the right to payment or benefits by a Federal health care program. Specifically, this section makes it a felony for a person, ''having knowledge of the occurrence of any event affecting * * * his initial or continued right to any [Federal health care] benefit or payment * * *, [to conceal or fail] to disclose such event with an intent fraudulently to secure such benefit or payment * * *.'' Thus, failure to notify us of an overpayment within a reasonable period of time may, in certain circumstances, establish criminal liability, and result in a referral to the Office of Inspector General.

II. Provisions of the Proposed Rule

In this rule we are proposing to modify and supplement the notice of proposed rulemaking that was published in the **Federal Register** on March 25, 1998 (63 FR 14506). We are revising the definition of overpayment to cover not just excess Medicare funds received by a provider, supplier, or individual, but also funds received by other entities. We are also adding a definition of other entities, which defines them as entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422, that are not providers, suppliers, or individuals, that provide Medicare services to Medicare beneficiaries. The new definition makes clear that other entities include managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422. We are also adding a paragraph to memorialize in regulations the responsibility and procedures for returning overpayments to us. The March 25, 1998 notice of proposed rulemaking would amend the Medicare regulations governing liability for overpayments in order to eliminate application of certain regulations of the Social Security Administration and replace them with regulations more specific to circumstances involving Medicare overpayments. This proposed rule would modify and supplement the March 25, 1998 notice of proposed rulemaking. It would require providers, suppliers, and individuals that have identified a Medicare payment received in excess of amounts payable under the Medicare statute and regulations to report and return the overpayment, within 60 days of identifying the overpayment, to the appropriate intermediary or carrier at the correct address. In the case of a managed care organization contracting with us, the managed care organization must, within 60 days of identifying the overpayment, notify us either in a manner consistent with certification of payment data requirements described at 42 CFR 422.502(l) or in a manner consistent with our cost settlement processes described at 42 CFR part 417, subparts O and U, so that we can adjust the identified overpayment appropriately. For overpayments identified by managed care organizations for a period beyond which payment data have already been certified or settled, the managed care organization must notify us in writing of the overpayment within 60 days of identifying or learning of the excess payment, so that we can recover the identified overpayment appropriately. For overpayments identified by other entities, other than managed care organizations, the other entities must notify us in writing of the overpayment within 60 days of identifying or learning of the excess payment, so that we can recover the identified overpayment appropriately. Submission of corrected bills in conformance with our policy, within 60 days, fulfills these requirements for providers, suppliers, and individuals. Our existing certification requirements for M+C organizations, described at § 422.502(l), and cost settlement processes for cost-based contractors, described at 42 CFR part 417, subparts O and U, and this new requirement for overpayments reported after payment certifications have already been submitted, provide the process for notifying, documenting, and correcting overpayments for managed care organizations contracting with us.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60 days notice in the **Federal Register** and solicit public comment when 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 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting comments from the public, including the provider and supplier community, on each of these issues for the information collection requirements discussed below.

§ 401.310(e)—If a provider, supplier, or individual identifies a Medicare payment received in excess of the amounts payable under the Medicare statute and regulations, the provider, supplier, or individual must, within 60 days of identifying or learning of the

excess payment, notify the intermediary or carrier, in writing, of the reason for the overpayment, and return the overpayment to the appropriate intermediary or carrier, at the correct address.

It is estimated that there will be approximately 906,724 notifications submitted on an annual basis and that it will take 5 minutes per instance for providers, suppliers, or individuals to notify the appropriate intermediary or carrier. The total annual burden associated with this requirement is 75,560 hours.

If a managed care organization contracting with us in accordance with 42 CFR parts 417 or 422 identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations before the payment data have been certified or settled, the managed care organization must notify us either in accordance with certification of payment data requirements described in § 422.502(l) or in accordance with cost settlement processes described in 42 CFR part 417, subparts O and U.

It is estimated that there will be no additional notifications submitted on an annual basis and that it will take 5 minutes per instance to notify us. The total annual burden associated with this requirement is zero hours.

If a managed care organization contracting with us in accordance with 42 CFR parts 417 or 422 identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations after payment data have been certified or settled, it must notify us, in writing, of the overpayment within 60 days of identifying or learning of the overpayment so that we can recover the identified overpayment appropriately.

It is estimated that there will be no additional notifications submitted on an annual basis and that it will take 5 minutes per instance to notify us. The total annual burden associated with this requirement is zero hours.

If an other entity, other than a managed care organization contracting with us in accordance with 42 CFR parts 417 or 422, identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations, it must notify us, in writing, of the overpayment within 60 days of identifying or learning of the overpayment so that we can recover the identified overpayment appropriately.

It is estimated that there will be no additional notifications submitted on an annual basis and that it will take 5 minutes per instance to notify us. The total annual burden associated with this requirement is zero hours.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in § 401.310. These requirements are not effective until they have been approved by OMB.

If you have any comments concerning any of these information collection and record keeping requirements, please mail one original and three copies within 60 days of this publication date to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard,Baltimore, MD 21244–1850, Attn: John Burke CMS–6011–P, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, 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. Because this document proposes to modify and supplement a notice of proposed rulemaking published on March 25, 1998 in the **Federal Register** (63 FR 14506), we will respond to all comments received concerning both that notice of proposed rulemaking and this proposed modification in the preamble to the combined subsequent document.

V. Regulatory Impact

A. Overall Impact

We have examined the impact 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 in any one year). This proposed rule is not a major rule. The requirements of this rule add another program integrity tool, but do not replace existing overpayment recovery efforts. Additionally, providers, suppliers, individuals, and other entities already report and return many overpayments. Any overpayments made by us are not amounts that are due to these entities. The cost of the required reporting should be minimal for providers, suppliers, individuals, and other entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422.

The RFA also requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of between $5 million and $25 million annually. Individuals and States are not included in the definition of small entities. Under this proposed rule, providers, suppliers, individuals, and other entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422, would be required to notify the Medicare intermediary or carrier, or us, as appropriate, in writing, within 60 days of identifying any payment that exceeds the amount payable under the Medicare statute and regulations.

The cost of the required reporting should be minimal for providers, suppliers, individuals, and other entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422. Because standard business practices dictate keeping accurate records concerning monies due and/or payable, the required reporting of overpayments will add minimal cost for some providers, suppliers, individuals, and other entities, and no cost for providers, suppliers, individuals, and other entities already reporting overpayments. 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 100 beds. The cost of the required reporting should be minimal for small rural hospitals. Because standard business practices dictate keeping accurate records concerning monies due and/or payable, the required reporting of overpayments will add minimal cost for some small rural hospitals and no cost for those hospitals already reporting overpayments. Therefore, we have determined, and we certify, that this proposed rule would not have a significant effect on the operations of a substantial number of 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 expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would have no effect on the annual expenditures of any State, local, or tribal government, or the private sector. Any overpayments made by us to a provider, supplier, individual, or other entity that are reported and returned to us are not expenditures. The overpayments are not amounts owed to the provider, supplier, individual, or other entity and their return would have no economic impact. 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. We are requiring providers, suppliers, individuals, and other entities that identify that we have overpaid them to report the overpayment to us and return the amount overpaid.

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 U.S.C 804(2).

List of Subjects in 42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

Accordingly, the Centers for Medicare & Medicaid Services proposes to amend the notice of proposed rulemaking at 63 FR 14506 (March 25, 1998), which proposed to amend 42 CFR chapter IV, part 401 by adding subpart D, as follows:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

Subpart D—Recovery of Overpayments, Suspension of Payment, and Repayment of Scholarships and Loans

1. The authority citation for part 401, subpart D, continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Proposed § 401.310 is amended by revising paragraph (a), adding a new paragraph (b)(4), and adding a new paragraph (e) as follows:

§ 401.310 Overpayments.

(a) *Definitions.* As used in this section, the following definitions apply:

Other entity means an entity, including a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter, that is not a provider, a supplier, or an individual, that provides Medicare services to Medicare beneficiaries.

Overpayment means Medicare funds a provider, a supplier, an individual, or other entity, including a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter, has received in excess of amounts payable under the Medicare statute and regulations.

* * * * *

(b) * * *

(4) Medicare overpayment to an other entity, including a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter.

* * * * *

(e) *Reporting and returning overpayments.* Identified payments in excess of amounts payable under the Medicare statute and regulations must be reported and returned as follows:

(1) If a provider, supplier, or individual identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations, the provider, supplier, or individual must, within 60 days of identifying or learning of the excess payment, return the overpayment to the appropriate intermediary or carrier, at the correct address, and notify the intermediary or carrier, in writing, of the reason for the overpayment.

(2) If a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations before the payment data have been certified or settled, the managed care organization must, within 60 days of identifying or learning of the excess payment, notify CMS, either—

(i) In accordance with certification of payment data requirements described in § 422.502(1) of this chapter; or

(ii) In accordance with cost settlement processes described in part 417, subparts O and U of this chapter.

(3) If a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations after payment data have been certified or settled, it must, within 60 days of identifying or learning of the excess payment, notify CMS, in writing so that CMS can recover the identified overpayment appropriately.

(4) If an other entity, other than a managed care organization contracting with CMS in accordance with 42 CFR parts 417 or 422, identifies a Medicare payment in excess of amounts payable under the Medicare statute and regulations it must, within 60 days of identifying or learning of the overpayment, notify CMS, in writing, so that CMS can recover the identified overpayment appropriately.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 30, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 2, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1688 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 689

RIN 3145–AA39

Research Misconduct

AGENCY: National Science Foundation (NSF).

ACTION: Proposed rule.

SUMMARY: NSF proposes to revise its existing misconduct in science and engineering regulations at 45 CFR Part 689. These revisions implement the Federal Policy on Research Misconduct issued by the Executive Office of the President's Office of Science and Technology on December 6, 2000.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Comments should be sent to Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703–292–8060.

SUPPLEMENTARY INFORMATION: The Office of Science and Technology Policy issued a final Federal research misconduct policy on December 6, 2000 in 65 FR 76260–76264 (''the Federal policy''). The Federal policy consists of a definition of research misconduct and basic guidelines to help Federal agencies and Federally funded research institutions respond to allegations of research misconduct. The policy directs Federal agencies that support or conduct research to implement it within one year.

The National Science Foundation has had regulations governing research misconduct since 1989. The Foundation is proposing to revise its existing regulations to make them fully consistent with the Federal policy.

The primary change concerns the definition of misconduct. The Federal policy provides a uniform Federal definition of research misconduct. It defines research misconduct as ''fabrication, falsification, and plagiarism in proposing, performing, or reviewing research or reporting research results.'' The Federal policy also defines ''fabrication,'' ''falsification,'' and ''plagiarism.'' This proposed rule adopts the definition of research misconduct set forth in the Federal Policy in place of the definition of misconduct contained in the existing regulation.

A significant portion of the Foundation's budget supports science and engineering education, and NSF has an ongoing interest in the integration of research and education. In order to ensure the same level of integrity for both education and research activities funded by the Foundation, NSF amended its regulations in 1991 to explicitly include misconduct in NSF-funded science and engineering education within the definition of misconduct. NSF continues to believe that it is important to ensure integrity in proposing, performing, reviewing, or reporting results from education proposals submitted to NSF. For this reason, the revised regulation would continue to define misconduct to include plagiarism, falsification, and fabrication in connection with NSF-funded science and engineering education.

The procedures for responding to allegations of misconduct found in the existing regulations would not materially change because they already conform to the Federal policy. Consistent with the Federal policy, NSF will also continue to protect research misconduct investigative and adjudicative files as exempt from mandatory disclosure under the Freedom of Information Act and the Privacy Act, to the extent permitted by law and regulation. Finally, this rule proposes some minor adjustments to the Foundation's internal timeframes for completing the investigative and adjudicative phases of misconduct proceedings.

Determinations

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866. The proposed rule is not an economically significant rule or a major rule under the Congressional Review Act. The Unfunded Mandate Reform Act of 1995, in sections 202 and 205, requires that agencies prepare several analytic statements before proposing a rule that may result in annual expenditures of $100 million by State, local and Indian tribal governments, or by the private sector. As any final rule would not result in expenditures of this magnitude, such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small businesses.

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR Part 1320, do not apply to this proposed rule because there are no new or revised recordkeeping or reporting requirements. Finally, NSF has reviewed this rule in light of Section 2 of Executive Order 12778 and certifies that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 689

Misconduct, Debarment and suspension, Fraud.

Dated: January 18, 2002.

Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation proposes to revise part 689 of title 45, chapter VI of the Code of Federal Regulations, to read as follows:

PART 689—RESEARCH MISCONDUCT

Sec.
689.1 Definitions.
689.2 General policies and responsibilities.
689.3 Actions.
689.4 Role of awardee institutions.
689.5 Initial NSF handling of misconduct matters.
689.6 Investigations.
689.7 Pending proposals and awards.
689.8 Interim administrative actions.
689.9 Dispositions.
689.10 Appeals.

Authority: Section 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

§ 689.1 Definitions.

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF.

(1) *Fabrication* means making up data or results and recording or reporting them.

(2) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(3) *Plagiarism* means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

(4) *Research,* for purposes of § 689.1(a), includes proposals submitted to NSF in all fields of science, engineering, mathematics, and education and results from such proposals.

(b) Research misconduct does not include honest error or differences of opinion.

§ 689.2 General policies and responsibilities.

(a) NSF will take appropriate action against individuals or institutions upon

a finding that research misconduct has occurred. Possible actions are described in § 689.3. NSF may also take interim action during an investigation, as described in § 689.8.

(b) NSF will find research misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An ''inquiry'' consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and if an investigation is warranted. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. An ''investigation'' is a formal development, examination and evaluation of a factual record to determine whether research misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action.

(c) A finding of research misconduct requires that—

(1) There be a significant departure from accepted practices of the relevant research community; and

(2) The research misconduct be committed intentionally, or knowingly, or recklessly; and

(3) The allegation be proven by a preponderance of evidence.

(d) Before NSF makes any final finding of research misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account procedures already followed by other entities investigating or adjudicating the same allegation of research misconduct.

(e) Debarment or suspension for research misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations, as described in §§ 689.8 and 689.9, respectively. Severe research misconduct, as established under these regulations, is an independent cause for debarment or suspension under the procedures established by the debarment and suspension regulations.

(f) The Office of Inspector General (OIG) oversees investigations of research misconduct and conducts any NSF inquiries and investigations into suspected or alleged research misconduct.

(g) The Deputy Director adjudicates research misconduct proceedings and the Director decides appeals.

§ 689.3 Actions.

(a) Possible final actions listed below for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not exhaustive and do not include possible criminal sanctions.

(1) Group I Actions. (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) Group II Actions. (i) Totally or partially suspend an active award, or restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(iii) Require a correction to the research record.

(3) Group III Actions. (i) Terminate an active award.

(ii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(iii) Debar or suspend an individual or institution from participation in Federal programs for a specified period after further proceedings under applicable regulations.

(b) In deciding what final actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) The degree to which the misconduct was knowing, intentional, or reckless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it had a significant impact on the research record, research subjects, other researchers, institutions or the public welfare; and

(5) Other relevant circumstances.

(c) Interim actions may include, but are not limited to:

(1) Totally or partially suspending an existing award;

(2) Suspending eligibility for Federal awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other, administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending participation as an NSF reviewer, advisor, or consultant.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in those regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

§ 689.4 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged research misconduct;

(2) Conduct a subsequent investigation, if warranted;

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities; and

(4) Provide appropriate safeguards for subjects of allegations as well as informants.

(b) If an institution wishes NSF to defer independent inquiry or investigation, it should:

(1) Complete any inquiry and decide whether an investigation is warranted within 90 days. If completion of an inquiry is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(2) Inform OIG immediately if an initial inquiry supports a formal investigation.

(3) Keep OIG informed during such an investigation.

(4) Complete any investigation and reach a disposition within 180 days. If completion of an investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(5) Provide OIG with the final report from any investigation.

(c) NSF expects institutions to promptly notify OIG should the

institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) NSF's resources, reputation, or other interests need protecting;

(3) There is reasonable indication of possible violations of civil or criminal law;

(4) Research activities should be suspended;

(5) Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or

(6) The scientific community or the public should be informed.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to research misconduct, which should indicate when NSF should be notified.

§ 689.5 Initial NSF handling of misconduct matters.

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform OIG or refer informants to OIG.

(b) The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

(c) If OIG determines that alleged research misconduct involves potential civil or criminal violations, OIG may refer the matter to the Department of Justice.

(d) Otherwise OIG may:

(1) Inform the awardee institution of the alleged research misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency; or

(3) At any time proceed with its own inquiry.

(e) If OIG proceeds with its own inquiry it will normally complete the inquiry no more than 90 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, OIG will decide whether a formal NSF investigation is warranted.

§ 689.6 Investigations.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, OIG may defer an NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, OIG may proceed with its own investigation.

(b) If OIG decides to initiate an NSF investigation, it must give prompt written notice to the individual or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. if notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies or the NSF, OIG will determine what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation may include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with subjects or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the subject of the investigation to be heard.

(e) OIG may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) OIG will make every reasonable effort to complete an NSF investigation and to report its recommendations, if any, to the Deputy Director within 180 days after initiating it.

§ 689.7 Pending proposals and awards.

(a) Upon learning of alleged research misconduct OIG will identify potentially implicated awards or proposals and when appropriate, will ensure that program, grant, and contracting officers handling them are informed (subject to § 689.6(c)).

(b) Neither a suspicion or allegation of research misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will not be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Program Director may consult with OIG and, after further consultation with the Office of General Counsel, either defer review, inform reviewers to disregard the matter, or inform reviewers of the status of the matter.

§ 689.8 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.3(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged research misconduct. Such an order will normally be issued on recommendation from OIG and in consultation with the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 45 CFR part 620, and the suspension procedures of 45 CFR part 620 will be followed, but the suspending official will be either the Deputy Director or an official designated by the Deputy Director.

(c) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during an investigation by NSF and modified as warranted. An interested party may request a review or modification by the Deputy Director of any interim action.

(d) The Deputy Director will make and OIG will retain a record of interim actions taken and the reasons for taking them.

(e) Interim administrative actions are not final agency actions subject to appeal.

§ 689.9 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency, OIG will assess the accuracy and completeness of the report and whether the investigating entity followed reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct,

(1) OIG will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct,

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarring official pursuant to 45 CFR part 620 and the procedures of 45 CFR part 620 will be followed, but:

(i) The debarring official will be either the Deputy Director, or an official designated by the Deputy Director.

(ii) Except in unusual circumstances, the investigation report and recommended disposition will be included among the materials provided to the subject of the investigation as part of the notice of proposed debarment.

(iii) The notice of the debarring official's decision will include instructions on how to pursue an appeal to the Director.

(2) In all other cases,

(i) Except in unusual circumstances, the investigation report will be provided by OIG to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally thirty days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(ii) Normally within 45 days after completing an NSF investigation or receiving the report from a satisfactory external investigation, OIG will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.3 lists possible final actions and considerations to be used in determining them.

(iii) The Deputy Director will review the investigation report and OIG's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within 120 days after receiving OIG's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal to the Director.

§ 689.10 Appeals.

(a) An affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will normally inform the appellant of a final decision within 60 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

[FR Doc. 02–1833 Filed 1–24–02; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1813 and 1852

RIN 2700–AC33

Non-Commercial Representations and Certifications andEvaluation Provisions for Use in Simplified Acquisitions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed change to the NFS will establish a consolidated set of representations and certifications and an evaluation provision for the acquisition of non-commercial items within the simplified acquisition threshold.

DATES: Comments should be submitted on or before March 26, 2002.

ADDRESSES: Interested parties should submit written comments to Celeste Dalton, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK),Washington, DC 20546. Comments may also be submitted by e-mail to: *cdalton@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, Code HK, (202) 358–1645, e-mail: *cdalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently for commercial acquisition, FAR provision 52.212–3, Offeror Representations and Certifications—CommercialItems, provides a consolidated set of representations and certifications. No equivalent provision exists for non commercial items. NASA proposes to establish an equivalent provision for use with NASA's non-commercial acquisitions within the simplified acquisition threshold (SAT). This new consolidated provision will ensure that all appropriate representations and certifications are consistently used and will simplify the incorporation of representation and certification into solicitations. Additionally, this rule proposes to establish an evaluation provision to be used in non-commercial acquisitions within the SAT when selection is based on other than technically acceptable low offer. This evaluation provision will provide a consistent notice to offerors of how evaluations will be conducted.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), because this proposed rule merely consolidates within one provision existing FAR representations and certifications for use in non-commercial simplified acquisitions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NFS do not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1813 and 1852

Government Procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1813 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1813 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

2. Add section 1813.302–570 to read as follows:

§ 1813.302–570 NASA solicitation provisions.

(a)(1) The contracting officer may use the provision at 1852.213–70, Offeror Representations and Certifications—Other Than Commercial Items, in simplified acquisitions exceeding the micropurchase threshold that are for other than commercial items.This provision must not be used for acquisitions conducted under FAR 13.5.

(2) This provision provides a single, consolidated list of certifications and representations for the acquisition of

other than commercial items using simplified acquisition procedures and is attached to the solicitation for offerors to complete and return with their offer. Use the provision with itsAlternate I in solicitations for acquisitions that are for, or specify the use of recovered materials (see FAR 23.4). Use the provision with its AlternateII in solicitations for the acquisition of research, studies, supplies, or services of the type normally acquired from higher education institutions (see FAR 26.3). Use the provision with its Alternate III in solicitations which include the clause at FAR 52.227–14, Rights in Data—General (see FAR 27.404(d)(2) and 1827.404(d)).

(b) The contracting officer may insert a provision substantially the same as the provision at 1852.213–71, Evaluation—Other than Commercial Items, in solicitations using simplified acquisition procedures for other than commercial items when evaluation factors are to be included for evaluation and the selection will be based upon best value, rather than technically acceptable, low price (see FAR 13.106).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add sections 1852.213–70 and 1852.213–71 to read as follows:

1852.213–70 Offeror Representations and Certifications—Other Than Commercial Items.

As prescribed in 1813.302–570, insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—OTHER THAN COMMERCIAL ITEMS

(XX/XX)

(a) *Definitions.* As used in this provision:

''Emerging small business'' means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

''Forced or indentured child labor'' means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

''Service-disabled veteran-owned small business concern''—(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

''Small business concern'' means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

''Veteran-owned small business concern'' means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

''Women-owned business concern'' means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

''Women-owned small business concern'' means a small business concern—

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationships with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

[ ] TIN: _____.

[ ] TIN has been applied for.

[ ] TIN is not required because:

[ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

[ ] Sole proprietorship;

[ ] Partnership;

[ ] Corporate entity (not tax-exempt);

[ ] Corporate entity (tax-exempt);

[ ] Government entity (Federal, State, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049–4;

[ ] Other _____.

(5) Common parent.

[ ] Offeror is not owned or controlled by a common parent;

[ ] Name and TIN of common parent:

Name _____.

[ ] TIN _____.

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a women-owned small business concern.

(6) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it [ ] is, [ ] is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of employees	Average annual gross revenues
__ 50 or fewer ..	__ $1 million or less.
__ 51–100	__ $1,000,001–$2 million.
__ 101–250	__ $2,000,001–$3.5 million.
__ 251–500	__ $3,500,001–$5 million.
__ 501–750	__ $5,000,001–$10 million.
__ 751–1000	__ $10,000,001–$17 million.
__ Over 1000 ...	__ Over $17 million.

(7) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(8) (Complete if dollar value of the resultant contract is expected to exceed $25,000 and the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.) *[The offeror shall check the category in which its ownership falls]:*

__ Black American.

__ Hispanic American.

__ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

__ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

__ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

__ Individual/concern, other than one of the preceding.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Parts 60–1 and 60–2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Buy American Act—Balance of Payments Program Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225–1, Buy American Act—Balance of Payments Program—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (e)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled ''Buy American Act—Balance of Payments Program—Supplies'' and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(f)(1) Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate. (Applies only if the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(1)(ii) or (f)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'' and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'':

NAFTA Country or Israeli End Products:

Line Item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (f)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.'' The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate I. If Alternate I to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph(f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'':

Canadian End Products:

Line Item No.
_____
_____
_____

[List as necessary]

(3) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate II. If Alternate II to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy

American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'':

Canadian or Israeli End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225–5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled ''Trade Agreements.''

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(g) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (j)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

Listed end product	Listed countries of origin
_____	_____
_____	_____
_____	_____

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

ALTERNATE I

(XX/XX)

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Recovered Material Certification. As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

ALTERNATE II

(XX/XX)

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Historically Black College Or University And Minority Institution Representation

(1) *Definitions.* As used in this provision—

''Historically black college or university'' means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

''Minority institution'' means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(2) *Representation.* The offeror represents that it—

( ) is ( ) is not a historically black college or university;

( ) is ( ) is not a minority institution.

ALTERNATE III

(MONTH/YEAR)

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Representation Of Limited Rights Data And Restricted Computer Software. (1) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227–16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data-General clause at 52.227–14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(2) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227–14, Rights in Data-General, the offeror shall complete paragraph (3) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(3) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

( ) None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

( ) Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

_____

_____

_____

Note: ''Limited rights data'' and ''Restricted computer software'' are defined in the contract clause entitled ''Rights in Data-General.''

§ 1852.213–71 Evaluation—Other than commercial items.

As prescribed in 1813.302–570(b) insert the following provision:

EVALUATION—OTHER THAN COMMERCIAL ITEMS

(XX/XX)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).]

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[FR Doc. 02–1915 Filed 1–24–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 176

[Docket No. RSPA–2002–11270; Notice No. 02–3]

Regulatory Flexibility Act Section 610 and Plain Language Reviews

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

ACTION: Notice of regulatory review; request for comments.

SUMMARY: RSPA requests comments on the economic impact of its regulations on small entities. As required by the Regulatory Flexibility Act and as published in DOT's Semi-Annual Regulatory Agenda, we are analyzing the rules on Carriage by Vessel to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand.

DATES: Comments must be received by April 25, 2002.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket number RSPA–2002–11270 at the beginning of your comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You can also submit comments by e-mail by accessing the Dockets Management System on the Internet at *''http://dms.dot.gov''* or by fax to (202) 366–3753.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. In addition, you can review comments by accessing the Dockets Management System at *''http://dms.dot.gov.''*

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–8553; or Donna O'Berry, Office of Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of rules that have a significant economic impact on a substantial number of small business entities. The purpose of the review is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on December 3, 2001, listing in Appendix D (66 FR 61900) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The Research and Special Programs Administration (RSPA, we) has divided its Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and Section 610 Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 began in the fall of 1998 and ended in the fall of 1999; Year 2 began in the fall of 1999 and ended in the fall of 2000; and so on.

During the Analysis Year, we will analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have a negative finding, we will provide a short explanation. For parts, subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The following table shows the 10-year analysis and review schedule:

RSPA SECTION 610 REVIEW PLAN 1999–2009

Title	Regulation	Analysis year	Review year
Incident reports	§§ 171.15 and 171.16	1998	N/A
Hazmat safety procedures	Parts 106 and 107	1999	N/A
General Information, Regulations, and Definitions	Part 171		
Carriage by Rail and Highway	Parts 174 and 177	2000	2001

RSPA SECTION 610 REVIEW PLAN 1999–2009—Continued

Title	Regulation	Analysis year	Review year
Carriage by Vessel	Part 176	2001	2002
Radioactive Materials	Parts 172, 173, 174, 175, 176, 177, 178	2002	2003
Explosives	Parts 172, 173, 174, 176, 178	2003	2004
Cylinders	Parts 172, 173, 178, 180		
Shippers—General Requirements for Shipments and Packagings.	Part 173	2004	2005
Specifications for Non-bulk Packagings	Part 178	2005	2006
Specifications for Bulk Packagings	Parts 178, 179, 180	2006	2007
Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements.	Part 172	2007	2008
Carriage by Aircraft	Part 175.		

C. Regulations Under Analysis

During Year 4 (2001–2002), the Analysis Year, we will conduct a preliminary assessment of the rules in 49 CFR Part 176, Carriage by Vessel. It includes the following subparts:

Subpart	Title
Subpart A	General.
Subpart B	General Operating Requirements.
Subpart C	General Handling and Stowage.
Subpart D	General Segregation Requirements.
Subpart E	Special Requirements for Transport Vehicles Loaded with Hazardous Materials and Transported on Board Ferry Vessels.
Subpart F	Special Requirements for Barges.
Subpart G	Detailed Requirements for Class 1 (Explosive) Materials.
Subpart H	Detailed Requirements for Class 2 (Compressed Gas) Materials.
Subpart I	Detailed Requirements for Class 3 (Flammable) and Combustible Liquid Materials.
Subpart J	Detailed Requirements for Class 4 (Flammable Solid), Class 5 (Oxidizers and Organic Peroxides), and Division 1.5 (Blasting Agents) Materials.
Subpart L	Detailed Requirements for Division 2.3 (Poisonous Gas) and Division 6.1 (Poisonous) Materials.
Subpart M	Detailed Requirements for Radioactive Materials.
Subpart N	Detailed Requirements for Class 8 (Corrosive) Materials.
Subpart O	Detailed Requirements for Cotton and Vegetable Fibers, Motor Vehicles, and Asbestos.

We are seeking comments on whether any requirements in part 176 have a significant impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if any of the requirements in part 176 has a significant economic impact on your business or organization, please submit a comment explaining how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

II. Plain Language

A. Background and Purpose

Plain language helps readers find requirements quickly and understand them easily. Examples of plain language techniques include:

(1) Undesignated center headings to cluster related sections within subparts.

(2) Short words, sentences, paragraphs, and sections to speed up reading and enhance understanding.

(3) Sections as questions and answers to provide focus.

(4) Personal pronouns to reduce passive voice and draw readers into the writing.

(5) Tables to display complex information in a simple, easy-to-read format.

For an example of a rule drafted in plain language, you can refer to RSPA's notice of proposed rulemaking entitled ''Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures,'' which was published December 11, 1998 (63 FR 68624). This NPRM proposed to rewrite 49 CFR part 106 and subpart A of part 107 in plain language and to create a new part 105 that would contain definitions and general procedures. We are currently evaluating comments received in response to the NPRM.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews of the HMR over a ten-year period on a schedule consistent with the section 610 review schedule. Thus, our review of part 176 will also include a plain language review to determine if the regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables or consolidating regulatory requirements, that may make the regulations easier to use.

Issued in Washington, DC, on January 18, 2002 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 02–1862 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–97–2426; Notice 4]

RIN 2137–AB48

Maps and Records of Pipeline Locations and Characteristics; Notification of State Agencies; Pipe Inventory

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Notice of removal of regulatory agenda item.

SUMMARY: This agenda item contemplated a rulemaking action to equalize as far as possible the requirements that gas and hazardous liquid pipeline operators keep maps and records to show the location and other characteristics of pipelines. Operators would have been required to keep an inventory of pipe and periodically report mileage and other data to federal and State agencies. This action was considered because of congressional and State concerns about the need for appropriate public officials to have pipeline information. Since this contemplated rulemaking was initiated in 1997, RSPA has developed the National Pipeline Mapping System (NPMS), a non-regulatory approach, to address these needs. Furthermore, pipeline security issues have been raised by recent events. In light of the development of the NPMS and the security issues, this item is removed from the regulatory agenda.

FOR FURTHER INFORMATION CONTACT: Richard Huriaux, by telephone at (202) 366–4565, by fax at (202) 366–4566, or by e-mail at *richard.huriaux@rspa.dot.gov*, regarding the subject matter of this notice. You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this notice or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov.* General information about the RSPA Office of Pipeline Safety programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION: In Section 102 and 202 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561, October 31, 1988), Congress directed RSPA to establish standards to require pipeline operators to complete and maintain an inventory of gas and hazardous liquid pipelines, including information on the location and history of leaks.

This requirement was to equalize as far as possible the requirements that gas and hazardous liquid pipeline operators keep maps and records to show the location and other characteristics of pipelines. Operators would have been required to keep an inventory of pipe and periodically report mileage and other facts to Federal and State agencies. A rulemaking action was considered because of congressional and State concerns about the need for appropriate public officials to have pipeline information.

Since the publication of this agenda item in 1997, RSPA has developed a non-regulatory alternative approach to ensuring that information on the location and characteristics of gas and hazardous liquid pipelines is available to Federal and State agencies. RSPA has worked with other Federal and State agencies and the pipeline industry to create the NPMS. The NPMS shows the location and selected attributes of the major natural gas and hazardous liquid pipelines and liquefied natural gas facilities in the Untied States.

The NPMS is a full-featured geographic information system that allows RSPA, for the first time, to accurately view pipelines in relation to the communities and environments they cross. The pipeline data layers now being populated cover both interstate and intrastate natural gas transmission pipelines and hazardous liquid pipelines. It includes data depicting population, urbanized areas, political boundaries, roads, railroads, hydrography, consequence and hazard areas, and unusually sensitive areas. At present, the NPMS includes data on 85–90 percent of the hazardous liquid pipeline milage and on more than 50 percent of the gas transmission pipeline mileage.

In addition, pipeline security issues have been raised by recent events. In light of the development of the NPMS and the security issues, a rulemaking action is no longer necessary.

On the basis of the foregoing, RSPA hereby removes this action from the regulatory agenda.

Authority: 49 U.S.C. 60102 *et seq.*; 49 CFR 1.53.

Issued in Washington, D.C. on January 22, 2002.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 02–1909 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH50

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Mariana Mallard and the Guam Broadbill From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973 (Act), as amended, we, the U.S. Fish and Wildlife Service (Service), propose to remove the Mariana mallard (*Anas platyrynchos oustaleti*) and the Guam broadbill (*Myiagra freycineti*) from the Federal List of Endangered and Threatened Wildlife. All available information indicates that these birds are extinct. The Mariana mallard was endemic to the islands of Guam, Tinian, Saipan, and possibly Rota, of the Mariana Archipelago in the western Pacific ocean. It was listed as endangered on June 2, 1977, because its population was critically low due to excessive hunting and loss of wetland habitat. No confirmed sightings of the Mariana mallard have been made since 1979. The Guam broadbill, endemic to Guam, was listed as endangered on August 27, 1984, because its population was critically low. No confirmed sightings or other evidence of the Guam broadbill in the Pajon Basin have been made since May 15, 1984. This proposal, if made final, would remove Federal protection provided by the Act for these species. Removal of the Mariana mallard and the Guam broadbill from the Federal list of Endangered and Threatened Wildlife does not alter or supersede their designation by the government of Guam as endangered species. The Mariana mallard is not a protected wildlife species by the government of the Commonwealth of the Northern Mariana Islands (CNMI).

DATES: Comments must be received by March 26, 2002. Public hearing requests must be received by March 11, 2002.

ADDRESSES: Send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson (see **ADDRESSES** section), telephone 808/541–2749; facsimile 808/541–2756; e-mail *paul__;henson@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Mariana mallard (*Anas platyrynchos oustaleti*) (Salvadori 1894) was first described by Salvadori based on six specimens collected from Guam in 1887 and 1888 (Reichel and Lemke 1994, Stinson 1994). The species is believed to have been a subspecies that originated as a hybrid between the common mallard (*Anas platyrhynchos*) and the grey duck (*Anas superciliosa*) (Reichel and Lemke 1994).

The Mariana mallard is known only from Guam, Tinian, and Saipan of the Marianas Archipelago. There is an unverified sighting of two ''unidentified ducks'' on Rota on October 20, 1945 (Baker 1948) and one specimen of *Anas* sp. found during a 1990 excavation of a late Holocene deposit in Payapai Cave, Rota (Steadman 1992). Other than these records, the Mariana mallard has never been reported on Rota. There are no records of this species from the more northern islands in the archipelago.

First collected by the early explorers in the late 1800s, only sporadic notes and observations have been made on this species. Marche (Baker 1951) collected six specimens from Guam in 1888. Collections from the time of Marche showed that the Mariana mallard concurrently inhabited the islands of Saipan and Tinian. A total of 38 specimens were collected from Tinian and Saipan by Japanese collectors between 1931 and 1940 (Baker 1951). There are probably fewer than 50 specimens of the Mariana mallard in collections in France, Japan, the United States, and elsewhere. Reichel and Lemke (1994) were able to locate 37 specimens. Most of these were collected by the Japanese in the 1930s and 1940s.

The Mariana mallard probably was never abundant (Baker 1951) due to limited habitat availability. There have never been extensive freshwater marshes or swamps in the Mariana Archipelago. The largest number of Mariana mallards ever recorded was by Kuroda (1942) who reported that his collector saw 2 flocks of 50 to 60 Mariana mallards at 2 locations at Lake Hagoi, Tinian. Gleize (1945) estimated a population of 12 mallards on Tinian. Marshall (1949) recorded their presence at both Lake Susupe, Saipan, and Lake Hagoi, Tinian. However, he speculated that they flew between the two islands as he never saw them at ''both * * * lakes during any one month.'' The last confirmed sighting of this species was in 1979 by Eugene Kridler of the Service who estimated that there were probably fewer than a dozen Mariana mallards remaining (Kridler 1979). At this time, Mr. Kridler collected a pair of birds for captive propagation. Captive breeding was first conducted at Pohakuloa, Hawaii, then at Sea World, San Diego, California. These attempts failed and the last known Mariana mallard died at Sea World, San Diego in 1981 (Stinson 1995).

On Guam, the last recorded sighting of the Mariana mallard was made by G.S.A. Perez on February 25, 1967 (Drahos 1977). Wetland surveys were conducted on Guam from the late 1960s through the 1980s; however, no Mariana mallards were seen (Engbring *et al.* 1986, Stinson *et al.* 1991, Reichel *et al.* 1992).

Small populations persisted on Tinian and Saipan until the late 1970s (Pratt *et al.* 1979, Stinson 1995). No confirmed sightings of the Mariana mallard have been made since 1979. Extensive surveys were conducted intermittently from 1982 through 1984 by us and staff from the Division of Fish and Wildlife (DFW) of the Commonwealth of the Northern Mariana Islands (CNMI). All of the known wetland habitat in the CNMI was surveyed. There were no confirmed sightings or vocalizations (U.S. Fish and Wildlife Service 1983). A special effort was made to search for the Mariana mallard during forest bird surveys conducted on the islands of Saipan, Tinian, Rota, and Agiguan in 1982. Teams comprising biologists and biotechnicians simultaneously surveyed wetlands on Saipan and Tinian from which the most recent (1979) sightings of the mallard had been recorded to determine the status and distribution of this species. No mallards were observed on either island (U.S. Fish and Wildlife Service 1983).

During the period from May, 1983, through December, 1989, biologists from the CNMI's DFW conducted 5 to 79 surveys of each permanent wetland and each seasonal wetland greater than 0.5 hectares (1.2 acres) in the CNMI (230 surveys). Wetlands that contained better mallard habitat were surveyed more often. Surveys occurred year round and the greatest frequency occurred from May through September (112 surveys) to coincide with the historical nesting season of the Mariana mallards. No Mariana mallards were seen during these intensive and systematic searches. The determination of the investigators at the conclusion of these surveys was that the Mariana mallard was extinct (Reichel and Lemke 1994). Researchers and managers currently in Guam and the CNMI concur that the Mariana mallard is probably extinct, as it has not been seen since 1979 despite frequent and intensive surveys of wetlands for waterbirds such as the endangered Mariana common moorhen (*Gallinula chloropus guami*) (Evans *et al.* 1996; Gary Wiles, Guam Division of Aquatic and Wildlife Resources (DAWR), pers. comm. 1998; Mike Ritter, Service, pers. comm. 1998).

The Mariana mallard's reduction in range and eventual extinction has been attributed to habitat loss and hunting, especially during, and immediately after, World War II (WWII) (Baker 1948, Engbring and Fritts 1988, Reichel and Lemke 1994). Evolving without predators, the mallard was not wary of humans and easily caught (Kuroda 1942, Stott 1947). They were hunted and trapped for food (Fritz 1904, Safford 1904). Safford (1904) reported that the Mariana mallard was ''the best game bird'' and ''very highly esteemed for food.'' Kuroda (1942) reported that there was a hunting season on Saipan from July through December, but no hunting was allowed on Tinian. However, it is unknown if these regulations were enforced. After WWII, islanders were allowed to own firearms and hunting of the birds persisted. Even with the designation of the species as endangered by the Trust Territories and the Service, there was little enforcement of the regulations (Drahos 1977).

Habitat loss due to draining and fragmentation of wetlands have greatly reduced the quantity and quality of wetlands on Guam, Tinian, and Saipan (Stinson *et al.* 1991, Reichel *et al.* 1992, Reichel and Lemke 1994). Though early reports on Tinian mention two lakes, Lake Hagoi is the only lake currently found on the island. It is probable that the second lake referenced is now known as Makpo Swamp. It is currently too overgrown with woody vegetation to be mallard habitat. Additionally, this wetland has been drained for water for San Jose village and converted into farmland (Bowers 1950, Reichel and

Lemke 1994). During the Japanese occupation of Saipan and Tinian between 1914 and 1945, most wetlands were channelized and converted to rice paddies. Also during this time, sugarmill wastes were discharged into Lake Susupe on Saipan. Since 1945, many wetlands have been drained or filled in the course of urban development on all three islands (Stinson *et al.* 1991, Reichel *et al.* 1992, Reichel and Lemke 1994). The Mariana mallard, never great in number, lost most of its limited habitat with the decimation of the wetlands, while being hunted with little to no restriction.

The Guam broadbill (*Myiagra freycineti*), a member of the family Muscicapidae, was endemic to the island of Guam in the Mariana Archipelago (U.S. Fish and Wildlife Service 1990). First collected by explorers in 1820, the specimens were labeled ''kingfisher with a russet throat'' and erroneously noted as being from Australia (Oustalet 1895). Marché collected 23 specimens in 1887 and 1888, from which Oustalet described *Myiagra freycineti* (Oustalet 1895).

Although the species was probably never abundant, a reduction in the range of the Guam broadbill was noted from 1950 into the early 1980s. Prior to 1950, the species occupied 500 square kilometers (sq km) (193 sq miles (mi)) of habitat throughout the island of Guam. By 1950, broadbill range had been reduced to 312 sq km (120 sq mi) or 62 percent of its former range (Ernie Kosaka, Service, *in litt.* 1982). By the early 1970s, the species was entirely absent from the southern two-thirds of the island but still relatively common in northern Guam into the mid-1970s. Decline of the Guam broadbill continued with no individuals detected on northern roadside counts that were initiated in 1973 (Drahos 1977). Further losses were attributed to super typhoon Pamela in 1976 (Joseph E. Ada, Acting Governor of Guam, *in litt.* 1979). By 1979, the Guam broadbill was restricted to the remaining areas of natural vegetation that occurred primarily along the northern cliff line in a thin strip from Naval Communication Station (NCS) Beach through Catalina Point on the eastern side of Guam (DAWR 1979–1986). At that time, the Guam broadbill had the lowest relative abundance and the lowest density of any native passerine during station counts. Although relative densities of the broadbill were highest at Pati and Ritidian Points and Tarague in 1980, the species was recorded only at Ritidian and Urunao Points and Anderson Air Force Base in 1981. This represented a further reduction of habitat range to 43 sq km (16.6 sq mi) or 9 percent of its original range (Engbring and Pratt 1985). Combined broadbill densities showed a 70 percent decline since 1979 (DAWR 1979–1986). By 1983, the population had declined 83 percent in the Ritidian Basin area (DAWR 1979–1986) and was further restricted to the extreme northern end of Guam in the Pajon Basin in 150 hectares (ha) (370 acres (ac)) or 1.5 sq km (0.57 sq mi) of habitat (Savidge 1987). Estimates of 460 birds (Engbring and Ramsey 1984) in 1981 and fewer than 100 individuals (Engbring and Pratt 1985) in 1983 from the Pajon Basin had dwindled to only one sighting of a male in October 1983 (Beck 1984a). The last two sightings of the Guam broadbill in the wild were of transient males in 1984. Robert E. Beck, Jr. (DAWR) and Dr. Eugene Morton (Smithsonian Institution) sighted a male at Northwest Field in March 1984, and Philip Bruner (Brigham Young University of Hawaii) sighted the other in an area adjacent to the Navy golf course in Barrigada in August 1984 (Beck 1984a). The Guam broadbill has not been sighted in the Pajon Basin area since May 15, 1984, and the species is believed to be extinct (DAWR 1979–1986).

In September 1983, a male was collected for captive propagation (Beck 1984b). This captive breeding attempt failed as other wild individuals were not located and the captive male died of unknown causes (DAWR 1979–1986). Attempts at captively breeding the Guam broadbill were abandoned in 1984 due to its virtual disappearance from the wild (Beck 1984a, b).

Based on the last field sightings, the approximate date of extirpation of the Guam broadbill is 1984 (Beck 1984a, Wiles *et al.* 1995), and it was presumed to be extinct by 1985 (Beck 1984a, b; Savidge 1987; U.S. Fish and Wildlife Service 1990; Reichel and Glass 1991; Stinson 1994).

Reduction in the range of the Guam broadbill and its eventual extinction have been variously attributed to excessive pesticide spraying during and after World War II, the spread of avian diseases, and predation by introduced animals including rats (*Rattus* spp.), the monitor lizard (*Varanus indicus*), and the brown tree snake (*Boiga irregularis*). However, studies conducted by our Patuxtent Wildlife Research Center in 1983 indicated that pesticide overuse and avian diseases were not responsible for broadbill declines noted in the early 1980s. Instead, studies conducted by Savidge in 1986 implicated predation by the brown tree snake as the single most important factor in the decline of Guam's native forest birds, including the Guam broadbill (Savidge 1986, 1987; Conry 1988; Wiles *et al.* 1995; Rodda *et al.* 1997).

Previous Federal Action

Federal action on the Mariana mallard began on May 22, 1975, when the Fund for Animals, Inc., requested that we list 216 taxa of plants and animals as endangered species pursuant to the Act. These species appeared in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), but did not appear on the United States List of Endangered and Threatened Wildlife and Plants. On September 26, 1975, we published in the **Federal Register** (40 FR 44329), a proposed rule to list 216 species as endangered, including the Mariana mallard. The rule that determined 159 of the 216 taxa to be endangered species was published on June 14, 1976 (41 FR 24062). The Mariana mallard was not included in this rule because the Governors of the States (which is defined by the Act to include Guam and the CNMI) in which this species was resident, inadvertently were not notified of the proposal as required by the Act. These Governors were then notified and allowed 90 days for comment. The Mariana mallard was listed as an endangered species on June 2, 1977, without critical habitat (42 FR 28137).

Federal action on the Guam broadbill began on February 27, 1979, when the Acting Governor of Guam petitioned us to list the Guam broadbill and five other forest bird species as endangered. On May 18, 1979, we issued a notice of review (44 FR 29128) for 12 petitioned animals, including the Guam broadbill. In our December 30, 1982, Review of Vertebrate Wildlife (47 FR 58454) the Guam broadbill was considered a category 1 candidate for Federal listing. Category 1 species were those for which we had substantial information on biological vulnerability and threats to support preparation of a listing proposal, but for which a listing proposal had not yet been published because it was precluded by other listing activities. On November 29, 1983, we published a proposed rule (48 FR 53729) to list the Guam broadbill as endangered. The final rule determining the Guam broadbill to be an endangered species was published on August 27, 1984 (49 FR 33881). Critical habitat was not designated.

Summary of Factors Affecting the Species

In accordance with the Act and implementing regulations at 50 CFR part 424, a species shall be listed if the

Secretary of the Interior determines that one or more of five factors listed in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted according to § 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) original data for classification of the species were in error.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat loss was a major factor in the decline and subsequent extinction of the Mariana mallard. Since 1945, draining, fragmentation, and filling of wetlands for urban development has greatly reduced their quantity and quality on Guam, Tinian, and Saipan (Stinson *et al.* 1991, Reichel *et al.* 1992, Reichel and Lemke 1994). Between 1914 and 1945, during the Japanese occupation of Saipan and Tinian, most wetlands were converted to rice paddies. In more recent times, wetlands have been drained to provide potable water for new villages and converted into farmland (Bowers 1950, Reichel and Lemke 1994).

The Guam broadbill was endemic to the island of Guam and, until the mid-1970s, common in the northern half of the island. This species was found in woodland areas, forests with brushy undercover, areas dominated by the alien shrub, tangantangan (*Leucaena leucocephala*), southern riparian areas, coastal strand, and mangrove swamps. Though the island of Guam has undergone massive development and urbanization over the last 20 years, habitat destruction or modification is not believed to have been a major factor in the decline of this bird because population numbers declined in areas with intact habitat over this time period.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Over-hunting is believed to have been a major factor leading to the decline and subsequent extinction of the Mariana mallard, particularly during and immediately after WW II (Kuroda 1942, Baker 1948, Engbring and Fritts 1988, Reichel and Lemke 1994). Overutilization is not known to be a factor in the decline of the Guam broadbill.

C. Disease or Predation

Disease or predation is not known to have been a factor in the decline of the Mariana mallard. While the brown tree snake is believed to have been accidentally introduced to Guam between 1945 and 1952 (Rodda *et al.* 1992), it is not believed to have been a factor in the decline of the mallard because the snake prefers forest habitat. While a population of this voracious predator may now be established on Saipan, it is not believed to have been present on the island during the 1970s, when the last sighting of the Mariana mallard was made. The brown tree snake is not known to be established on Tinian.

The spread of avian disease and predation by introduced animals, including the monitor lizard, rats (*Rattus* spp.), cats (*Felis catus*), dogs (*Canis familiaris*), pigs (*Sus scrofa*), and the brown tree snake, were suspected as factors in the decline of the Guam broadbill at the time of its listing. However, later studies concluded that predation by the brown tree snake was probably the single most important factor in the drastic decline and subsequent extinction of the Guam broadbill (Savidge 1986, 1987; Conry 1988). These studies provided no evidence of its decline due to avian disease (Savidge 1986, 1987). By 1986, the snake was probably present throughout the island (Savidge 1986, 1987). Primarily arboreal, this snake preys upon eggs and hatchlings in nests, and roosting young and adults.

D. The Inadequacy of Existing Regulatory Mechanisms

The Mariana mallard was listed as an endangered species by the Trust Territory of the Pacific Islands in 1976 and by us in 1977. It is currently protected as endangered under Guam's Endangered Species Act (Pub. L. 15–36). The Mariana mallard was not listed as a threatened or endangered species by the CNMI government (CNMI 1991).

The Guam broadbill is presently protected as endangered under Guam's Endangered Species Act (Pub. L. 15–36) and is federally protected as an endangered species under the Endangered Species Act of 1973.

Protection as endangered species by the Federal government and governments of Guam and the Trust Territory of the Pacific Islands, was probably too late to compensate for the earlier effects of unrestricted hunting and habitat loss, in the case of the Mariana mallard, and for the accidental introduction and subsequent spread of the brown tree snake, in the case of the Guam broadbill.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

At the time it was listed, one of the factors believed to have contributed to the critically low population levels of the Guam broadbill was overuse of pesticides. However, pesticide use has not been found to be a major factor in the decline of this species (Grue 1986, Savidge 1986, 1987).

In summary, all available information indicates that the Mariana mallard and the Guam broadbill are extinct. Previous population estimates made on Guam (1944), Tinian (1945), and Saipan (1947) for the Mariana mallard reported 12 or fewer individuals on each of these islands (Baker 1951). No confirmed sightings or vocalizations have been reported for this bird since 1979, and the last captive bird died in 1981. The Guam broadbill was reported to be on the verge of extinction at the time of its listing, and population estimates of 460 and less than 100 individuals were reported in 1981 and 1983, respectively. No confirmed sightings or vocalizations have been reported for this species since May 14, 1984, and the last captive bird died in February 1984. We propose to remove the Mariana mallard and the Guam broadbill from the List of Endangered and Threatened Wildlife.

Effects of This Rule

This rule, if made final, would revise § 17.11(h) to remove the Mariana mallard and the Guam broadbill from the Federal list of Endangered and Threatened Wildlife due to extinction. The prohibitions and conservation measures provided by the Act, particularly sections 7 and 9, will no longer apply to these species if this rule is made final. There is no designated critical habitat for these species.

The Mariana mallard and the Guam broadbill are protected by the government of Guam (Pub. L. 15–36). Removal of these species from the Federal list of Endangered and Threatened Wildlife does not alter or supersede their designation by the government of Guam as endangered species.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate as possible. Therefore, we solicit data, comments, or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning the

Mariana mallard and the Guam broadbill not included in this document; and

(2) The location of any individuals or populations of the Mariana mallard and the Guam broadbill.

The final decision on this proposal will take into consideration the comments and any additional information we receive, and such communications may lead to a final determination that differs from this proposal.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we will withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety.

Public Hearings

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Field Supervisor (see **ADDRESSES** section).

Clarity of This regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful to understanding the rule? (3) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

National Environmental Policy Act

We have determined that preparation of an environmental assessment or environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, is not necessary when issuing regulations adopted under section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this decision in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

The OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on ten or more persons. This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Arlene Pangelinan and Lee Ann Woodward, Ecological Services, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set out in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entries for ''Mallard, Mariana'' and ''Broadbill, Guam'' under ''BIRDS'' from the List of Endangered and Threatened Wildlife.

Dated: July 17, 2001,

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–1876 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 010302D]

RIN 0648–AL86

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Sustainable Fishery Act Amendment to the Fishery Management Plans of the U.S. Caribbean

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council (Council) has submitted a Comprehensive Amendment Addressing Sustainable Fishery Act Definitions and Other Required Provisions of the Magnuson-Stevens Act in the Fishery Management Plans of the U.S. Caribbean (Comprehensive SFA Amendment) for review, approval, and implementation by NMFS. The Comprehensive SFA Amendment would define status determination criteria and overfishing thresholds (e.g., maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT)) for the species or species complexes under the Council's authority, establish rebuilding plans for three overfished species: queen conch, Nassau grouper, and goliath grouper (formerly known as jewfish), and modify existing or add new framework adjustment procedures to all Caribbean FMPs.

These new and modified framework procedures would allow timely modification/addition of required stock parameters and management measures relating to preventing overfishing and rebuilding overfished stocks. The proposed measures should result in improved management of U.S. Caribbean marine fishery resources.

In addition, the Comprehensive SFA Amendment also would provide descriptions of the U.S. Caribbean

fisheries and fishing communities based on the best information available and recommend future establishment of a socio-economic data collection program and permanent expansion of NMFS' Marine Recreational Fisheries Statistical Survey to include Puerto Rico and the U.S. Virgin Islands to enhance the available information. The comprehensive SFA Amendment would also address bycatch in the fisheries managed under the Council's FMPs and recommend future development of a standardized bycatch reporting program.

DATES: Written comments must be received on or before March 26, 2002.

ADDRESSES: Written comments on the Comprehensive SFA Amendment should be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or the Internet.

Requests for copies of the Comprehensive SFA Amendment, which includes a regulatory impact review and an environmental assessment, should be sent to the Caribbean Fishery Management Council, 268 Munoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918–1920; e-mail: Caribbean.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, telephone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The Comprehensive SFA Amendment includes Amendment 2 to the FMP for Corals and Reef Associated Plants and Invertebrates, Amendment 1 to the FMP for Queen Conch Resources, Amendment 3 to the FMP for the Reef Fish Fishery, and Amendment 2 to the FMP for the Spiny Lobster Fishery. These FMPs were prepared by the Council, approved by NMFS, and implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Section 303 of the Magnuson-Stevens Act requires, in part, that FMPs provide descriptions of the applicable fisheries and fishing communities; assess the amount and types of bycatch and include management measures that, to the extent practicable, minimize bycatch and bycatch mortality; specify objective and measurable criteria for identifying when a stock is overfished, i.e., status determination criteria; and rebuild stocks to achieve MSY. The Council developed its Comprehensive SFA Amendment to address these requirements.

The Comprehensive SFA Amendment would define status determination criteria and overfishing thresholds (e.g., maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT)) for the species or species complexes under the Council's authority, establish rebuilding plans for three overfished species: queen conch, Nassau grouper, and goliath grouper (formerly known as jewfish), and modify existing or add new framework adjustment procedures to all Caribbean FMPs.

Because information on U.S. Caribbean fisheries is sparse and incomplete, the fisheries can be classified as data-poor (among other parameters, biomass and fishing mortality rates are not available for most Caribbean fishery resources). Thus, managers must use biomass-based proxies for the MSY, OY, MFMT, and MSST parameters for the respective fishery resources. Formulae for the derivation of these proxies are presented in the Comprehensive SFA Amendment. In general, the MSY proxies are based on average landings of commercial fisheries for a specified time period. OY must be less than or equal to the MSY proxy. The proxies for MSST are defined either as the greater of (1—M) xB_{msy} or 0.5 x B_{msy} where M is the estimated instantaneous natural mortality rate and B is the estimated spawning biomass. MFMT is considered equal to the estimated M for the respective species or species complex. Values for each proxy, when available, are presented in the Comprehensive SFA Amendment. Assessment information provided in the Comprehensive SFA Amendment reflects conditions in the commercial fisheries. Due to lack of adequate catch and effort data, the status of recreational fisheries is currently unknown.

The NMFS 2000 Report to Congress on the Status of U.S. Fisheries listed Nassau grouper, goliath grouper, and queen conch as overfished in the U.S. Caribbean. The Comprehensive SFA Amendment would establish rebuilding timeframes for these species.

In addition, the Comprehensive SFA Amendment also would provide descriptions of the U.S. Caribbean fisheries and fishing communities based on the best information available and recommend future establishment of a socio-economic data collection program and permanent expansion of NMFS' Marine Recreational Fisheries Statistical Survey to include Puerto Rico and the U.S. Virgin Islands to enhance the available information. The comprehensive SFA Amendment would also address bycatch in the fisheries managed under the Council's FMPs and recommend future development of standardized bycatch reporting program.

NMFS is requesting comment on the proposed framework procedures, especially concerning any changes that would allow the public to comment more fully on proposed management measures. Also, NMFS invites comment concerning the types of information that should be collected to more precisely describe Caribbean fisheries and fishing communities.

Comments received by March 26, 2002, whether specifically directed to those management measures in the Comprehensive SFA Amendment that would amend the Caribbean FMPs or to the proposed rule that NMFS plans to publish that would implement the Comprehensive SFA Amendment, will be considered by NMFS in its decision to approve, disapprove, or partially approve those measures amending the FMPs. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the Comprehensive SFA Amendment or the proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

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

Dated: January 18, 2002.

Jonathan Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1872 Filed 1–24–02; 8:45 am]

BILLING CODE 3510s–22–S

Proposed Rules

Federal Register
Vol. 67, No. 17
Friday, January 25, 2002

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

RIN 3150–AG91

Specification of a Probability for Unlikely Features, Events and Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada, to define the term ''unlikely'' in quantitative terms. That is, it would be defined as a range of numerical values for use in determining whether a feature, event, or process (FEP) or sequence of events and processes should be excluded from certain required assessments. The NRC is proposing this amendment to clarify how it plans to implement two of the final environmental standards for Yucca Mountain issued by the U.S. Environmental Protection Agency (EPA). Specifically, EPA's final standards require the exclusion of ''unlikely'' FEPs, or sequences of events and processes, from the required assessments for the human intrusion and ground-water protection standards. In accordance with the Energy Policy Act of 1992, the NRC has adopted EPA's final standards in its recently published technical requirements for a potential geologic repository at Yucca Mountain.

DATES: The comment period expires April 10, 2002. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via NRC's interactive rulemaking website http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail cag@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room (PDR), Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737; or by email to: *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7285, e-mail: tjm3@nrc.gov; or Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203, e-mail: cwp@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2001 (66 FR 55732), the U.S. Nuclear Regulatory Commission (NRC) published its final rule, 10 CFR Part 63, governing disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada. These are the regulations that the U.S. Department of Energy (DOE) must meet in any license application for construction and operation of a potential repository. As mandated by the Energy Policy Act of 1992, Public Law 102–486 (EnPA), NRC's final rule adopts the radiation protection standards established by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 197 (66 FR 32074; June 13, 2001). EPA's standards for disposal include an individual protection standard (40 CFR 197.20); a human intrusion standard (40 CFR 197.25); and ground-water protection standards (40 CFR 197.30). These EPA standards have been incorporated into NRC's regulations at 10 CFR 63.311, 63.321, and 63.331, respectively.

DOE's performance assessments are required to consider the naturally occurring features, events, and processes (FEPs) that could affect the performance of a geologic repository (i.e., specific conditions or attributes of the geologic setting; degradation, deterioration, or alteration processes of engineered barriers; and interactions between natural and engineered barriers). EPA's standards include limits on what DOE must consider in performance assessments undertaken to determine whether the repository will perform in compliance with the standards (40 CFR 197.36). DOE's performance assessments shall not include consideration of ''very unlikely'' features, events or processes (FEPs), which EPA defines to be those FEPs that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. In addition, EPA's standards require NRC to exclude ''unlikely'' FEPs, or sequences of events and processes, from the required assessments for demonstrating compliance with the human intrusion and ground-water protection standards. EPA did not define unlikely FEPs in its standards, but, rather, left the specific probability of the unlikely FEPs for NRC to define.

The Commission explained in its rulemaking establishing Part 63 that it ''* * * fully supports excluding unlikely FEPs from analyses for estimating compliance with the standards for human intrusion and ground-water protection * * *,'' and that it ''* * * considers a frequency for unlikely FEPs would fall somewhere between 10^{-8} to 10^{-4} per year * * *,'' but that it had decided not to provide a specific quantitative value for defining unlikely FEPs in the final rule (66 FR 55734; November 2, 2001). Instead, the Commission stated that it ''* * *

plan[ned] to conduct an expedited rulemaking to quantitatively define the term ''unlikely.'' Consideration will be given to whether a range of values or a single specific value should be used as well as the appropriate numerical value(s). The expedited rulemaking will provide an opportunity for public comment to assist the Commission in determining an appropriate approach'' (66 FR 55734; November 2, 2001). This proposed rule initiates the rulemaking to quantitatively define the term ''unlikely'' promised by the Commission.

II. Discussion

EPA's standards for disposal include an individual protection standard; a human intrusion standard; and ground-water protection standards. EPA's standards also prescribe that DOE should exclude ''very unlikely'' FEPs from the performance assessments used to determine compliance with the three postclosure standards (i.e., individual protection, human intrusion, and ground-water protection). Unlike the broader purposes served by the performance assessment for the all-pathway individual protection standard, the performance assessments used to determine compliance with the human intrusion standard and the ground-water protection standards serve narrow, focused objectives. In the case of the performance assessment for human intrusion, the purpose is to evaluate the robustness of the repository system to the consequences of human intrusion. In the case of the performance assessment for ground-water protection, the purpose is to evaluate the degradation of the ground-water resource. Consistent with the specific purposes of these two standards, EPA prescribed specific conditions to be used in determining compliance with the human intrusion standard and the ground-water protection standards. For these two standards, EPA prescribed the exclusion of not only ''very unlikely'' FEPs, but also ''unlikely'' FEPs. Although EPA's final standards did not specify a numerical value to define unlikely FEPs in quantitative terms, the preamble to the standards stated that the exclusion of unlikely FEPs is intended to focus these assessments on the ''expected'' or ''likely'' performance of the repository.[1] This intent is consistent with the NRC approach of requiring the use of reasonable and prudently conservative assumptions in modeling exposure scenarios.

Under 10 CFR 63.321(b)(1), DOE must demonstrate the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion could occur without recognition by the drillers and ''* * * demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual receives no more than an annual dose of 0.15 mSv (15 mrem) as a result of a human intrusion, at or before 10,000 years after disposal.'' The elements of the stylized human intrusion scenario are specified by 10 CFR 63.322 and specifically direct DOE to assume that no releases are included which are caused by unlikely natural processes and events. With respect to the ground-water standards (10 CFR 63.331), DOE must demonstrate that there is a reasonable expectation that, for 10,000 years of undisturbed performance (i.e., 10,000 years during which the occurrence of unlikely FEPs do not disturb the repository) after disposal, releases of radionuclides from waste in the Yucca Mountain disposal system into the accessible environment will not cause the level of radioactivity in the representative volume of ground water to exceed the limits specified in a table attached to 10 CFR 63.331.

In assessing compliance with both the human intrusion standard and ground-water protection standards, 10 CFR 63.342 provides that unlikely FEPs, or sequences of events and processes, shall be excluded ''* * * upon prior Commission approval for the probability limit used for unlikely FEPs.'' Although the Commission could review and approve a probability limit in the context of its review of a potential DOE license application, it is proposing to set this limit in advance, through the rulemaking process, so that it will have the advantage of public views on this question, and so that DOE, interested participants, and the public will have knowledge, before the license application, of what probability the Commission would find acceptable.

The Commission has considered whether the probability for unlikely FEPs should be defined as a single value or a range of values. A single value would be used as a probability limit such that each FEP with a probability less than the specified limit should be considered unlikely. A probability range would be used to define the spread of probability (i.e., upper and lower values) that represents unlikely FEPs. Although both approaches specify an upper value for probability, a probability range provides a more complete description of the spread of probability that is identified with unlikely FEPs. The Commission is not aware of any disadvantages to using a range and therefore is specifying a probability range because it provides a better characterization of the range of probabilities associated with FEPs than what would be provided by a single number.

Assigning specific numerical values to a qualitative term such as ''unlikely'' is complicated by the subjective nature of this term. As a first step, the Commission found it useful to describe three broad categories to represent the entire probability range for what could occur at the Yucca Mountain repository site. These three categories are: (1) Very unlikely; (2) unlikely; and (3) likely. As a practical matter, the rationale for the quantitative range defining unlikely FEPs is easier to describe in terms of the categories of likely and very unlikely, because unlikely is bounded by these two categories. Very unlikely FEPs have been described in the EPA standards as FEPs with such low probability of occurrence that they need not be considered in any performance assessments for Yucca Mountain. As mentioned previously, the EPA standards quantitatively define very unlikely FEPs as those FEPs with less than a 0.01 percent chance of occurring within the 10,000 year compliance period (i.e., annual probability less than 10^{-8}). In a qualitative sense, likely FEPs are those FEPs that can be reasonably expected to occur during the 10,000 year compliance period. From a probabilistic perspective, any FEP with an annual probability of 10^{-4} or higher would have a high probability of occurring within the 10,000 year compliance period.[2] However, likely FEPs should include not only FEPs very likely to occur but also those reasonably likely to occur. Given uncertainties in estimating the occurrence of FEPs over a 10,000 year time period, the Commission believes a prudent decision is to consider FEPs with 10 percent or greater chance of occurring within the 10,000 year compliance period as likely FEPs. Thus, unlikely FEPs are defined as those FEPs with less than a 10

[1] For example, the preamble states: (1) ''[t]he assessment of resource pollution potential is based upon the engineered design of the repository being sufficiently robust under expected conditions to prevent unacceptable degradation of the ground-water resources over time'' (66 FR 32114; June 12, 2001); and (2) the term ''undisturbed,'' which is used in connection with demonstrating compliance with the ground-water protection standards, means the ''disposal system is not disturbed by human intrustion but that other processes or events that are likely to occur could disturb the system'' (66 FR 32104; June 13, 2001).

[2] Estimating a high probability of occurrence for an FEP creates an expectation than an FEP will occur, however, it does not guarantee such an occurence; there is a chance that even high probability FEPs will not occur.

percent chance but greater than or equal to a 0.01 percent chance, of occurring within the 10,000 year compliance period (i.e., annual probability less than 10^{-5} but greater than or equal to 10^{-8} which is the upper boundary for very unlikely events).

In light of the foregoing discussion, the Commission seeks comment on the appropriateness of using an annual probability range of greater than or equal to 10^{-8} and less than 10^{-5} to define unlikely FEPs. As a matter of reference, current understanding of FEPs relevant to Yucca Mountain indicates that this designation would allow exclusion of igneous activity as an unlikely FEP, whereas a wide range of seismic events, fault movement, and rock fall would have higher probabilities than the upper bound for unlikely FEPs and would be included in the performance assessments for human intrusion and ground-water protection.

In arriving at this decision, the Commission considered the merits of using a lower value for the demarcation between likely and unlikely FEPs. For example, a 1 percent chance of occurring over the 10,000 year compliance period (i.e., annual probability of 10^{-6}) would also be considered unlikely. It is somewhat subjective whether a qualitative term such as ''unlikely'' should be quantitatively defined as less than a 1 or a 10 percent chance of occurring. Selection of an appropriate value needs to consider the context of the performance assessments (i.e., robustness of the repository system to the consequences of human intrusion and the degradation of the ground-water resource). As mentioned previously, the focus of the performance assessments for human intrusion and ground-water protection is to be on expected conditions. The Commission considers that an FEP having a 1 percent chance of occurring is neither expected nor likely and, therefore, an inappropriate value for the lower bound for likely events. The Commission believes a lower bound for likely FEPs of a 10 percent chance of occurring within the compliance period is consistent with the intended focus for these two standards. Although ''unlikely'' FEPs would not be considered in the performance assessments for human intrusion and ground-water protection, these FEPs are required to be considered in the performance assessment for the individual protection standard.

This rulemaking is proposing a probability range for unlikely FEPs as part of NRC's implementation of EPA's final standards for Yucca Mountain, in accordance with EnPA. Specification of the probability for unlikely FEPs is in the context of assessments of compliance with the human intrusion standard and ground-water protection standards, which have a regulatory compliance period of 10,000 years. The Commission made clear in its final regulations in Part 63 that the ''[C]riteria set out in this final rule apply specifically and exclusively to the proposed repository at Yucca Mountain'' (66 FR 55732; November 2, 2001). Similarly, the proposed definition for the term ''unlikely'' in this rulemaking is intended to apply specifically and exclusively to the potential repository at Yucca Mountain and is not intended to suggest or imply precedent for NRC regulations in other parts of this Chapter that use the term ''unlikely'' in significantly different contexts (e.g., compliance periods of tens of years, higher dose limits, different facilities, and different activities).

III. Section-by-Section Analysis

Section 63.342 Limits on Performance Assessments

This section specifies how DOE will determine which features, events, and processes will be considered in the performance assessments described in Subpart L of Part 63.

IV. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is establishing probability limits for unlikely features, events, and processes at a potential geologic repository for high-level radioactive waste at Yucca Mountain, Nevada. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Finding of No Significant Environmental Impact: Availability

Pursuant to Section 121(c) of the Nuclear Waste Policy Act, this proposed rule does not require the preparation of an environmental impact statement under Section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of Section 102(2) of such act.

VII. Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995. (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0199.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. It is available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203, e-mail: cwp@ nrc.gov.

IX. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule relates to the licensing of only one entity, DOE, which does not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act.

X. Backfit Analysis

NRC has determined that the backfit rule does not apply to this proposed

rule and, therefore, that a backfit analysis is not required, because this proposed rule does not involve any provisions that would impose backfits as defined in 10 CFR Chapter 1.

List of Subjects in 10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553, NRC is proposing to adopt the following amendments to 10 CFR Part 63.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

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

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat.1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141); and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. Section 63.342 is revised to read as follows:

§ 63.342 Limits on performance assessments.

DOE's performance assessments should not include consideration of very unlikely features, events, or processes, i.e., those that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. DOE's assessments for the human intrusion and ground-water protection standards should not include consideration of unlikely features, events, and processes, or sequences of events and processes, i.e., those that are estimated to have less than one chance in 10 and at least one chance in 10,000 of occurring within 10,000 years of disposal. In addition, DOE's performance assessments need not evaluate the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurrence if the results of the performance assessments would not be changed significantly.

Dated at Rockville, Maryland, this 18th day of January, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–1891 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 70

[Docket Number 020103004–2004–01]

Cutoff Dates for Recognition of Boundary Changes for Census 2000 and for the Intercensal Period

AGENCY: Bureau of the Census, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) is establishing cutoff dates for recognition of boundary changes to geographic entities for which the Census Bureau reports data in various surveys, estimates, censuses, programs, compilations, and publications throughout the period between decennial censuses (years 2001 through 2009). These operations include, but are not limited to, the American Community Survey, the Population Estimates Program, and the 2002 and 2007 Economic Censuses. The Census Bureau establishes cutoff dates for including boundary changes to be used in tabulating data from these operations; such cutoff dates were last established for Census 2000. For the tabulation and dissemination of data from its intercensal operations, the Census Bureau will recognize only those boundaries legally in effect on January 1 of the survey, estimate, or census year that have been reported officially to the Census Bureau no later than April 1 of the same year.

DATES: Any comments, suggestions, or recommendations concerning this proposed rule should be submitted in writing by February 25, 2002.

ADDRESSES: Address all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington DC 20233–0001.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, 4700 Silver Hill Road, Stop 7400, U.S. Census Bureau, Washington, DC 20233–7400, telephone (301) 457–2131, or e-mail *(rmarx@geo.census.gov).*

SUPPLEMENTARY INFORMATION: The Census Bureau proposes to amend Title 15, Code of Federal Regulations (CFR), part 70, to establish cutoff dates for recognition of boundary changes for all geographic data operations throughout the intercensal period (years 2001 through 2009). This amendment is necessary because the dates established for Census 2000 on March 3, 1998, (63 FR 10303) do not cover the intercensal period. For the intercensal period, the Census Bureau will recognize only those boundaries legally in effect on January 1 of the survey, estimate, or census year that have been reported officially to the Census Bureau no later than April 1 of the same year.

Administrative Procedure Act

Because this rule makes only procedural changes to Title 15, CFR, part 70, the Administrative Procedure Act does not require the Census Bureau to issue a proposed rule and request for comments (Title 5, United States Code (U.S.C.), section 553(b)(3)(A)). Nevertheless, the Census Bureau is doing so in order to ensure that the public is given a forum to provide any comments or raise any issues.

Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by 5 U.S.C. 553, or any other law, so a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

List of Subjects in 15 CFR Part 70

Census data.

For the reasons set forth in the preamble, Part 70 is amended as follows:

PART 70—CUTOFF DATES FOR RECOGNITION OF BOUNDARY CHANGES FOR CENSUS 2000 AND FOR THE INTERCENSAL PERIOD

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

Authority: 13 U.S.C. 4 and Department of Commerce Organization Order 35–2A (40 FR 42765).

2. Revise the heading of Part 70 to read as set forth above.

3. Amend §70.1 by revising the second sentence and by adding a third sentence to read as follows:

§ 70.1 Cutoff dates and effect on enumeration and data tabulation.

* * * The Bureau of the Census enumerates respondents on the date of the decennial census as residing within the legal limits of municipalities, county subdivisions, counties, states, federal and state American Indian reservations and federal off-reservation trust land, Alaska Native Regional Corporations, Hawaiian home lands, and equivalent entities as those limits legally exist on January 1, 2000. For the tabulation and publication of data from its surveys, estimates, censuses, and other operations during the intercensal period (years 2001 through 2009), the Bureau of the Census will recognize only those boundaries legally in effect on January 1 of the survey, estimate, or census year that have been reported officially to the Bureau of the Census no later than April 1 of the same year.

4. Amend § 70.2 by revising the second sentence and by adding a third sentence to read as follows:

§ 70.2 ''Municipality and ''county subdivision'' defined for census purposes.

* * * A more complete description appears on pages A–13, A–14, A–18 and A–19 of Appendix A, Geographic Terms and Concepts, which appear in the Census 2000 printed reports (PHC–1, Summary Population and Housing Characteristics; PHC–2, Summary Social, Economic, and Housing Characteristics; and PHC–3, Population and Housing Unit Totals). The same text (Appendix A, Geographic Terms and Concepts) also is available online under Technical Documentation, Summary File 1, 2000 Census of Population and Housing.

5. Amend §70.3 by adding both a third and fourth sentence to read as follows:

§ 70.3 Effect of boundary changes occurring or reported after the cutoff dates.

* * * For the tabulation and publication of data from surveys, estimates, censuses, and other operations during the intercensal period (years 2001 through 2009), the Census Bureau will not recognize changes in boundaries that become effective after January 1 of the survey, estimate, or census year. The Census Bureau will not recognize changes in boundaries occurring on or before January 1 of the survey, estimate, or census year, if reported officially to the Census Bureau after April 1 of the same year.

Dated: January 8, 2002.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–1815 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–000]

Standardizing Generator Interconnection Agreements and Procedures; Notice of Extension of Time

January 16, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: On October 25, 2001, the Federal Energy Regulatory Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) seeking comments on a standard generator interconnection agreement and procedures that would be applicable to all public utilities that own, operate or control transmission facilities under the Federal Power Act, 66 FR 55140 (November 1, 2001). The date for filing comments is being extended at the request of various interested parties.

DATES: Comments on issues posed by the ANOPR published at 66 FR 55140 (November 1, 2001) shall be filed on or before February 1, 2002.

ADDRESSES: Federal Energy Regulatory Commission,888 First Street, NE.,Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Linwood A. Watson, Jr.,Acting Secretary,888 First Street, NE.,Washington, DC 20426,(202) 208–0400.

SUPPLEMENTARY INFORMATION: On January 16, 2002, the American Public Power Association, the American Wind Energy Association, the Edison Electric Institute, the Electric Power Supply Association, the National Association of Regulatory Utility Commissioners, the National Rural Electric Cooperative Association, and the Project for Sustainable FERC Policy (collectively, Petitioners) filed a joint motion for an extension of time for the filing of comments on the issues posed by the Commission's Advance Notice of Proposed Rulemaking (ANOPR), as directed by the Notice issued by the Commission on December 14, 2001, in the above-docketed proceeding.

In its motion, Petitioners state that due to the voluminous nature of the documents involved in this proceeding to date, additional time is needed for industry personnel to prepare and file comments. The motion also states that an extension will not unduly delay the Commission's process and will lead to more thoughtful and well-developed comments in the effort to enhance the ANOPR process.

Upon consideration, notice is hereby given that an extension of time for the filing of comments on issues posed by the ANOPR is granted to and including February 1, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1823 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC92

Oil and Gas and Sulphur Operations on the Outer Continental Shelf-Suspension of Operations for Exploration Under Salt Sheets; Correction

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; correction.

SUMMARY: MMS proposed to modify regulations that govern suspension of operations for oil and gas leases on the Outer Continental Shelf (OCS) in the **Federal Register** of January 9, 2002 (67 FR 1171). The title of the signer of that document was in error. This action corrects that error.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, 703/787–1598.

SUPPLEMENTARY INFORMATION: In the **Federal Register** document published on January 9, 2002, there was an error in the title of the signer of the document. While the authority of the signer was not diminished by the erroneous title, the Department wishes that an accurate title be indicated on the document. The Department is correcting the documents as follows:

In proposed rule document (Federal Register document 02–521) make the following correction:

On page 1173, in the second column, 3 lines from the top of the column, the

title for James C. Cason is corrected to read ''Acting Deputy Secretary.''

Dated: January 21, 2002.

Timothy S. Elliott,

Acting Deputy Solicitor.

[FR Doc. 02–1918 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–135–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposes revisions to rules about surface and ground water monitoring in order to satisfy a required program amendment at 30 CFR 938.16(hh), and revisions to rules about coal refuse disposal to satisfy required program amendments at 30 CFR 938.16(vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb). Additionally, Pennsylvania is submitting new rules concerning coal refuse disposal operations. Pennsylvania intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and provide additional safeguards.

Finally, Pennsylvania requested we remove the required regulatory program amendment at 30 CFR 938.16(kk) (1) and (2). In this program amendment, we required Pennsylvania to correct cross-section references within the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA).

This document gives the times and locations that the Pennsylvania program and proposed amendments to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.s.t., February 25, 2002. If requested, we will hold a public hearing on the amendment on February 19, 2002. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on February 11, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Beverly Brock, Acting Director, Harrisburg Field Office at the address listed below.

You may review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Harrisburg Field Office.

Beverly Brock, Acting Director,Harrisburg Field Office,Office of Surface Mining Reclamation and Enforcement,Harrisburg Transportation Center, Third Floor, Suite 3C,4th and Market Streets,Harrisburg, Pennsylvania 17101,Telephone: (717) 782–4036.

J. Scott Roberts, Director,Bureau of Mining and Reclamation,Pennsylvania Department of Environmental Protection,Rachel Carson State Office Building,PO Box 8461,Harrisburg, Pennsylvania 17105–8461,Telephone: (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Telephone: 717–782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By two letters, both dated December 20, 2001, Pennsylvania sent us proposed amendments to its program (administrative record Nos. PA 881.00 and 837.101) under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania sent the amendments in response to the required program amendments at 30 CFR 938.16(hh), (vvv), (www), (xxx), (yyy), (zzz), (aaaa), and (bbbb) and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**. In a third letter dated November 16, 2001, (administrative record No. PA 880.00) Pennsylvania sent us an explanation regarding citation of cross-references in PA SMCRA required by the program amendment at 30 CFR 938.16(kk). This letter is also available for you to read at the locations listed under **ADDRESSES**.

In the first letter dated December 20, 2001, (administrative record No. PA 881.00) Pennsylvania notes that 30 CFR 938.16(hh) required it to amend 25 Pa. Code 89.59(a)(1) and (2) to be no less effective than 30 CFR 784.14(h)(1), relating to ground water monitoring plans. Specifically, 30 CFR 938.16(hh) required ground water monitoring plans to specify that, at a minimum, the total dissolved solids or specific conductance, pH, total iron, total manganese and water levels shall be monitored and data submitted to Pennsylvania at least every three months for each monitoring location.

In response to 30 CFR 938.16(hh) Pennsylvania submitted changes made to its regulations at 25 Pa. Code 89.59(a)(2), (3) and (b). The change in 25 Pa. Code 89.59(a)(2) was to delete the word ''periodically'' from the first sentence and to add the following phrase to the end to the section:

> At a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, acidity, alkalinity, total iron, total manganese, sulfates and water levels shall be monitored and reported to the Department at least every 3 months for each monitoring location.

The change Pennsylvania is proposing to 25 Pa. Code 89.59(a)(3) is to delete the last sentence from the section that reads, ''The Department will approve

the nature of data, frequency of collection, reporting requirements and the duration of the monitoring programs.'' Pennsylvania is proposing to add the following to the end of the section:

Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 89.36 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, total iron, total manganese, acidity, alkalinity, pH, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

Pennsylvania is also proposing to change 25 Pa. Code 89.59(b) by adding a sentence to the end of the section that reads, ''The Department may also require the operator to conduct monitoring and reporting more frequently than every 3 months and to monitor additional parameters beyond the minimum specified in this section.''

In the second letter of December 20, 2001, (administrative record No. PA 837.101) Pennsylvania submitted changes to various sections of its rules in 25 Pa. Code Chapters 88 and 90. Some of the proposed changes were to respond to required amendments at 30 CFR 938.16(vvv), (www), (xxx), (yyy), (zzz), (aaaa) and (bbbb). Other changes included adding 25 Pa. Code 90.116(a) to clarify that the water supply replacement requirements of 25 Pa. Code 87.119, relating to water rights and replacement for surface mining activities, are applicable to coal refuse disposal activities and adding subchapters E, F, and G to Chapter 90.

Changes to 25 Pa. Code Chapter 88 include the addition of references to 25 Pa. Code Chapter 90 to the first paragraph of 25 Pa. Code 88.281, replacing the word ''full'' with the phrase, ''the fill,'' in 25 Pa. Code 88.310(e), and the addition of subsections 25 Pa. Code 88.310(j) and (k). The full text of subsections (j) and (k) is:

(j) The system to prevent adverse impacts to the surface water and groundwater shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(k) The system to prevent precipitation from coming in contact with the coal refuse shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles and cross-sections approved in the permit and shall function to prevent precipitation from contacting the coal refuse.

(1) The system shall be installed as phases of the disposal area reach capacity, as specified in the permit, when the operation temporarily ceases for a period in excess of 90 days (unless the department approves a longer period, not to exceed 1 year) or when the operation permanently ceases.

(2) The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 88.330 (relating to revegetation: standards for successful revegetation) and for prevention of erosion.

In addition, Pennsylvania is proposing to amend 25 Pa. Code 88.332 by adding the following sentences to the end of subsection (a):

The system for preventing precipitation from contacting the coal refuse shall be installed when the temporary cessation exceeds 90 days. The department may approve a longer period, not to exceed 1 year, under subsection (b).

Numerous changes were proposed for 25 Pa. Code Chapter 90. Definitions for the terms ''coal refuse disposal,'' ''operator,'' and ''public recreational impoundment'' were to 25 Pa. Code 90.1. The proposed definitions are:

Coal refuse disposal—The storage, placement or disposal of coal refuse. The term includes engineered features integral to the placement of the coal refuse including relocations or diversions of stream segments contained within the proposed fill area and the construction of required systems to prevent adverse impacts to surface water and groundwater and to prevent precipitation from contacting the coal refuse.

Operator—A person operating a coal refuse disposal area, or part thereof.

Public recreational impoundment—A closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water and which is owned, rented or leased by the federal government, the commonwealth or a political subdivision of the commonwealth and which is used for swimming, boating, water skiing, hunting, fishing, skating or other similar activities.

Section 90.5 titled, ''Site Selection and Permitting'' is proposed to be added. The full text of this section, as proposed, is:

90.5. Site Selection and Permitting

(a) Prior to applying for a permit to conduct coal refuse disposal activities, the applicant shall comply with Subchapter E (relating to site selection). The department's technical guidance document number 563–2113–660, titled Coal Refuse Disposal—Site Selection, shall be used as guidance for selecting a coal refuse disposal site.

(b) After the department has approved a site in accordance with Subchapter E, the applicant may apply for a permit for coal refuse disposal activities in accordance with Chapters 86 and 88 (relating to Surface and Underground Coal Mining: General; and Anthracite Coal) and this chapter.

Pennsylvania is proposing numerous changes to section 25 Pa. Code 90.12 including organizational changes, deletion of some portions of existing regulations and addition of new regulations. The section as proposed to be changed now reads:

90.12. Geology

(a) The application shall include a description of the areal and structural geology within the proposed permit and adjacent area, including the lithology of the strata that influence the occurrence, availability, movement and quality of groundwater that may be affected by the coal refuse disposal. For lands within the proposed permit and adjacent areas, the applicant shall provide a description of the geology with complementing maps and cross sections and the results of test borings. The description shall include the strata down to and including any aquifer that may be affected. At a minimum, the description shall include:

(1) Location and quality of subsurface water.

(2) Depth, lithology and structure of near-surface bedrock.

(3) Location, identification and status of mining and coal refuse disposal operations within or adjacent to the proposed permit area.

(4) A description of any glacial, alluvial, or colluvial deposits or other unconsolidated deposits that are present within or beneath the proposed permit area, including their thickness and location.

(5) A description of any mine workings that are present beneath the proposed permit area.

(6) The attitude and characteristics of joints, cleats, fracture zones, and faults within the permit and adjacent areas.

(7) The location and identification of all coal seam croplines within the permit area.

(8) A description of the physical characteristics of soils within the permit area.

(9) A description of aquifers that are present beneath the proposed permit area.

(b) Maps, cross-sections, and geologic descriptions required by this section shall be prepared and certified by a qualified registered professional geologist.

Pennsylvania is proposing to revise section 90.13(2) to read as follows:

(2) Other information on the baseline hydrogeologic properties of the groundwater system shall be included with the application. The Department may require information on indicator parameters such as pumping test, lithologic and piezometer data or that other appropriate information be provided. The application shall include a description of the groundwater flow system as it relates to the design and operation of the proposed groundwater and surface water protection system as described in § 90.50 (relating to Design Criteria: Groundwater and Surface Water Protection System).

Pennsylvania is proposing some organizational changes to 25 Pa. Code 90.34(a). The section, as proposed, reads:

(a) An application shall contain a description of the proposed land use, following reclamation, of the lands to be affected within the proposed permit area by coal refuse disposal activities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain the following:

(1) How the proposed postdisposal land use is to be achieved, and the necessary support activities which may be needed to achieve the proposed land use.

(2) The detailed management plan to be implemented when pastureland is the postdisposal land use.

(3) Materials needed for approval of the alternative use under § 90.166 (relating to postdisposal land use).

(4) The consideration given to making all of the proposed coal refuse disposal activities consistent with surface owner plans and applicable Commonwealth and local land use plans and programs.

Pennsylvania is proposing to add a phrase to the first sentence of section 25 Pa. Code 90.45. The sentence now reads, ''A person who conducts, or intends to conduct, coal refuse disposal activities on prime farmlands historically used for cropland, in accordance with Subchapter E (relating to site selection), shall submit a plan, as part of the permit application, for the disposal and restoration of the land.''

Pennsylvania is proposing to add section 25 Pa. Code 90.49. The section, as proposed, reads:

90.49. Stream Buffer Zone Variance

(a) Stream buffer zone restriction. Coal refuse disposal may not occur within 100 feet (30.48 meters) of the bank of a stream. The department may grant a variance for disposal of coal refuse under subsection (c) if consistent with subchapter E (relating to site selection).

(b) Compliance required. Surface mining operations supporting coal refuse disposal shall comply with § 86.102(12) (relating to areas where mining is prohibited or limited).

(c) Variance. The department may grant a variance from the 100-foot (30.48-meter) stream buffer zone to dispose of coal refuse and to relocate or divert streams in the 100-foot (30.48-meter) stream buffer zone. The stream buffer zone is the area within 100 feet (30.48 meters) measured horizontally from the bank of any stream.

(1) Stream buffer zone variances will only be granted if the operator demonstrates to the satisfaction of the department that, as a result of the variance, coal refuse disposal will not adversely affect water quality and quantity, or other environmental resources of the stream and will not cause or contribute to the violation of applicable state or federal water quality standards.

(2) Prior to granting a variance, the operator shall be required to give public notice of the application in two newspapers of general circulation in the area once a week for two successive weeks.

(i) If a person files an exception to the proposed variance within 20 days of the last publication of the notice, the department will conduct a public hearing with respect to the application within 30 days of receipt of the exception.

(ii) The department will also consider information or comments submitted by the Fish and Boat Commission prior to taking action on a variance request.

(3) The variance will be issued as a written order specifying the methods and techniques that shall be employed to prevent or mitigate adverse impacts. Mitigation can include, but is not limited to, compensatory restoration and enhancements of nearby streams or stream segments.

Pennsylvania is proposing to add 25 Pa. Code 90.5. The full text of the section, as proposed, is:

90.50. Design Criteria: Groundwater and Surface Water Protection System

(a) The application shall include a description of the system that will be installed to prevent adverse impacts to groundwater and surface water. The description shall include maps, plans, and other information necessary to evaluate the design of the system.

(b) The application shall include a description of the system that will be installed to prevent precipitation from coming into contact with the coal refuse. The description shall include maps, plans, and other information necessary to evaluate the design of the system. The coal refuse disposal operation shall be designed in phases to minimize the amount of time the entire coal refuse area is exposed to precipitation prior to the installation of the system to prevent precipitation from contacting the coal refuse. The application shall describe the design of the system for preventing precipitation from contacting coal refuse and how the system will be installed in accordance with the following:

(1) During routine coal refuse disposal as phases of the coal refuse disposal area reach capacity.

(2) During periods of temporary cessation as directed under § 90.167(d) (relating to cessation of operations: temporary).

(3) When the operation permanently ceases.

(c) The department's technical guidance document number 563–2112–656, titled Liners—Impoundments, Stockpiles, and Coal Refuse Disposal Areas, shall be used as guidance for designing coal refuse disposal sites incorporating earthen, admixed or synthetic liners or caps for preventing adverse impacts to groundwater and surface water and for preventing precipitation from contacting coal refuse.

(d) The application shall include a description of the measures to be taken to ensure the long-term functionality of the systems described in subsections (a) and (b). The description shall address the site's susceptibility to mine subsidence and the potential impacts of mine subsidence on the systems described in subsections (a) and (b). The description shall also address the potential for deterioration of components of the systems described in subsections (a) and (b) due to other physical or chemical processes including but not limited to attack from sulfate-laden or acidic groundwater and/or leachate.

In section 25 Pa. Code 90.101(b), Pennsylvania is proposing to replace the phrase, ''the water,'' with the phrase, ''groundwater and surface water.''

Pennsylvania is proposing to add section 25 Pa. Code 90.116a. This section reads:

90.116a. Hydrologic Balance: Water Rights and Replacement

An operator who conducts coal refuse disposal and adversely affects a water supply by contamination, pollution, diminution, or interruption shall comply with § 87.119 (relating to water rights and replacement).

In 25 Pa. Code 90.122, Pennsylvania is proposing to delete former subsections (e) and (g). Under the proposed amendment, former subsection (f) is now subsection (e) and former subsection (h) is now subsection (f). In addition, Pennsylvania has submitted new subsections (g) and (h). The new subsections are:

(g) The disposal area shall be provided with a system to prevent adverse impacts to the surface water and groundwater. The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit and shall function to prevent adverse impacts to surface water and groundwater.

(h) When a phase of the coal refuse disposal area reaches capacity, the operator shall install a system to prevent precipitation from coming in contact with the coal refuse in the completed phase.

(1) The system shall be constructed in accordance with design schematics, test results, descriptions, plans, maps, profiles or cross-sections approved in the permit.

(2) During normal coal refuse disposal, the system is not required to prevent precipitation from coming in contact with the coal refuse being placed in phases of the operation that have not reached capacity.

(3) The system shall be designed to allow for revegetation of the site in accordance with the standard of success under § 90.159 (relating to revegetation: standards for successful revegetation) and for the prevention of erosion.

(4) If the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of 90 days (unless the department, for reasons of labor strike or business necessity, approves a longer period not to exceed one year) or when the operation permanently ceases, the operator shall install the system for preventing precipitation from contacting the coal refuse.

In 25 Pa. Code 90.167, Pennsylvania is proposing to change ''shall'' to ''may'' in section (b) and to add new subsection (d). Subsection (d) reads:

The operator shall install the system for preventing precipitation from contacting the

coal refuse when the temporary cessation exceeds 90 days. The department may approve a longer period, not to exceed 1 year, for reasons of a labor strike or business necessity.

Finally, Pennsylvania is proposing to add three new subchapters to 25 Pa. Code Chapter 90. The new subchapters are E. Site Selection, F. Coal Refuse Disposal Activities on Areas With Preexisting Pollutional Discharges, and G. Experimental Practices. The full text of these new subchapters follow:

Subchapter E. Site Selection

Section 90.201. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

Preferred Site—A watershed polluted by acid mine drainage; a watershed containing an unreclaimed surface mine but which has no mining discharge; a watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation; unreclaimed coal refuse disposal piles that could be improved by the proposed coal refuse disposal operation; or other unreclaimed areas previously affected by mining activities.

Search area—The geographic area within a 1-mile radius of an existing coal preparation facility or the 25-square-mile geographic area encompassing a proposed coal preparation facility

Selected Site—A location selected by the applicant and approved by the Department under this Subchapter for which the applicant can then apply for a permit to conduct coal refuse disposal activities.

Section 90.202. General Requirements

(a) A preferred site shall be used for coal refuse disposal unless the applicant demonstrates to the Department that an alternate site is more suitable based upon engineering, geology, economics, transportation systems, and social factors and is not adverse to the public interest.

(b) The applicant is required to determine whether the search area contains a preferred site.

(1) For a new coal refuse disposal area that will support an existing coal preparation facility, the applicant shall examine the geographic area within a 1-mile radius of the existing coal preparation facility.

(2) For a proposed coal refuse disposal area that will support a proposed coal preparation facility, the applicant shall examine a 25-square-mile geographic area encompassing the proposed coal preparation facility. In defining the 25-square-mile area, consideration shall be given to environmental, technical, transportation, economic, and social factors where applicable.

(c) If there are no preferred sites located within the search area, the applicant must conduct a comparative analysis of the potential coal refuse disposal sites in accordance with § 90.204(b) (relating to proposing an alternate site).

(d) The Department will not approve a site proposed by the applicant for coal refuse disposal activities when the Department finds that the adverse environmental impacts of using the site for coal refuse disposal activities would clearly outweigh the public benefits.

(e) Except on preferred sites, the Department shall not approve coal refuse disposal on or within any of the following areas:

(1) Prime Farmlands.

(2) An exceptional value watershed as defined under Chapter 93 (relating to water quality standards).

(3) Sites known to contain threatened or endangered animals listed exclusively under the Commonwealth's protection programs.

(4) An area that is hydrologically connected to and contributes at least 5% of the drainage to wetlands designated as exceptional value under Chapter 105 (relating to dam safety and waterway management) unless a larger percentage contribution is authorized by the Department after consultation with the Fish and Boat Commission.

(5) A watershed less than 4 square miles in area upstream of the intake of a public water supply.

(6) A watershed less than 4 square miles in area upstream of the upstream limit of a public recreational impoundment.

(7) Sites known to contain Federally listed threatened or endangered plants or animals. At preferred sites known to contain Federally listed threatened or endangered species, approval will be granted only where the Department concludes and the United States Fish and Wildlife Service concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the take of Federally listed threatened or endangered species in violation of section 9 of the Endangered Species Act of 1973 (16 U.S.C.A. 1538).

(f) As part of the site selection process, an applicant may request approval for more than one site. The Department will evaluate each site proposed for coal refuse disposal and, if the Department finds that a proposed site meets the requirements of this subchapter, it will designate it as an approved site. The applicant will then have the option of choosing a selected site from among the approved sites and submitting an application for coal refuse disposal for that site.

Section 90.203. Proposing a Preferred Site

If the applicant proposes to use a preferred site, the Department will approve the proposed site subject to § 90.202(c) (relating to general requirements) provided the applicant demonstrates that the attendant adverse environmental impacts will not clearly outweigh the public benefits.

Section 90.204. Proposing an Alternate Site

(a) Where a preferred site(s) exists within the search area, but the applicant proposes an alternate site, the applicant shall:

(1) Demonstrate that the alternate site is more suitable, using criteria in § 90.202(a) (relating to general requirements), than all preferred sites within the search area.

(2) Identify other alternate sites considered and provide the basis for the rejection of these sites.

(3) Based on reasonably available data, demonstrate that it is the most suitable site based on environmental, economic, technical, transportation and social factors.

(b) If a preferred site does not exist within the search area, the applicant shall:

(1) Identify all the sites considered within the search area and provide the basis for their consideration.

(2) Provide the basis for the rejection of considered sites.

(3) Based on reasonably available data, demonstrate to the Department that the proposed site is the most suitable based on environmental, economic, technical, transportation, and social factors.

Section 90.205. Alternatives Analysis

The alternatives analysis required by §§ 90.202(b) and 90.204 (relating to general requirements; and proposing an alternate site) satisfies the requirement for an alternatives analysis under the Dam Safety and Encroachments Act (32 P.S. 693.1–693.27) and regulations promulgated thereunder. See Chapter 105 (relating to dam safety and waterway management).

Section 90.206. Disapproval of a Proposed Site

If the Department disapproves the applicant's proposed site, the applicant may submit a new proposal supporting the selection of another site located either within or outside of the search area.

Section 90.207. Approval of a Selected Site

Department approval of a selected site does not indicate the Department will approve an application for coal refuse disposal activities for the selected site.

Subchapter F. Coal Refuse Disposal Activities on Areas With Preexisting Pollutional Discharges

Section 90.301. Scope

(a) This subchapter specifies procedures and rules applicable to those who seek authorization to engage in coal refuse disposal activities on an area on which there are preexisting pollutional discharges resulting from previous mining and describes the terms and conditions under which the Department may release bonds to operators who have received authorization.

(b) Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A–D apply to authorizations to mine areas with preexisting pollutional discharges except as specifically modified by this subchapter.

Section 90.302. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Abatement Plan—Any individual technique or combination of techniques, the implementation of which will result in reduction of the base line pollution load. Abatement techniques include but are not limited to: Addition of alkaline material, special plans for managing toxic and acid-

forming material, regrading, revegetation and relocating coal refuse to a coal refuse disposal area that includes systems to prevent adverse impacts to surface and groundwater and to prevent precipitation from contacting the coal refuse.

Actual Improvement—The reduction of the baseline pollution load resulting from the implementation of the approved abatement plan; except that any reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement provided, however, that treatment approved by the Department of the coal refuse before, during or after placement in the coal refuse disposal area shall not be considered to be water treatment.

Baseline Pollution Load—The characterization of the pollutional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the Department, including seasonal variations and variations in response to precipitation events. The Department will establish in each authorization the specific parameters it deems relevant for the baseline pollution load, including, at a minimum, iron and acid loadings.

Best Professional Judgment—The highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Department under sections 301 and 402 of the Federal Water Pollution Control Act (33 U.S.C.A. 1311 and 1342).

Best Technology—Measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

Coal Refuse Disposal Activities—The storage, dumping or disposal of any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, underground development wastes, coal processing wastes, excess soil and related materials, associated with or near a coal seam, that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or are separated from coal during the cleaning or preparation operations. The term shall not include the removal or storage of overburden from surface mining activities.

Excess Soil and Related Material—Rock, clay or other material located immediately above or below a coal seam and which are extracted from a coal mine during the process of mining coal. The term does not include topsoil or subsoil.

Pollution Abatement Area—The part of the permit area that is causing or contributing to the baseline pollution load. It shall include adjacent and nearby areas that must be affected to bring about significant improvements of the baseline pollution load and may include the immediate locations of the discharges.

Section 90.303. Applicability

(a) Authorization may be granted under this subchapter when the authorization is part of the following:

(1) A permit issued after February 6, 1995, but only if the authorization request is made during one of the following periods:

(i) At the time of the submittal of the permit application for the coal refuse disposal activities, including the proposed pollution abatement area.

(ii) Prior to a Department decision to issue or deny that permit.

(2) A permit revision under § 86.52 (relating to permit revisions), but only if the operator affirmatively demonstrates to the satisfaction of the Department that:

(i) The operator has discovered pollutional discharges within the permit area that came into existence after its permit application was approved.

(ii) The operator has not caused or contributed to the pollutional discharges.

(iii) The proposed pollution abatement area is not hydrologically connected to an area where coal refuse disposal activities have been conducted under the permit.

(iv) The operator has not affected the proposed pollution abatement area by coal refuse disposal activities.

(v) The Department has not granted a bonding authorization and mining approval for the area under § 86.37(b) (relating to criteria for permit approval or denial).

(b) Notwithstanding subsection (a), no authorization may be granted under this subchapter for repermitting under §§ 86.12 and 86.14 (relating to continued operation under interim permits; and permit application filing deadlines), permit renewals under § 86.55 (relating to permit renewals: general requirements) or permit transfers under § 86.56 (relating to transfer of permit).

Section 90.304. Application for Authorization

(a) An operator who requests authorization under this Subchapter shall comply with the permit application requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A–D, except as specifically modified by this subchapter. The operator shall also:

(1) Delineate on a map the proposed pollution abatement area, including the location of the preexisting discharges.

(2) Provide a description of the hydrologic balance for the proposed pollution abatement area that includes:

(i) Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events and modeled baseline pollution loads using this monitoring program.

(ii) Monitoring for pH, alkalinity, acidity, total iron, total manganese, aluminum, sulfates, total suspended solids and other water quality parameters the Department deems relevant.

(3) Provide a description of the abatement plan that represents best technology and includes the following:

(i) Plans, cross-sections and schematic drawings describing the abatement plan proposed to be implemented.

(ii) A description and explanation of the range of abatement level that is anticipated to be achieved, costs and each step in the proposed abatement plan.

(iii) A description of the standard of success for revegetation necessary to ensure success of the abatement plan.

(b) The operator seeking this authorization shall continue the water quality and quantity monitoring program required by subsection (a)(2) after making the authorization request. The operator shall submit the results of this continuing monitoring program to the Department on a monthly basis until a decision on the authorization request is made.

Section 90.305. Application Approval or Denial

(a) Authorization may not be granted under this subchapter unless the operator seeking the authorization affirmatively demonstrates the following to the satisfaction of the Department on the basis of information set forth in the application:

(1) Neither the operator, nor an officer, principal shareholder, agent, partner, associate, parent corporation, subsidiary or affiliate, sister corporation, contractor or subcontractor, or a related party as defined in § 86.1 (relating to definitions) has either of the following:

(i) Legal responsibility or liability as an operator for treating the water pollution discharges from or on the proposed pollution abatement area.

(ii) Statutory responsibility or liability for reclaiming the proposed pollution abatement area.

(2) The proposed abatement plan will result in significant reduction of the baseline pollution load and represents best technology.

(3) The land within the proposed pollution abatement area can be reclaimed.

(4) The coal refuse disposal activities on the proposed pollution abatement area will not cause additional surface water pollution or groundwater degradation.

(5) The standard of success for revegetation will be achieved. The standard of success for revegetation for sites previously reclaimed to the standards of Chapters 87, 88 and 90 shall be the standards set forth in § 90.159 (relating to revegetation: standards for successful revegetation). The standard of success for revegetation for sites not previously reclaimed to the standards of Chapters 87, 88 and 90 shall be, at a minimum, the following, provided the site is not a bond forfeiture site where the forfeited money paid into the fund is sufficient to reclaim the forfeited site to the applicable standards:

(i) A ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area.

(ii) A ground cover no less than that existing before disturbance of the area by coal refuse disposal activities.

(iii) Adequate vegetation to control erosion. Vegetation may be no less than that necessary to ensure the success of the abatement plan.

(6) The coal refuse disposal activities on permitted areas other than the proposed pollution abatement area will not cause surface water pollution or groundwater degradation.

(7) Requirements of § 86.37(a) (relating to criteria for permit approval or denial) that are consistent with this section have been met.

(b) An authorization may be denied under this subchapter if granting the authorization will, or is likely to, affect a legal responsibility or liability under The Clean Streams Law (35 P.S. 691.1–691.1001), the Surface Mining Conservation and Reclamation Act (52 P.S. 1396.1–1396.19a), Chapter 86 (relating to surface and underground coal mining: general) or Subchapters A–D, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

(c) Authorization may not be granted under this subchapter unless there are one or more preexisting discharges from or on the pollution abatement area.

(d) The authorization allowed under this subchapter is only for the pollution abatement area and does not apply to other areas of the permit.

Section 90.306. Operational Requirements

(a) An operator who receives an authorization under this subchapter shall comply with the requirements of Chapter 86 (relating to surface and underground coal mining: general) and Subchapters A–D except as specifically modified by this subchapter. The operator shall also:

(1) Implement the approved water quality and quantity monitoring program for the pollution abatement area until the requirements of § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas) are met.

(2) Implement the approved abatement plan.

(3) Notify the Department immediately prior to the completion of each step of the abatement plan.

(4) Provide a progress report to the Department within 30 days after the completion of each step of the abatement program that includes a statement signed by the operator, and if required by the Department, a statement signed by the supervising engineer, that all work has been performed in accordance with the terms and conditions of the pollution abatement authorization, the approved maps, plans, profiles and specifications.

Section 90.307. Treatment of Discharges

(a) Except for preexisting discharges that are not encountered during coal refuse disposal activities or the implementation of the abatement plan, the operator shall comply with § 90.102 (relating to hydrologic balance: effluent standards).

(b) The operator shall treat the preexisting discharges that are not encountered during coal refuse disposal activities or implementation of the abatement plan to comply with the effluent limitations established by best professional judgment. The effluent limitations established by best professional judgment may not be less than the baseline pollution load. If the baseline pollution load, when expressed as a concentration for a specific parameter, satisfies the effluent limitation in § 90.102 for that parameter, the operator shall treat the preexisting discharge for that parameter to comply with either effluent limitations established by best professional judgment or the effluent limitations in § 90.102.

(c) For purposes of subsections (a) and (b), the term encountered may not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the abatement plan that would otherwise drain into the affected area, as long as the diversions are designed, operated and maintained under § 90.104 (b)–(h) (relating to hydrologic balance: diversions).

(d) An operator required to treat preexisting discharges will be allowed to discontinue treating the discharges under subsection (b) when the operator affirmatively demonstrates the following to the Department's satisfaction:

(1) The preexisting discharges are meeting the effluent limitations established by subsection (b) as shown by groundwater and surface water monitoring conducted by the operator or the Department.

(2) Coal refuse disposal activities under the permit—including the pollution abatement area—are being or were conducted under the requirements of the permit and the authorization, and Chapter 86 (relating to surface and underground mining: general) and this chapter except as specifically modified by this subchapter.

(3) The operator has implemented each step of the abatement plan as approved in the authorization.

(4) The operator did not cause or allow additional surface water pollution or groundwater degradation by reaffecting the pollution abatement area.

(e) If after discontinuance of treatment of discharges under subsection (d) the discharges fail to meet the effluent limitations established by subsection (b), the operator shall reinstitute treatment of the discharges under subsection (b). An operator who reinstitutes treatment under this subsection will be allowed to discontinue treatment if the requirements of subsection (d) are met.

(f) Discontinuance of treatment under subsection (d) may not be deemed or construed to be or to authorize a release of bond under § 90.309 (relating to criteria and schedule for release of bonds on pollution abatement areas).

Section 90.308. Request for Bond Release

Sections 86.172(c) and 90.309 (relating to criteria for release of bond; and criteria and schedule for release of bonds on pollution abatement areas) apply to the release of bonds for pollution abatement areas authorized by this subchapter. Section 86.172(a), (b) and (d) shall not be applicable to the release of bonds.

Section 90.309. Criteria and Schedule for Release of Bonds on Pollution Abatement Areas

(a) The Department will release up to 50% of the amount of bond for the authorized pollution abatement area if the applicant demonstrates and the Department finds the following:

(1) The coal refuse disposal activities were conducted on the permit area, including the pollution abatement area, under the requirements of the permit and the authorization, Chapter 86 (relating to surface and underground mining: general) and this chapter except as specifically modified by this subchapter.

(2) The operator has satisfactorily completed backfilling, grading, installing the water impermeable cover and drainage control in accordance with the approved reclamation plan.

(3) The operator has properly implemented each step of the pollution abatement plan approved and authorized under this subchapter.

(4) The operator has not caused degradation of the baseline pollution load at any time during the 6 months prior to the submittal of the request for bond release under this subsection and until the bond release is approved as shown by all groundwater and surface water monitoring conducted by the permittee under § 90.306(a)(1) (relating to operational requirements) or conducted by the Department.

(5) The operator has not caused or contributed to surface water pollution or groundwater degradation by reaffecting the pollution abatement area.

(b) The Department will release up to an additional 35% of the amount of bond for the authorized pollution abatement area but retain an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party if the operator demonstrates and the Department finds the following:

(1) The operator has replaced the topsoil or material conserved under § 90.97 (relating to topsoil: removal), completed final grading, planting and established revegetation under the approved reclamation plan and achieved the standards of success for revegetation in § 90.305(a)(5) (relating to application approval or denial).

(2) The operator has not caused or contributed to groundwater or surface water pollution by reaffecting the pollution abatement area.

(3) The operator has achieved the following standards:

(i) Achieved the actual improvement of the baseline pollution load described in the approved abatement plan as shown by groundwater and surface water monitoring conducted by the permittee for the time provided in the abatement plan after completion of backfilling, final grading, drainage control, topsoiling and establishment of revegetation to achieve the standard for success in § 90.305(a)(5).

(ii) Achieved the following:

(A) At a minimum has not caused degradation of the baseline pollution load as shown by groundwater and surface water monitoring conducted by the operator or the Department for one of the following:

(I) For a period of 12 months from the date of initial bond release under subsection (a), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.305(a)(5) have been completed.

(II) If treatment has been initiated at any time after initial bond release under subsection (a) and § 90.307(e) (relating to treatment of discharges), for 12 months from the date of discontinuance of treatment under

§ 90.307(d), if backfilling, final grading, drainage control, placement of impermeable cover, topsoiling and establishment of revegetation to achieve the standard of success for revegetation in § 90.305(a)(5) have been completed.

(B) Conducted all the measures provided in the approved abatement plan and additional measures specified by the Department in writing at the time of initial bond release under subsection (a) of this section for the area requested for bond release.

(C) Caused aesthetic or other environmental improvements and the elimination of public health and safety problems by engaging in coal refuse disposal activities and reaffecting the pollution abatement area.

(D) Stabilized the pollution abatement area.

(c) The Department will release the remaining portion of the amount of bond on the authorized pollution abatement area if the operator demonstrates and the Department finds the following:

(1) The operator has successfully completed the approved abatement and reclamation plans, and the pollution abatement area is capable of supporting the postdisposal land use approved under § 90.166 (relating to postdisposal land use).

(2) The operator has complied with the permit and the authorization, Chapter 86 and this chapter, except as specifically modified by this subchapter.

(3) The operator has not caused degradation of the baseline pollution load from the time of bond release under subsection (b) or, if treatment has been initiated after bond release under subsection (b) in accordance with § 90.307(e) for 5 years from the discontinuance of treatment under § 90.307(d).

(4) The applicable liability period has expired under § 86.151 (relating to period of liability).

Subchapter G. Experimental Practices

Section 90.401. General

(a) To encourage advances in coal refuse disposal practices, coal refuse site reclamation, and advances in technology or practices that will enhance environmental protection with respect to coal refuse disposal activities, the Department may grant permits approving experimental practices and demonstration projects. The Department may grant these permits under the following circumstances:

(1) The environmental protection provided will be potentially more protective or at least as protective as required by this chapter, the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51 30.66) and Chapter 86 (relating to surface and underground coal mining: general).

(2) The coal refuse disposal activities approved under the permits are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices or demonstration projects.

(3) The experimental practices or demonstration projects do not reduce the protection afforded public health and safety below that provided by this chapter, the Coal Refuse Disposal Control Act and Chapter 86.

(b) Experimental practice permits issued under this subchapter shall meet all the provisions, standards, and information requirements of the 30 CFR 785.13 (relating to experimental practices mining).

In the letter of November 16, 2001, (administrative record No. PA 880.00) Pennsylvania notes that 30 CFR 938.16(kk) required it to amend the references contained in sections 3.1(c) and 3.1(d) of PA SMCRA. The condition requires the cross-reference to section 4.2(f) in section 3.1(c) be replaced with section 4b(f) and the cross reference to section 18.6 in section 3.1(d) be replaced with section 24.

Pennsylvania explained that sections 3.1(c) and 3.1(d) of PA SMCRA are part of a numbering system used by the Pennsylvania Legislative Reference Bureau. Likewise the cross-referenced sections 4.2(f) and 18.6 are also Legislative Reference Bureau numbering. Section 4b(f) is part of a numbering system used in Purdon's Pennsylvania Statutes Annotated (Purdon's). The complete number for section 4(b)(f) in Purdon's is 52 P.S. 1396.4b(f). Purdon's 52 P.S. 1396.4b(f) is the Legislative Reference Bureau's Section 4.2(f). Section 24 was formerly a Purdon's number. The complete number for section 24 in Purdon's was 52 P.S. 1396.24. Section 1396.24 was renumbered to 1396.18f in 1993 as a result of amendments to PA SMCRA. Purdon's section 1396.18f is the Legislative Reference Bureau's Section 18.6. Pennsylvania believes that since the cross-references in sections 3.1(c) and 3.1(d) of SMCRA are the appropriate Legislative Reference Bureau Numbers that should be referenced, 30 CFR 938.16(kk) should be removed.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on February 11, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C)Of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804 (2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–1945 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7132–8]

RIN 2060–AJ73

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Proposed Non-Conformance Penalties for 2004 and Later Model Year Emission Standards for Heavy-Duty Diesel Engines and Heavy-Duty Diesel Vehicles; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of January 16, 2002, regarding non-conformance penalties for heavy-duty diesel engines and vehicles. This correction provides the correct EPA docket number for the submission of comments on the proposed rule.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; Fax:

(734) 214–4816; e-mail: *borushko.margaret@epa.gov.*

Correction

In the **Federal Register** of January 16, 2002, in FR Doc. 02–1109, on page 2159, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: *Comments:* We must receive your comments by the date indicated under **DATES** above. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. In your correspondence, refer to Docket A–2001–25. See Section VI.B for more information on comment procedures.

Public hearing: We will hold a public hearing on February 15, 2002 at the Washington Dulles Airport Marriott, 45020 Aviation Drive, Dulles, Virginia 20166. Phone: (703–471–9500). If you want to testify at the hearing, notify the contact person listed below at least ten days before the date of the hearing. See Section VI.B for more information on the public-hearing procedures.

Public docket: EPA's Air Docket makes materials related to this rulemaking available for review in Docket No. A–2001–25 located at U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M. Street, SW., Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Dated: January 18, 2002.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–1880 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–9877–P]

RIN 0938–AH53

Medicare and Medicaid Programs; Terms, Definitions, and Addresses: Technical Amendments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This technical regulation would amend CMS rules—

To simplify and rationalize the system of definitions and increase uniformity in the use of terms;

To clarify which steps of the appeals process are ''final'' and which are ''binding'';

To correct outdated addresses and organizational unit names;

To remove content that is outdated or duplicative; and

To make other editorial changes and technical corrections.

These revisions are necessary to preclude confusion regarding our regulations and to better ensure uniform understanding and application. By updating and removing content that is outdated, unnecessary, or duplicative, these changes would also shorten our rules and make them easier to use.

DATES: *Comment date:* We will consider all comments received at one of the addresses indicated below no later than 5 p.m. on March 26, 2002.

ADDRESSES: Please 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: HCF–9877–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received in the event of delivery delays.

If you prefer, you may deliver your written comments by courier (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 indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–9877–FC. 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 C5–12–08 of the headquarters Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on 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) 786–7197.

FOR FURTHER INFORMATION CONTACT: Margaret Teeters, (410) 786–4678.

SUPPLEMENTARY INFORMATION:

A Simplification and Rationalization of the System of Definitions

In revising the definitions system, we aim to ensure that each definition would meet the following conditions:

1. Is worded so as to preclude confusion or misinterpretation.
2. Is not duplicated.
3. Does not include requirements or prohibitions (which belong in the text of the rules); or personnel qualifications (which need to be identified as such).
4. If it is of general applicability, is located at the beginning of chapter IV.
5. If it is of limited applicability, is presented as a basic definition in that part of the regulations to which it is most pertinent or in which it is most frequently used. (When the term is used elsewhere, with the same meaning it has in the basic definition, we cite that basic definition and do not duplicate it. A separate definition of that term would be presented only if it is used with a special, different meaning (for example, in a broader or more limited sense).

We do not include definitions of terms that are not used in the text, are used in their ordinary, usual sense, or are used only once or twice. (In the latter case, the word is explained where used, not placed in a definitions section.)

We would keep all the acronyms for both programs in § 400.200.

Because of the great number of definitions in CMS's regulations, attempting to deal with all of them now would unduly delay issuance of this rule. That would not be desirable for a rule that includes content (updating and correcting) that must be made available promptly to those who implement our regulations and to the general public. We will be developing another technical rule to deal with the remaining definitions.

With respect to personnel qualifications, which have sometimes been presented as ''definitions,'' our goal has been to include in a new § 400.210, the qualifications for the practitioners whose services are most frequently used in the Medicare program. The personnel qualifications for practitioners who furnish less frequently used services would be retained in their current locations.

Qualifications that are different from the basic qualifications set forth in the new section would also be retained where they have been.

A proposed rule identified as BPD–819–P was published on March 10, 1997 at 62 FR 11005. The final rule, identified as CMS–3819–F, will revise part 484 of the CMS regulations, which

sets forth the conditions of participation for home health agencies. The revision includes changes to the personnel qualifications for speech language pathologists, physical and occupational therapists and their assistants, and social workers and social work assistants. For that reason, this rule proposes no changes in part 484, and does not include in the new § 400.210 the qualifications for the above-noted skilled professionals.

B. Effect of Appeals Decisions

Several sections in part 417 pertaining to the appeals process would be revised to clarify which steps in the process are ''binding'' but not ''final.'' The aim is to make clear that the last step in the administrative appeals process must be completed before the appellant has any right to judicial review.

C. Correction of Addresses

We would revise the following sections of the regulations to reflect CMS's new address and any applicable name changes that result from the reorganization of CMS: 401.128, 401.148, 412.63, 412.210, 430.62, 483.102, 485.623.

D. Conforming Amendments

We would correct or remove cross-references to reflect removal or transfer of definitions and personnel qualifications, and outdated or duplicative rules.

E. Clarifying Editorial Revisions

The editorial revisions would—

1. Shorten the regulations and, in order to improve clarity, make the following kinds of changes:

• Eliminate repetition and highlight the similarities and differences among rules that apply to different types of providers or practitioners. Part 456 (Utilization Control) currently includes 3 subparts that repeat all the requirements that apply equally to hospitals, mental hospitals, and intermediate care facilities for the mentally retarded (ICFs/MR).

• Shorten the content and highlight the similarities and differences by presenting the common requirements once in subpart C (''Utilization Control: All Hospitals'') and revising subparts D and F to set forth only the additional requirements that apply to mental hospitals and to ICFs/MR, respectively.

• Remove undesignated centered headings and either substitute designated subparts, or incorporate the content of the undesignated heading into the section headings. Undesignated centered headings, unlike designated subparts, cannot be used to refer to the whole group of sections they encompass. They are usually followed by incomplete section headings because the writer depends too much on the centered heading language—even when the section may appear many pages after the centered heading. This kind of change would be made in part 456 and also in part 447 (Payments for Services).

• Provide an overview of disclosure of information rules set forth in several sections. A single section lists and designates the kinds of information that must be disclosed and the entities that must make disclosure. (Part 420—Program Integrity: Medicare)

2. Make numerous minor modifications to—

• Reflect the fact that the nursing home reform amendments identify Medicaid facilities as ''nursing facilities'' (NFs) rather than ''skilled nursing facilities'' (SNFs); and

• Limit ''intermediate care facilities'' (ICFs) to those that serve persons with mental retardation and related conditions.

3. In part 498, which establishes rules for appeals from CMS determinations, we are proposing to—

• Remove references to the Office of the Inspector General (OIG) because the OIG now has its own appeals regulations in part 1005 of chapter V of this title; and

• In § 498.3(d), restore a sentence removed by a previous technical amendment. That sentence makes absolutely clear that the only administrative actions that qualify as ''initial determinations'' are those listed in paragraph (b) of the section.

4. Remove regulations that are no longer in effect.

Subpart E of part 417 would be removed because the requirements applicable to employer group health plans that include HMOs have become outdated.

Subpart I of part 456 would be removed because section 4751 of the Balanced Budget Act (BBA) of 1997 amended sections 1902(a)(26) and 1902(a)(31) of the Social Security Act to remove the requirement for States to perform Inspection of Care (IoC) reviews in institutions for mental diseases and ICFs/MR.

5. Correct cross-references that have become outdated through changes made by other regulations, as in parts 410 and 424.

F. Deferred Changes

The definitions in subpart J of part 411 and parts 435 and 436 would not be revised because those rules are undergoing extensive changes included in other **Federal Register** documents.

Other Required Information

A. 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 major comments in the preamble to that document.

B. Paperwork Reduction Act

This rule contains no information collection requirements subject to review by the Office of Management and Budget.

C. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA), Public Law 96–354. Executive Order 12866 directs agencies to assess the 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 rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have reviewed this rule and have determined that it is not a major rule. Therefore, we are not required to perform an assessment of the costs and savings.

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed rule and a final rule that has been preceded by a proposed rule. 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 a small entity. We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule or a final rule preceded by a proposed 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 sections 603 and 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. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandate Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any proposed rule and a final rule preceded by a proposed rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This rule would have no consequential effect on the governments mentioned 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 reviewed this proposed rule and have determined that it would not have a substantial effect on State or local governments.

We have reviewed this rule and determined that, under the provisions of Public Law 104–121, the Contract with America Act, it is not a major rule.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMOs), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 402

Administrative practice and procedure, Health facilities, Health Professions, Medicaid, Medicare, Penalties.

42 CFR Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-ray.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney disease, Medicare, Reporting and record keeping requirements, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMOs), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 420

Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Health maintenance organizations (HMO), Medicare+Choice, Provider sponsored organizations (PSO).

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 430

Administrative practice and procedure, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirement.

42 CFR Part 434

Grant programs—health, Health maintenance organizations (HMOs), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 441

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting and record keeping requirements.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Medicaid, Nursing homes, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 456

Administrative practice and procedure, Grant programs—health,

Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 475

Grant programs—health, Health care, Health professions, Peer Review Organizations (PROs).

42 CFR Part 476

Grant programs—health, Health care, Health facilities, Health professions, Peer Review organizations (PROs), Reporting and record keeping requirements.

42 CFR Part 478

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PROs), Reporting and record keeping requirements.

42 CFR Part 480

Health care, Health professionals, Health records, Peer Review Organizations (PROs), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR 482

Grant programs—health, Hospitals, Medicare, Medicaid, Reporting and record keeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Health facilities, Medicare, Reporting and record keeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 491

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 493

Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirement.

For the reasons set forth in the preamble, 42 CFR Chapter IV would be amended as follows:

PART 400—INTRODUCTION: DEFINITIONS; PERSONNEL QUALIFICATIONS; COLLECTIONS OF INFORMATION

A. Part 400 is amended as set forth below.

1. The heading of part 400 is revised to read as set forth above.

2. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C.1302 and 1395hh) and 44 U.S.C. Chapter 35.

Subpart B—Definitions and Personnel Qualifications

3. The heading of subpart B is revised to read as set forth above.

4. In § 400.200, the following changes are made:

a. The definitions of ''Area'', DAB'', ''ICF'', and ''United States'' are removed.

b. In the definition of ''FQCH'', ''means'' is revised to read ''stands for:''.

c. The following definitions are added in alphabetical order to read as follows:

§ 400.200 General definitions.

* * * * *

Anesthetist means a physician anesthetist, an anesthesiologist assistant, or a certified registered nurse anesthetist.

* * * * *

CAH stands for critical access hospital.

* * * * *

Departmental Appeals Board means either of the following:

(1) A panel of members of a Board established in the office of the Secretary to provide impartial review of disputed decisions made by the operating components of the Department or by ALJs.

(2) The Medicare Appeals Council designated by the Board Chair to review ALJ decisions under part 405, subparts G and H; part 417, subpart Q; part 422, subpart M; and part 478, subpart B.

EACH stands for essential access community hospital.

* * * * *

FMAP stands for Federal medical assistance percentage.

* * * * *

HIO stands for health insuring organization.

* * * * *

Hospital means an institution that meets the requirements of section 1861(e) of the Act.

ICD–9–CM stands for International Classification of Diseases, Ninth Revision, Clinical Modification.

* * * * *

IMD stands for institution for mental diseases.

* * * * *

MCO stands for managed care organization.

* * * * *

NF stands for nursing facility.

* * * * *

PHP stands for prepaid health plan.

PHS stands for Public Health Service, and PHS Act means the Public Health Service Act.

Practitioner means a physician or any other individual who has the credentials to practice within a recognized health care discipline and who furnishes the services of that discipline to patients.

* * * * *

Qualified practitioner means a practitioner who meets the personnel qualification requirements set forth in the statute, or in this part or elsewhere in this chapter, as a condition for coverage of his or her services under Medicare or Medicaid, or both.

* * * * *

Religious nonmedical health care institution means an institution that meets the requirements of section 1861(ss)(1) of the Act.

* * * * *

RNHCI stands for religious nonmedical health care institution.

* * * * *

Significant business transaction means a business transaction or series of transactions carried out by an entity involved in the furnishing of health care services, the total of which, during any fiscal year, exceeds 5 per cent of the facility's total operating expenses or $25,000, whichever is less.

* * * * *

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands.

State survey agency means the State health agency or other appropriate State or local agency that—

(1) Has an agreement with CMS under section 1864 of the Act, under which it performs surveys and inspections of health care facilities and recommends to CMS whether they meet the applicable requirements of section 1819, section 1832, section 1861, or subpart C of title XVIII of the Act; and

(2) Is used by the State to determine, on the basis of surveys and inspections,

whether health care facilities meet the requirements for participation in Medicaid.

* * * * *

5. In § 400.202, the following changes are made:

a. In the definition of ''Carrier'', the phrase ''payable on a charge basis'' is removed.

b. In the definition of ''Intermediary'', ''(or under any Prospective Payment System)'' is added immediately after ''payable on a cost basis''.

c. The following definitions are added in alphabetical order to read as follows:

§ 400.202 Definitions specific to Medicare.

* * * * *

Assignment means that the beneficiary transfers the right to claim payment for a service to the physician or other supplier of the service.

* * * * *

Covered services means services for which payment may be made to or on behalf of a Medicare beneficiary, subject to all requirements and limitations imposed by title XVIII of the Act and by this chapter.

* * * * *

Deductible means any of the following:

(1) The fixed amount for which the beneficiary is liable when he or she receives inpatient services in a hospital or CAH for the first time in a benefit period.

(2) The specified amount of expenses that a beneficiary must incur for covered Part B services in a calendar year before Medicare payment may be made, on his or her behalf, for additional Part B services (other than those specifically exempted under section 1833(b) of the Act and elsewhere in this chapter) furnished in that year.

(3) The expenses incurred for the first three pints of whole blood or units of packed red cells furnished to a beneficiary during a calendar year under Medicare Part A or Part B.

* * * * *

Medicare enrollee means a beneficiary who has elected to have his or her Medicare coverage provided through an HMO, CMP, HCPP, or M+C organization that participates in Medicare.

* * * * *

Physician means—

(1) A doctor of medicine or osteopathy authorized to practice medicine and surgery in the State in which he or she performs the function; and

(2) For certain specified services, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, and a chiropractor. (The specific services are set forth in subpart B of part 410 of this chapter.)

* * * * *

Skilled nursing facility (SNF) means a facility that meets the requirements of sections 1819(a) through 1819(d) of the Act.

* * * * *

6. In § 400.203, the following changes are made:

a. The definition of ''State'' is removed.

b. A definition of ''Institution for mental diseases'' is added in alphabetical order.

c. The definitions of ''FMAP'' and ''Nursing facility'' are revised to read as set forth below.

§ 400.203 Definitions specific to Medicaid.

* * * * *

Federal medical assistance percentage (FMAP) means the percentage used to calculate the amount of the Federal share of State expenditures under the Medicaid program in accordance with section 1905(b) of the Act.

* * * * *

Institution for mental diseases (IMD) means a facility that meets the requirements of section 1905(i) of the Act and the definition in § 435.1009 of this chapter.

* * * * *

Nursing facility (NF) means a facility that meets the requirements of sections 1919(a) through 1919(d) of the Act.

* * * * *

7. A new § 400.210 is added to read as follows:

§ 400.210 Personnel qualifications for Medicare.

(a) *Basis and scope.* (1) *Basis.* In order to participate in the Medicare program, providers and certain suppliers must use qualified staff. In order to be paid for the services they furnish to Medicare beneficiaries, physicians and other practitioners must meet specified qualifications.

(2) *Scope.* (i) This section sets forth the specific qualifications that must be met by those practitioners whose services are most frequently and widely used in the Medicare program.

(ii) Qualifications required of practitioners whose services are less frequently used or that are different for a particular program aspect are set forth in the subparts or sections that deal with those program aspects.

(b) *Specific requirements.* As a condition for Medicare payment to the providers and suppliers that employ them, or for the services that they furnish in independent practice, practitioners must meet the requirements for State licensing, certification, or approval, and the additional qualifications set forth in this section.

(c) An *anesthesiologist assistant* must meet the following requirements:

(1) Work under the direction of an anesthesiologist.

(2) Be in compliance with all applicable requirements of State law, including any licensure requirements the State imposes on anesthetists who are not physicians.

(3) Be a graduate of a medical school-based anesthesiologist's assistant educational program that—

(i) Is accredited by the Committee on Allied Health Education and Accreditation; and

(ii) Includes approximately 2 years of specialized basic science and clinical education in anesthesia at a level that builds on a premedical undergraduate science background.

(d) A *certified registered nurse anesthetist* must meet the following requirements:

(1) Be licensed as a registered professional nurse by the State in which he or she practices.

(2) Meet any licensure requirements the State imposes on anesthetists who are not physicians.

(3) Be a graduate of a nurse anesthesia educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Programs or any other accreditation organization that CMS designates.

(4) Meet one of the following conditions:

(i) Have passed a certification examination of the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, or any other certification organization that CMS designates.

(ii) Be a graduate of a program described in the qualification in paragraph (d)(3) of this section and, within 24 months after that graduation, meet the condition in paragraph (d)(4)(i) of this section.

(e) A *nurse-midwife* must meet the requirements in paragraphs (e)(1) and (2) of this section, and the requirement in paragraph (e)(3) or the requirement in paragraph (e)(4):

(1) Be currently licensed to practice in the State as a registered professional nurse.

(2) Be legally authorized under State law or regulations to practice as a nurse-midwife.

(3) Have completed a State-specified program of study and clinical experience for nurse-midwives.

(4) If there is no State-specified program of study and clinical experience for nurse-midwives, meet one of the following conditions:

(i) Be currently certified as a nurse-midwife by the American College of Nurse-Midwives.

(ii) Have successfully completed a formal educational program (of a least 1 academic year) that, upon completion, qualifies the nurse to take the certification examination offered by the American College of Nurse-Midwives.

(iii) Have successfully completed a formal educational program for preparing registered nurses to furnish gynecological and obstetrical care to women during pregnancy, delivery, and the post-partum period and care to normal newborns; and have practiced as a nurse-midwife for a total of 12 months during any 18-month period between August 8, 1976 and July 16, 1982.

(f) A *nurse practitioner* must meet one of the following requirements:

(1) Be a registered professional nurse who—

(i) Is authorized by the State in which he or she furnishes the services to practice as a nurse practitioner in accordance with State law; and

(ii) Is certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners.

(2) Be a registered professional nurse who—

(i) Is authorized by the State in which he or she furnishes the services to practice as a nurse practitioner under State law; and

(ii) Has been granted a Medicare billing number as a nurse practitioner by December 31, 2000.

(3) Be a nurse practitioner who—

(i) On or after January 1, 2001, applies for a Medicare billing number for the first time; and

(ii) Meets the requirements specified in paragraph (f)(1) of this section

(4) Be a nurse practitioner who—

(i) On or after January 1, 2003, applies for a Medicare billing number for the first time;

(ii) Has a master's degree in nursing; and

(iii) Meets the requirements specified in paragraph (f)(1) of this section.

(g) A *physician assistant* must meet all of the following requirements:

(1) Have graduated from a physician assistant educational program that is accredited by the National Commission on Accreditation of Allied Health Education Programs;

(2) Have passed the national certification examination of the National Commission on Certification of Physician Assistants; and

(3) Be licensed by the State to practice as a physician assistant.

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

B. Part 401 is amended as set forth below.

1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh). Subpart F is also issued under the authority of the Federal Claims Collection Act (31 U.S.C. 3711).

§ 401.128 [Amended]

2. In paragraph (a)(3), under ''Region IX'', ''Trust Territory of Pacific Islands'' is removed, and ''Northern Mariana Islands'' is added after ''American Samoa''.

3. In paragraph (b), the address ''Director, Office of Research, Demonstrations, and Statistics, CMS, Baltimore, Maryland 21235'' is revised to read ''Privacy Officer, CMS, 7500 Security Boulevard, Baltimore, MD 21244–1850'', and '', Office of Research, Demonstrations and Statistics'', the second time it appears, is removed.

§ 401.148 [Amended]

4. In § 401.148, the address ''CMS, 700 East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235,'' is revised to read ''Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850''.

PART 402—CIVIL MONEY PENALTIES, ASSESSMENTS, AND EXCLUSIONS

C. Part 402 is amended as set forth below.

1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 402.113 [Amended]

2. In § 402.113, in paragraph (c), ''DAB'' is revised to read ''Departmental Appeals Board (the Board).''.

PART 403—SPECIAL PROGRAMS AND PROJECTS

D. 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).

§ 403.300 [Amended]

2. In § 403.300, the section heading is revised to read ''Basis and scope'' and the heading of paragraph (b) is revised to read ''Scope''.

§ 403.302 [Amended]

3. In § 403.302, the following changes are made:

a. The definition of ''Chief executive officer of a State'' is removed.

b. The definition of ''State system or system'' is amended by placing a period after ''control system'' and removing all that follows.

4. In § 403.304, the following changes are made:

a. The section heading is revised.

b. Paragraph (a) is revised.

c. Paragraph (b)(1) is revised.

The changes read as follows:

§ 403.304 Minimum requirements for approval of a State system.

(a) *Application and submission of documentation.* The State Governor or his or her designee is responsible for submitting the application for system approval and any assurances and other documentation required under this subpart.

(b) *Basis for approval: Specific requirements.* (1) CMS may approve the making of Medicare payments under a State reimbursement control system if CMS determines that the system meets the requirements of paragraphs (b) and (c) and, if applicable, paragraph (d), of this section.

(i) CMS evaluates any application for approval of a State system and gives the State notice of its determination within 60 days.

(ii) CMS may reconsider a denied application in accordance with § 403.316.

* * * * *

§§ 403.312 and 403.314 [Removed]

5. §§ 403.312 and 403.314 are removed.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

E. Part 405 is amended as set forth below.

1. In subpart C, the authority citation is revised to read as follows:

Authority: Secs. 1102, 1870, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395gg, and 1395hh), and 31 U.S.C. 3711.

2. In § 405.400, the definition of ''Emergency care services'' is removed, and the definition of ''Emergency services'' is added to read as follows:

§ 405.400 Definitions.

* * * * *

Emergency services has the meaning given the term in § 422.113 of this chapter.

* * * * *

3. In subparts G and H, the authority citations are revised to read as follows:

Authority: Secs. 1102, 1869 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395ff and 1395hh).

4. In § 405.802, the definition of ''Assignment'' is removed.

§ 405.855 [Amended]

5. In § 405.855, in paragraph (c)(1)(i), ''DAB'' is revised to read ''Departmental Appeals Board''.

§ 405.857 [Amended]

6. In § 405.857, in paragraph (a), ''DAB'', the first time it appears, is revised to read ''Departmental Appeals Board''.

§ 405.1875 [Corrected]

7. In § 405.1875, in paragraph (a)(2), ''Attorney Advisory'' is corrected to read ''Attorney Advisor''.

§ 405.1877 [Amended]

8. In § 405.1877, the following changes are made:

a. In paragraph (b) ''must file its appeal'' is revised to read ''must file the civil action''.

b. The heading of paragraph (e) is revised to read ''*Group actions.*''.

c. The heading of paragraph (f) is revised to read ''*Venue for group actions.*''.

Subpart U [Amended]

9. In subpart U, the authority citation is revised to read as follows:

Authority: Secs. 1102, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395qq).

10. In § 405.2401, the definitions of ''Act'', ''Beneficiary'', ''Carrier'', ''CMS'', ''Covered services'', ''Deductible'', ''Nurse-midwife'', ''Nurse practitioner and physician assistant'', ''Reporting period'', and ''Secretary'' are removed, and the definition of ''Physician'' is revised to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

Physician includes residents who meet the definition of § 415.152 of this chapter and meet the requirements of § 415.206(b) of this chapter for payment under the physician fee schedule.

* * * * *

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

F. Part 406 is amended as set forth below.

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 406.21, paragraph (f)(1) is revised to read as follows:

§ 406.21 Individual enrollment.

* * * * *

(f) *Transfer enrollment period for HMO and CMP enrollees.* (1) *Applicability.* This paragraph applies to an enrollee of an HMO or CMP that has a contract with CMS under subpart L of part 417 of this chapter.

* * * * *

PART 409—HOSPITAL INSURANCE BENEFITS

G. Part 409 is amended as set forth below.

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 409.3 [Amended]

2. In § 409.3, the definition of ''Covered'' is removed.

§ 409.60 [Amended]

3. In § 409.60, in paragraph (c), ''405.330'', wherever it appears, is revised to read ''§ 411.400''.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

H. Part 410 is amended as set forth below.

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh unless otherwise indicated).

§ 410.1 [Amended]

2. In § 410.1, paragraph (b), ''copayment'' is revised to read ''coinsurance'', and ''subpart C of part 405'' is revised to read ''part 411''.

3. In § 410.2, the definition of ''nominal charge provider'' is revised to read as follows:

§ 410.2 Definitions.

* * * * *

Nominal charge provider has the meaning given the term in § 409.3 of this chapter.

* * * * *

§ 410.32 [Amended]

4. In § 410.32, in paragraph (d)(1), ''RPCH'' is revised to read ''CAH''.

§ 410.50 [Amended]

5. In § 410.50, in paragraph (b), the word ''independent'' is removed and ''subpart M of part 405 of this chapter.'' is revised to read ''part 493 of this chapter.''.

§ 410.58 [Amended]

6. In § 410.58, the following changes are made:

a. In paragraph (a)(1), ''as defined in § 491.2 of this chapter,'' is removed.

b. In paragraph (a)(2), ''as defined in § 417.416'' is revised to read ''who has the qualifications specified in § 417.416(d)(2)''.

7. In § 410.62, the following changes are made:

a. Paragraph (a)(2)(i) is revised to read as set forth below.

b. In paragraph (a)(2)(iii), ''§ 410.63'' is revised to read ''§ 424.24''.

§ 410.62 Outpatient speech pathology services: Conditions and exclusions.

(a) * * *

(2) * * *

(i) Is established either by a physician or by the speech pathologist who will provide the services to the particular individual;

* * * * *

8. Section 410.69 is revised to read as follows:

§ 410.69 Services of a certified registered nurse anesthetist or an anesthesiologist assistant.

Medicare Part B pays for anesthesia services and related care furnished by a certified registered nurse anesthetist or an anesthesiologist assistant who—

(a) Is legally authorized to perform the services by the State in which he or she performs them; and

(b) Meets the qualifications specified in § 400.210 of this chapter.

§ 410.74 [Amended]

9. In § 410.74, the following changes are made:

a. In paragraph (a)(2)(i), ''paragraph (c) of this section'' is revised to read ''§ 400.210 of this chapter''.

b. Paragraph (c) is removed and reserved.

10. In § 410.75, paragraph (b) is revised to read as follows:

§ 410.75 Nurse practitioner's services.

* * * * *

(b) *Qualifications.* For Medicare Part B coverage of his or her services, a nurse practitioner must meet one of the requirements specified in § 400.210(f) of this chapter.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

I. Part 411 is amended as set forth below.

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 411.6 [Amended]

2. In § 411.6, in paragraph (b)(4), ''(as defined in § 409.3 of this chapter)'' is removed.

§ 411.15 [Amended]

3. In § 411.15, the following changes are made:

a. In paragraph (m)(1), ''(as defined in § 409.3 of this chapter)'' is removed.

b. Paragraph (m)(3)(vi) is revised to read ''Services of a certified registered nurse anesthetist or of an anesthesiologist's assistant.''.

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

J. Part 412 is amended as set forth below.

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 412.50 [Amended]

2. In § 412.50, in paragraph (c), ''(as defined in § 409.3 of this chapter)'' is removed.

§§ 412.63 and 412.210 [Amended]

3. In § 412.63(b)(3) and § 412.210(b)(2), the address ''CMS, East High Rise Building, Room 132, 6325 Security Boulevard, Baltimore, Maryland, 21207'' is revised to read ''Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850''.

§ 412.108 [Amended]

4. In § 412.108, paragraph (a)(1)(i), ''as defined in'' is revised to read ''as determined under''.

5. In § 412.113, in paragraph (c)(2)(i)(B), the first sentence is revised to read as follows:

§ 412.113 Other payments.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) The hospital must, as of January 1, 1988, have employed or contracted with a certified registered nurse anesthetist or an anesthesiologist's assistant to perform anesthesia services in that hospital.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

K. Part 413 is amended as set forth below.

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

§ 413.20 [Amended]

2. In § 413.20, in paragraph (c) introductory text, ''provider of services (as defined in § 400.202 of this chapter)'' is revised to read ''provider''.

§ 413.53 [Amended]

3. In § 413.53, in the table for Hospital K, ''ICF-type'', wherever it appears, is revised to read ''NF-type''.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

L. Part 414 is amended as set forth below.

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

§ 414.2 [Amended]

2. In § 414.2, the following changes are made:

a. The definitions for *CY* and *FY* are removed.

b. In paragraph (3) of the definition of ''Physician services'', remove ''of services as defined in § 400.202 of this chapter''.

PART 416—AMBULATORY SURGICAL SERVICES

M. 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).

§ 416.42 [Amended]

2. In § 416.42, in paragraph(b)(2), ''as defined in § 410.68(b) of this chapter'' is removed.

§ 416.61 [Amended]

3. In § 416.61, in paragraph (b), ''include items and services'' is revised to read ''include services'', and ''of part 405'' is removed.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

N. Part 417 is amended as set forth below.

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e-5, and 300e-9); and 31 U.S.C. 9701.

§ 417.1 [Amended]

2. In § 417.1, the following changes are made:

a. The definitions of ''Secretary'' and ''Significant business transaction'' are removed.

b. In the definition of ''Furnished'', ''maid'' is corrected to read ''made'', and ''dierctly'' is corrected to read ''directly''.

§ 417.101 [Amended]

3. In § 417.101, in paragraph (c), ''§§ 417.168 and 417.169,'' is revised to read

''§ 417.142(g) and (h),''.

4. In § 417.126, the following changes are made:

a. In paragraph (b)(1), ''(as defined in paragraph (c) of this section)'' is revised to read ''(as defined in § 400.200 of this chapter)''.

b. Paragraph (c) is revised to read as set forth below.

c. Paragraphs (d) and (e), the first time they appear, are removed.

§ 417.126 Recordkeeping and reporting requirements.

* * * * *

(c) *Business transaction defined.* As used in paragraph (b) of this section, a business transaction is any of the following kinds of transactions:

(1) Sale, exchange, or lease of property.

(2) Goods, services, or facilities furnished for a monetary consideration, including management services but not including—

(i) Salaries paid to employees for services performed in the normal course of their employment; or

(ii) Health services furnished to the HMO's enrollees by hospitals and other providers and by HMO staff, medical groups, IPAs, or any combination of these entities.

* * * * *

§ 417.143 [Amended]

5. In § 417.143, in paragraph (b)(2), ''417.168 and 427.169 of subpart F.'' is revised to read ''§ 417.142(g) and (h).''.

Subpart E [Removed]

6. Subpart E, consisting of §§ 417.150 through 417.159, is removed and reserved.

§ 417.404 [Amended]

7. In § 417.404, in paragraph (a)(1), ''§ 117.142'' is revised to read ''§ 417.142''.

§ 417.416 [Amended]

8. In § 417.416, in paragraph (d)(1),''(as defined in § 491.2 of this chapter)'' is removed.

§ 417.602 [Removed]

9. § 417.602 is removed.

§ 417.604 [Amended]

10. In § 417.604, in paragraph (b)(3), the parenthesis preceding ''§ 427.440(b)(2)'' is moved to precede ''under''.

§§ 417.646, 417.658, and 417.690 [Amended]

11. in § 417.646 introductory text, § 417.658, and § 417.690(c), ''final and binding'' is revised to read ''binding''.

§ 417.800 [Amended]

12. In § 417.800, the definition of ''Medicare enrollee'' is removed.

PART 418—HOSPICE CARE

O. 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).

§ 418.3 [Amended]

2. In § 418.3, the definition of ''Physician'' is removed.

§ 418.98 [Amended]

3. In 418.98(b)(2), ''An ICF'' is revised to read ''An NF''.

§ 418.202 [Amended]

4. In § 418.202, in paragraph (c), ''as defined in § 410.20 of this chapter'' is removed.

PART 420—PROGRAM INTEGRITY: MEDICARE

P. Part 420 is amended as set forth below.

1. The authority citation for part 420 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. § 420.200 is revised to read as follows:

§ 420.200 Basis, scope, and applicability.

(a) *Basis and scope.* This subpart is based on sections 1124, 1124A, 1126, and 1861(v)(1)(I) of the Act. It sets forth requirements for providers, Part B suppliers, health maintenance organizations, and intermediaries and carriers to disclose information about the following matters and persons.

(1) The hiring of an intermediary's former employees by a provider.

(2) Any person who—

(i) Has an ownership or control interest in the provider or supplier or serves as the agent or managing employee of the provider or supplier;

(ii) Has been convicted of a criminal offense, subjected to a civil money penalty, or excluded from the program, as a result of any activities related to involvement in Medicare, Medicaid, the Maternal and Child Health program under title V of the Act, or the Social Services program under title XX of the Act, at any time since the inception of these programs; or

(iii) Has an ownership or control interest in, or is the agent or managing employee of, an entity that has been sanctioned as described in paragraph (a)(2)(ii) of this section.

(3) Significant business transactions between the provider or supplier and any subcontractor or wholly owned supplier.

(b) *Applicability.* The following are subject to the requirements of this subpart as disclosing entities:

(1) A provider of services as defined in section 1861(u) of the Act or a Part B supplier.

(2) A clinical laboratory.

(3) A renal disease facility.

(4) A rural health clinic.

(5) A Federally qualified health center.

(6) A health maintenance organization as defined in section 1301(a) of the PHS Act.

(7) A Medicare intermediary or carrier.

(8) A Medicare+Choice organization, as defined in section 1859 of the Act.

(9) A managed care entity as defined in section 1932 of the Act.

3. In § 420.201, the following changes are made:

a. The definition of ''Significant business transaction'' is removed.

b. The definitions of ''Disclosing entity'', ''Other disclosing entity'', ''Indirect ownership interest'' and ''Ownership interest'' are revised and the newly revised definition of *Other disclosing entity* is transferred to proper alphabetical order, to read as follows:

§ 420.201 Definitions.

* * * * *

Disclosing entity means any of the entities specified in § 420.200(b).

Indirect ownership interest means an ownership interest in an entity that has a direct or indirect ownership interest in a disclosing entity.

* * * * *

Other disclosing entity means any entity (other than an individual practitioner or group of practitioners) that—

(1) Is not listed in § 420.200 (b) and does not participate in Medicare; but

(2) Is required to disclose ownership and control information because it furnishes health-related services under any of the programs established under title V, XIX, or XX of the Act, or serves as a Medicaid fiscal agent.

* * * * *

Ownership interest means the possession of equity in the capital, the stock, or the profits of a disclosing entity.

* * * * *

§ 420.301 [Amended]

4. In § 420.301, the definition of ''Provider'' is removed.

PART 421—INTERMEDIARIES AND CARRIERS

Q. Part 421 is amended as set forth below.

1. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§§ 421.1 and 421.3 [Revised]

2. §§ 421.1 and 421.3 are revised to read as follows:

§ 421.1 Basis and scope.

(a) *Basis.* (1) This part is based on the indicated provisions of the following sections of the Act:

1124—Requirements for disclosure of certain information.

1816 and 1842—Use of organizations and agencies to make Medicare payments to providers and suppliers of covered services.

(2) Section 421.118 is also based on 42 U.S.C. 1395b-1(a)(1)(F), which authorizes demonstration projects involving intermediary agreements and carrier contracts.

(b) *Scope.* This part sets forth—

(1) The procedures for selecting intermediaries and carriers;

(2) The requirements for approval of intermediary agreements and carrier contracts;

(3) The functions that intermediaries and carriers are required to perform;

(4) The criteria for—

(i) Evaluating intermediary and carrier performance;

(ii) Designating intermediaries and carriers to serve a class of providers on a regional or national basis; and

(iii) Assigning and reassigning providers or suppliers to particular intermediaries.

(5) CMS's authority to perform certain functions directly or by contract; and

(6) The appeal rights of intermediaries and carriers dissatisfied with specified adverse actions.

§ 421.3 Definition.

For purposes of designation of intermediaries (§ 421.117) and application of performance criteria and standards (§§ 421.120 and 421.122) ''intermediary'' includes a Blue Cross plan that has entered into a CMS-approved subcontract with the Blue Cross and Blue Shield Association to perform intermediary functions.

PART 422—MEDICARE+CHOICE PROGRAM

R. Part 422 is amended as set forth below.

1. The authority citation for part 422 continues to read as follows:

Authority: Secs.1102, 1851 through 1857, 1859, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–21 through 1395w–27, and 1395hh).

§ 422.500 [Amended]

2. In § 422.500, the definition of ''Significant business transaction'' is removed.

§ 422.562 [Amended]

3. In paragraph (b)(3)(v), ''DAB'' is revised to read ''Departmental Appeals Board''.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

S. Part 424 is amended as set forth below.

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 424.3 [Amended]

2. In § 424.3, the definition of ''ICD–9-CM'' is removed.

§ 424.20 [Amended]

3. In § 424.20(e)(2), ''neither of whom has'' is revised to read ''who does not have''.

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

Part 430 is amended as set forth below.

1. The authority citation for part 430 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 430.25 [Amended]

2. In § 430.25(c)(2), ''SNF, ICF, or ICF/MR'' is revised to read ''NF or ICF/MR''.

§ 430.30 [Amended]

3. In § 430.30(e), the language following ''under this subpart:'' is revised to read as follows:

§ 430.30 Grants procedures.

* * * * *

(e) * * *

§ 74.12—Forms for applying for HHS financial assistance.

§ 74.23—Cost sharing or matching.

§ 74.25—Revision of budget and program plans.

§ 74.52—Financial reporting.

§ 430.62 [Amended]

4. In § 430.62, the name and address ''Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement, and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Telephone: (301) 594–8261'' is revised to read ''Centers for Medicare & Medicaid Services, Office of Hearings, 7500 Security Boulevard, Baltimore, MD 21244–1850''.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

U. Part 431 is amended as set forth below.

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Throughout this subpart E, all references to ''skilled nursing facility'' are removed.

§ 431.57 [Amended]

3. In § 431.57, the following changes are made:

a. In paragraphs (b) and (c),''subchapter'' is revised to read ''chapter''.

b. In paragraph (e), ''of this part'' is removed.

§ 431.200 [Amended]

4. In § 431.200, remove ''skilled nursing facilities and''.

§ 431.201 [Amended]

5. In § 431.201:

a. In the definition of ''Action'', remove ''skilled nursing facilities and''.

b. The definition of ''Date of action'' is removed.

§ 431.206 [Amended]

6. In § 431.206, in paragraph (c)(3), remove ''a skilled nusring facility or''.

§ 431.210 [Amended]

7. In § 431.210, in paragraph (a), remove ''State, skilled nursing facility, or nursing facility'' and add in its place ''State or nursing facility''.

8. Section 431.211 is revised to read as follows:

§ 431.211 Advance notice.

Except as permitted under §§ 431.213 and 431.214, the State or local agency must mail the notice required under § 431.206(c)(2) through (c)(4) at least 10 days before the intended effective date of the action.

9. In § 431.213, the following changes are made:

a. The introductory text and paragraph (h) are revised to read as set forth below.

b. Remove the semicolons at the end of paragraphs (a) through (g) and add periods in their place, and remove the ''or'' after paragraph (g).

§ 431.213 Exceptions to advance notice requirements.

The agency may mail the notice no later than the effective date of the action or the date of the determination, as applicable, under any of the following circumstances:

* * * * *

(h) The discharge or transfer of the recipient will be effective in less that 10 days and the timing exception of § 483.12(a)(5)(ii) of this chapter applies.

10. In § 431.214, the introductory text is revised to read as follows:

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the effective date of the action or the date of the determination, as applicable, if—

* * * * *

§ 431.220 [Amended]

11. In § 431.220, in paragraph (a)(3), remove ''skilled nursing facility or''.

§ 431.241 [Amended]

12. In § 431.241, in paragraph (c), remove ''skilled nursing facility or''.

§ 431.242 [Amended]

13. In § 431.242, in paragraph (a)(2), remove ''skilled nursing facility''.

14. In § 431.610, the following changes are made:

a. In paragraph (g)(1), ''subchapter'' is revised to read ''chapter''.

b. Paragraph (g)(3) is revised to read as follows:

§ 431.610 Relations with standard-setting and survey agencies.

* * * * *

(g) * * *

(3) Have qualified personnel perform on-site inspections at least once during each certification period, or more often if there is a compliance question.

* * * * *

15. In § 431.620, paragraph (b) is revised to read as follows:

§ 431.620 Agreement with State mental health authority or mental institutions.

* * * * *

(b) *Definition. Institution for mental diseases (IMD)* has the meaning given the term in § 400.203 of this chapter.

* * * * *

§ 431.701 [Amended]

16. In § 431.701, the following changes are made:

a. Under the definition of ''Nursing home'', paragraphs (a) and (b) are redesignated as paragraphs (1) and (2).

b. In newly designated paragraph (2), ''subchapter'' is revised to read ''chapter''.

17. In § 431.804, the definitions of ''active case'' and ''administrative period'' are revised to read as follows:

§ 431.804 Definitions.

* * * * *

Active case means an individual or family that the State agency has determined to be currently eligible for Medicaid.

Administrative period means the 2-month period (review month and preceding month) during which a case error is not cited for the State agency's failure to take any action required by a change in case circumstances.

* * * * *

PART 433—STATE FISCAL ADMINISTRATION

V. Part 433 is amended as set forth below.

1. The authority citation for part 433 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 433.1 [Removed]

2. § 433.1 is removed.

3. In subpart A, a new § 433.5 is added, to read as follows:

§ 433.5 Basis and scope.

(a) *Basis.* Most of the sections in this subpart identify the statutory provisions on which the rules are based. Certain portions of section 1902(a) of the Act are the basis for general administrative requirements such as those for accounting systems, cost allocation, reporting, and the handling of checks that are uncashed or canceled.

(b) *Scope.* This subpart sets forth the conditions for, and the rates of, FFP and the general administrative requirements related to the State's fiscal activities.

4. Section 433.111 is amended to revise the section heading and paragraph (b) to read as follows:

§ 433.111 Terminology.

* * * * *

(b) *Mechanized claims processing and information retrieval system* or *system* means the system of hardware and software used to process Medicaid claims and to produce and retrieve services utilization and management information required by the Medicaid single State agency and the Federal Government for program administration and auditing.

(1) The claims are from providers of medical care and services furnished to recipients under the Medicaid program.

(2) The system consists of the following:

(i) Required subsystems specified in the State Medicaid Manual.

(ii) Required changes to the required system or subsystem, published in accordance with § 433.123, and specified in the State Medicaid Manual.

(iii) System enhancements approved by CMS.

(3) Eligibility determination systems are not part of the claims processing and information retrieval system or enhancements to that system.

5. In § 433.304, the following changes are made:

a. The definitions of ''Provider'' and ''Recoupment'' are removed.

b. The definitions of ''Abuse'', ''Fraud'', ''Overpayment'', and ''Third party'' are revised; and a definition of ''Sixty-day period'' is added to read as set forth below.

§ 433.304 Definitions.

Abuse has the meaning given the term in § 455.2 of this chapter.

* * * * *

Fraud has the meaning given the term in § 455.2 of this chapter.

Overpayment means the portion of a Medicaid payment to a provider—

(1) That is in excess of the amount allowable for the services under section 1902 of the Act and implementing regulations; and

(2) That must be refunded to CMS by the State under section 1903 of the Act and this subpart.

* * * * *

Sixty-day period means the 60 calendar days immediately following discovery of an overpayment, allowed for the State agency to recover or seek to recover the overpayment.

Third party has the meaning given the term in § 433.136.

PART 434—CONTRACTS

W. Part 434 is amended as set forth below.

1. The authority citation for part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 434.2 [Corrected]

2. In § 434.2, the definition of ''Prepaid health plan'', ''Medical agency'' is corrected to read ''Medicaid agency''.

§ 434.6 [Amended]

3. In § 434.6(a)(1), ''appendix G;'' is revised to read ''appendix A;''.

§ 434.21 [Amended]

4. In § 434.21(b)(3), ''Skilled nursing facility (SNF) services'' is revised to read ''Nursing facility services''.

PART 440—SERVICES: GENERAL PROVISIONS

X. Part 440 is amended as set forth below.

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.10 [Amended]

2. In § 440.10(b), ''SNF and ICF services'' is revised to read ''NF services''.

3. In § 440.20, the following changes are made:

a. The introductory text of paragraph (b) and paragraph (b)(1) are revised to read as set forth below.

b. In paragraph (b)(2), ''(as defined in §§ 405.2401 and 491.2 of this chapter)'' is removed.

c. In paragraph (c), second sentence, ''furnishd'' is corrected to read ''furnished''.

§ 440.20 Outpatient hospital services and rural health clinic services.

* * * * *

(b) *Rural health clinic services* means the following services when they are furnished by a rural health clinic that has been certified in accordance with part 491 of this chapter, and by practitioners who are acting within the scope of their practice under State law and who meet the conditions specified in this paragraph:

(1) Services furnished by a physician in the clinic and services furnished away from the clinic if the physician's contract with the clinic so provides.

4. In § 440.40, paragraph (a) is revised to read as follows:

§ 440.40 Nursing facility services for individuals age 21 or older (other than services in institutions for mental diseases), EPSDT, and family planning services and supplies.

(a) *Nursing facility services.* (1) ''Nursing facility services for individuals age 21 or older other than services in an institution for mental disease'' means inpatient care that meets the requirements of paragraphs (a)(2) and (a)(3) of this section and includes the following:

(i) Skilled nursing care and related services for residents who require medical or nursing care.

(ii) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(iii) Health related care and services for individuals who, because of their mental or physical condition, require, on a regular basis, services that—

(A) Are above the level of room and board; and

(B) Must be made available on an inpatient basis.

(2) The services must be ordered by, and furnished under the direction of, a physician.

(3) The services must be provided by one of the following:

(i) A facility or distinct part of a facility that is certified as meeting the requirements for participation that are set forth in subpart B of part 483 of this chapter.

(ii) If specified in the State plan, a swing-bed hospital that has CMS approval to furnish SNF services under Medicare.

(iii) Any facility located on an Indian reservation if the facility is certified by the Secretary as meeting the requirements of subpart B of part 483 of this chapter.

* * * * *

§ 440.50 [Amended]

5. In paragraph (a) introductory text, ''skilled'' and ''by a physician'' are removed.

6. In § 440.70. paragraph (c) is revised to read as follows:

§ 440.70 Home health services.

* * * * *

(c) Services furnished to a recipient whose place of residence is a hospital or a nursing facility are not ''home health services''. However, home health services may be furnished to residents of an ICF/MR if they are services other than those required under subpart I of part 483 of this chapter. For example, a registered nurse may provide short-term care for a recipient in an ICF/MR to avoid having to transfer the recipient to a nursing facility.

* * * * *

§ 440.80 [Amended]

7. In § 440.80(c)(3), ''A skilled nursing facility'' is revised to read ''A nursing facility''.

8. In § 440.140, the following changes are made:

a. The section heading is revised to read as follows: ''§ 440.140 Inpatient hospital services and nursing facility services for individuals age 65 or older in institutions for mental diseases.''

b. In paragraph (a), introductory text, ''(b), (c), and (e)'' is removed.

c. In paragraph (a)(2), ''subpart H of'' is removed.

§ 440.165 [Amended]

9. Section 440.165 is amended by revising paragraph (b) to read as follows:

§ 440.165 Nurse-midwife service.

* * * * *

(b) ''Nurse-midwife'' means a registered professional nurse who meets the applicable qualifications set forth in § 400.210(b) of this chapter.

§ 440.166 [Amended]

10. In § 440.166, in paragraph (d), ''this subchapter.'' is revised to read ''this chapter.''.

§ 440.220 [Amended]

11. In § 440.220, in paragraph (a)(3), ''skilled'' is removed.

§ 440.250 [Amended]

12. In § 440.250, the following changes are made:

a. In paragraph (a), ''skilled nursing facility services'' is revised to read ''nursing facility services''.

b. In paragraph (m), ''(as defined in § 440.255)'' is removed.

13. Paragraph (b)(1) is revised to read as follows:

§ 440.255 Limited services available to certain aliens.

* * * * *

(b) * * *

(1) Emergency services as defined in § 447.53(b) of this chapter.

* * * * *

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

Y. Part 441 is amended as set forth below.

1. The authority citation for part 441 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

§ 441.1 [Amended]

2. In § 441.1, the following changes are made:

a. The word ''subchapter'', wherever it appears, is revised to read ''chapter''.

b. Revise ''intermediate care facility services for the mentally retarded'' to read ''nursing facilities and intermediate care facilities for persons with mental retardation''.

§ 441.15 [Amended]

3. In § 441.15, the following changes are made:

a. In the introductory text, the word ''subchapter'' is revised to read ''chapter''.

b. In paragraph (b)(2), ''skilled'' and ''individuals;'' are removed.

c. In paragraph (b)(3), ''skilled nursing facility'' is revised to read ''nursing facility''.

4. Section 441.17 is revised to read as follows:

§ 441.17 Laboratory services.

(a) The plan must provide for payment for laboratory services as defined in § 440.30 of this chapter, if they are furnished by entities that meet the following additional requirements, as appropriate:

(1) For hospital-based laboratories, the requirements of § 482.27 of this chapter.

(2) For services furnished by rural health clinics, the requirements of § 491.9(c)(2) of this chapter.

(3) For NF-based laboratories, the requirements of § 483.75(j) of this chapter

(b) Laboratory records must contain the name (or other identifier approved by the Medicaid agency) of the person from whom the specimen was taken.

§ 441.100 [Amended]

5. In § 441.100, '', skilled nursing services, and intermediate care facility services'' is revised to read ''and nursing facility services''.

§ 441.150 [Amended]

6. In § 441.150, ''subchapter'' is revised to read ''chapter''.

§ 441.152 [Amended]

7. In § 441.152, the following changes are made:

a. The designation ''(a)'' is removed and ''§ 441.154'' is revised to read''§ 441.153''.

b. The designations ''(1)'', ''(2)'', and ''(3)'' are revised to read ''(a)'', ''(b)'', and ''(c)'', respectively.

c. Paragraph (b) is removed.

§ 441.155 [Amended]

8. In § 441.155, the following changes are made:

a. In paragraph (a), ''to the extent that'' is revised to read ''to the point at which''.

b. Paragraph (d) is removed.

§ 441.181 [Amended]

9. In paragraph (a)(2), the parenthetical statement at the end is removed.

§ 441.302 [Amended]

10. In § 441.302, the following changes are made:

a. Throughout § 441.302, ''a NF'' is revised to read ''an NF''.

b. In § 441.302(d), ''an SNF, ICF, or ICF/MR'' is revised to read ''an NF or ICF/MR''.

§ 441.354 [Amended]

11. In § 441.354, the following changes are made:

a. In paragraph (b)(1), ''an SNF or ICF'' is revised to read ''an NF'', and ''(NF effective October 1, 1990)'' is removed.

b. In paragraph (c), in the ''P'' and ''Q'' factors of the formula, ''for SNF and ICF'' is revised to read ''for NF'', and ''(NF effective October 1, 1990)'' is removed.

PART 442—STANDARDS FOR PAYMENT TO NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

Z. Part 442 is amended as set forth below.

1. The authority citation for part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 442.2 [Amended]

2. In § 442.2, the definition of ''Immediate jeopardy'' is revised to read as follows:

§ 442.2 Terms.

* * * * *

Immediate jeopardy has the meaning given that term in § 488.1 of this chapter.

* * * * *

PART 447—PAYMENT FOR SERVICES

AA. Part 447 is amended as set forth below.

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Subparts B and C are redesignated as subparts C and D, respectively.

3. The undesignated centered heading ''Cost Sharing'' is removed and the following is added in its place:

* * * * *

Subpart B—Cost Sharing

* * * * *

§ 447.50 [Amended]

4. In § 447.50, the following changes are made:

a. The heading of § 447.50 is revised to read ''Basis and purpose.''.

b. The designation ''(a)'' is removed.

c. ''§§ 447.51 through 447.59 prescribe '' is revised to read ''this subpart prescribes''.

5. The undesignated centered heading immediately preceding § 447.51 is removed.

§ 447.51 [Amended]

6. In § 447.51, the following changes are made:

a. The heading of § 447.51 is revised to read ''Enrollment fees and premiums or similar charges: Requirements and options.''.

b. In paragraph (a), ''subchapter'' is revised to read ''chapter''.

§ 447.52 [Amended]

7. In § 447.52, the heading is revised to read ''Enrollment fees and premiums or similar charges: Minimum and maximum income-related charges.''.

8. The undesignated centered heading immediately preceding § 447.53 is removed.

9. In § 447.53, the following changes are made:

a. The heading of § 447.53 is revised to read as set forth below.

b. The heading for paragraph (a) is revised to read ''Basic rule.''.

c. Paragraphs (b) and (c) are revised to read as follows:

§ 447.53 Deductibles, coinsurance, and copayment, or similar charges: General rules.

* * * * *

(b) *Exceptions.* The plan may not provide for imposition of a deductible, coinsurance, copayment, or similar charge for the following services furnished to categorically needy or medically needy individuals:

(1) *Services to children.* This means services to individuals under 18 years of age or (at State option) to individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over but under 21.

(2) *Services related to pregnancy.* This means services furnished to pregnant women if the services are related to the pregnancy or to any other condition that may complicate the pregnancy. These services include the following:

(i) Routine prenatal care.

(ii) Labor and delivery.

(iii) Routine postpartum care.

(iv) Family planning services.

(v) Services for complications likely to affect pregnancy or delivery, such as hypertension, diabetes, or urinary tract infection.

(vi) Services furnished during the postpartum period for conditions or complications related to the pregnancy.(The postpartum period begins on the last day of the pregnancy and ends on the last day of the month in which the subsequent 60-day period ends.)

(3) *Services to individuals in institutions.* This means services furnished to any individual who—

(i) Is an inpatient of a hospital, NF, other medical institution, or ICF/MR; and

(ii) Is required, as a condition for receiving services in the institution, to contribute to the medical care costs all but the minimum amount of income he or she needs for personal expenses. (Sections 435.725, 435.733, 435.832, and 436.832 of this chapter specify the groups to which this requirement applies.)

(4) *Emergency services.* This means services furnished in a hospital, clinic, office, or other facility that is equipped to furnish emergency services, that is, services that are required after the sudden onset of a medical condition manifesting itself by acute symptoms so severe (including severe pain) that failure to provide immediate medical attention could reasonably be expected to result in—

(i) Serious jeopardy to the patient's health;

(ii) Serious impairment of bodily functions; or

(iii) Serious dysfunction of any bodily organ or part.

(5) *Family planning services.* This means family planning services furnished to individuals of child-bearing age.

(6) *Hospice care.* This means hospice care as defined in section 1905(o) of the Act.

(c) *Optional exclusions.* States may, at their option—

(1) Exempt from cost sharing all services furnished to pregnant women; and

(2) Exempt from copayment charges any HMO services furnished to medically needy Medicaid enrollees.

* * * * *

§ 447.54 [Amended]

10. In § 447.54, the section heading is revised to read: ''Maximum allowable cost sharing amounts.''.

11. The undesignated center heading immediately preceding § 447.59 is removed.

12. § 447.59 is revised to read as follows:

§ 447.59 Federal financial participation (FFP): Limits related to cost sharing.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, FFP is not available for expenditures for cost sharing amounts (enrollment fees or premiums, deductibles, coinsurance, copayment, or similar charges) that a recipient should have paid.

(b) *Exception.* FFP is available for the amounts that the agency pays as bad debts of providers under § 447.57. (We note that FFP is not available for payments the agency makes on behalf of an ineligible individual even if he or she has paid any required premium or enrollment fee.)

13. The undesignated center headings immediately preceding §§ 447.251, 447.257, 447.271, and 447.280 are removed.

14. Section 447.253 is amended to revise paragraph (b)(1)(ii)(B) to read as follows:

§ 447.253 Other requirements.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) If a State elects to cover services furnished at an inappropriate level of care (hospital inpatient services furnished to patients who require nursing facility level of care), the State's methods and standards specify that payment for this type of care is at the lower rates appropriate for nursing facility care, consistent with section 1861(v)(1)(G) of the Act; and

* * * * *

§ 447.257 [Amended]

15. The heading of § 447.257 is revised to read ''Limits on FFP.''.

§ 447.272 [Amended]

16. In § 447.272, paragraph (c), ''§§ 447.296 through 447.299.'' is revised to read ''subpart E.''.

§ 447.280 [Amended]

17. The heading of § 447.280 is revised to read ''Special rules for swing-bed hospitals.''.

Subpart F [Amended]

18. All undesignated center headings in subpart F are removed.

§ 447.331 [Amended]

19. In § 447.331, in paragraph (a), ''set forth in paragraph (b)'' is revised to read ''set forth in paragraph (b) of this section''.

20. In § 447.332, the following changes are made:

a. In paragraph (a)(1) introductory text, ''will establish'' is revised to read ''establishes''.

b. In paragraph (a)(3), ''will identify'' is revised to read ''identifies''.

c. Paragraph (b) is revised to read as follows:

§ 447.332 Upper limits for multiple source drugs.

* * * * *

(b) *Specific upper limits.* (1) The agency's payments for multiple source drugs identified and listed in accordance with paragraph (a) of this section may not exceed, in the aggregate, payment levels determined by applying, for each drug entity—

(i) A reasonable dispensing fee established by the agency; plus

(ii) An amount established by CMS that is equal to 150 percent of the published price at which the least costly therapeutic equivalent can be purchased by pharmacists.

(2) In selecting the size of the drug entity, the agency must—

(i) For non-liquids commonly available in quantities of 100 tablets or capsules, use that size;

(ii) For non-liquids not commonly available in quantities of 100 tablets or capsules, use the commonly listed package size; and

(iii) For liquids, use the commonly listed package size.

(3) In determining the least costly equivalent, the agency must use all available national compendia.

§ 447.333 [Amended]

21. In § 447.333, in paragraphs (b)(1)(i) and (b)(1)(ii), ''this subpart'' is revised to read ''this part''.

§ 447.334 [Amended]

22. In § 447.334, the following changes are made:

a. ''skilled nursing facility services'' is revised to read ''nursing facility services''.

b. ''and intermediate care facility services'' is removed.

PART 455—PROGRAM INTEGRITY: MEDICAID

BB. Part 455 is amended as set forth below.

1. The authority citation for part 455 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 455.2 [Amended]

2. In § 455.2, the following changes are made:

a. The definitions of ''Practitioner'' and ''Suspension'' are removed.

b. The definition of ''Exclusion'' is revised to read as follows:

§ 455.2 Definitions.

* * * * *

Exclusion means denial of participation in the Medicaid program for a provider that has defrauded or abused the program, or been convicted of a program-related offense under a Federal, State, or local law.

* * * * *

3. In § 455.3, the following changes are made:

a. The introductory text is republished and paragraph (a) is revised to read as set forth below.

b. In paragraph (b), ''or suspended practitioners'' is removed.

c. In paragraph (c), ''or suspension'' is removed.

§ 455.3 Other applicable regulations.

Part 1002 of this title sets forth the following:

(a) State plan requirements for excluding providers for fraud or abuse or for conviction of program-related crimes.

* * * * *

4. Section 455.100 is revised to read as follows:

§ 455.100 Basis and scope.

(a) This subpart implements sections 1124, 1126, 1902(a)(38), and 1903(i)(2) of the Act.

(b) It sets forth State plan requirements for disclosure of information regarding—

(1) Ownership and control of providers and fiscal agents, and their subcontractors;

(2) Persons convicted of criminal offenses related to their involvement in any program under Medicare, Medicaid, or the social services program under title XX of the Act; and

(3) Business transactions between providers and their subcontractors or wholly owned suppliers.

(c) It also provides instructions for determining ownership or control percentages, and specifies the penalties for failure to furnish the required information timely.

§ 455.101 [Amended]

5. In § 455.101, the definition of ''Significant business transaction'' is removed, and the definitions of ''Indirect ownership interest'' and ''Ownership interest'' are revised to read as follows:

§ 455.101 Definitions.

* * * * *

Indirect ownership interest has the meaning given the term in § 420.201 of this chapter.

* * * * *

Ownership interest has the meaning given the term in § 420.201 of this chapter.

* * * * *

PART 456—UTILIZATION CONTROL

CC. Part 456 is amended as set forth below.

1. The authority citation for part 456 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

Subpart A [Amended]

2. In subpart A, the following changes are made:

§ 456.1 [Amended]

a. In § 456.1, the following changes are made:

1. In paragraph (b)(2), in the last full sentence of the introductory text, ''and intermediate care facilities (ICF's).'' is revised to read ''and ICFs/MR.''.

2. In paragraph (b)(5), ''(IMD's)'' is revised to read ''(IMDs)'', and ''ICF's'' is revised to read ''ICFs/MR''.

b. § 456.5 is revised to read as follows:

§ 456.5 Evaluation criteria.

(a) The agency must establish and use written criteria for evaluating the quality and appropriateness of Medicaid services.

(b) The utilization review (UR) plan must provide that the UR committee—

(1) Develops written criteria for assessment of the need for admission and the need for continued stay; and

(2) Develops more extensive written criteria for cases that its experience shows are—

(i) Associated with high costs;

(ii) Associated, frequently, with the furnishing of excessive services; or

(iii) Attended by physicians whose patterns of care are frequently found to be questionable.

c. A new § 456.10 is added, to read as follows:

§ 456.10 Definitions.

As used in this part—

Medical care appraisal norms or *norms* means numerical or statistical measures of usually observed performance; and

Medical care criteria or *criteria* means predetermined elements against which aspects of the quality of a medical service may be compared.

Subpart C—Utilization Control: All Hospitals

3. In subpart C, the following changes are made:

a. The heading of subpart C is revised to read as set forth above.

b. All undesignated centered headings in subpart C are removed.

c. § 456.50 is revised to read as follows:

§ 456.50 Scope.

This subpart sets forth the requirements that all hospitals must meet for certification of need for care, plan of care, and utilization review (UR) plans.

§ 456.51 [Removed]

d. Section 456.51 is removed.

456.60 [Amended]

e. In § 456.60, in paragraph (b)(1), ''(as defined in § 491.2 of this chapter)'' is removed.

f. § 456.100 is revised to read as follows:

§ 456.100 UR plan: Basic requirement.

The State plan must provide that each hospital furnishing inpatient services under the plan has in effect a written UR plan that meets the requirements of this subpart.

§ 456.101 [Removed]

g. § 456.101 is removed.

§ 456.111 [Amended]

h. In § 456.111, the following changes are made:

1. In paragraph (d), ''§ 456.70.'' is revised to read ''§ 456.80.''.

2. In paragraph (h), ''(or, in an ICF/MR, the mental retardation professional)'' is inserted immediately before ''believes continued stay is necessary.''.

i. Section 456.133 is revised to read as follows:

§ 456.133 Subsequent continued stay review dates.

The UR plan must provide as follows:

(a) The committee assigns subsequent continued stay review dates in accordance with §§ 456.128 and 456.134(a).

(b) The committee assigns a subsequent review date each time it decides that the continued stay is needed and, for a mental hospital patient, it schedules subsequent reviews for at least every 90 days.

(c) The committee ensures that each continued stay review date it assigns is entered in the recipient's record.

j. Section 456.135 is amended to revise paragraphs (f), (g), and (h) to read as follows:

§ 456.135 Continued stay review process.

* * * * *

(f) If the committee, subgroup, or designee finds that a continued stay is not needed, it notifies the recipient's attending physician (in the case of a mental hospital patient, it may be the attending or staff physician) and provides an opportunity for the physician to present his or her views before it makes a final decision.

(g) If the attending or staff physician does not present additional information or clarification of the need for continued stay, the decision of the committee, subgroup, or designees is final.

(h) If the attending or staff physician presents additional information or clarification, at least two physician members of the committee (at least one of which is knowledgeable about mental diseases) review the need for continued stay. If they find that the patient no longer needs inpatient care, their decision is final.

k. Section 456.136 is amended to revise paragraph (b), to read as follows:

§ 456.136 Notification of adverse decision.

* * * * *

(b) The attending physician (or the attending or staff physician in a mental hospital);

* * * * *

§ 456.141 Medical care evaluation studies: Purpose and general description.

l. The section heading is revised to read as set forth above.

Subpart D—Utilization Control: Additional Requirements for Mental Hospitals

4. In subpart D, the following changes are made:

a. The subpart heading is revised to read as set forth above.

b. All undesignated center headings are removed.

c. Section 456.150 is revised to read as follows:

§ 456.150 Scope.

This subpart sets forth the utilization control requirements that mental hospitals must meet in addition to those required of all hospitals as set forth in subpart C of this part.

§§ 456.151 and 456.160 [Removed]

d. §§ 456.151 and 456.160 are removed.

e. § 456.180 is revised to read as follows:

§ 456.180 Individual written plan of care.

For mental hospital patients, the following rules apply:

(a) The plan of care required under § 456.80 must be expanded to include—

(1) Objectives;

(2) Any orders for therapies or for special procedures recommended for the patient's health and safety; and

(3) Provision for modifying the plan of care as needed.

(b) The attending or staff physician must participate in reviewing the plan at least every 90 days (rather than every 60 days as is required for all other hospitals).

§§ 456.200, 456.201, and 456.205 [Removed]

f. Sections 456.200, 456.201, and 456.205 are removed.

g. Section 456.206 is revised to read as follows:

§ 456.206 Organization of UR committee; disqualification from UR committee membership.

The rules for mental hospitals differ from those set forth in § 456.106 only in that—

(a) One of the physician members of the UR committee must be knowledgeable in the diagnosis and treatment of mental diseases; and

(b) A member is disqualified on the basis of financial interest only if it is an interest in a mental hospital.

§§ 456.211 through 456.213 [Removed]

h. Sections 456.211 through 456.213 are removed.

i. § 456.231 is revised to read as follows:

§ 456.231 Continued stay review: Basic requirement.

The UR plan must provide for a review of each recipient's continued stay in a mental hospital to decide whether it is needed, in accordance with the applicable requirements of subpart C of this part and this subpart.

§ 456.232 [Removed]

j. Section 456.232 is removed.

k. Section 456.233 is revised to read as follows:

§ 456.233 Date of initial continued stay review.

(a) For mental hospital patients, the following rules apply, in addition to those set forth in § 456.128.

(b) If an individual applies for Medicaid while a patient in a mental hospital—

(1) The committee sets the date for initial continued stay review within 1 working day after the hospital receives notice of the application; and

(2) That date may not be later than 30 days after admission of the patient or 30 days after receipt of notice of his or her application for Medicaid, whichever is earlier.

§§ 456.234 through 456.245 [Removed]

l. Sections 456.234 through 456.245 are removed.

Subpart F—Utilization Control: Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR)

5. In subpart F, the following changes are made:

a. The heading of subpart F is revised as set forth above.

b. All undesignated center headings in subpart F are removed.

c. Section 456.350 is revised to read as follows:

§ 456.350 Scope.

This subpart sets forth the requirements that ICFs/MR must meet in addition to those specified, for hospitals, in subparts C and D of this part. In applying the rules of those subparts, references to ''hospitals'' must be read as references to ''ICF/MR''.

d. § 456.351 is revised to read as follows:

§ 456.351 Definition.

ICF/MR services means services that meet the conditions specified in § 440.150 of this chapter, but exclude services furnished in a religious nonmedical health care institution as defined in § 440.170(b) of this chapter.

e. Section 456.360 is revised to read as follows:

§ 456.360 Certification and recertification of need for inpatient care.

The rules of § 456.60 apply, except that recertification is required every 12 months rather than every 60 days.

f. In § 456.370, the following changes are made:

1. Paragraphs (a) and (b) are revised to read as set forth below.

2. In paragraph (c)(8), ''ICF'', wherever it appears, is revised to read ''ICF/MR''.

§ 456.370 Medical, social, and psychological evaluations.

(a) Before admission to an ICF/MR, or before authorization of payment, an interdisciplinary team of health professionals must make a comprehensive medical and social evaluation, and if appropriate, a psychological evaluation, of each applicant's or recipient's need for care in an ICF/MR.

(b) The psychological evaluation must be made not more than 3 months before admission.

* * * * *

§ 456.371 [Amended]

g. In § 456.371, ''ICF services'' is revised to read ''ICF/MR services''.

h. § 456.380 is revised to read as follows:

§ 456.380 Individual written plan of care.

The plan of care must meet the requirements set forth in § 456.180 for a plan of care for a mental hospital patient.

i. Section 456.381 is revised to read as follows:

§ 456.381 Reports and evaluations of plans of care.

The rules for mental hospitals, as set forth in § 456.181, also apply to ICFs/MR.

j. § 456.400 is revised to read as follows:

§ 456.400 Utilization review plan: General requirements.

The State plan must—

(a) Provide that each ICF/MR has on file and implements a written UR plan that provides for review of each recipient's need for the services the ICF/MR furnishes, and meets the requirements of this subpart; and

(b) Specify the method used to perform UR, which may be any of the following:

(1) Review conducted by the facility.

(2) Direct review in the facility by individuals who are—

(i) Employed by the medical assistance unit of the Medicaid agency; or

(ii) Under contract to the Medicaid agency.

(3) Any other method.

§ 456.401 [Removed]

k. § 456.401 is removed.

l. Section 456.405 is revised to read as follows:

§ 456.405 UR plan: Administrative requirements.

The UR plan must meet the following requirements:

(a) Specify how and when UR review is performed.

(b) Provide that review is performed by a group of professional personnel that—

(1) Includes at least one physician and one mental retardation professional; and

(2) Does not include any individual who—

(i) Is responsible for the care of the individual being reviewed;

(ii) Is employed by the ICF/MR; or

(iii) Has a financial interest in any ICF/MR.

(c) Describe the UR support responsibilities of the ICF/MR's administrative staff and the procedures used by that staff to take corrective action.

§§ 456.406 and 456.407 [Removed]

m. §§ 456.406 and 456.407 are removed.

n. § 456.411 is revised to read as follows:

§ 456.411 UR plan: Information requirements.

(a) *Recipient records.* The UR plan must provide that each recipient's record contains the information specified in § 456.111 and also the name of the qualified mental retardation professional. (The qualifications for this professional are set forth in § 483.430 of this chapter.)

(b) *Other records and reports, and confidentiality.* The requirements set forth in §§ 456.112 and 456.113 apply also to ICFs/MR.

§§ 456.412 and 456.413 [Removed]

o. §§ 456.412 and 456.413 are removed.

p. In § 456.431, the following changes are made:

1. In paragraph (a), ''recipients'' is revised to read ''recipient's''.

2. The section heading and paragraphs (b) introductory text, (b)(1), and (b)(2) are revised to read as follows:

§ 456.431 Continued stay review.

* * * * *

(b) The UR plan requirement for continued stay review may be met by either of the following:

(1) Reviews that apply the criteria specified in § 456.5(b) and are performed in accordance with this subpart.

(2) Reviews that meet the onsite inspection requirements of subpart I of this part provided—

(i) The composition of the independent professional review team meets the requirements of § 456.405; and

(ii) The reviews are conducted at least every 6 months.

§ 456.432 [Removed]

q. § 456.432 is removed.

r. § 456.433 is revised to read as follows:

§ 456.433 Initial continued stay review date.

The UR plan must—

(a) Provide that, when a recipient is admitted to an ICF/MR, the UR committee assigns, for the initial continued stay review, a specific date that is—

(1) Not later than 6 months after admission; and

(2) May be earlier than 6 months after admission if indicated at the time of admission.

(b) Describe the methods and criteria that are the basis for assigning the date; and

(c) Ensure that the date is entered in the recipient's record.

§ 456.434 [Amended]

s. In § 456.434, in paragraph (a), ''§ 456.435.'' is revised to read ''the methods and criteria required to be described under § 456.433(b).''.

§ 456.435 [Removed]

t. § 456.435 is removed.

u. In § 456.436, the following changes are made:

1. In paragraph (c), ''ICF'' is revised to read ''ICF/MR'', ''§ 456.411'' is revised to read ''§ 456.411(a)'', ''§ 456.432'' is revised to read ''§ 456.5(b)(1)'', and ''§ 456.432(b)'' is revised to read ''§ 456.5(b)(2)''.

2. Paragraph (f) is revised to read as set forth below.

3. In paragraphs (g) and (h), ''attending physician or'' is removed.

4. In paragraph (i), ''ICF services'' is revised to read ''ICF/MR services''.

§ 456.436 Continued stay review process.

* * * * *

(f) If the group or subgroup making the review under paragraph (e) of this section finds that a continued stay is not needed, it notifies the recipient's qualified mental retardation professional within one working day of its decision and allows 2 working days from the date of notice for the professional to present his or her views before it makes a final decision.

* * * * *

v. § 456.437 is revised to read as follows:

§ 456.437 Notification of adverse decision.

The UR plan must provide that the UR committee gives written notice of any adverse decision on the need for continued stay—

(a) Not later than 2 days after the final decision; and

(b) To the following:

(1) The administrator of the ICF/MR.

(2) The qualified mental retardation professional.

(3) The Medicaid agency.

(4) The recipient.

(5) If possible, the next of kin or sponsor.

§ 456.438 [Removed]

w. § 456.438 is removed.

Subpart H [Amended]

6. In subpart H, the following changes are made:

a. The undesignated center heading immediately preceding § 456.505 is removed.

b. The heading of § 456.505 is revised to read as follows:

§ 456.505 Basis for waiver of UR requirements.

* * * * *

Subpart I [Removed]

7. Subpart I, consisting of §§ 456.600 through 456.614, is removed and reserved.

§ 456.722 [Amended]

8. In § 456.722(c)(1), in the second sentence, ''subpart P and appendix G–O of OMB circular A–102'' is removed.

PART 475—PEER REVIEW ORGANIZATIONS

DD. Part 475 is amended as set forth below.

1. The authority citation for part 475 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 475.1 [Amended]

2. In § 475.1, the following changes are made:

a. The introductory text is revised to read ''As used in this subchapter—''.

b. Definitions of ''Affiliate of a payor organization'', ''Non-facility organization'', and ''PRO area'' are added, in alphabetical order.

c. The heading *Health care facility* is revised to read *Health care facility or facility.*

d. The definitions of ''Payor organization'' and ''Physician'' are revised to read as set forth below.

§ 475.1 Definitions.

* * * * *

Affiliate of a payor organization means an organization with a governing body, two or more members of which are—

(1) Governing body members, officers, partners, or 5 percent or more owners of the payor organization; or

(2) Managing employees of an HMO or CMP.

* * * * *

Non-facility organization means a corporate entity that—

(1) Is not a health care facility;

(2) Is not a 5 percent or more owner of a health care facility; and

(3) Is not owned by one or more health care facilities or any association of facilities in the PRO area.

Payor organization means any organization (other than a self-insured employer) that pays providers or practitioners (directly or indirectly) for services that the organization reviews,

or would review if it entered into a PRO contract.

Physician includes—

(1) An intern, resident, or Federal Government employee authorized under State or Federal law to practice medicine, surgery, or osteopathy in the PRO area; and

(2) An individual licensed to practice medicine in American Samoa or the Northern Mariana Islands.

PRO area means the geographic area designated as the area within which a designated PRO performs utilization and quality control review under its PRO contract with CMS.

§ 475.100 [Amended]

3. In § 475.100, ''Social Security'' and ''as amended by the Peer Review Improvement Act of 1982 (Pub. L. 97–248)'' are removed.

§ 475.105 [Amended]

4. In paragraph (b) of § 475.105, ''Effective November 15, 1984, the'' is removed, and ''The'' is added in its place, and ''will not apply'' is revised to read ''does not apply''.

5. Section 475.106 is revised to read as follows:

§ 475.106 Prohibition against contracting with payor organizations and affiliates of payor organizations.

Payor organizations and their affiliates are not eligible to become PROs for the area in which they make payments unless CMS determines, on the basis of lack of response to an appropriate Request for Proposal, that there is not available any eligible organization that is not a payor organization or affiliate of a payor organization.

§ 475.107 [Amended]

6. In § 475.107, the following changes are made:

a. In the introductory text, ''will take'' is revised to read ''takes''.

b. In paragraphs (a) and (b), ''Identify'' is revised to read ''Identifies''.

c. In paragraph (c), ''Assign'' is revised to read ''Assigns''.

d. In paragraph (d), ''award'' is revised to read ''awards''.

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

EE. Part 476 is amended as set forth below.

1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 476.1 [Amended]

2. In § 476.1, the following changes are made:

a. The definitions of ''Five percent or more owner'', ''Health care facility or facility'', ''Health care practitioners other than physicians'', ''Hospital'', ''Non-facility organization'', ''Physician'', ''Practitioner'', ''Preadmission certification'', ''Review responsibility'' and ''Skilled nursing facility'' are removed.

b. The following definitions are revised to read as follows:

§ 476.1 Definitions.

* * * * *

Active staff privileges means authorization, on a regular, rather than an infrequent or courtesy basis—

(1) For a physician or other health care practitioner to order the admission of patients to a facility; and

(2) For a physician to perform diagnostic and treatment services in the facility.

* * * * *

Diagnosis related group (DRG) means a system for classifying inpatient hospital discharges as a basis for Medicare payment under the prospective payment system.

DRG validation means PRO validation to the effect that the DRG classification assigned to a discharge is based on the correct diagnostic and procedural information.

* * * * *

Hospital means a health care institution or distinct part of an institution as defined in section 1861(e) through (g) of the Act, including a religious nonmedical health care institution as defined in section 1861(ss)(1) of the Act.

* * * * *

Peer review means review of services by health care practitioners in the same professional field as the practitioner who ordered or furnished the services.

* * * * *

3. § 476.74 is revised to read as follows:

§ 476.74 General requirements for the assumption of review.

In assuming review responsibility, a PRO must comply with the following conditions:

(a) Assume review responsibility in accordance with the schedule, functions, and negotiated objectives specified in its contract with CMS.

(b) Notify the appropriate Medicare fiscal intermediary or carrier of its assumption of review in particular health care facilities no later than 5 working days after the day it assumes review in the facility.

(c) Maintain and make available for public inspection at its principal business office—

(1) A copy of each agreement with a Medicare intermediary or carrier;

(2) A copy of its current approved review plan, including its method for implementing review; and

(3) Copies of all subcontracts for the conduct of review.

(d) Limit subcontracts for review by health care facilities to review of quality of care. (There is no limit to the types of review that the PRO may subcontract to organizations that are not health care facilities.)

(e) If required by CMS—

(1) Compile statistics based on the criteria specified in § 411.402 of this chapter;

(2) Make limitation of liability determinations in accordance with subpart K of part 411 of this chapter; and

(3) Notify providers regarding these determinations. (Appeals from these determinations are subject to the rules set forth in part 405 of this chapter—subpart G for Part A services, and subpart H for Part B services.)

(f) Make its responsibilities under its contract with CMS primary to all its other interests and activities.

§ 476.86 [Amended]

4. In § 476.86(b), ''or SNF care'' is removed and''§§ 405.1035, 405.1042, and 405.1137 of this chapter.'' is revised to read ''§ 482.30 of this chapter.''.

PART 478—RECONSIDERATIONS AND APPEALS

FF. Part 478 is amended as set forth below.

1. The authority citation for part 478 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 478.46 [Revised]

2. Section 478.46 is revised to read as follows:

§ 478.46 Departmental Appeals Board review and judicial review.

(a) *Board review.* The circumstances under which the Departmental Appeals Board (the ''Board'') will review an ALJ hearing decision or dismissal are the same as those set forth at 20 CFR 404.970 for Appeals Council review.

(b) *Basis for seeking judicial review.* (1) The affected party may seek judicial review of the Board's decision, or of the ALJ's hearing decision if the Board denies review, if the amount in controversy is $2,000 or more.

(2) The party must file the civil action within 60 days from the date of receipt

of the notice of the Board's determination or denial of review.

PART 480—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

GG. Part 480 is amended as set forth below.

1. The authority citation for part 480 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—PRO Information: General Provisions

2. The heading of subpart B is revised to read as set forth above.

3. The undesignated centered heading immediately preceding § 480.101 is removed.

§ 480.101 [Amended]

4. In § 480.101, the following changes are made:

a. The definitions of ''Health care facility or facility'', ''Non-facility organization'', and ''practitioner'' are removed.

b. The definition of *Implicitly identify (ies)* is removed and a new definition of *Implicitly identifies* is added in its place to read as follows:

§ 480.101 Scope and definitions.

* * * * *

(b) * * *

Implicitly identifies refers to data so unique, or to numbers so small, that the identity of a particular patient, practitioner, or reviewer would be obvious.

5. § 480.103 is amended to revise paragraph (b) to read as follows:

§ 480.103 Statutory bases for disclosure of information.

* * * * *

(b) Section 1160 of the Act provides that PRO information must be held in confidence and not disclosed to any person except—

(1) To the extent necessary to carry out the purposes of title XI, part B, of the Act;

(2) In cases and circumstances specified by regulation to ensure adequate protection of the rights and interests of patients, practitioners, and providers of health care; and

(3) As necessary to assist the following agencies in the performance of their duties:

(i) Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse.

(ii) Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health.

(iii) Appropriate State agencies responsible for licensing or certifying providers or practitioners.

(iv) Federal or State health planning agencies that need PROs to furnish them aggregate statistical data on a geographical, institutional, or other basis.

Subpart C—PRO Access to Information and PRO Responsibilities

6. The heading of subpart C is revised to read as set forth above.

7. The undesignated center heading immediately preceding § 480.115 is removed.

Subpart D—Disclosure of Nonconfidential Information

8. The heading of subpart D is revised to read as set forth above.

Subpart E—Disclosure of Confidential Information

9. The heading of subpart E is revised to read as set forth above.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

HH. 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).

§ 482.30 [Amended]

2. In § 482.30(a)(2), ''§ 456.50 through 456.245 of this chapter.'' is revised to read ''part 456 of this chapter.''.

§ 482.52 [Amended]

3. In § 482.52, in paragraphs (a)(4) and (a)(5), '', as defined in § 410.69(b) of this chapter,'' is removed.

PART 483—REQUIREMENTS FOR STATES AND FOR LONG TERM CARE FACILITIES

II. 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).

§ 483.40 [Amended]

2. In § 483.40, in paragraph (e)(1)(i), ''the applicable definition in § 491.2 of this chapter'' is revised to read ''the qualifications set forth in § 400.210 of this chapter''.

§ 483.102 Applicability and evaluation criteria.

3. In § 483.102, the following changes are made:

a. The section heading is revised to read as set forth above.

b. The paragraph heading *Applicability* is inserted immediately after the designation (a).

c. The heading of paragraph (b) is revised to read *Evaluation criteria*.

d. Footnotes 1 and 2 are revised to read as set forth below.

* * * * *

[1] The Diagnostic and Statistical Manual of Mental Disorders is available for inspection at the Centers for Medicare & Medicaid Services, CMS Library, Room C2–07–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, or at the Office of the Federal Register, suite 700, 800 North Capitol St., NW., Washington, DC. Copies may be obtained from the American Psychiatric Association, Division of Publications and Marketing, 4100 K Street, NW., Washington, DC 20005.

* * * * *

[2] The American Association on Mental Retardation's Manual on Classification in Mental Retardation is available for inspection at the Centers for Medicare & Medicaid Services, CMS Library, Room C2–07–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, or at the Office of the Federal Register, suite 700, 800 North Capitol St., NW., Washington, DC. Copies may be obtained from the American Association on Mental Retardation, 1719 Kalorama Rd., NW., Washington, DC 20009.

§ 483.460 [Amended]

4. In § 483.460—

a. In paragraph (b)(1), ''that specified plan of care requirements for ICFs'' is removed.

b. In paragraph (b)(2), the phrase ''physicians must participate in'' is removed.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

JJ. Part 485 is amended as set forth below.

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 485.51 is revised to read as follows:

§ 485.51 Definition.

As used in this subpart, unless the context indicates otherwise, *Comprehensive outpatient rehabilitation facility, CORF,* or *facility* means a nonresidential facility that is established and operated, at a single fixed location, exclusively for the purpose of providing outpatient diagnostic, therapeutic, and restorative services that are for the rehabilitation of injured, disabled, or sick persons, and that are furnished by, or under the supervision of, a physician.

§ 485.70 [Amended]

3. In § 485.70, the following changes are made:

a. In paragraph (c), ''§ 405.1202(f) and (g) of this chapter.'' is revised to read''§ 484.4 of this chapter.''

b. In paragraph (m),''§ 485.705(f) of this chapter.'' is revised to read ''§ 484.4 of this chapter.''.

4. In § 485.604, paragraphs (b) and (c) are removed, and a new paragraph (b) is added, to read as follows:

§ 485.604 Personnel qualifications.

* * * * *

(b) A nurse practitioner and a physician assistant must meet the qualifications specified in § 400.210(f) and (g) of this chapter.

* * * * *

§ 485.639 [Amended]

5. In § 485.639, in paragraphs (c)(1)(v) and (c)(1)(vi), '', as defined in § 410.69(b) of this chapter'' is removed.

§ 485.705 [Amended]

6. In § 485.705, paragraphs (b)(2) and (c)(8) are revised to read as set forth below.

§ 485.705 Personnel qualifications.

* * * * *

(b) * * *

(2) For a speech/language pathologist, the qualifications set forth in § 484.4 of this chapter.

* * * * *

(c) * * *

(8) A nurse practitioner is a person who must meet one of the requirements specified in § 400.210(f) of this chapter.

* * * * *

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

KK. Part 488 is amended as set forth below.

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 488.1 [Amended]

2. In § 488.1, the following changes are made:

a. The definitions of ''Act'', ''Provider of services or provider'', and ''State'' are removed.

b. The following definition is added in alphabetical order:

§ 488.1 Definitions.

* * * * *

Immediate jeopardy means a situation in which the provider's noncompliance with one or more of the requirements for participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a patient or resident.

* * * * *

c. In the definition of ''Substantial allegation of noncompliance'', ''raises doubts as to a provider's or supplier's noncompliance'' is revised to read ''raises doubts as to a provider's or supplier's compliance''.

§ 488.56 [Amended]

3. In § 488.56, in paragraph (b) introductory text and paragraph (b)(2), ''§ 488.75(i)'' is corrected to read ''§ 483.75''.

4. In § 488.64, the following changes are made:

a. Paragraph (b) is revised to read as set forth below.

b. In paragraphs (c), and (d), ''§ 405.1137 of this chapter, or § 482.30 of this chapter, as applicable.'' is revised to read ''§ 482.30 of this chapter.''.

c. In paragraph (g), ''pursuant to § 405.1137 of this chapter or § 482.30'' is revised to read ''in accordance with § 482.30 of this chapter''.

§ 488.64 Remote facility variances for utilization review requirements.

* * * * *

(b) The Secretary may grant a facility a variance from the utilization review time-frames set forth in § 482.30 of this chapter if the requesting facility can show, to CMS's satisfaction, that it has been unable to comply with those time-frames by reason of lack of sufficient professional personnel available to conduct the reviews.

* * * * *

§ 488.301 [Amended]

5. In § 488.301, the following changes are made:

a. In the definition of ''Validation survey'', ''Secretary'' is revised to read ''CMS''.

b. The definition of ''Immediate jeopardy'' is removed.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVALS

LL. Part 489 is amended as set forth below.

1. The authority citation for part 489 is revised to read as follows:

Authority: Secs. 1102, 1819, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, and 1395hh).

§ 489.3 [Amended]

2. In § 489.3, the definition of ''Immediate jeopardy'' is revised and a definition of ''Supplier approval'' is added, in alphabetical order, to read as follows:

§ 489.3 Definitions.

Immediate jeopardy has the meaning given the term in § 488.1 of this chapter.

* * * * *

Supplier approval means approval by CMS for a supplier to receive payment for Medicare covered services it furnishes to Medicare beneficiaries.

PART 491—CERTIFICATION OF CERTAIN FACILITIES

MM. Part 491 is amended as set forth below.

1. The authority citation for part 491 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), and sec. 332 of the Public Health Service Act (42 U.S.C. 254e).

§ 491.2 [Amended]

2. In § 491.2, the following changes are made:

a. The definitions of ''Nurse practitioner'', ''Physician'', ''Physician assistant'', and ''Secretary'' are removed.

b. The definition of ''FQHC'' is removed and a new definition of *Federally qualified health center (FQHC)* is added in its place to read as follows:

§ 491.2 Definitions.

* * * * *

Federally qualified health center (FQHC) has the meaning given the term in § 405.2401(b) of this chapter.

* * * * *

§ 491.3 [Amended]

3. In § 491.3, ''subpart S of 42 CFR part 405'' is revised to read ''subparts A through C of part 488 of this chapter.''.

PART 493—LABORATORY REQUIREMENTS

NN. Part 493 is amended as set forth below.

1. The authority citation for part 493 is revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act and secs. 1102 and 1871 of the

Social Security Act (42 U.S.C. 263a, 1302, and 1395hh).

§ 493.1 [Corrected]

2. In § 493.1, ''the sentence following section 1861(s)(13),'' is removed.

§ 493.2 [Amended]

3. In § 493.2, the following changes are made:

a. The statements and definitions for ''HHS'', ''Physician'', and ''State survey agency'' are removed.

b. The definition of ''immediate jeopardy'' is revised to read as set forth below.

c. In the definition of ''party'', the word ''imposed'' is inserted immediately before ''by CMS''.

d. The definitions of ''sample'', ''State'' and ''Substantial allegation of noncompliance'' are revised to read as follows:

§ 493.2 Definitions.

* * * * *

Immediate jeopardy has the meaning given that term in § 488.1 of this chapter.

* * * * *

Sample, in relation to proficiency testing, means the material that is to be tested by the participants in the proficiency testing program.

State includes any political subdivision to which the State has expressly delegated powers sufficient to enable it to enforce requirements equal to, or more stringent than, CLIA requirements.

* * * * *

Substantial allegation of noncompliance has the meaning given that term in § 488.1 of this chapter.

* * * * *

§ 493.57 [Amended]

4. In § 493.57, in paragraph (e)(2), ''as defined in subpart C of this part;'' is revised to read ''as set forth in subpart C of this part;''.

§ 493.61 [Amended]

5. In § 493.61, the following changes are made:

a. In paragraph (e)(2), ''for a certificate as defined in subpart C of this part; and'' is revised to read ''for one of the certificates specified in subpart C of this part; and''.

b. In paragraph (i)(2), ''for a certificate as defined in subpart C of this part; '' is revised to read ''for any of the certificates specified in subpart C of this part;''

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

OO. Part 498 is amended as set forth below.

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 498.2 [Amended]

2. In § 498.2, the definitions of ''Departmental Appeals Board'', ''OHA'', and ''OIG'' are removed.

§ 498.3 [Amended]

3. In § 498.3:

a. Paragraph (a)(1) is revised to read as set forth below.

b. In paragraph (c), the introductory text is designated as ''(1)'', paragraph designations ''(1)'', ''(2)'', and ''(3)'' are revised to read ''(i)'', ''(ii)'', and ''(iii)'', respectively.

c. A new paragraph (c)(2) is added to read as set forth below.

d. Paragraph (d) introductory text is revised as set forth below.

§ 498.3 Scope and applicability.

(a) *Scope.* (1) This part sets forth procedures for reviewing initial determinations that CMS makes with respect to the matters specified in paragraph (b) of this section, and identifies, in paragraph (c) of this section, matters for which the OIG makes initial determinations and provides appeals procedures. It also specifies, in paragraph (d) of this section, administrative actions that are not subject to appeal under this part.

* * * * *

(c) * * *

(2) Appeals procedures for OIG determinations are set forth in part 1005 of this chapter.

* * * * *

(d) *CMS Administrative actions that are not initial determinations.* CMS administrative actions other than those specified in paragraph (b) of this section are not initial determinations and thus are not subject to appeal under this part. Administrative actions that are not initial determinations (and therefore not subject to appeal under this part) include but are not limited to the following:

* * * * *

§ 498.5 [Amended]

4. In § 498.5(j)(2)(i), ''the SNF or ICF'' is revised to read ''the ICF/MR'', and ''patients'' is revised to read ''residents''.

§ 498.22 [Amended]

5. In § 498.22, in paragraph (a), the parenthetical statement at the end of the paragraph is removed.

§ 498.40 [Amended]

6. In § 498.40, in paragraph (a)(1), ''or the OIG, as appropriate, or with OHA.'' is removed and ''or the Departmental Appeals Board.'' is added in its place.

§ 498.42 [Amended]

7. In § 498.42, insert a period after ''CMS'', and remove the remainder of the sentence.

8. Section 498.44 is revised to read as follows:

§ 498.44 Designation of hearing official.

(a) The Chair of the Departmental Appeals Board (the Board) or his or her delegate designates an ALJ or a member or members of the Board to conduct the hearing.

(b) If appropriate, the Chair or the delegate may substitute a different ALJ or member or members of the Board to conduct the hearing.

(c) As used in this part, ''ALJ'' includes a member or members of the Board who are designated to conduct a hearing.

§ 498.56 [Amended]

9. In § 498.56, in paragraph (b)(5), ''SNFs or ICFs'' is revised to read ''ICFs/MR''.

§ 498.82 [Amended]

10. In § 498.82, paragraph (a)(2), the following changes are made:

a. The term ''the OHA'' is revised to read ''the Board''.

b. ''Departmental Appeals Board'' is revised to read ''Board''.

c. ''§ 98.22(c)(3)'' is corrected to read ''§ 498.22(b)(3)''.

11. In § 498.83, paragraph (d) is revised to read as follows:

§ 498.83 Departmental Appeals Board action on request for review.

* * * * *

(d) *Review panel.* If the Board grants a request for review of the ALJ decision, the review is conducted by a panel of three members of the Board designated by the Chair or Deputy Chair.

PP. Nomenclature changes.

1. Throughout this chapter IV:

a. ''DAB'', wherever it appears, is revised to read ''Board''.

b. ''DAB's'', wherever it appears, is revised to read ''Board's''.

c. ''(DAB)'', wherever it appears, is removed.

2. Throughout this chapter IV, ''a SNF'', and ''a NF'', wherever they appear, are revised to read ''an SNF'' and ''an NF'', respectively.

3. Throughout chapter IV, ''intermediate care facility for the mentally retarded'' wherever it appears, is revised to read ''intermediate care facility for persons with mental retardation and related conditions''.

4. In the following locations, ''co-payment'' wherever it appears, is revised to read ''copayment'': §§ 447.54(a)(3) (table heading), 447.55(a) and (b), 447.56, and 447.58.

5. In § 447.54(a)(3) text, ''co-payments'' is revised to read ''copayments''.

6. In the following locations, ''the OIG, as appropriate,'' is removed: § 498.20(a)(1), § 498.25(b)(1), and § 498.32(a)(1).

7. In the following locations, ''or the OIG'' is removed:§ 498.32(b)(2), § 498.56(a)(2), § 498.56(d), heading and text, § 498.66(b)(2),§ 498.78(a), and § 498.83(a), heading and text.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance; Program No. 93.778, Medical Assistance)

Dated: August 8, 2001.

Ruben J. King-Shaw, Jr.,

Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Dated: September 9, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1065 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 401

[CMS–6011–P]

RIN 0938–AK45

Medicare Program; Reporting and Repayment of Overpayments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would supplement and modify the notice of proposed rulemaking that was published on March 25, 1998 (63 FR 14506). That notice proposed to amend the Medicare regulations governing liability for overpayments from the Centers for Medicare & Medicaid services (CMS) to providers, suppliers, and individuals to eliminate application of certain regulations of the Social Security Administration and to replace them with regulations more specific to circumstances involving Medicare overpayments.

This proposed regulation would supplement and modify that notice in order to establish, in regulations, the longstanding resp[onsibility of providers, suppliers, individuals and also managed care organizations contracting with us to report and return overpayments to us. This proposed would establish the timeframe and process for making the reports and returning the overpayments.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 26, 2002.

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–6011–P, PO 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 & 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–6011–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: Paul Reed (410) 786–4001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 1998 we published in the **Federal Register** (63 FR 14506) a notice of proposed rulemaking that would amend the Medicare regulations governing liability for overpayments to eliminate application of certain regulations of the Social Security Administration and to replace them with regulations more specific to circumstances involving Medicare overpayments.

Section 401.310 of those proposed regulations defined overpayment as those Medicare funds that a provider, supplier, or individual has received in excess of amounts payable under the Medicare statute and regulations. The notice of proposed rulemaking described the types of overpayments, and gave examples of causes of overpayments, such as payments made by Medicare for noncovered services, Medicare payments in excess of the allowable amount for an identified covered service, errors and nonreimbursable expenditures in cost reports, duplicate payments, and Medicare payment when another entity had the primary responsibility for payment (63 FR 14517). It also stated that once a determination and any adjustments in the amount of the overpayments have been made, the remaining amount is a debt owed to the United States Government. After publishing that notice of proposed rulemaking, we received several comments on their provisions. In addition, on June 26, 1998, we published the Medicare+Choice (M+C) interim final rules (63 FR 34968) in which we addressed a process for reporting to us violations of the law, including overpayments. We stated that we wanted M+C organizations to self identify when they had been overpaid. While the amount of estimated overpayments has decreased in recent years, the number and amount of overpayments continue to be a significant issue in the Medicare program.

The June 29, 2000 final M+C regulation (65 FR 40170) eliminated any requirement for self-reporting of overpayments on the basis that it was arguably unfair to impose a self-reporting requirement on M+C organizations, but not on other types of providers and suppliers participating in the Medicare program. The preamble to that regulation stated:

''While we are withdrawing all requirements for self-reporting in this rule, we believe that the required reporting of overpayments is an effective tool for promoting Medicare

program integrity generally. Accordingly, HCFA intends to develop policies through separate notice and comment rulemaking in cooperation with the HHS Office of Inspector General that would require all Medicare providers, suppliers, and contractors to report overpayments to HCFA.'' (65 FR 40265)

With this proposed modification to the March 25, 1998 notice of proposed rulemaking, we intend to issue one comprehensive rule on this subject.

The obligation to report and return overpayments is derived from sections 1870, 1871, and 1102 of the Social Security Act (the Act). Section 1870 of the Act establishes that providers and suppliers are liable for overpayments unless determined to be without fault, as defined in proposed § 401.323, with respect to the overpayments. Individuals may be liable in certain circumstances unless the individual is determined to be without fault, as defined in proposed § 401.355, and the recovery of the overpayment would either defeat the purposes of the statute or be against equity and good conscience.

Section 1102 of the Act requires that the Secretary make and publish such rules and regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is charged under the Act. Under section 1871 of the Act, the Secretary must prescribe such regulations as may be necessary to carry out the administration of the insurance programs under the Medicare statute. In certain contexts, formal guidance requires providers to report overpayments through our Medicare Credit Balance Report, and suppliers to report overpayments through their reporting mechanisms. This proposed rule would further memorialize the longstanding responsibility for all providers, suppliers, individuals, and other entities, including managed care organizations contracting with us, to report overpayments and establish the time frame and process for making those reports.

In addition, section 1128B(a)(3) of the Act establishes that persons are under a legal duty to disclose the occurrence of events affecting the right to payment or benefits by a Federal health care program. Specifically, this section makes it a felony for a person, ''having knowledge of the occurrence of any event affecting * * * his initial or continued right to any [Federal health care] benefit or payment * * *, [to conceal or fail] to disclose such event with an intent fraudulently to secure such benefit or payment * * *.'' Thus, failure to notify us of an overpayment within a reasonable period of time may, in certain circumstances, establish criminal liability, and result in a referral to the Office of Inspector General.

II. Provisions of the Proposed Rule

In this rule we are proposing to modify and supplement the notice of proposed rulemaking that was published in the **Federal Register** on March 25, 1998 (63 FR 14506). We are revising the definition of overpayment to cover not just excess Medicare funds received by a provider, supplier, or individual, but also funds received by other entities. We are also adding a definition of other entities, which defines them as entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422, that are not providers, suppliers, or individuals, that provide Medicare services to Medicare beneficiaries. The new definition makes clear that other entities include managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422. We are also adding a paragraph to memorialize in regulations the responsibility and procedures for returning overpayments to us. The March 25, 1998 notice of proposed rulemaking would amend the Medicare regulations governing liability for overpayments in order to eliminate application of certain regulations of the Social Security Administration and replace them with regulations more specific to circumstances involving Medicare overpayments. This proposed rule would modify and supplement the March 25, 1998 notice of proposed rulemaking. It would require providers, suppliers, and individuals that have identified a Medicare payment received in excess of amounts payable under the Medicare statute and regulations to report and return the overpayment, within 60 days of identifying the overpayment, to the appropriate intermediary or carrier at the correct address. In the case of a managed care organization contracting with us, the managed care organization must, within 60 days of identifying the overpayment, notify us either in a manner consistent with certification of payment data requirements described at 42 CFR 422.502(l) or in a manner consistent with our cost settlement processes described at 42 CFR part 417, subparts O and U, so that we can adjust the identified overpayment appropriately. For overpayments identified by managed care organizations for a period beyond which payment data have already been certified or settled, the managed care organization must notify us in writing of the overpayment within 60 days of identifying or learning of the excess payment, so that we can recover the identified overpayment appropriately. For overpayments identified by other entities, other than managed care organizations, the other entities must notify us in writing of the overpayment within 60 days of identifying or learning of the excess payment, so that we can recover the identified overpayment appropriately. Submission of corrected bills in conformance with our policy, within 60 days, fulfills these requirements for providers, suppliers, and individuals. Our existing certification requirements for M+C organizations, described at § 422.502(l), and cost settlement processes for cost-based contractors, described at 42 CFR part 417, subparts O and U, and this new requirement for overpayments reported after payment certifications have already been submitted, provide the process for notifying, documenting, and correcting overpayments for managed care organizations contracting with us.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60 days notice in the **Federal Register** and solicit public comment when 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 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting comments from the public, including the provider and supplier community, on each of these issues for the information collection requirements discussed below.

§ 401.310(e)—If a provider, supplier, or individual identifies a Medicare payment received in excess of the amounts payable under the Medicare statute and regulations, the provider, supplier, or individual must, within 60 days of identifying or learning of the

excess payment, notify the intermediary or carrier, in writing, of the reason for the overpayment, and return the overpayment to the appropriate intermediary or carrier, at the correct address.

It is estimated that there will be approximately 906,724 notifications submitted on an annual basis and that it will take 5 minutes per instance for providers, suppliers, or individuals to notify the appropriate intermediary or carrier. The total annual burden associated with this requirement is 75,560 hours.

If a managed care organization contracting with us in accordance with 42 CFR parts 417 or 422 identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations before the payment data have been certified or settled, the managed care organization must notify us either in accordance with certification of payment data requirements described in § 422.502(l) or in accordance with cost settlement processes described in 42 CFR part 417, subparts O and U.

It is estimated that there will be no additional notifications submitted on an annual basis and that it will take 5 minutes per instance to notify us. The total annual burden associated with this requirement is zero hours.

If a managed care organization contracting with us in accordance with 42 CFR parts 417 or 422 identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations after payment data have been certified or settled, it must notify us, in writing, of the overpayment within 60 days of identifying or learning of the overpayment so that we can recover the identified overpayment appropriately.

It is estimated that there will be no additional notifications submitted on an annual basis and that it will take 5 minutes per instance to notify us. The total annual burden associated with this requirement is zero hours.

If an other entity, other than a managed care organization contracting with us in accordance with 42 CFR parts 417 or 422, identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations, it must notify us, in writing, of the overpayment within 60 days of identifying or learning of the overpayment so that we can recover the identified overpayment appropriately.

It is estimated that there will be no additional notifications submitted on an annual basis and that it will take 5 minutes per instance to notify us. The total annual burden associated with this requirement is zero hours.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in § 401.310. These requirements are not effective until they have been approved by OMB.

If you have any comments concerning any of these information collection and record keeping requirements, please mail one original and three copies within 60 days of this publication date to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard,Baltimore, MD 21244–1850, Attn: John Burke CMS–6011–P, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, 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. Because this document proposes to modify and supplement a notice of proposed rulemaking published on March 25, 1998 in the **Federal Register** (63 FR 14506), we will respond to all comments received concerning both that notice of proposed rulemaking and this proposed modification in the preamble to the combined subsequent document.

V. Regulatory Impact

A. Overall Impact

We have examined the impact 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 in any one year). This proposed rule is not a major rule. The requirements of this rule add another program integrity tool, but do not replace existing overpayment recovery efforts. Additionally, providers, suppliers, individuals, and other entities already report and return many overpayments. Any overpayments made by us are not amounts that are due to these entities. The cost of the required reporting should be minimal for providers, suppliers, individuals, and other entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422.

The RFA also requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of between $5 million and $25 million annually. Individuals and States are not included in the definition of small entities. Under this proposed rule, providers, suppliers, individuals, and other entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422, would be required to notify the Medicare intermediary or carrier, or us, as appropriate, in writing, within 60 days of identifying any payment that exceeds the amount payable under the Medicare statute and regulations.

The cost of the required reporting should be minimal for providers, suppliers, individuals, and other entities, including managed care organizations contracting with us in accordance with 42 CFR parts 417 or 422. Because standard business practices dictate keeping accurate records concerning monies due and/or payable, the required reporting of overpayments will add minimal cost for some providers, suppliers, individuals, and other entities, and no cost for providers, suppliers, individuals, and other entities already reporting overpayments. 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 100 beds. The cost of the required reporting should be minimal for small rural hospitals. Because standard business practices dictate keeping accurate records concerning monies due and/or payable, the required reporting of overpayments will add minimal cost for some small rural hospitals and no cost for those hospitals already reporting overpayments. Therefore, we have determined, and we certify, that this proposed rule would not have a significant effect on the operations of a substantial number of 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 expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would have no effect on the annual expenditures of any State, local, or tribal government, or the private sector. Any overpayments made by us to a provider, supplier, individual, or other entity that are reported and returned to us are not expenditures. The overpayments are not amounts owed to the provider, supplier, individual, or other entity and their return would have no economic impact. 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. We are requiring providers, suppliers, individuals, and other entities that identify that we have overpaid them to report the overpayment to us and return the amount overpaid.

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 U.S.C 804(2).

List of Subjects in 42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

Accordingly, the Centers for Medicare & Medicaid Services proposes to amend the notice of proposed rulemaking at 63 FR 14506 (March 25, 1998), which proposed to amend 42 CFR chapter IV, part 401 by adding subpart D, as follows:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

Subpart D—Recovery of Overpayments, Suspension of Payment, and Repayment of Scholarships and Loans

1. The authority citation for part 401, subpart D, continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Proposed § 401.310 is amended by revising paragraph (a), adding a new paragraph (b)(4), and adding a new paragraph (e) as follows:

§ 401.310 Overpayments.

(a) *Definitions.* As used in this section, the following definitions apply:

Other entity means an entity, including a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter, that is not a provider, a supplier, or an individual, that provides Medicare services to Medicare beneficiaries.

Overpayment means Medicare funds a provider, a supplier, an individual, or other entity, including a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter, has received in excess of amounts payable under the Medicare statute and regulations.

* * * * *

(b) * * *

(4) Medicare overpayment to an other entity, including a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter.

* * * * *

(e) *Reporting and returning overpayments.* Identified payments in excess of amounts payable under the Medicare statute and regulations must be reported and returned as follows:

(1) If a provider, supplier, or individual identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations, the provider, supplier, or individual must, within 60 days of identifying or learning of the excess payment, return the overpayment to the appropriate intermediary or carrier, at the correct address, and notify the intermediary or carrier, in writing, of the reason for the overpayment.

(2) If a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations before the payment data have been certified or settled, the managed care organization must, within 60 days of identifying or learning of the excess payment, notify CMS, either—

(i) In accordance with certification of payment data requirements described in § 422.502(1) of this chapter; or

(ii) In accordance with cost settlement processes described in part 417, subparts O and U of this chapter.

(3) If a managed care organization contracting with CMS in accordance with parts 417 or 422 of this chapter identifies a Medicare payment received in excess of amounts payable under the Medicare statute and regulations after payment data have been certified or settled, it must, within 60 days of identifying or learning of the excess payment, notify CMS, in writing so that CMS can recover the identified overpayment appropriately.

(4) If an other entity, other than a managed care organization contracting with CMS in accordance with 42 CFR parts 417 or 422, identifies a Medicare payment in excess of amounts payable under the Medicare statute and regulations it must, within 60 days of identifying or learning of the overpayment, notify CMS, in writing, so that CMS can recover the identified overpayment appropriately.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 30, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 2, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1688 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 689

RIN 3145–AA39

Research Misconduct

AGENCY: National Science Foundation (NSF).

ACTION: Proposed rule.

SUMMARY: NSF proposes to revise its existing misconduct in science and engineering regulations at 45 CFR Part 689. These revisions implement the Federal Policy on Research Misconduct issued by the Executive Office of the President's Office of Science and Technology on December 6, 2000.

DATES: Comments must be received by February 25, 2002.

ADDRESSES: Comments should be sent to Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703–292–8060.

SUPPLEMENTARY INFORMATION: The Office of Science and Technology Policy issued a final Federal research misconduct policy on December 6, 2000 in 65 FR 76260–76264 (''the Federal policy''). The Federal policy consists of a definition of research misconduct and basic guidelines to help Federal agencies and Federally funded research institutions respond to allegations of research misconduct. The policy directs Federal agencies that support or conduct research to implement it within one year.

The National Science Foundation has had regulations governing research misconduct since 1989. The Foundation is proposing to revise its existing regulations to make them fully consistent with the Federal policy.

The primary change concerns the definition of misconduct. The Federal policy provides a uniform Federal definition of research misconduct. It defines research misconduct as ''fabrication, falsification, and plagiarism in proposing, performing, or reviewing research or reporting research results.'' The Federal policy also defines ''fabrication,'' ''falsification,'' and ''plagiarism.'' This proposed rule adopts the definition of research misconduct set forth in the Federal Policy in place of the definition of misconduct contained in the existing regulation.

A significant portion of the Foundation's budget supports science and engineering education, and NSF has an ongoing interest in the integration of research and education. In order to ensure the same level of integrity for both education and research activities funded by the Foundation, NSF amended its regulations in 1991 to explicitly include misconduct in NSF-funded science and engineering education within the definition of misconduct. NSF continues to believe that it is important to ensure integrity in proposing, performing, reviewing, or reporting results from education proposals submitted to NSF. For this reason, the revised regulation would continue to define misconduct to include plagiarism, falsification, and fabrication in connection with NSF-funded science and engineering education.

The procedures for responding to allegations of misconduct found in the existing regulations would not materially change because they already conform to the Federal policy. Consistent with the Federal policy, NSF will also continue to protect research misconduct investigative and adjudicative files as exempt from mandatory disclosure under the Freedom of Information Act and the Privacy Act, to the extent permitted by law and regulation. Finally, this rule proposes some minor adjustments to the Foundation's internal timeframes for completing the investigative and adjudicative phases of misconduct proceedings.

Determinations

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866. The proposed rule is not an economically significant rule or a major rule under the Congressional Review Act. The Unfunded Mandate Reform Act of 1995, in sections 202 and 205, requires that agencies prepare several analytic statements before proposing a rule that may result in annual expenditures of $100 million by State, local and Indian tribal governments, or by the private sector. As any final rule would not result in expenditures of this magnitude, such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small businesses.

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR Part 1320, do not apply to this proposed rule because there are no new or revised recordkeeping or reporting requirements. Finally, NSF has reviewed this rule in light of Section 2 of Executive Order 12778 and certifies that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 689

Misconduct, Debarment and suspension, Fraud.

Dated: January 18, 2002.

Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation proposes to revise part 689 of title 45, chapter VI of the Code of Federal Regulations, to read as follows:

PART 689—RESEARCH MISCONDUCT

Sec.
689.1 Definitions.
689.2 General policies and responsibilities.
689.3 Actions.
689.4 Role of awardee institutions.
689.5 Initial NSF handling of misconduct matters.
689.6 Investigations.
689.7 Pending proposals and awards.
689.8 Interim administrative actions.
689.9 Dispositions.
689.10 Appeals.

Authority: Section 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

§ 689.1 Definitions.

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF.

(1) *Fabrication* means making up data or results and recording or reporting them.

(2) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(3) *Plagiarism* means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

(4) *Research,* for purposes of § 689.1(a), includes proposals submitted to NSF in all fields of science, engineering, mathematics, and education and results from such proposals.

(b) Research misconduct does not include honest error or differences of opinion.

§ 689.2 General policies and responsibilities.

(a) NSF will take appropriate action against individuals or institutions upon

a finding that research misconduct has occurred. Possible actions are described in § 689.3. NSF may also take interim action during an investigation, as described in § 689.8.

(b) NSF will find research misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An ''inquiry'' consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and if an investigation is warranted. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. An ''investigation'' is a formal development, examination and evaluation of a factual record to determine whether research misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action.

(c) A finding of research misconduct requires that—

(1) There be a significant departure from accepted practices of the relevant research community; and

(2) The research misconduct be committed intentionally, or knowingly, or recklessly; and

(3) The allegation be proven by a preponderance of evidence.

(d) Before NSF makes any final finding of research misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account procedures already followed by other entities investigating or adjudicating the same allegation of research misconduct.

(e) Debarment or suspension for research misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations, as described in §§ 689.8 and 689.9, respectively. Severe research misconduct, as established under these regulations, is an independent cause for debarment or suspension under the procedures established by the debarment and suspension regulations.

(f) The Office of Inspector General (OIG) oversees investigations of research misconduct and conducts any NSF inquiries and investigations into suspected or alleged research misconduct.

(g) The Deputy Director adjudicates research misconduct proceedings and the Director decides appeals.

§ 689.3 Actions.

(a) Possible final actions listed below for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not exhaustive and do not include possible criminal sanctions.

(1) Group I Actions. (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) Group II Actions. (i) Totally or partially suspend an active award, or restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(iii) Require a correction to the research record.

(3) Group III Actions. (i) Terminate an active award.

(ii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(iii) Debar or suspend an individual or institution from participation in Federal programs for a specified period after further proceedings under applicable regulations.

(b) In deciding what final actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) The degree to which the misconduct was knowing, intentional, or reckless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it had a significant impact on the research record, research subjects, other researchers, institutions or the public welfare; and

(5) Other relevant circumstances.

(c) Interim actions may include, but are not limited to:

(1) Totally or partially suspending an existing award;

(2) Suspending eligibility for Federal awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other, administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending participation as an NSF reviewer, advisor, or consultant.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in those regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

§ 689.4 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged research misconduct;

(2) Conduct a subsequent investigation, if warranted;

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities; and

(4) Provide appropriate safeguards for subjects of allegations as well as informants.

(b) If an institution wishes NSF to defer independent inquiry or investigation, it should:

(1) Complete any inquiry and decide whether an investigation is warranted within 90 days. If completion of an inquiry is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(2) Inform OIG immediately if an initial inquiry supports a formal investigation.

(3) Keep OIG informed during such an investigation.

(4) Complete any investigation and reach a disposition within 180 days. If completion of an investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(5) Provide OIG with the final report from any investigation.

(c) NSF expects institutions to promptly notify OIG should the

institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) NSF's resources, reputation, or other interests need protecting;

(3) There is reasonable indication of possible violations of civil or criminal law;

(4) Research activities should be suspended;

(5) Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or

(6) The scientific community or the public should be informed.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to research misconduct, which should indicate when NSF should be notified.

§ 689.5 Initial NSF handling of misconduct matters.

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform OIG or refer informants to OIG.

(b) The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

(c) If OIG determines that alleged research misconduct involves potential civil or criminal violations, OIG may refer the matter to the Department of Justice.

(d) Otherwise OIG may:

(1) Inform the awardee institution of the alleged research misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency; or

(3) At any time proceed with its own inquiry.

(e) If OIG proceeds with its own inquiry it will normally complete the inquiry no more than 90 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, OIG will decide whether a formal NSF investigation is warranted.

§ 689.6 Investigations.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, OIG may defer an NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, OIG may proceed with its own investigation.

(b) If OIG decides to initiate an NSF investigation, it must give prompt written notice to the individual or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. if notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies or the NSF, OIG will determine what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation may include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with subjects or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the subject of the investigation to be heard.

(e) OIG may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) OIG will make every reasonable effort to complete an NSF investigation and to report its recommendations, if any, to the Deputy Director within 180 days after initiating it.

§ 689.7 Pending proposals and awards.

(a) Upon learning of alleged research misconduct OIG will identify potentially implicated awards or proposals and when appropriate, will ensure that program, grant, and contracting officers handling them are informed (subject to § 689.6(c)).

(b) Neither a suspicion or allegation of research misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will not be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Program Director may consult with OIG and, after further consultation with the Office of General Counsel, either defer review, inform reviewers to disregard the matter, or inform reviewers of the status of the matter.

§ 689.8 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.3(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged research misconduct. Such an order will normally be issued on recommendation from OIG and in consultation with the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 45 CFR part 620, and the suspension procedures of 45 CFR part 620 will be followed, but the suspending official will be either the Deputy Director or an official designated by the Deputy Director.

(c) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during an investigation by NSF and modified as warranted. An interested party may request a review or modification by the Deputy Director of any interim action.

(d) The Deputy Director will make and OIG will retain a record of interim actions taken and the reasons for taking them.

(e) Interim administrative actions are not final agency actions subject to appeal.

§ 689.9 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency, OIG will assess the accuracy and completeness of the report and whether the investigating entity followed reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct,

(1) OIG will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct,

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarring official pursuant to 45 CFR part 620 and the procedures of 45 CFR part 620 will be followed, but:

(i) The debarring official will be either the Deputy Director, or an official designated by the Deputy Director.

(ii) Except in unusual circumstances, the investigation report and recommended disposition will be included among the materials provided to the subject of the investigation as part of the notice of proposed debarment.

(iii) The notice of the debarring official's decision will include instructions on how to pursue an appeal to the Director.

(2) In all other cases,

(i) Except in unusual circumstances, the investigation report will be provided by OIG to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally thirty days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(ii) Normally within 45 days after completing an NSF investigation or receiving the report from a satisfactory external investigation, OIG will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.3 lists possible final actions and considerations to be used in determining them.

(iii) The Deputy Director will review the investigation report and OIG's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within 120 days after receiving OIG's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal to the Director.

§ 689.10 Appeals.

(a) An affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will normally inform the appellant of a final decision within 60 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

[FR Doc. 02–1833 Filed 1–24–02; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1813 and 1852

RIN 2700–AC33

Non-Commercial Representations and Certifications andEvaluation Provisions for Use in Simplified Acquisitions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed change to the NFS will establish a consolidated set of representations and certifications and an evaluation provision for the acquisition of non-commercial items within the simplified acquisition threshold.

DATES: Comments should be submitted on or before March 26, 2002.

ADDRESSES: Interested parties should submit written comments to Celeste Dalton, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK),Washington, DC 20546. Comments may also be submitted by e-mail to: *cdalton@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, Code HK, (202) 358–1645, e-mail: *cdalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently for commercial acquisition, FAR provision 52.212–3, Offeror Representations and Certifications—CommercialItems, provides a consolidated set of representations and certifications. No equivalent provision exists for non commercial items. NASA proposes to establish an equivalent provision for use with NASA's non-commercial acquisitions within the simplified acquisition threshold (SAT). This new consolidated provision will ensure that all appropriate representations and certifications are consistently used and will simplify the incorporation of representation and certification into solicitations. Additionally, this rule proposes to establish an evaluation provision to be used in non-commercial acquisitions within the SAT when selection is based on other than technically acceptable low offer. This evaluation provision will provide a consistent notice to offerors of how evaluations will be conducted.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), because this proposed rule merely consolidates within one provision existing FAR representations and certifications for use in non-commercial simplified acquisitions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NFS do not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1813 and 1852

Government Procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1813 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1813 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

2. Add section 1813.302–570 to read as follows:

§ 1813.302–570 NASA solicitation provisions.

(a)(1) The contracting officer may use the provision at 1852.213–70, Offeror Representations and Certifications—Other Than Commercial Items, in simplified acquisitions exceeding the micropurchase threshold that are for other than commercial items.This provision must not be used for acquisitions conducted under FAR 13.5.

(2) This provision provides a single, consolidated list of certifications and representations for the acquisition of

other than commercial items using simplified acquisition procedures and is attached to the solicitation for offerors to complete and return with their offer. Use the provision with itsAlternate I in solicitations for acquisitions that are for, or specify the use of recovered materials (see FAR 23.4). Use the provision with its AlternateII in solicitations for the acquisition of research, studies, supplies, or services of the type normally acquired from higher education institutions (see FAR 26.3). Use the provision with its Alternate III in solicitations which include the clause at FAR 52.227–14, Rights in Data—General (see FAR 27.404(d)(2) and 1827.404(d)).

(b) The contracting officer may insert a provision substantially the same as the provision at 1852.213–71, Evaluation—Other than Commercial Items, in solicitations using simplified acquisition procedures for other than commercial items when evaluation factors are to be included for evaluation and the selection will be based upon best value, rather than technically acceptable, low price (see FAR 13.106).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add sections 1852.213–70 and 1852.213–71 to read as follows:

1852.213–70 Offeror Representations and Certifications—Other Than Commercial Items.

As prescribed in 1813.302–570, insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—OTHER THAN COMMERCIAL ITEMS

(XX/XX)

(a) *Definitions.* As used in this provision:

''Emerging small business'' means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

''Forced or indentured child labor'' means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

''Service-disabled veteran-owned small business concern''—(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

''Small business concern'' means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

''Veteran-owned small business concern'' means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

''Women-owned business concern'' means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

''Women-owned small business concern'' means a small business concern—

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationships with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

[ ] TIN: _____.

[ ] TIN has been applied for.

[ ] TIN is not required because:

[ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

[ ] Sole proprietorship;

[ ] Partnership;

[ ] Corporate entity (not tax-exempt);

[ ] Corporate entity (tax-exempt);

[ ] Government entity (Federal, State, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049–4;

[ ] Other _____.

(5) Common parent.

[ ] Offeror is not owned or controlled by a common parent;

[ ] Name and TIN of common parent:

Name _____.

[ ] TIN _____.

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it [ ] is, [ ] is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it [ ] is, [ ] is not a women-owned small business concern.

(6) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it [ ] is, [ ] is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of employees	Average annual gross revenues
__ 50 or fewer ..	__ $1 million or less.
__ 51–100	__ $1,000,001–$2 million.
__ 101–250	__ $2,000,001–$3.5 million.
__ 251–500	__ $3,500,001–$5 million.
__ 501–750	__ $5,000,001–$10 million.
__ 751–1000	__ $10,000,001–$17 million.
__ Over 1000 ...	__ Over $17 million.

(7) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(8) (Complete if dollar value of the resultant contract is expected to exceed $25,000 and the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.) *[The offeror shall check the category in which its ownership falls]:*

__ Black American.

__ Hispanic American.

__ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

__ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

__ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

__ Individual/concern, other than one of the preceding.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Parts 60–1 and 60–2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Buy American Act—Balance of Payments Program Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225–1, Buy American Act—Balance of Payments Program—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (e)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled ''Buy American Act—Balance of Payments Program—Supplies'' and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(f)(1) Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate. (Applies only if the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (f)(1)(ii) or (f)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'' and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'':

NAFTA Country or Israeli End Products:

Line Item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (f)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.'' The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate I. If Alternate I to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph(f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'':

Canadian End Products:

Line Item No.
_____
_____
_____

[List as necessary]

(3) Buy American Act—North American Free Trade Agreements—Israeli Trade Act—Balance of Payments Program Certificate, Alternate II. If Alternate II to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (f)(1)(ii) for paragraph (f)(1)(ii) of the basic provision:

(f)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy

American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program'':

Canadian or Israeli End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225–5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph f)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled ''Trade Agreements.''

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(g) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (j)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

Listed end product	Listed countries of origin
_____	_____
_____	_____
_____	_____

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

ALTERNATE I

(XX/XX)

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Recovered Material Certification. As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

ALTERNATE II

(XX/XX)

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Historically Black College Or University And Minority Institution Representation

(1) *Definitions.* As used in this provision—

''Historically black college or university'' means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

''Minority institution'' means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(2) *Representation.* The offeror represents that it—

( ) is ( ) is not a historically black college or university;

( ) is ( ) is not a minority institution.

ALTERNATE III

(MONTH/YEAR)

As prescribed in 1813.302–570(a)(2), add the following paragraph to the end of the basic provision and identify appropriately:

( ) Representation Of Limited Rights Data And Restricted Computer Software. (1) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227–16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data-General clause at 52.227–14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(2) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227–14, Rights in Data-General, the offeror shall complete paragraph (3) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(3) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

( ) None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

( ) Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

_____

_____

_____

Note: ''Limited rights data'' and ''Restricted computer software'' are defined in the contract clause entitled ''Rights in Data-General.''

§ 1852.213–71 Evaluation—Other than commercial items.

As prescribed in 1813.302–570(b) insert the following provision:

EVALUATION—OTHER THAN COMMERCIAL ITEMS

(XX/XX)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304).]

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

[FR Doc. 02–1915 Filed 1–24–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 176

[Docket No. RSPA–2002–11270; Notice No. 02–3]

Regulatory Flexibility Act Section 610 and Plain Language Reviews

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

ACTION: Notice of regulatory review; request for comments.

SUMMARY: RSPA requests comments on the economic impact of its regulations on small entities. As required by the Regulatory Flexibility Act and as published in DOT's Semi-Annual Regulatory Agenda, we are analyzing the rules on Carriage by Vessel to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand.

DATES: Comments must be received by April 25, 2002.

ADDRESSES: Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket number RSPA–2002–11270 at the beginning of your comments and submit two copies. If you want to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You can also submit comments by e-mail by accessing the Dockets Management System on the Internet at *''http://dms.dot.gov''* or by fax to (202) 366–3753.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. In addition, you can review comments by accessing the Dockets Management System at *''http://dms.dot.gov.''*

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–8553; or Donna O'Berry, Office of Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of rules that have a significant economic impact on a substantial number of small business entities. The purpose of the review is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on December 3, 2001, listing in Appendix D (66 FR 61900) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The Research and Special Programs Administration (RSPA, we) has divided its Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and Section 610 Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 began in the fall of 1998 and ended in the fall of 1999; Year 2 began in the fall of 1999 and ended in the fall of 2000; and so on.

During the Analysis Year, we will analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have a negative finding, we will provide a short explanation. For parts, subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review.

The following table shows the 10-year analysis and review schedule:

RSPA SECTION 610 REVIEW PLAN 1999–2009

Title	Regulation	Analysis year	Review year
Incident reports	§§ 171.15 and 171.16	1998	N/A
Hazmat safety procedures	Parts 106 and 107	1999	N/A
General Information, Regulations, and Definitions	Part 171		
Carriage by Rail and Highway	Parts 174 and 177	2000	2001

RSPA SECTION 610 REVIEW PLAN 1999–2009—Continued

Title	Regulation	Analysis year	Review year
Carriage by Vessel	Part 176	2001	2002
Radioactive Materials	Parts 172, 173, 174, 175, 176, 177, 178	2002	2003
Explosives	Parts 172, 173, 174, 176, 178	2003	2004
Cylinders	Parts 172, 173, 178, 180		
Shippers—General Requirements for Shipments and Packagings.	Part 173	2004	2005
Specifications for Non-bulk Packagings	Part 178	2005	2006
Specifications for Bulk Packagings	Parts 178, 179, 180	2006	2007
Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements.	Part 172	2007	2008
Carriage by Aircraft	Part 175.		

C. Regulations Under Analysis

During Year 4 (2001–2002), the Analysis Year, we will conduct a preliminary assessment of the rules in 49 CFR Part 176, Carriage by Vessel. It includes the following subparts:

Subpart	Title
Subpart A	General.
Subpart B	General Operating Requirements.
Subpart C	General Handling and Stowage.
Subpart D	General Segregation Requirements.
Subpart E	Special Requirements for Transport Vehicles Loaded with Hazardous Materials and Transported on Board Ferry Vessels.
Subpart F	Special Requirements for Barges.
Subpart G	Detailed Requirements for Class 1 (Explosive) Materials.
Subpart H	Detailed Requirements for Class 2 (Compressed Gas) Materials.
Subpart I	Detailed Requirements for Class 3 (Flammable) and Combustible Liquid Materials.
Subpart J	Detailed Requirements for Class 4 (Flammable Solid), Class 5 (Oxidizers and Organic Peroxides), and Division 1.5 (Blasting Agents) Materials.
Subpart L	Detailed Requirements for Division 2.3 (Poisonous Gas) and Division 6.1 (Poisonous) Materials.
Subpart M	Detailed Requirements for Radioactive Materials.
Subpart N	Detailed Requirements for Class 8 (Corrosive) Materials.
Subpart O	Detailed Requirements for Cotton and Vegetable Fibers, Motor Vehicles, and Asbestos.

We are seeking comments on whether any requirements in part 176 have a significant impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if any of the requirements in part 176 has a significant economic impact on your business or organization, please submit a comment explaining how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

II. Plain Language

A. Background and Purpose

Plain language helps readers find requirements quickly and understand them easily. Examples of plain language techniques include:

(1) Undesignated center headings to cluster related sections within subparts.

(2) Short words, sentences, paragraphs, and sections to speed up reading and enhance understanding.

(3) Sections as questions and answers to provide focus.

(4) Personal pronouns to reduce passive voice and draw readers into the writing.

(5) Tables to display complex information in a simple, easy-to-read format.

For an example of a rule drafted in plain language, you can refer to RSPA's notice of proposed rulemaking entitled ''Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures,'' which was published December 11, 1998 (63 FR 68624). This NPRM proposed to rewrite 49 CFR part 106 and subpart A of part 107 in plain language and to create a new part 105 that would contain definitions and general procedures. We are currently evaluating comments received in response to the NPRM.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews of the HMR over a ten-year period on a schedule consistent with the section 610 review schedule. Thus, our review of part 176 will also include a plain language review to determine if the regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables or consolidating regulatory requirements, that may make the regulations easier to use.

Issued in Washington, DC, on January 18, 2002 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 02–1862 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–97–2426; Notice 4]

RIN 2137–AB48

Maps and Records of Pipeline Locations and Characteristics; Notification of State Agencies; Pipe Inventory

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Notice of removal of regulatory agenda item.

SUMMARY: This agenda item contemplated a rulemaking action to equalize as far as possible the requirements that gas and hazardous liquid pipeline operators keep maps and records to show the location and other characteristics of pipelines. Operators would have been required to keep an inventory of pipe and periodically report mileage and other data to federal and State agencies. This action was considered because of congressional and State concerns about the need for appropriate public officials to have pipeline information. Since this contemplated rulemaking was initiated in 1997, RSPA has developed the National Pipeline Mapping System (NPMS), a non-regulatory approach, to address these needs. Furthermore, pipeline security issues have been raised by recent events. In light of the development of the NPMS and the security issues, this item is removed from the regulatory agenda.

FOR FURTHER INFORMATION CONTACT: Richard Huriaux, by telephone at (202) 366–4565, by fax at (202) 366–4566, or by e-mail at *richard.huriaux@rspa.dot.gov*, regarding the subject matter of this notice. You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this notice or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov.* General information about the RSPA Office of Pipeline Safety programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION: In Section 102 and 202 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561, October 31, 1988), Congress directed RSPA to establish standards to require pipeline operators to complete and maintain an inventory of gas and hazardous liquid pipelines, including information on the location and history of leaks.

This requirement was to equalize as far as possible the requirements that gas and hazardous liquid pipeline operators keep maps and records to show the location and other characteristics of pipelines. Operators would have been required to keep an inventory of pipe and periodically report mileage and other facts to Federal and State agencies. A rulemaking action was considered because of congressional and State concerns about the need for appropriate public officials to have pipeline information.

Since the publication of this agenda item in 1997, RSPA has developed a non-regulatory alternative approach to ensuring that information on the location and characteristics of gas and hazardous liquid pipelines is available to Federal and State agencies. RSPA has worked with other Federal and State agencies and the pipeline industry to create the NPMS. The NPMS shows the location and selected attributes of the major natural gas and hazardous liquid pipelines and liquefied natural gas facilities in the Untied States.

The NPMS is a full-featured geographic information system that allows RSPA, for the first time, to accurately view pipelines in relation to the communities and environments they cross. The pipeline data layers now being populated cover both interstate and intrastate natural gas transmission pipelines and hazardous liquid pipelines. It includes data depicting population, urbanized areas, political boundaries, roads, railroads, hydrography, consequence and hazard areas, and unusually sensitive areas. At present, the NPMS includes data on 85–90 percent of the hazardous liquid pipeline milage and on more than 50 percent of the gas transmission pipeline mileage.

In addition, pipeline security issues have been raised by recent events. In light of the development of the NPMS and the security issues, a rulemaking action is no longer necessary.

On the basis of the foregoing, RSPA hereby removes this action from the regulatory agenda.

Authority: 49 U.S.C. 60102 *et seq.*; 49 CFR 1.53.

Issued in Washington, D.C. on January 22, 2002.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 02–1909 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH50

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Mariana Mallard and the Guam Broadbill From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973 (Act), as amended, we, the U.S. Fish and Wildlife Service (Service), propose to remove the Mariana mallard (*Anas platyrynchos oustaleti*) and the Guam broadbill (*Myiagra freycineti*) from the Federal List of Endangered and Threatened Wildlife. All available information indicates that these birds are extinct. The Mariana mallard was endemic to the islands of Guam, Tinian, Saipan, and possibly Rota, of the Mariana Archipelago in the western Pacific ocean. It was listed as endangered on June 2, 1977, because its population was critically low due to excessive hunting and loss of wetland habitat. No confirmed sightings of the Mariana mallard have been made since 1979. The Guam broadbill, endemic to Guam, was listed as endangered on August 27, 1984, because its population was critically low. No confirmed sightings or other evidence of the Guam broadbill in the Pajon Basin have been made since May 15, 1984. This proposal, if made final, would remove Federal protection provided by the Act for these species. Removal of the Mariana mallard and the Guam broadbill from the Federal list of Endangered and Threatened Wildlife does not alter or supersede their designation by the government of Guam as endangered species. The Mariana mallard is not a protected wildlife species by the government of the Commonwealth of the Northern Mariana Islands (CNMI).

DATES: Comments must be received by March 26, 2002. Public hearing requests must be received by March 11, 2002.

ADDRESSES: Send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson (see **ADDRESSES** section), telephone 808/541–2749; facsimile 808/541–2756; e-mail *paul__;henson@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Mariana mallard (*Anas platyrynchos oustaleti*) (Salvadori 1894) was first described by Salvadori based on six specimens collected from Guam in 1887 and 1888 (Reichel and Lemke 1994, Stinson 1994). The species is believed to have been a subspecies that originated as a hybrid between the common mallard (*Anas platyrhynchos*) and the grey duck (*Anas superciliosa*) (Reichel and Lemke 1994).

The Mariana mallard is known only from Guam, Tinian, and Saipan of the Marianas Archipelago. There is an unverified sighting of two ''unidentified ducks'' on Rota on October 20, 1945 (Baker 1948) and one specimen of *Anas* sp. found during a 1990 excavation of a late Holocene deposit in Payapai Cave, Rota (Steadman 1992). Other than these records, the Mariana mallard has never been reported on Rota. There are no records of this species from the more northern islands in the archipelago.

First collected by the early explorers in the late 1800s, only sporadic notes and observations have been made on this species. Marche (Baker 1951) collected six specimens from Guam in 1888. Collections from the time of Marche showed that the Mariana mallard concurrently inhabited the islands of Saipan and Tinian. A total of 38 specimens were collected from Tinian and Saipan by Japanese collectors between 1931 and 1940 (Baker 1951). There are probably fewer than 50 specimens of the Mariana mallard in collections in France, Japan, the United States, and elsewhere. Reichel and Lemke (1994) were able to locate 37 specimens. Most of these were collected by the Japanese in the 1930s and 1940s.

The Mariana mallard probably was never abundant (Baker 1951) due to limited habitat availability. There have never been extensive freshwater marshes or swamps in the Mariana Archipelago. The largest number of Mariana mallards ever recorded was by Kuroda (1942) who reported that his collector saw 2 flocks of 50 to 60 Mariana mallards at 2 locations at Lake Hagoi, Tinian. Gleize (1945) estimated a population of 12 mallards on Tinian. Marshall (1949) recorded their presence at both Lake Susupe, Saipan, and Lake Hagoi, Tinian. However, he speculated that they flew between the two islands as he never saw them at ''both * * * lakes during any one month.'' The last confirmed sighting of this species was in 1979 by Eugene Kridler of the Service who estimated that there were probably fewer than a dozen Mariana mallards remaining (Kridler 1979). At this time, Mr. Kridler collected a pair of birds for captive propagation. Captive breeding was first conducted at Pohakuloa, Hawaii, then at Sea World, San Diego, California. These attempts failed and the last known Mariana mallard died at Sea World, San Diego in 1981 (Stinson 1995).

On Guam, the last recorded sighting of the Mariana mallard was made by G.S.A. Perez on February 25, 1967 (Drahos 1977). Wetland surveys were conducted on Guam from the late 1960s through the 1980s; however, no Mariana mallards were seen (Engbring *et al.* 1986, Stinson *et al.* 1991, Reichel *et al.* 1992).

Small populations persisted on Tinian and Saipan until the late 1970s (Pratt *et al.* 1979, Stinson 1995). No confirmed sightings of the Mariana mallard have been made since 1979. Extensive surveys were conducted intermittently from 1982 through 1984 by us and staff from the Division of Fish and Wildlife (DFW) of the Commonwealth of the Northern Mariana Islands (CNMI). All of the known wetland habitat in the CNMI was surveyed. There were no confirmed sightings or vocalizations (U.S. Fish and Wildlife Service 1983). A special effort was made to search for the Mariana mallard during forest bird surveys conducted on the islands of Saipan, Tinian, Rota, and Agiguan in 1982. Teams comprising biologists and biotechnicians simultaneously surveyed wetlands on Saipan and Tinian from which the most recent (1979) sightings of the mallard had been recorded to determine the status and distribution of this species. No mallards were observed on either island (U.S. Fish and Wildlife Service 1983).

During the period from May, 1983, through December, 1989, biologists from the CNMI's DFW conducted 5 to 79 surveys of each permanent wetland and each seasonal wetland greater than 0.5 hectares (1.2 acres) in the CNMI (230 surveys). Wetlands that contained better mallard habitat were surveyed more often. Surveys occurred year round and the greatest frequency occurred from May through September (112 surveys) to coincide with the historical nesting season of the Mariana mallards. No Mariana mallards were seen during these intensive and systematic searches. The determination of the investigators at the conclusion of these surveys was that the Mariana mallard was extinct (Reichel and Lemke 1994). Researchers and managers currently in Guam and the CNMI concur that the Mariana mallard is probably extinct, as it has not been seen since 1979 despite frequent and intensive surveys of wetlands for waterbirds such as the endangered Mariana common moorhen (*Gallinula chloropus guami*) (Evans *et al.* 1996; Gary Wiles, Guam Division of Aquatic and Wildlife Resources (DAWR), pers. comm. 1998; Mike Ritter, Service, pers. comm. 1998).

The Mariana mallard's reduction in range and eventual extinction has been attributed to habitat loss and hunting, especially during, and immediately after, World War II (WWII) (Baker 1948, Engbring and Fritts 1988, Reichel and Lemke 1994). Evolving without predators, the mallard was not wary of humans and easily caught (Kuroda 1942, Stott 1947). They were hunted and trapped for food (Fritz 1904, Safford 1904). Safford (1904) reported that the Mariana mallard was ''the best game bird'' and ''very highly esteemed for food.'' Kuroda (1942) reported that there was a hunting season on Saipan from July through December, but no hunting was allowed on Tinian. However, it is unknown if these regulations were enforced. After WWII, islanders were allowed to own firearms and hunting of the birds persisted. Even with the designation of the species as endangered by the Trust Territories and the Service, there was little enforcement of the regulations (Drahos 1977).

Habitat loss due to draining and fragmentation of wetlands have greatly reduced the quantity and quality of wetlands on Guam, Tinian, and Saipan (Stinson *et al.* 1991, Reichel *et al.* 1992, Reichel and Lemke 1994). Though early reports on Tinian mention two lakes, Lake Hagoi is the only lake currently found on the island. It is probable that the second lake referenced is now known as Makpo Swamp. It is currently too overgrown with woody vegetation to be mallard habitat. Additionally, this wetland has been drained for water for San Jose village and converted into farmland (Bowers 1950, Reichel and

Lemke 1994). During the Japanese occupation of Saipan and Tinian between 1914 and 1945, most wetlands were channelized and converted to rice paddies. Also during this time, sugarmill wastes were discharged into Lake Susupe on Saipan. Since 1945, many wetlands have been drained or filled in the course of urban development on all three islands (Stinson *et al.* 1991, Reichel *et al.* 1992, Reichel and Lemke 1994). The Mariana mallard, never great in number, lost most of its limited habitat with the decimation of the wetlands, while being hunted with little to no restriction.

The Guam broadbill (*Myiagra freycineti*), a member of the family Muscicapidae, was endemic to the island of Guam in the Mariana Archipelago (U.S. Fish and Wildlife Service 1990). First collected by explorers in 1820, the specimens were labeled ''kingfisher with a russet throat'' and erroneously noted as being from Australia (Oustalet 1895). Marché collected 23 specimens in 1887 and 1888, from which Oustalet described *Myiagra freycineti* (Oustalet 1895).

Although the species was probably never abundant, a reduction in the range of the Guam broadbill was noted from 1950 into the early 1980s. Prior to 1950, the species occupied 500 square kilometers (sq km) (193 sq miles (mi)) of habitat throughout the island of Guam. By 1950, broadbill range had been reduced to 312 sq km (120 sq mi) or 62 percent of its former range (Ernie Kosaka, Service, *in litt.* 1982). By the early 1970s, the species was entirely absent from the southern two-thirds of the island but still relatively common in northern Guam into the mid-1970s. Decline of the Guam broadbill continued with no individuals detected on northern roadside counts that were initiated in 1973 (Drahos 1977). Further losses were attributed to super typhoon Pamela in 1976 (Joseph E. Ada, Acting Governor of Guam, *in litt.* 1979). By 1979, the Guam broadbill was restricted to the remaining areas of natural vegetation that occurred primarily along the northern cliff line in a thin strip from Naval Communication Station (NCS) Beach through Catalina Point on the eastern side of Guam (DAWR 1979–1986). At that time, the Guam broadbill had the lowest relative abundance and the lowest density of any native passerine during station counts. Although relative densities of the broadbill were highest at Pati and Ritidian Points and Tarague in 1980, the species was recorded only at Ritidian and Urunao Points and Anderson Air Force Base in 1981. This represented a further reduction of habitat range to 43 sq km (16.6 sq mi) or 9 percent of its original range (Engbring and Pratt 1985). Combined broadbill densities showed a 70 percent decline since 1979 (DAWR 1979–1986). By 1983, the population had declined 83 percent in the Ritidian Basin area (DAWR 1979–1986) and was further restricted to the extreme northern end of Guam in the Pajon Basin in 150 hectares (ha) (370 acres (ac)) or 1.5 sq km (0.57 sq mi) of habitat (Savidge 1987). Estimates of 460 birds (Engbring and Ramsey 1984) in 1981 and fewer than 100 individuals (Engbring and Pratt 1985) in 1983 from the Pajon Basin had dwindled to only one sighting of a male in October 1983 (Beck 1984a). The last two sightings of the Guam broadbill in the wild were of transient males in 1984. Robert E. Beck, Jr. (DAWR) and Dr. Eugene Morton (Smithsonian Institution) sighted a male at Northwest Field in March 1984, and Philip Bruner (Brigham Young University of Hawaii) sighted the other in an area adjacent to the Navy golf course in Barrigada in August 1984 (Beck 1984a). The Guam broadbill has not been sighted in the Pajon Basin area since May 15, 1984, and the species is believed to be extinct (DAWR 1979–1986).

In September 1983, a male was collected for captive propagation (Beck 1984b). This captive breeding attempt failed as other wild individuals were not located and the captive male died of unknown causes (DAWR 1979–1986). Attempts at captively breeding the Guam broadbill were abandoned in 1984 due to its virtual disappearance from the wild (Beck 1984a, b).

Based on the last field sightings, the approximate date of extirpation of the Guam broadbill is 1984 (Beck 1984a, Wiles *et al.* 1995), and it was presumed to be extinct by 1985 (Beck 1984a, b; Savidge 1987; U.S. Fish and Wildlife Service 1990; Reichel and Glass 1991; Stinson 1994).

Reduction in the range of the Guam broadbill and its eventual extinction have been variously attributed to excessive pesticide spraying during and after World War II, the spread of avian diseases, and predation by introduced animals including rats (*Rattus* spp.), the monitor lizard (*Varanus indicus*), and the brown tree snake (*Boiga irregularis*). However, studies conducted by our Patuxtent Wildlife Research Center in 1983 indicated that pesticide overuse and avian diseases were not responsible for broadbill declines noted in the early 1980s. Instead, studies conducted by Savidge in 1986 implicated predation by the brown tree snake as the single most important factor in the decline of Guam's native forest birds, including the Guam broadbill (Savidge 1986, 1987; Conry 1988; Wiles *et al.* 1995; Rodda *et al.* 1997).

Previous Federal Action

Federal action on the Mariana mallard began on May 22, 1975, when the Fund for Animals, Inc., requested that we list 216 taxa of plants and animals as endangered species pursuant to the Act. These species appeared in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), but did not appear on the United States List of Endangered and Threatened Wildlife and Plants. On September 26, 1975, we published in the **Federal Register** (40 FR 44329), a proposed rule to list 216 species as endangered, including the Mariana mallard. The rule that determined 159 of the 216 taxa to be endangered species was published on June 14, 1976 (41 FR 24062). The Mariana mallard was not included in this rule because the Governors of the States (which is defined by the Act to include Guam and the CNMI) in which this species was resident, inadvertently were not notified of the proposal as required by the Act. These Governors were then notified and allowed 90 days for comment. The Mariana mallard was listed as an endangered species on June 2, 1977, without critical habitat (42 FR 28137).

Federal action on the Guam broadbill began on February 27, 1979, when the Acting Governor of Guam petitioned us to list the Guam broadbill and five other forest bird species as endangered. On May 18, 1979, we issued a notice of review (44 FR 29128) for 12 petitioned animals, including the Guam broadbill. In our December 30, 1982, Review of Vertebrate Wildlife (47 FR 58454) the Guam broadbill was considered a category 1 candidate for Federal listing. Category 1 species were those for which we had substantial information on biological vulnerability and threats to support preparation of a listing proposal, but for which a listing proposal had not yet been published because it was precluded by other listing activities. On November 29, 1983, we published a proposed rule (48 FR 53729) to list the Guam broadbill as endangered. The final rule determining the Guam broadbill to be an endangered species was published on August 27, 1984 (49 FR 33881). Critical habitat was not designated.

Summary of Factors Affecting the Species

In accordance with the Act and implementing regulations at 50 CFR part 424, a species shall be listed if the

Secretary of the Interior determines that one or more of five factors listed in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted according to § 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) original data for classification of the species were in error.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat loss was a major factor in the decline and subsequent extinction of the Mariana mallard. Since 1945, draining, fragmentation, and filling of wetlands for urban development has greatly reduced their quantity and quality on Guam, Tinian, and Saipan (Stinson *et al.* 1991, Reichel *et al.* 1992, Reichel and Lemke 1994). Between 1914 and 1945, during the Japanese occupation of Saipan and Tinian, most wetlands were converted to rice paddies. In more recent times, wetlands have been drained to provide potable water for new villages and converted into farmland (Bowers 1950, Reichel and Lemke 1994).

The Guam broadbill was endemic to the island of Guam and, until the mid-1970s, common in the northern half of the island. This species was found in woodland areas, forests with brushy undercover, areas dominated by the alien shrub, tangantangan (*Leucaena leucocephala*), southern riparian areas, coastal strand, and mangrove swamps. Though the island of Guam has undergone massive development and urbanization over the last 20 years, habitat destruction or modification is not believed to have been a major factor in the decline of this bird because population numbers declined in areas with intact habitat over this time period.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Over-hunting is believed to have been a major factor leading to the decline and subsequent extinction of the Mariana mallard, particularly during and immediately after WW II (Kuroda 1942, Baker 1948, Engbring and Fritts 1988, Reichel and Lemke 1994). Overutilization is not known to be a factor in the decline of the Guam broadbill.

C. Disease or Predation

Disease or predation is not known to have been a factor in the decline of the Mariana mallard. While the brown tree snake is believed to have been accidentally introduced to Guam between 1945 and 1952 (Rodda *et al.* 1992), it is not believed to have been a factor in the decline of the mallard because the snake prefers forest habitat. While a population of this voracious predator may now be established on Saipan, it is not believed to have been present on the island during the 1970s, when the last sighting of the Mariana mallard was made. The brown tree snake is not known to be established on Tinian.

The spread of avian disease and predation by introduced animals, including the monitor lizard, rats (*Rattus* spp.), cats (*Felis catus*), dogs (*Canis familiaris*), pigs (*Sus scrofa*), and the brown tree snake, were suspected as factors in the decline of the Guam broadbill at the time of its listing. However, later studies concluded that predation by the brown tree snake was probably the single most important factor in the drastic decline and subsequent extinction of the Guam broadbill (Savidge 1986, 1987; Conry 1988). These studies provided no evidence of its decline due to avian disease (Savidge 1986, 1987). By 1986, the snake was probably present throughout the island (Savidge 1986, 1987). Primarily arboreal, this snake preys upon eggs and hatchlings in nests, and roosting young and adults.

D. The Inadequacy of Existing Regulatory Mechanisms

The Mariana mallard was listed as an endangered species by the Trust Territory of the Pacific Islands in 1976 and by us in 1977. It is currently protected as endangered under Guam's Endangered Species Act (Pub. L. 15–36). The Mariana mallard was not listed as a threatened or endangered species by the CNMI government (CNMI 1991).

The Guam broadbill is presently protected as endangered under Guam's Endangered Species Act (Pub. L. 15–36) and is federally protected as an endangered species under the Endangered Species Act of 1973.

Protection as endangered species by the Federal government and governments of Guam and the Trust Territory of the Pacific Islands, was probably too late to compensate for the earlier effects of unrestricted hunting and habitat loss, in the case of the Mariana mallard, and for the accidental introduction and subsequent spread of the brown tree snake, in the case of the Guam broadbill.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

At the time it was listed, one of the factors believed to have contributed to the critically low population levels of the Guam broadbill was overuse of pesticides. However, pesticide use has not been found to be a major factor in the decline of this species (Grue 1986, Savidge 1986, 1987).

In summary, all available information indicates that the Mariana mallard and the Guam broadbill are extinct. Previous population estimates made on Guam (1944), Tinian (1945), and Saipan (1947) for the Mariana mallard reported 12 or fewer individuals on each of these islands (Baker 1951). No confirmed sightings or vocalizations have been reported for this bird since 1979, and the last captive bird died in 1981. The Guam broadbill was reported to be on the verge of extinction at the time of its listing, and population estimates of 460 and less than 100 individuals were reported in 1981 and 1983, respectively. No confirmed sightings or vocalizations have been reported for this species since May 14, 1984, and the last captive bird died in February 1984. We propose to remove the Mariana mallard and the Guam broadbill from the List of Endangered and Threatened Wildlife.

Effects of This Rule

This rule, if made final, would revise § 17.11(h) to remove the Mariana mallard and the Guam broadbill from the Federal list of Endangered and Threatened Wildlife due to extinction. The prohibitions and conservation measures provided by the Act, particularly sections 7 and 9, will no longer apply to these species if this rule is made final. There is no designated critical habitat for these species.

The Mariana mallard and the Guam broadbill are protected by the government of Guam (Pub. L. 15–36). Removal of these species from the Federal list of Endangered and Threatened Wildlife does not alter or supersede their designation by the government of Guam as endangered species.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate as possible. Therefore, we solicit data, comments, or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning the

Mariana mallard and the Guam broadbill not included in this document; and

(2) The location of any individuals or populations of the Mariana mallard and the Guam broadbill.

The final decision on this proposal will take into consideration the comments and any additional information we receive, and such communications may lead to a final determination that differs from this proposal.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we will withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety.

Public Hearings

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Field Supervisor (see **ADDRESSES** section).

Clarity of This regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful to understanding the rule? (3) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

National Environmental Policy Act

We have determined that preparation of an environmental assessment or environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, is not necessary when issuing regulations adopted under section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this decision in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

The OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on ten or more persons. This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Arlene Pangelinan and Lee Ann Woodward, Ecological Services, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set out in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entries for ''Mallard, Mariana'' and ''Broadbill, Guam'' under ''BIRDS'' from the List of Endangered and Threatened Wildlife.

Dated: July 17, 2001,

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–1876 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 010302D]

RIN 0648–AL86

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Sustainable Fishery Act Amendment to the Fishery Management Plans of the U.S. Caribbean

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council (Council) has submitted a Comprehensive Amendment Addressing Sustainable Fishery Act Definitions and Other Required Provisions of the Magnuson-Stevens Act in the Fishery Management Plans of the U.S. Caribbean (Comprehensive SFA Amendment) for review, approval, and implementation by NMFS. The Comprehensive SFA Amendment would define status determination criteria and overfishing thresholds (e.g., maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT)) for the species or species complexes under the Council's authority, establish rebuilding plans for three overfished species: queen conch, Nassau grouper, and goliath grouper (formerly known as jewfish), and modify existing or add new framework adjustment procedures to all Caribbean FMPs.

These new and modified framework procedures would allow timely modification/addition of required stock parameters and management measures relating to preventing overfishing and rebuilding overfished stocks. The proposed measures should result in improved management of U.S. Caribbean marine fishery resources.

In addition, the Comprehensive SFA Amendment also would provide descriptions of the U.S. Caribbean

fisheries and fishing communities based on the best information available and recommend future establishment of a socio-economic data collection program and permanent expansion of NMFS' Marine Recreational Fisheries Statistical Survey to include Puerto Rico and the U.S. Virgin Islands to enhance the available information. The comprehensive SFA Amendment would also address bycatch in the fisheries managed under the Council's FMPs and recommend future development of a standardized bycatch reporting program.

DATES: Written comments must be received on or before March 26, 2002.

ADDRESSES: Written comments on the Comprehensive SFA Amendment should be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or the Internet.

Requests for copies of the Comprehensive SFA Amendment, which includes a regulatory impact review and an environmental assessment, should be sent to the Caribbean Fishery Management Council, 268 Munoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918–1920; e-mail: Caribbean.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, telephone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The Comprehensive SFA Amendment includes Amendment 2 to the FMP for Corals and Reef Associated Plants and Invertebrates, Amendment 1 to the FMP for Queen Conch Resources, Amendment 3 to the FMP for the Reef Fish Fishery, and Amendment 2 to the FMP for the Spiny Lobster Fishery. These FMPs were prepared by the Council, approved by NMFS, and implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Section 303 of the Magnuson-Stevens Act requires, in part, that FMPs provide descriptions of the applicable fisheries and fishing communities; assess the amount and types of bycatch and include management measures that, to the extent practicable, minimize bycatch and bycatch mortality; specify objective and measurable criteria for identifying when a stock is overfished, i.e., status determination criteria; and rebuild stocks to achieve MSY. The Council developed its Comprehensive SFA Amendment to address these requirements.

The Comprehensive SFA Amendment would define status determination criteria and overfishing thresholds (e.g., maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT)) for the species or species complexes under the Council's authority, establish rebuilding plans for three overfished species: queen conch, Nassau grouper, and goliath grouper (formerly known as jewfish), and modify existing or add new framework adjustment procedures to all Caribbean FMPs.

Because information on U.S. Caribbean fisheries is sparse and incomplete, the fisheries can be classified as data-poor (among other parameters, biomass and fishing mortality rates are not available for most Caribbean fishery resources). Thus, managers must use biomass-based proxies for the MSY, OY, MFMT, and MSST parameters for the respective fishery resources. Formulae for the derivation of these proxies are presented in the Comprehensive SFA Amendment. In general, the MSY proxies are based on average landings of commercial fisheries for a specified time period. OY must be less than or equal to the MSY proxy. The proxies for MSST are defined either as the greater of (1—M) xB_{msy} or 0.5 x B_{msy} where M is the estimated instantaneous natural mortality rate and B is the estimated spawning biomass. MFMT is considered equal to the estimated M for the respective species or species complex. Values for each proxy, when available, are presented in the Comprehensive SFA Amendment. Assessment information provided in the Comprehensive SFA Amendment reflects conditions in the commercial fisheries. Due to lack of adequate catch and effort data, the status of recreational fisheries is currently unknown.

The NMFS 2000 Report to Congress on the Status of U.S. Fisheries listed Nassau grouper, goliath grouper, and queen conch as overfished in the U.S. Caribbean. The Comprehensive SFA Amendment would establish rebuilding timeframes for these species.

In addition, the Comprehensive SFA Amendment also would provide descriptions of the U.S. Caribbean fisheries and fishing communities based on the best information available and recommend future establishment of a socio-economic data collection program and permanent expansion of NMFS' Marine Recreational Fisheries Statistical Survey to include Puerto Rico and the U.S. Virgin Islands to enhance the available information. The comprehensive SFA Amendment would also address bycatch in the fisheries managed under the Council's FMPs and recommend future development of standardized bycatch reporting program.

NMFS is requesting comment on the proposed framework procedures, especially concerning any changes that would allow the public to comment more fully on proposed management measures. Also, NMFS invites comment concerning the types of information that should be collected to more precisely describe Caribbean fisheries and fishing communities.

Comments received by March 26, 2002, whether specifically directed to those management measures in the Comprehensive SFA Amendment that would amend the Caribbean FMPs or to the proposed rule that NMFS plans to publish that would implement the Comprehensive SFA Amendment, will be considered by NMFS in its decision to approve, disapprove, or partially approve those measures amending the FMPs. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the Comprehensive SFA Amendment or the proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

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

Dated: January 18, 2002.

Jonathan Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1872 Filed 1–24–02; 8:45 am]

BILLING CODE 3510s–22–S

Notices

Federal Register
Vol. 67, No. 17
Friday, January 25, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Pacific Southwest Region; California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Pacific Southwest Region to publish legal notices of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR parts 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers listed will begin with decisions subject to appeal that are made after publication of this notice in the **Federal Register**. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Regional Appeals Manager, Pacific Southwest Region, 1323 Club Drive, Vallejo, California 94592, 707–562–8945.

SUPPLEMENTARY INFORMATION: On November 4, 1993, 36 CFR parts 215 and 217 were published requiring publication of legal notice of decisions subject to appeal. Sections 215.5 and 217.5 require notice published in the **Federal Register** advising the public of the principal newspapers to be utilized for publishing legal notices. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day publication of the notice.

In addition to the primary newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (primary) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Regional Forester Decisions

Sacremento Bee, published daily in Sacramento, Sacramento County, California, for decisions affecting National Forest System lands and for any decision of Region-wide impact.

Angeles National Forest, California

Forest Supervisor Decisions

Los Angeles Times, published daily in Los Angeles, Los Angeles County, California.

District Rangers Decisions

Los Angeles Ranger District *Daily News,* published daily in Los Angeles, Los Angeles County, California.

Newspapers providing additional notice of Los Angeles District Ranger decisions: *Pasadena Star News,* published in Pasadena, California; and *Foothill Leader,* published in Glendale, California.

San Gabriel River Ranger District: *Inland Valley Bulletin,* published daily in Los Angeles, Los Angeles County, California.

Newspaper providing additional notice of San Gabriel River District Ranger decisions: *San Gabriel Valley Tribune,* published in the eastern San Gabriel Valley, California.

Santa Clara/Mojave Ranger District: *Daily News,* published daily in Los Angeles, Los Angeles County, California.

Newspapers providing additional notice of Santa Clara/Mojave Rivers District Ranger decisions: *Antelope Valley Press*, published in Palmdale, California; and *Mountaineer Progress,* published in Wrightwood, California.

Cleveland National Forest, California

Forest Supervisor Decisions

San Diego Union-Tribune, published daily in San Diego, San Diego County, California.

District Rangers Decisions

Descanso Ranger District: *San Diego Union-Tribune,* published daily in San Diego, San Diego County, California.

Palomar Ranger District: *San Diego Union-Tribune,* published daily in San Diego, San Diego County, California.

Newspaper providing additional notice of Palomar District Ranger decisions: *Riverside Press Enterprise,* published daily in Riverside, Riverside County, California.

Trabuco Ranger District: *Riverside Press Enterprise,* published daily in Riverside, Riverside County, California.

Newspaper providing additional notice of Trabuco District Ranger decisions: *Orange County Register,* published daily in Santa Ana, Orange County, California

Eldorado National Forest, California

Forest Supervisor Decisions

Mountain Democrat published four-times weekly in Placerville, El Dorado County, California.

District Rangers Decisions

Mountain Democrat published four-times weekly in Placerville, El Dorado County, California.

Inyo National Forest, California

Forest Supervisor Decisions

Inyo Register published three-times weekly in Bishop, Inyo County, California.

District Rangers Decisions

Inyo Register published three-times weekly in Bishop, Inyo County, California.

Klamath National Forest, California

Forest Supervisor Decisions

Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.

District Rangers Decisions

Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.

Lake Tahoe Basin Management Unit, California and Nevada

Forest Supervisor Decisions

Tahoe Daily Tribune, published daily (five-times weekly) in South Lake Tahoe, El Dorado County, California.

Lassen National Forest, California

Forest Supervisor Decisions

Lassen County Times, published weekly in Susanville, Lassen County, California.

District Rangers Decisions

Eagle Lake Ranger District: *Lassen County Times,* published weekly in Susanville, Lassen County, California.

Almanor Ranger District: *Chester Progressive,* published weekly in Chester, Plumas County, California.

Hat Creek Ranger District: *Intermountain News,* published weekly in Burney, Shasta County, California.

Los Padres National Forest, California

Forest Supervisor Decisions

Santa Barbara News Press, published daily in Santa Barbara, Santa Barbara County, California.

District Rangers Decisions

Monterey Ranger District: *Monterey County Herald,* published daily in Monterey, Monterey County, California.

Santa Lucia Ranger District: *Telegram Tribune,* published daily in San Luis Obispo, San Luis Obispo County, California.

Santa Barbara Ranger District: *Santa Barbara News Press,* published daily in Santa Barbara, Santa Barbara County, California.

Ojai Ranger District: *Ventura Star,* published daily in Ventura, Ventura County, California.

Mt. Pinos Ranger District: *The Bakersfield Californian,* published daily in Bakersfield, Kern County, California.

Mendocino National Forest, California

Forest Supervisor Decisions

Chico Enterprise-Record, published daily in Chico, Butte County, California.

District Rangers Decisions

Grindstone Ranger District: *Chico Enterprise-Record,* published daily in Chico, Butte County, California.

Upper Lake and Covelo Districts: *Ukiah Daily Journal,* published daily in Ukiah, Mendocino County, California.

Modoc National Forest, California

Forest Supervisor Decisions

The Modoc County Record, published weekly in Alturas, Modoc County, California.

District Rangers Decisions

The Modoc County Record, published weekly in Alturas, Modoc County, California.

Plumas National Forest, California

Forest Supervisor Decisions

Feather River Bulletin, published weekly in Quincy, Plumas County, California.

Newspaper providing additional notice for Environmental Impact Statements: *Sacramento Bee,* published daily in Sacramento, Sacramento County, California.

District Rangers Decisions

Beckwourth Ranger District: *Portola Reporter,* published weekly in Portola, Plumas County, California.

Newspaper occasionally providing additional notice of Beckwourth District Ranger decisions: *Feather River Bulletin,* published weekly in Quincy, Plumas County, California.

Feather River Ranger District: *Oroville Mercury Register,* published daily in Oroville, Butte County, California.

Newspaper occasionally providing additional notice of Feather River District Ranger decisions: *Feather River Bulletin,* published weekly in Quincy, Plumas County, California.

Mt. Hough Ranger District: *Feather River Bulletin,* published weekly in Quincy, Plumas County, California.

Newspaper occasionally providing additional notice of Mt. Hough District Ranger decisions: *Portola Reporter,* published weekly in Portola, Plumas County, California.

San Bernardino National Forest, California

Forest Supervisor Decisions

San Bernardino Sun, published daily in San Bernardino, San Bernardino County, California.

District Rangers Decisions

Mountaintop Ranger District—Arrowhead Area: *Mountain News*, published weekly in Blue Jay, San Bernardino County, California.

Mountaintop Ranger District—Big Bear Area: *Big Bear Life and Grizzly,* published weekly in Big Bear, San Bernardino County, California.

Front Country Ranger District: *San Bernardino Sun,* published daily in San Bernardino, San Bernardino County, California.

San Jacinto Ranger District: *Idyllwild Town Crier,* published weekly in Idyllwind, Riverside County, California.

Sequoia National Forest, California

Forest Supervisor Decisions

Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.

District Rangers Decisions

Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.

Shasta-Trinity National Forest, California

Forest Supervisor Decisions

Record Searchlight, published daily in Redding, Shasta County, California

District Rangers Decisions

Record Searchlight, published daily in Redding, Shasta County, California.

Sierra National Forest, California

Forest Supervisor Decisions

Fresno Bee, published daily in Fresno, Fresno County, California.

District Rangers Decisions

Fresno Bee, published daily in Fresno, Fresno County, California.

Six Rivers National Forest, California

Forest Supervisor Decisions

Times Standard, published daily in Eureka, Humboldt County, California.

District Rangers Decisions

Smith River National Recreation Area: *Del Norte Triplicate,* published daily in Crescent City, Del Norte County, California.

Orleans and Lower Trinity Districts: *The Kourier,* published weekly in Willow, Humboldt County, California.

Mad River District: *Times Standard,* published daily in Eureka, Humboldt County, California.

Stanislaus National Forest, California

Forest Supervisor Decisions

The Union Democrats, published daily (five-times weekly) in Sonora, Tuolumne County, California.

District Rangers Decisions

The Union Democrat, published daily (five-times weekly) in Sonora, Tuolumne County, California.

Newspaper sometimes providing additional notice of Groveland District

Rangers decisions: *Mariposa Gazette,* published weekly in Mariposa, California.

Newspaper sometimes providing additional notice of Calaveras District Ranger decisions: *Calaberas Enterprise,* published twice weekly in San Andrea, California.

Tahoe National Forest, California

Forest Supervisor Decisions

*The Union,*published daily (except Sunday) in Grass Valley, Nevada County, California.

District Rangers Decisions

Downieville and Sierraville Ranger Districts: *Mountain Messenger,* published weekly in Downieville, Sierra County, California.

Newspapers providing additional notice of Sierraville District Ranger decisions: *Sierra Booster,* published weekly in Loyalton, Sierra County, California; and *Portola Recorder,* published weekly in Portola, Plumas County, California.

Foresthill Ranger District: *Auburn Journal,* published daily in Auburn, Placer County, California.

Nevada City Ranger District: *The Union,* published daily (except Sunday) in Grass Valley, Nevada County, California.

Truckee Ranger District: *Sierra Sun,* published weekly in Truckee, Nevada County, California.

Newspaper providing additional notice of Truckee District Ranger decisions: *Tahoe World,* published weekly in Tahoe City, Placer County, California.

Dated: January 17, 2002.

Gilbert J. Espinosa,

Deputy Regional Forester.

[FR Doc. 02–1714 Filed 1–24–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on February 14–15, 2002 in John Day, Oregon. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 14 from 9:30 a.m. to 4 p.m. and February 15, 2002 from 8 a.m. until 2 p.m.

ADDRESSES: The meeting will be held in Juniper Hall, at the Malheur National Forest Headquarters Office located at 431 Patterson Bridge Road, John Day, Oregon.

FOR FURTHER INFORMATION CONTACT: Bonnie Wood, Designated Federal Official, USDA, Malheur National Forest, PO Box 909, John Day, Oregon 97845. Phone: (541) 575–3100.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on meeting other RAC members, becoming familiar with duties and responsibilities, selecting a chairperson, and reviewing Title II project proposals for funding under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000. The meeting is open to the public. A public input opportunity will be provided, and individuals will have the opportunity to address the committee at that time.

Dated: January 18, 2002.

William T. Supulski II,

Ecosystem Staff Officer.

[FR Doc. 02–1843 Filed 1–24–02; 8:45 am]

BILLING CODE 3410–DK–M

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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 25, 2002.

ADDRESSES: 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 will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Janitorial/Custodial, Environmental Protection Agency/Western Ecology Division, National Health and Environmental Effects Research Laboratory,Main Site and Research Station, Corvallis, Oregon.

NPA: Williamette Valley Rehabilitation Center, Inc., Lebanon, Oregon.

Government Agency: Environmental Protection Agency.

Service

Janitorial/Custodial, VA Medical Center, Salem Primary Care Clinic,Salem, Oregon.

NPA: The Garten Foundation, Salem, Oregon.

Government Agency: Portland Veterans Affairs Medical Center.

Service

Laundry Service, Naval Air Station, Patuxent River, Maryland.

NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.

Government Agency: Department of the Navy.

Service

Transcription Services, Equal Employment

Office, Federal Bureau of Prisons, Washington, DC.
NPA: The Lighthouse of Houston, Houston, Texas.
Government Agency: Federal Bureau of Prisons.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–1885 Filed 1–24–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: February 25, 2002.

ADDRESSES: 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 October 5, November 9, November 16, November 23 and November 30, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 51005, 56638, 57703, 58712 and 59778) of proposed additions to and deletions from the Procurement List:

The following comments pertain to Brush, Tooth Brush Style: Comments were received from the current contractor for this brush. The contractor indicated that it has been providing the brush to the Government for over thirty years. Government sales of the brush are a large minority of the company's total sales of the brush, allowing for economies of scale in purchasing brush components which could be lost if the brush were added to the Procurement List. While Government sales of the brush do not represent a large percentage of the company's total sales, the contractor stated that losing the Government contract for the brush would exacerbate the losses the company has suffered in the past year because of the economy and the company's debt burden, resulting in severe adverse impact on the company. The contractor noted that it has already substantially reduced employment and cut pay because of these economic factors, and it anticipates further employee terminations if the Committee adds the brush to the Procurement List.

The percentage of the contractor's current total sales, taking into account the losses of the past year, which its Government sales of this brush represent is less than half the minimum percentage which the Committee normally considers to be likely to constitute severe adverse impact on a contractor. Even taking into account the contractor's long history of dependence on Government sales of this brush, and the economies of scale in purchasing materials which may be lost because of addition of this brush to the Procurement List, the Committee does not believe that the effects of the addition rise to a level which is likely to be severe adverse impact on this contractor.

The unemployment rate for people with severe disabilities exceeds sixty-five percent, well above that for the groups represented by the contractor's employees. Consequently, the Committee believes that the creation of jobs for people with severe disabilities through addition of the brush to the Procurement List outweighs the possibility of job losses by people who might more easily find replacement work.

The following material pertains to all of the items being added to the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are added to the Procurement List:

Commodity

Stapler, 7520–00–240–5727.

Commodity

Brush, Tooth Brush Style, 7920–00–900–3577.

Commodity

Mop, Twist-Wring and Twist-Wring Head, 7920–01–448–0218, 7920–01–448–0220.

Commodity

Undershirt, Man's, Brown, 8420–01–112–1472, 8420–01–112–1473,8420–01–112–1474, 8420–01–112–1475,8420–01–112–1476, 8420–01–112–1477,8420–01–112–1478, 8420–01–112–1479
(Additional 500,000 shirts/increase from 1,600,000 to 2,100,000).

Commodity

Cleaner, Tobacco Pipe, 9920–00–292–9946.

Service

Grounds Maintenance, Basewide, Fort Bragg, North Carolina.

Service

Janitorial/Custodial, Naval Sea Systems Command (NAVSEA), Buildings 22, 28, 104, 176, 197, 201, 213 and 214,Washington Navy Yard, DC.

Service

Janitorial/Custodial, Naval Reserve Readiness Command, Regional North Central,715 Apollo Avenue,Minneapolis, Minnesota.

Service

Janitorial/Custodial, Missouri Air National Guard, 10800 Lambert International Boulevard,Bridgeton, Missouri.

Service

Janitorial/Custodial, U.S. Marshals Service, Will Rogers World Airport,5900 Air Cargo Road,Oklahoma City, Oklahoma.

Service

Laundry Service, At the following locations: Naval Air Station, Brunswick, Maine; Naval Shipyard, Portsmouth, New Hampshire.

Service

Office Supply Store, at the following locations: Defense Supply Service—Washington, Hoffman Building II,

Alexandria, Virginia; Defense Supply Service—Washington,Army Material Command,Alexandria, Virginia; Defense Supply Service—Washington,Pentagon,Rooms 1E700 and 3C157,Arlington, Virginia.

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.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are deleted from the Procurement List:

Commodity

Sheath, Ax, 8465–01–110–2078.

Commodity

Sheath, Brush Hook (Brush), 8465–01–136–4720.

Commodity

Tissue, Facial, 8540–00–900–4891.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–1886 Filed 1–24–02; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Friday, February 22, 2002, at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57104. The purpose of the meeting is to be briefed on current projects, hold new member orientation, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 18, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–1857 Filed 1–24–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the California Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 3 p.m. on Wednesday, February 13, 2002, at the Crowne Plaza Union Square Hotel, 480 Sutter Street, San Francisco, California 94108. The purpose of the meeting is to hold new member orientation and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 17, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–1855 Filed 1–24–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Tuesday, February 12, 2002 at the Embassy Suites Hotel, 425 South 7th Street, Minneapolis, Minnesota 55415. The purpose of the meeting is to discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC January 18, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–1856 Filed 1–24–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–2002]

Foreign-Trade Zone 61—San Juan, Puerto Rico Expansion of Manufacturing Authority-Subzone 61G IPR Pharmaceuticals, Inc. Plant (Pharmaceuticals) Carolina, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by IPR Pharmaceuticals, Inc., requesting to expand the scope of manufacturing authority under zone procedures within Subzone 61G, at the IPR plant in Carolina, Puerto Rico. It was formally filed on January 17, 2002.

Subzone 61G was approved by the Board in 1995 at a single site (2 bldgs./135,552 square feet, on 6.78 acres)

located at Sabana Gardens Industrial Park, Main Street, Carolina, Puerto Rico, with authority granted for the manufacture of a range of human health products (Board Order 787, 60 FR 63499, December 11, 1995).

IPR is now proposing to expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 61G to include additional general categories of inputs that have recently been approved by the Board for other pharmaceutical plants. They include chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, colloidal precious metals, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic and ethylene polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances. Materials sourced from abroad represent some 50%–65% of finished product value.

Zone procedures would exempt IPR from Customs duty payments on foreign materials used in production for export. Some 30–40 percent of the plant's shipments are exported. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (duty free—14.2%) instead of the rates otherwise applicable to the foreign input materials (duty free—20%)(noted above). The application indicates that the savings from zone procedures would help improve IPR's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is March 11, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 5-day period (to March 18, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: January 16, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–1911 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty review.

SUMMARY: In accordance with 19 CFR 351.216(b), Okaya (U.S.A.), Inc. (''Okaya''), a U.S. importer of subject merchandise filed a request for a changed circumstances review of the antidumping order on certain tin mill products from Japan with respect to certain tin–free steel as described below. Weirton Steel, the only petitioner producer in the underlying investigation, filed a letter with the Department of Commerce (''the Department'') stating that they do not object to the exclusion of this product from the order. In response to the apparent lack of interest in this product from the domestic industry, the Department of Commerce (''the Department'') is initiating a changed circumstances review with respect to this request for all future entries of certain tin–free steel as described below.

EFFECTIVE DATES: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1394.

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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 C.F.R. Part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the Federal Register the antidumping duty order on certain tin mill products from Japan. See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan 65 FR 52067 (August 28, 2000). On December 3, 2001, Okaya, a U.S. importer requested that the Department revoke in part the antidumping duty order on certain tin mill products from Japan. Okaya also requested that the partial revocation apply retroactively for all unliquidated entries. Specifically, the U.S. importer requested that the Department revoke the order with respect to imports meeting the following specifications: Steel coated with a metallic chromium layer between 100–200 mg/mFD and a chromium oxide layer between 5–30 mg/mFD; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (''Br'') of 10 kg minimum and a coercive force (''Hc'') of 3.8 Oe minimum. The U.S. importer indicated that, based on its consultations with domestic producers, the domestic producers lack interest in producing this specialized product.

On January 16, 2002, Weirton Steel, the only petitioner producer in the underlying investigation filed a letter

stating that they do not object to the exclusion of this product from the order. Weirton Steel, a domestic producer of tin mill products, together with the Independent Steelworkers Union and the United Steelworkers of America, AFL–CIO, were the petitioners in the underlying sales at less–than–fair–value investigation (see 65 FR 52067). The Department notes that Weirton Steel is a producer of tin mill products, but individually does not account for substantially all of the production of the domestic like product. See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review, 66 FR 52109 (October 12, 2001). However, the Department has no information on the record that the other known domestic producers of tin mill products, Bethlehem Steel Corp., National Steel Corp., Midwest Division, Ohio Coatings Co., U.S. Steel Group, a Unit of USX Corp., and USS–Posco Industries, Inc., have no interest in maintaining the antidumping duty order with respect to certain tin–free steel described in Okaya's request. Therefore, we are not combining this initiation with the preliminary determination, which is our normal practice under section 351.221(c)(3)(ii). This initiation will accord all interested parties an opportunity to address this proposed exclusion.

Scope of Review

The products covered by this antidumping order are tin mill flat–rolled products that are coated or plated with tin, chromium or chromium oxides. Flat–rolled steel products coated with tin are known as tin plate. Flat–rolled steel products coated with chromium or chromium oxides are known as tin–free steel or electrolytic chromium–coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single– or double–reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

– Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (ι10%) or 0.251 mm (90 pound base box) (ι10%) or 0.255 mm (ι10%) with 770 mm (minimum width) (ι1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (ι 1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 1/2 anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m–FD; with a chrome oxide coating restricted to 6 to 25 mg/m–FD with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut–off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m–FD as type DOS, or 3.5 to 6.5 mg/m–FD as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

– Single reduced electrolytically chromium–or tin–coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

– Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

– Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/mFD, with a chromium oxide layer of 5–30 mg/mFD , with a tensile strength of 260–440 N/mmFD , with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

– Bright finish tin–coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of 3/4 pound (0.000045 inch) and 1 pound (0.00006 inch).

– Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of 1/4 inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m–FD and chromium oxide of 10 mg/m–FD, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of ι 1/8 inch, with a thickness tolerance of ι0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag)

per coil, with a surface free of scratches, holes, and rust.

– Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

– Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS''), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non–alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Initiation of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to sections 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. To the Department's knowledge the following are U.S. producers of tin mill products: Bethlehem Steel Corp., National Steel Corp., Midwest Division, Ohio Coatings Co., U.S. Steel Group, a Unit of USX Corp., and USS–Posco Industries, Inc. Based upon Weirton's statement of no interest and the silence of other domestic producers, we believe there is information sufficient to warrant initiation of this changed circumstances review.

The Department will publish in the Federal Register a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the Federal Register. While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or other administrative review.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: January 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1910 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011702C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given that the State of Washington through Washington State Department of Transportation (WSDOT), King, Pierce, Snohomish, Clallam, Kitsap, Mason, and Thurston Counties, and the Cities of Bellevue, Bremerton, Burien, Covington, Edgewood, Everett, Kenmore, Kent, Lake Forest Park, Lakewood, Maple Valley, Newcastle, Renton, Sammamish, Shoreline, Tacoma, and University Place have jointly submitted a Routine Road Maintenance Program (RMP) pursuant to protective regulations promulgated under the ESA. The RMP would affect 12 Evolutionarily Significant Units (ESUs) of threatened salmonids identified in the

SUPPLEMENTARY INFORMATION. This document serves to notify the public of the availability of the RMP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft RMP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on February 25, 2002.

ADDRESSES: Written comments should be sent to Laura Hamilton, Habitat Conservation Division, National Marine Fisheries Service, 510 Desmond Drive, Suite 103, Lacey, Washington 98503. Comments may also be faxed to 360–753–9517. Copies of the entire RMP are available on the Internet at http://www.metrokc.gov/roadcon/bmp/pdfguide.htm, or from the address posted on that site. Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Laura Hamilton at phone number 360-753-5820, or e-mail: Laura.Hamilton@noaa.gov.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following 12 threatened salmonid ESUs: Puget Sound, Lower Columbia River, Upper Willamette River, Snake River spring/summer, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); Hood Canal summer-run and Columbia River chum salmon (*O. Keta*); Ozette Lake sockeye salmon (*O. Nerka*), and; Snake River Basin, Lower Columbia River, Upper Willamette River, and Middle Columbia River steelhead (*O. mykiss*).

Background

WSDOT and the counties and cities named above, submitted the RMP for routine road maintenance activities that might affect certain salmonid ESUs listed as threatened in Washington State. The RMP was designed so that routine road maintenance activities would be protective of salmonids and their habitat.

In Part 1, the RMP describes the program framework including the 10 program elements that comprise the program (Regional Forum, Program Review, Best Management Practices (BMPs) and Conservation Outcomes (element 3), Training, Compliance Monitoring, Research, Adaptive Management, Emergency Response, Biological Data Collection, and Reporting). In Part 2, the RMP elaborates on element 3, the BMPs, in much greater detail and provides detailed instructions to crews, supervisors, environmental support staff, design personnel and managers. Part 3 describes a process by which additional counties, cities, and ports in Washington State may develop routine road maintenance programs by adopting RMP parts 1 and 2, and then submit their RMP to NMFS for review, public comment, and approval or disapproval.

The RMP defines what activities are routine road maintenance. These consist of maintenance activities that are conducted on currently serviceable structures, facilities, and equipment, involve no expansion of or change in use, and do not result in significant negative hydrological impact.

Finally, the RMP includes a biological review of the RMP prepared by WSDOT and the other entities named above. The biological review analyzes the effects of the RMP on listed salmonids and their habitat statewide. The biological review concludes that the identified routine road maintenance activities conducted throughout Washington State under the RMP will not impair properly functioning habitat, nor appreciably reduce the functioning of already impaired habitat, nor retard the long-term progress of impaired habitat toward PFC. Approval or disapproval of the RMP will depend on NMFS' findings after public review and comment.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve a routine road maintenance program of any state, city, county, or port, provided that NMFS finds the activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of properly functioning condition. Prior to final approval of a routine road maintenance program, NMFS must publish notification in the **Federal Register** announcing the program's availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with routine road maintenance provided that a state or local program has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000).

Dated: January 18, 2002.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1873 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402H]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: A meeting of the SEP will be held beginning at 8:30 a.m. on Thursday, February 7, 2002, and will conclude at 4 p.m. on Friday, February 8, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SEP will meet to review a regulatory amendment on rebuilding the red grouper stock and to review a study of the charter and party boat fishing industry of Alabama, Mississippi, Louisiana, and Texas. The SEP will also discuss bioeconomic modeling as an approach to future economic assessments.

A report will be prepared by the SEP containing their conclusions and recommendations. This report will be presented for review to the Council's Reef Fish Advisory Panel and Standing and Special Reef Fish Scientific and Statistical Committee at meetings to be held on the week of February 25th, 2002. Also, the SEP report will be presented to the Council at its meeting on the week of March 11th, 2002 in Mobile, AL.

Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other non-emergency issues not on the agendas may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by January 31, 2002.

Dated: January 22, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1897 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011102F]

North Pacific Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of correction of a public meeting notice.

SUMMARY: The North Pacific Fishery Management Council's (Council) Essential Fish Habitat (EFH) Committee will meet in Juneau, AK.

DATES: The meeting will be held on January 29-30, 2002.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Office, 709 W. 9th Street, 4th Floor, Juneau, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Cathy Coon, North Pacific Fishery Management Council; 907–271–2809.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on January 16, 2002 (67 FR 2198). This notice serves as a correction to the address of the meeting. The original notice stated that the meeting would be held at the Alaska Fisheries Science Center in Seattle, WA.

All other previously-published information remains the same.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 22, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 02–1896 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153]

Federal Acquisition Regulation; Submission for OMB Review; OMB Circular A–119

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 (9000–0153).

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 OMB Circular A–119. A request for public comments was published at 66 FR 58493, November 21, 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 February 25, 2002.

ADDRESSES: 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 Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

On February 19, 1998, a revised OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' was published in the **Federal Register** at 63 FR 8545, February 19, 1998. FAR Subparts 11.1 and 11.2 were revised and a solicitation provision was added at 52.211–7, Alternatives to Government-Unique Standards, to implement the requirements of the revised OMB circular. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 1.
Total Burden Hours: 100.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0153, OMB Circular A–119, in all correspondence.

Dated: January 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–1912 Filed 1–24–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043]

Federal Acquisition Regulation; Submission for OMB Review; Delivery Schedules

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.

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 delivery schedules. A request for public comments was published at 66 FR 58454, November 21, 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 February 25, 2002.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Respondents: 3,440.
Responses Per Respondent: 5.
Total Responses: 17,200.
Hours Per Response: .167.
Total Burden Hours: 2,872.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: January 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–1913 Filed 1–24–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 10 a.m. to 4 p.m., February 27, 2002.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

10 a.m. Meeting—Board of Regents

(1) Approval of Minutes—November 14, 2001
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: January 18, 2002.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–1951 Filed 1–22–02; 4:37 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Thursday, February 21, 2002, 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion

6 p.m.—Call to Order; Approve Minutes
6:10 p.m.—DDFO's Comments; Board Response; Public Comments
7 p.m.—Presentations
8:30 p.m.—Task Force and Subcommittee Reports; Board Response; Public Comments
9 p.m.—Administrative Issues
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on January 21, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1853 Filed 1–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with a meeting of the IEA's Emergency Response Exercise 2 Design Group will be held on February 1, 2002, at the headquarters of the IEA in Paris, France.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with a meeting of the IEA's Emergency Response Exercise 2 (ERE 2) Design Group will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on February 1, 2002, beginning at approximately 9:15 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at the ERE 2 Design Group meeting. The purpose of this meeting is to develop scenarios for an oil supply disruption simulation exercise in connection with the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA between March 12–14, 2002.

The Agenda for the meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

Introductions

1. Introductions by the Chair.
2. Introduction by OME [IEA Secretariat Oil Markets and Emergency Preparedness staff]: Background and Objectives of IEA Objectives of Emergency Response Exercises.
3. Presentation of goals and objectives of the ERE 2 Simulation Exercise

Scenario Building: Oil Disruption Scenarios in the Wake of September 11, 2001.

4. Presentation on Scenario Building and Risk Assessments.
5. Discussion on Scenario Building for the ERE 2 Simulation Exercise.

Design Group Meeting on ERE 2 Training and Simulation Exercise

6. Discussion led by the Chair.

Points for Discussion include:

- Approve the half-day training agenda for distribution to the SEQ.
- Approve goals and objectives for scenario building for the Simulation Exercise.
- Approve agenda for the Simulation Exercise.
- Discussion on operational issues.
- Briefing on the outcome of the December 12, 2001, SEQ/SLT [Standing Group on Long-Term Cooperation] Interfuels Workshop.

7. Chairman's Conclusion.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, January 22, 2002.

Lee Liberman Otis,

General Counsel.

[FR Doc. 02–1979 Filed 1–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–415–000]

East Tennessee Natural Gas Company; Notice of Site Visit

January 18, 2002.

Between January 28 and 31, 2002 the staff will be conducting site visits and an overflight of the project route alternatives for the proposed Patriot Extension in Wythe, Carroll, Floyd, Patrick, and Henry Counties, Virginia, and Rockingham County, North Carolina. Representatives of East Tennessee Natural Gas Company will accompany Commission staff. Anyone interested in participating in the site visits may contact the Commission's Office of External Affairs at (201) 208–1088 for more details and must provide their own transportation.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 02–1824 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2060–005, 2084–020, 2320–005, and 2330–007]

Erie Boulevard Hydropower, L.P.; Notice of Teleconference

January 18, 2002.

a. *Date and Time of Meeting:* January 24, 2002, 12 noon EST.

b. *FERC Contact:* Tom Dean at (202) 219–2778; *thomas.dean@ferc.fed.us* or John Costello at (202) 219–2914; *john.costello@ferc.fed.us.*

c. *Purpose of the Teleconference:* As follow-up to discussions during the January 18, 2002, teleconference regarding four projects on the Raquette River, the Federal Energy Regulatory Commission, the New York State Historic Preservation Office, and the Advisory Council on Historic Preservation intend to discuss agency concerns regarding consultation with the St. Regis Mohawk Tribe.

d. *Proposed Agenda:*

A. Introduction, Recognition of Participants, Teleconference Objectives

B. Discussion of PA, Appendices, and License Orders

C. Summary of meeting

D. Follow-up actions

E. Information regarding the teleconference including the toll free telephone number will be provided later.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1831 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP02–65–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

(January 18, 2002)

Take notice that on January 14, 2002, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP02–65–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon by sale and transfer to Kokomo Gas & Fuel Company (Kokomo) a portion of Panhandle's piping downstream of Panhandle's Kokomo Meter Station, located in Tipton County, Indiana, under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Panhandle proposes to transfer approximately 352 feet of certain pipeline segments and appurtenances constituting a portion of Panhandle's Tipton Lateral, Line No. 45–06–0001–0023, located in Tipton County, Indiana. Specifically, Panhandle proposes to transfer the last 352 feet of Line No. 45–06–0001–0023, which consists of approximately 64 feet of 16-inch outlet meter station header pipe, 243 feet of 12-inch, 37 feet of 16-inch, and 8 feet of 10-inch diameter pipelines. Panhandle indicates that these segments of the Tipton Lateral extend from the outlet side of Panhandle's Kokomo measuring station to the inlet side of Kokomo's facilities. Panhandle declares that currently, this portion of the lateral is used to deliver gas to Kokomo for its local distribution system. Panhandle states that Kokomo has indicated that its acquisition of the last 352 feet and appurtenances of the Tipton Lateral would provide better continuity for its distribution facilities and enhance the operation of its distribution system.

Panhandle avers that during the past twelve months, there have been three customers (NESI Energy Marketing L.L.C., Energy USA-TPC Corporation, and Northern Indiana Public Service Company) receiving firm service from Panhandle delivered at Panhandle's Kokomo Meter Station for further transportation on Kokomo's distribution system, and these three customers are all affiliated with Kokomo. Panhandle states that there are no other connections along the 352-foot segment of pipe. Panhandle asserts that since all transportation services which utilize these facilities are affiliated with Kokomo, the proposed abandonment will have no effect on the service Panhandle is providing to these customers through this short segment of pipe.

Panhandle states that Kokomo will acquire all rights, title, and interest in the last 352 feet of pipeline and appurtenances and incorporate the facilities as part of its distribution system.

Any questions regarding the prior notice request should be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs , Panhandle Eastern Pipe Line Company, 5444 Westheimer Road, Houston, Texas 77056–5306, at (713) 989–7000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. Comments and protests 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1826 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2942–005; 2931–002; 2941–002; 2932–003; and 2897–003]

S.D. Warren Company; Notice of Commission Staff's 10(j) Meeting With Representatives of the Fish and Wildlife Service

January 18, 2002.

The staff of the Office of Energy Projects, Federal Energy Regulatory Commission will hold a Section 10(j) meeting on Tuesday, February 19, 2002, at the Holiday Inn West, 81 Riverside Street, in the city of Portland, Maine. The meeting is scheduled to begin at 12:30 p.m. to end no later than 3 p.m.

The purpose of the meeting is to discuss and resolve with the Fish and Wildlife Service that agency's following two Section 10(j) recommendations for the relicensing of the Presumpscot River Projects.

(1) Maintain minimum flows in the bypassed reaches of the Dundee, Gambo, and Mallison Falls projects as

follows: 57 cubic feet per second (cfs) year round at Dundee; 40 cfs year round at Gambo; and 63 cfs year round at Mallison Falls.

(2) Develop a detailed shoreline management plan for licensee-owned lands abutting project waters within 500 feet of the high water elevation that are determined to be needed for project-related purposes, such as fish and wildlife habitat protection, providing public access for recreation, or protecting sensitive, unique, or scenic areas.

Representatives of the licensee and the State of Maine's fish and wildlife agencies are encouraged to participate in meeting discussions; due to the nature of the 10(j) process, representatives of concerned non-governmental organizations and other interested persons are invited to attend the meeting as observers.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1829 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–245–000 and RP01–253–000]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

January 18, 2002.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Monday, February 4, 2002 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Bill Collins at (202) 208–0248 or Irene Szopo at (202) 208–1602.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1832 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–93–002]

Virginia Electric and Power Company; Notice of Filing

January 18, 2002.

Take notice that on January 10, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) with GenPower Earleys, L.L.C. (GenPower) that complies with the Commission's December 11, 2001 Letter Order in Docket No. ER02–93–000.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the Interconnection Agreement effective as of December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11th Order. pies of the filing were served upon GenPower, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: January 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1827 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–63–000]

White Rock Pipeline, L.L.C.; Notice of Application

January 18, 2002.

Take notice that on January 11, 2002, White Rock Pipeline, L.L.C. (White Rock), 426 East Missouri Avenue, Pierre, South Dakota 57501, filed in Docket No. CP02–63–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations (Commission), for a certificate of public convenience and necessity authorizing White Rock to operate an existing single-use pipeline that is approximately 10.5 miles long and 4.5 inches in diameter, all as more fully set forth in the application which is on file with the Commission and open to 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).

White Rock states that the proposed pipeline is to be used for the sole purpose of transporting natural gas from an interconnection with the Alliance Pipeline in North Dakota, to a end-use customer, the Tri-State Ethanol Company, L.L.C. (Tri-State), which is White Rock's affiliate. White Rock states that Tri-State is a farmer-owned company that is in the process of building a facility near Rosholt, South Dakota that will produce ethanol from locally-produced corn. It is stated that the plant will be operational by mid-February. According to White Rock, Tri-State will be the majority owner and will exercise ownership and operational control over the pipeline.

White Rock states that the proposed pipeline is located in a sparsely-populated agricultural area in the extreme southeast corner of North Dakota and the extreme northeast corner of South Dakota. According to White Rock, the pipeline passes through farms and under rural roads; it will not pass through any residential areas. The sole

purpose and use of the pipeline will be to transport natural gas to White Rock's affiliate, Tri-State.

White Rock states that the proposed pipeline has already been constructed. It was built in October and November 2001 because, at that time, it was conceived that there would be two companies that would own the pipeline—White Rock, which would own the portion of the pipeline in South Dakota, and another company, Fairmount Natural Gas Pipeline Company, L.L.C. (Fairmount), which would own the pipeline running from the Alliance interconnection to the North Dakota-South Dakota border. White Rock and Fairmount believed this arrangement would not be subject to FERC jurisdiction because the White Rock pipeline (as then conceived) would be a non-jurisdictional, intra-state plant line located wholly within South Dakota, and the Fairmount pipeline would be an intrastate pipeline located wholly in North Dakota, only interconnecting with the White Rock pipeline at the state border.

As a result, according to White Rock, the pipeline running from Alliance to the Tri-State facility was constructed in the Fall of 2001. No landowners expressed concern with the construction, as all easements and rights-of-way already had been purchased from consenting landowners.

According to White Rock, in accordance with Alliance's suggestion expressed during negotiations of an interconnect development agreement, White Rock agreed to obtain either an NGA certificate of public convenience and necessity, or a FERC determination that the pipelines were not required to obtain an NGA certificate.

According to White Rock, as a result and because the owners of these pipelines wish to put the entire pipeline into service as promptly as possible, White Rock has filed the subject application to operate the pipeline. Furthermore, and to simplify this application and its intent, the entire pipeline running from the Alliance interconnection to the Tri-State facility has been consolidated and now is owned and will be operated as a single pipeline—i.e., the White Rock pipeline, and the Fairmount entity will be or has been dissolved. The entire 10.5 mile pipeline is now owned by White Rock.

White Rock states that in addition to approving its request for a certificate, White Rock requests that the Commission grant a waiver of any regulations and requirements that White Rock may not have complied with in constructing its pipeline as it did. White Rock further requests waiver of various otherwise-applicable FERC regulations and requirements.

Any questions regarding this application should be directed to James Robbennolt, Olinger, Lovald, Robbennolt, McCahren & Reimers, P.C., 117 E. Capitol, P. O. Box 66, Pierre, S.D. 57501, at (605) 224–8851.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 25, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene 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 NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1825 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5376–062]

Horseshoe Bend Hydroelectric Company; Notice of Availability of Environmental Assessment

January 18, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, the Division of Hydropower Administration and Compliance, Office of Energy Projects has reviewed an application to amend the license for the Horseshoe Bend Hydroelectric Project. The amendment application is for the modification of existing facilities and construction of new facilities in two phases to control sediment accumulation in the project's power canal. The proposed Phase I facilities include (a) widening of the entrance of the canal bottom width from 79 feet to 360 feet, (b) installing a 540-foot long elevated sill at the canal entrance, (c) constructing a diverging channel downstream of the sill and a sluice way on the river side of the sill, with trash racks over sluiceway boxes. Features of the Phase II include (a) a desanding/settling basin in the canal area, (b) desander sluice boxes end-to-end across the canal bed, and (c) access ramp for the maintenance of desander and other facilities. Phase II facilities will be constructed only if required after evaluating the effectiveness of Phase I facilities.

An Environmental Assessment (EA) has been prepared by staff for the proposed Phase I activities only, because the implementation of Phase II actions is uncertain and would depend upon the effectiveness of the facilities under Phase I. In the EA, staff does not identify any significant impacts that would result from the Commission's approval of the construction of Phase I facilities. Thus, staff concludes that approval of the proposed amendment of license would not cause a major federal action significantly affecting the quality of the human environment.

The EA has been attached and made part of an Order Amending the License

Under Article 2, issued January 18, 2002, for the Horseshoe Bend Project (FERC No. 5376–062). Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The EA may also be viewed on the Web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1828 Filed 1–24–02; 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 and Protests

January 18, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2782–006.

c. *Date filed:* October 30, 2001.

d. *Applicant:* Parowan City.

e. *Name of Project:* Red Creek Hydroelectric Project.

f. *Location:* On Red Creek near the City of Paragonah, in Iron County, Utah. The project occupies 19.06 acres of lands of the U.S. Department of the Interior, Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Travis S. Taylor, P.E., Sunrise Engineering, Inc., 25 East 500 North, Fillmore, Utah 84631, (435) 743–6151.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 219–2756 or *gaylord.hoisington@FERC.fed.us.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests 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 (http://www.ferc.gov) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Red Creek Hydroelectric Project consists of: (1) (a) The South Fork 8-foot-high, 29-foot-long concrete overflow type diversion dam; a radial gate and trash racks incorporating an intake structure connected to a 4,263-foot-long, 10-inch-diameter steel penstock extending from the diversion structure to a pump-house located at the junction of the South Fork and the Red Creek Canyon penstock; and (b) the Red Creek Canyon 8-foot-high, 48-foot-long concrete overflow type diversion dam; a radial gate and trash racks incorporating an intake structure connected to a 16,098-foot-long steel penstock that consists of 7,838-foot, 18-inch-diameter 12 gauge; 1,408-foot, 18-inch-diameter 10-gauge; 2,620-foot, 16-inch-diameter 10-gauge; and 4,232-foot, 16-inch-diameter 7-gauge steel pipe, (2) a pump station, at the junction of the South Fork penstock and the Red Creek penstock, housing a 15 horsepower and a 20 horsepower pump with control equipment, (3) a 27-foot by 32-foot concrete block powerhouse housing a 500-kilowatt (kW) generator having a total installed capacity of 500 kW; and (3) appurtenant facilities.

m. A copy of the application is on file with the Commission and is 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). A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1830 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

January 18, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the

document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may 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).

Exempt

1. Project Nos. 20, 2401 and 472, 01–08–02, John G. Carter
2. Project No. 2000–036, 01–08–02, David L Dickinson
3. CP01–361–000, 01–08–02, Susan Smillie
4. Project No. 10942–001, 01–08–02, John Phipps
5. Project No. 2342, 01–08–02, Loree Randall
6. Project No. 2055, 01–10–02, Susan Pengilly Neitzel
7. Project No. 2342, 01–14–02, Jim Rhoads
8. Project No. 2342, 01–14–02, Jerry Smith
9. Project Nos. 10461 and 10462, 01–16–02, Janet Hutzel

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1822 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–9]

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 (66 FR 27647).

Draft EISs

ERP No. D–USA–D11032–PA Rating EC2, Fort Indiantown Gap National Guard Training Center, To Enhance Training and Operations, Pennsylvania National Guard (PANG), Annville, Dauphin and Lebanon Counties, PA.

Summary: EPA expressed environmental concerns regarding wetlands, noise and prime and unique farmland issues. EPA requested that the FEIS include wetlands delineation, the type and quality of wetland habitat and functions/values. In addition, EPA recommended the use of a noise map that depicts the land use areas below the noise contours (including sensitive receptors), the acreage of land affected by noise and the number of people living within the impacted area. Regarding farmland issues, EPA requested that prime and unique farmland impacted by the project be delineated.

Final EISs

ERP No. F–AFS–J65343–MT, North Elkhorns Vegetation Project, Elkhorn Wildlife Management Unit, Implementation, Strawberry Butte Area, Helena National Forest, Jefferson County, MT.

Summary: EPA did not identify potential environmental impacts requiring substantive changes to the selected alternative.

ERP No. F–AFS–J65347–MT, Gold/Boulder/Sullivan (GBS), Implementation of Timber Harvest and Associated Activities Prescribed Burning, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about impacts to watersheds and wildlife habitat and security from proposed timber harvest and road management, with particular concern over exceedances of Forest Standards for open road density.

ERP No. F–BLM–L65318–OR, Southeastern Oregon Resource Management Plan, Implementation, Comprehensive Framework of Managing Public Land, Malheur, Jordan and Andrew Resource Areas, Vale and Burns Districts, Malheur, Harney and Grant Counties, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–HUD–K89062–CA North Hollywood Arts and Entertainment District Project, Construction and Operation, North Hollywood Redevelopment Project, City of Los Angeles, and Los Angeles County, CA.

Summary: EPA found the FEIS adequately addresses most of the issues raised in its comment letter on the DEIS. However, EPA

ERP No. F–UAF–D11048–VA Initial F–22 Operational Wing Beddown Replacing the Existing F–15C at Langley (AFB) or one of the Four Alternative Locations, VA.

Summary: EPA has determined that the United States Air Force has adequately addressed its comments within the FEIS.

ERP No. FS–COE–K36098–CA Prado Dam Water Conversion Plan, Implementation, New Information Concerning New Modified Flood Protection Features, Remaining Features of the Santa Ana River Project (SARP) and Stabilization of the Bluff Toe at Norco Bluffs, Riverside, Orange and San Bernardino Counties, CA.

Summary: EPA expressed continuing environmental concerns regarding potential impacts associated with toxic air contaminants (due to project construction), mitigation for toxic air contaminants and criteria air pollutants, consistency with the Clean Water Act section 404, and analyzing cumulative impacts under the National Environmental Policy Act.

Dated: January 22, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1883 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed January 14, 2002 Through January 18, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020022, FINAL EIS, AFS, MT, Dry Fork Vegetation Restoration Project, To Improve Forest and Watershed Health and Sustainability, King Hill Ranger District, Lewis and Clark National Forest, Cascade and Judith Basin Counties, MT, Wait Period Ends: February 25, 2002, Contact: Jennifer Johnsten (406) 791–7765.

EIS No. 020023, DRAFT SUPPLEMENT, AFS, ID, North Lochsa Face Ecosystem Management Project,

Updated Information on the Potential Effects of the Vegetation and Aquatic Restoration, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID, Comment Period Ends: March 11, 2002, Contact: Lois Foster (208) 935–4258.

EIS No. 020024, DRAFT EIS, BLM, OR, Coos County Natural Gas Transmission Pipeline, Construction, Operation and Maintenance, Proposed Natural Gas Pipeline from Roseburg to Coos Bay, Right-of-Way Permit, Coos Bay District, Coos County, OR, Comment Period Ends: March 26, 2002, Contact: Bob Gunther (541) 751–4295. This document is available on the Internet at: (*www.or.blm.gov/coosbay*) and (*http://www.co.coos.or.us*).

EIS No. 020025, FINAL EIS, AFS, ID, West Fork Potlatch Timber Harvesting, Road Construction, Reforestation and Watershed Restoration, Palouse Ranger District, Latah County, ID, Wait Period Ends: February 25, 2002, Contact: Larry W. Ross (208) 875–1131.

EIS No. 020026, DRAFT EIS, FRC, ID, Four Mid-Snake River Hydroelectric Projects, Applications for New License for the Existing Projects: Shoshane Falls-FERC No. 2778, Upper Salmon Falls-FERC No. 2777, Lower Salmon Falls-FERC No. 2061 and Bliss-FERC No. 1975, Snake River, ID, Comment Period Ends: March 26, 2002, Contact: John Blair (202) 219–2845. This document is available on the Internet at: *http://www.ferc.gov/hydro/hydro2.htm.*

EIS No. 020027, FINAL EIS, AFS, ID, Little Blacktail Ecosystem Restoration Project, Health and Productivity of Terrestrial and Aquatic Habitats Improvement, Implementation, Idaho PanhandleNational Forests, Sandpoint Ranger District,Bonner County, ID, Wait Period Ends: February 25,2002, Contact: Nancy Kertis (208) 263–5111.This document is available on the Internet at: *http:/www.fs.fed.us/ipnf/eco/manage/nepa/index.html.*

EIS No. 020028, DRAFT EIS, NRS, OK, Lower ClearBoggy Creek Watershed Project, FloodwaterRetarding Structure (FWRS) Site 32B Construction,Atoka County, OK, Comment Period Ends: March 11,2002, Contact: M. Darrel Dominick (405) 742–1227.

EIS No. 020029, FINAL EIS, USN, HI, ProgrammaticEIS—Ford Island Development Program, ProposedConsolidation of Selected Operations at PearlHarbor by Locating and Relocating CertainActivities, Ford Island, HI, Wait Period Ends:February 25, 2002, Contact: Stanley Uehara(808) 474–5909.

EIS No. 020030, DRAFT EIS, IBR, CA, ImperialIrrigation District Water Conservation andTransfer Project and Draft Habitat ConservationPlan (HCP), To Implement a Grant and Section 10Permit to Authorize the Incidental Take, ColoradoRiver, Imperial County, CA, Comment Period Ends:April 26, 2002, Contact: Bruce Ellis (602) 216–3854.This document is available on the Internet at: *www.is.ch2m.com/iidweb.*

Amended Notices

EIS No. 010541, DRAFT EIS, COE, TX, Texas City'sProposed Shoal Point Container Terminal Project,Containerized Cargo Gateway Development, US ArmyCOE Section 404 and 10 Permits Issuance, MaterialPlacement Area (DMPA), City of Texas, GalvestonCounty, TX, Comment Period Ends: February 19, 2002,Contact: Sharon Manella Tirpak (409) 766–3136.Published FR 01–04–02 Correction to Contact Person telephone number.

EIS No. 020017, DRAFT EIS, BLM, WY, Powder RiverBasin Oil and Gas Project, To Extract, Transport, and Sell Oil and Natural Gas Resource,Application of Permit to Drill (APD), Special UsePermit and Right-of-Way Grant, Campbell,Converse, Johnson and Sheridan Counties, WY ,Comment Period Ends: April 18, 2002, Contact:Paul Beels (307) 684–1100.Published FR 01–18–02—Correction to Website Address.This document is available on the Internet at: *www.wy.blm.gov.*

Dated: January 22, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1884 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34203J; FRL–6819–6–]

Chlorpyrifos; End-Use Products Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the cancellations, as requested by the companies, that hold the registrations of pesticide end-use products containing the active ingredient chlorpyrifos and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a December 5, 2001, notice of receipt of requests for registration cancellations. In that notice, EPA indicated that it would issue an order confirming the voluntary registration cancellations. Any distribution, sale, or use of canceled chlorpyrifos products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8589; fax number: (703) 308–8041; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use chlorpyrifos products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). 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.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment

for chlorpyrifos, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/chlorpyrifos.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34203J. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

In a memorandum of agreement (''Agreement'') effective June 7, 2000, EPA and the basic manufacturers of the active ingredient chlorpyrifos agreed to several voluntary measures that will reduce the potential exposure to children associated with chlorpyrifos containing products. EPA initiated the negotiations with registrants after finding chlorpyrifos, as currently registered, was an exposure risk especially to children. As a result of the Agreement, registrants that hold the pesticide registrations of end-use products containing chlorpyrifos (who are in large part the customer of these basic manufacturers) have asked EPA to cancel their registrations for these products.

In the **Federal Register** of December 5, 2001 (66 FR 63237) (FRL–6811–4), EPA published a notice of the Agency's receipt of end-use product cancellation requests from registrants that hold the pesticide registrations containing chlorpyrifos (who are in large part the customer of the basic manufacturers). These requests were submitted as a result of the Memorandum of Agreement that was signed on June 7, 2000, between EPA and the basic manufacturers of chlorpyrifos. A copy of the Memorandum of Agreement that was signed on June 7, 2000, is located in OPP docket control number 34203D.

B. Requests for Voluntary Cancellation of End-Use Products

Pursuant to the Agreement and FIFRA section 6(f)(1)(A), several registrants have submitted requests for voluntary cancellation of registrations for their end-use products. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1. END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Dragon Chemical Corporation	16–101 16–123 16–139 16–146 16–163 16–172	Dursban ½ Granular Insecticide Dragon Home Pest Control Dragon Home Pest Killer Dragon Termite and Soil Insect Killer Dragon Crawling Insect Killer Dragon Dursban 1% Granular Insecticide
The Scotts Company	239–2423 239–2490 239–2513 239–2517 239–2520 239–2521 239–2570 239–2633 239–2635	Ortho Lawn Insect Spray Ortho Home Pest Insect Control Ortho-Klor Soil Insect and Termite Killer Ortho-Klor Indoor & Outdoor Insect Killer Ortho Mole Cricket Bait Formula II Ortho Mole Cricket Bait Formula III Ortho-Klor 1% Dursban Lawn & Soil Granules Ortho Dursban Lawn Insect Formula II Ortho Multipurpose Borer & Insect Spray
Amvac Chemical Corporation	5481–68 5481–121 5481–216 5481–217 5481–221 5481–222 5481–240	Alco Chlorpyrifos 1E Emulsifiable Insecticide Chlorpyrifos Granules 1 Dursban-DDVP 2.50 Pest Control Dursban-DDVP 1.25 Dursban 2E Insecticide Bilco Dursban 4E Insecticide Alco Bug Spray Flea, Ant and Roach Killer
Contact Industries, a Division of Safeguard Chemical Corporation	10806–52 10806–99 10806–100 10806–101 10806–102	Contact Roach & Ant Killer II Contact Ant and Roach Killer IV Contact Ant and Roach Killer XV Contact Liquid Ant & Roach Killer V Contact Roach and Ant Killer XVI
Amrep, Incorporated	10807–116 10807–187	Misty Ant, Roach, & Spider Residual Insecticide with Dursban Misty Aqueous Residual Spray
Drexel Chemical Company	19713–229 19713–341	Drexel Chlorpyrifos 0.5G Leisur and Lawn Insect Control

In the **Federal Register** notice of December 5, 2001 (66 FR 63237), EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30–day comment period. The registrants requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C).

No public comments were submitted to the docket in response to EPA's request for comments.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested registration cancellations. The Agency orders that the registrations identified in Table 1 are hereby canceled. After January 25, 2002, any distribution, sale, or use of existing stocks of the products identified in Table 1 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV of this **Federal Register** notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

1. *Distribution or sale by registrants.* Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal, the distribution or sale of existing stocks by registrants of any product identified in Table 1 will not be lawful under FIFRA after January 25, 2002.

2. *Retail and other distribution or sale.* The retail sale of existing stocks of products listed in Table 1 will not be lawful under FIFRA after January 25, 2002. Except as otherwise provided in this order, any other distribution or sale (for example, return to the manufacturer for relabeling) is permitted until stocks are exhausted.

3. *Use of existing stocks.* The use of existing stocks of products listed in Table 1 is permitted until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Memorandum of Agreement, Pesticides andpests.

Dated: January 15, 2002.

Jack Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–1764 Filed 1–24–02; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1066; FRL–6819–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1066, must be received on or before February 25, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1066 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Geri McCann, Insecticide/Rodenticide Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8375; e-mail address: mccann.geri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1066. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The PIRIB telephone number is (703) 305–5805.

C. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1066 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1066. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 14, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 1F6301

EPA has received a pesticide petition (PP 1F6301) from E. I. du Pont de Nemours and Company (DuPont), P.O. Box 30, Newark, DE 19714, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for combined residues of indoxacarb, [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino] carbonyl]indeno[1,2e][1,3,4]oxadiazine-4a(3H)- carboxylate] and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl] amino] carbonyl] indeno [1,2-e] [1,3,4]oxadiazine-4a(3H)-carboxylate] in a 75:25 mixture (DPX MP062), respectively, in or on the raw agricultural commodities as follows: Alfalfa forage at 12 parts per million (ppm), alfalfa hay at 50 ppm, peanut at 0.01 ppm, peanut hay at 40 ppm, potato at 0.02 ppm, soybean aspirated grain fractions at 70 ppm, soybean hulls at 6.5 ppm, head lettuce at 5 ppm, meat (of cattle, goats, hogs, horses and sheep) at 0.05 ppm, fat (of cattle, goats, hogs, horses and sheep) at 1.5 ppm, meat by-products (of cattle, goats, hogs, horses and sheep) at 0.03 ppm and milk at 0.15 ppm. Two analytical enforcement methods are available for determining these plant and animal residues. They are GC-MSD and HPLC column-switching with UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

The active ingredient in the end-use formulations, Steward® and Avaunt™, is a 75:25 mixture of two isomers, indoxacarb (IN-KN128) and IN-KN127. Only one of the isomers, indoxacarb (DPX-KN128), has insecticidal activity. Since the insecticidal efficacy is based

on the concentration of indoxacarb (DPX-KN128), the application rates have been normalized on an indoxacarb (DPX-KN128) basis. The proposed tolerance expression includes both indoxacarb (DPX-KN128) and IN-KN127 and the residue method does not distinguish between the enantiomers, therefore residues are reported as the sum of indoxacarb (DPX-KN128) combined with IN-KN127. Residues of indoxacarb (DPX-KN128) combined with IN-KN127 will be referred to as ''KN128/KN127.''

1. *Plant metabolism* The metabolism of indoxacarb in plants is adequately understood to support these tolerances. Plant metabolism studies in cotton, lettuce, grapes and tomatoes showed no significant metabolites. The only significant residue was parent compound.

2. *Analytical method.* One plant residue enforcement method detects and quantitates indoxacarb in cotton and sweet corn matrices by HPLC with UV detection. The other plant residue enforcement method detects and quantitates indoxacarb in various matrices including lettuce, tomato, pepper, cabbage, broccoli, cauliflower, apple, pear, grape, cottonseed, tomato and apple processed commodity samples by GC-MSD. The analytical method for detecting and quantitating indoxacarb in animal matrices including whole and skim milk, cream, fat, muscle, liver and kidney is an HPLC column-switching method using UV detection. The limit of quantitation in each method allows monitoring of crops and animal matrices with indoxacarb residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues—i. Alfalfa.* Residue studies were conducted at a total of 12 field sites. All studies were done using Steward® Insecticide. One broadcast application of Steward® Insecticide was made for each alfalfa cutting at each test site. Each application was made at a maximum rate of 0.11 lb. a.i. DPX-KN128/A. After application, the plant was cut at a PHI of 7 days and samples of forage were taken. Additional forage was allowed to dry to proper moisture content to produce hay samples (cutting 1). Plants were allowed to regrow and were retreated with 0.11 lb. a.i. DPX-KN128 seven days prior to the next cutting. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in individual duplicate forage samples were 9.0 ppm at a PHI of 7 days (range 0.8–9.0 ppm). Maximum residues of KN128/KN127 in individual duplicate hay samples were 39 ppm at a PHI of 7 days (range 3.2–39 ppm).

ii. *Lettuce.* Residue studies were conducted at a total of 18 field sites. All studies were done using Avaunt™ Insecticide. Avaunt™ contains 30% active ingredient (a.i.) (300 g DPX-KN128 per kg, w/w). Four broadcast applications of Avaunt ™ Insecticide were made at each test site. Each application was made at a maximum rate of 0.111 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.444 lb. a.i./A). Applications were made approximately 3 days apart. The target PHI was 3 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in individual duplicate head lettuce samples collected from the field with wrapper leaves were 4.4 ppm at a PHI of 3 days (range < 0.40–4.4 ppm). Maximum residues of KN128/KN127 in individual duplicate head lettuce samples without wrapper leaves were 1.1 ppm at a PHI of 3 days (range < 0.02–1.1 ppm). Maximum residues of KN128/KN127 in individual duplicate leaf lettuce samples were 8.7 ppm at a PHI of 3 days (range 2.7–8.7 ppm). Head lettuce and leaf lettuce were each grown at 9 field sites.

iii. *Peanuts.* Residue studies were conducted at a total of 12 field sites. All studies were done using Steward® Insecticide. Steward® contains 15% a.i (150 g DPX-KN128 per liter, w/v). Four broadcast applications of Steward Insecticide were made at each test site. Each application was made at a maximum rate of 0.110 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.440 lb. a.i./A). Applications were made approximately 5 days apart. The target PHI was 14 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in peanut hay were 32 ppm at a PHI of 14 days (range 2.1–32 ppm). No detectable residues of KN128/KN127 were found in peanut nutmeat at a PHI of 14 days at any of the 12 test sites in the study (residues < 0.003 ppm).

iv. *Peanuts, process fractions.* A processing study was conducted to determine the magnitude of KN128/KN127 residues in peanut nutmeat and their possible concentration in peanut processed fractions (refined oil and meal). Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Peanuts were treated with Steward Insecticide (see description above). Four broadcast applications were made each at a rate of 0.110 and 0.550 lb. a.i./A (1X and 5X the proposed maximum seasonal use rate of 0.440 lb. a.i./A). The application interval was 5 days and the pre-harvest interval (PHI) was 14 days. At 5X the maximum seasonal use rate, quantifiable residues of KN128/KN127 were found in peanut nutmeat (0.013 ppm). Residues of KN128/KN127 in refined oil were 0.013 ppm. Quantifiable residues were not found in meal (residues < 0.0075 ppm). Residues of KN128/KN127 did not concentrate in refined oil or meal to levels greater than those on the raw agricultural commodity (concentration factors =1 or < 1, respectively).

v. *Potatoes.* Residue studies were conducted at a total of 16 field sites. All studies were done using Avaunt™ Insecticide. Avaunt™ contains 30% a.i. (300 g DPX-KN128 per kg, w/w). Four broadcast applications of Avaunt™ Insecticide were made at each test site. Each application was made at a maximum rate of 0.065 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.26 lb. a.i./A). Applications were made approximately 5 days apart. The target PHI was 7 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). No quantifiable residues of KN128/KN127 were found in potato tubers at a PHI of 7 days at any of the 16 test sites in the study (residues < 0.010 ppm).

vi. *Potatoes, process fractions.* A processing study was conducted state to determine the magnitude of KN128/KN127 residues in unwashed and washed potato tubers and culls and their possible concentration in potato tuber processed fractions (wet peel, chips and flakes). Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Potatoes were treated with Avaunt Insecticide (see description above). Four broadcast applications were made each at a rate of 0.065 and 0.325 lb. a.i./A (1X and 5X the proposed maximum seasonal use rate of 0.26 lb. a.i./A). The application interval was 5 days and the pre-harvest interval (PHI) was 7 days. At 5X, the maximum seasonal use rate, no quantifiable residues of KN128/KN127 were found in unwashed or washed potatoes, culls or in wet peel, chips or flakes (residues < 0.010 ppm). Residues of KN128/KN127 did not concentrate in any potato processed fraction to levels greater than those on the raw agricultural commodity.

vii. *Soybeans.* Residue studies were conducted at a total of 20 field sites. All

studies were done using Steward® Insecticide. Steward® contains 15% a.i. (150 g DPX-KN128 per liter, w/v). Four broadcast applications of Steward® Insecticide were made at each test site. Each application was made at a maximum rate of 0.111 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.444 lb. a.i./A). Applications were made approximately 5 days apart. The target PHI was 21 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in soybean seed were 0.59 ppm at a PHI of 21 days (range < 0.010–0.59 ppm). As part of this study, large samples of soybean seed were collected and subsequently processed into aspirated grain fraction (dust). Analysis of the seed showed a residue of 0.032 ppm. Analysis of the aspirated grain fraction (dust) showed a residue of 2.8 ppm (concentration factor of 88:1).

viii. *Soybean, process fractions.* A processing study was conducted to determine the magnitude of KN128/KN127 residues in soybean seed and their possible concentration in processed fractions (hulls, meal and refined oil). Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Soybeans were treated with Steward® Insecticide (see description above). Four broadcast applications were made each at a rate of 0.111 and 0.555 lb. a.i./A (1X and 5X the proposed maximum seasonal use rate of 0.444-lb. a.i./A). The application interval was 5 days and the pre-harvest interval (PHI) was 21 days. At 5X the maximum seasonal use rate, residues of KN128/KN127 in soybean seed were 0.077 ppm. Quantifiable residues were found in hulls (0.63 ppm) and refined oil (0.049 ppm). Quantifiable residues were not found in meal (residues < 0.010 ppm). Residues of KN128/KN127 concentrated in hulls (concentration factor = 8.12) but did not concentrate in refined oil or meal to levels greater than those on the raw agricultural commodity (concentration factors < 1).

B. Toxicological Profile

1.*Acute toxicity* Based on EPA criteria, indoxacarb is classified as follows for Toxicity Categories

Guideline	Title	Results	Category
81–1	Acute oral txicity	LD_{50} 1,730 mg/kg (M Rat) LD_{50} 268 mg/kg/(F Rat)	Category II
81–2	Acute dermal toxicity	LD_{50} > 5,000 mg/kg (Rat)	Category IV
81–3	Acute inhalation toxicity	LC_{50} > 5.5 mg/L (M Rat) (70% MUP)	Category IV
81–4	Primary eye irritation	Effects reversed within 72 hours (Rabbit)	Category III
81–5	Primary Dermal Irritation	No irritation (Rabbit)	Category IV
81–6	Skin Sensitization	Sensitizer (Guinea Pig)	----------

Formulated products are slightly less acutely toxic than indoxacarb.

In an acute neurotoxicity study, indoxacarb exhibited decreased forelimb grip strength, decreased foot splay, and some evidence of slightly reduced motor activity, but only at the highest doses tested. The NOAEL was 100 mg/kg for males and 12.5 mg/kg for females based on body weight effects in females 50 mg/kg.

2. *Genotoxicty.* Indoxacarb has shown no genotoxic activity in the following listed *in-vitro* and *in-vivo* tests:

i. Ames--Negative

ii. *In-vitro* mammalian gene mutation (CHO/HGPRT)-- Negative

iii. *In-vitro* unscheduled DNA synthesis-- Negative

iv. *In-vitro* chromosomal aberration--Negative

v. *In-vivo* mouse micronucleus--Negative

3. *Reproductive and developmental toxicity.* The results of a series of studies indicated that there were no reproductive, developmental or teratogenic hazards associated with the use of indoxacarb. In a 2-generationrat reproduction study, the parental no observed adverse effect level (NOAEL) was 1.5 mg/kg/day. The parental NOAEL was based on observations of reduced weight gain and food consumption for the higher concentration groups of the F0 generation and potential treatment-related changes in spleen weights for the higher groups of the F1 generation. There was no effect on mating or fertility. The NOAEL for fertility and reproduction was 6.4 mg/kg/day. The offspring NOAEL was 1.5 mg/kg/day, and was based on the reduced mean pup weights noted for the F1 litters of the higher concentration groups. The effects on pup weights occurred only at a maternal effect level and may have been due to altered growth and nutrition in the dams. In studies conducted to evaluate developmental toxicity potential, indoxacarb was neither teratogenic nor uniquely toxic to the conceptus (i.e., not considered a developmental toxin). Developmental studies conducted in rats and rabbits demonstrated that the rat was more susceptible than the rabbit to the maternal and fetal effects of DPX-MP062. Developmental toxicity was observed only in the presence of maternal toxicity. The NOAEL for maternal and fetal effects in rats was 2 mg/kg/day based on body weight effects and decreased food consumption at 4 mg/kg/day. The NOAEL for developmental effects in fetuses was >4 mg/kg/day. In rabbits, the maternal and fetal NOAELS were 500 mg/kg/day based on body weight effects, decreased food consumption in dams and decreased weight and delayed ossification in fetuses at 1,000 mg/kg/day.

4. *Subchronic toxicity.* Subchronic (90–day) feeding studies were conducted with rats, mice, and dogs. In a 90–day feeding study in rats, the NOAEL was 3.1 and 2.1 mg/kg/day for males and females, respectively. In male rats, the NOAEL was based on decreased body weight and nutritional parameters, mild hemolytic anemia and decreased total protein and globulin concentration. In female rats, the NOAEL was based on decreased body weight and food efficiency. In a subchronic neurotoxicity study in rats, there was no evidence of neurotoxicity at 11.9 and 6.09 mg/kg/day, the highest dose tested for males and females, respectively. The subchronic NOAEL in dogs (5.0 mg/kg/day, M/F) was based on hemolytic anemia. Erythrocyte values for most dogs were within a range that would be considered normal for dogs in

a clinical setting. Mice were less sensitive to indoxacarb than the rats or dogs. NOAELs (23 mg/kg/day, males, 16 mg/kg/day, females) were based on mortality (males only); increased reticulocytes and Heinz bodies and decreased body weight, weight gain, food consumption, food efficiency; and increased clinical signs (leaning to one side and/or with abnormal gait or mobility) (females only). In a 28–day repeated dose dermal study, the NOAEL was 50 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters, the spleen and clinical signs of toxicity in both sexes in rats.

5. *Chronic toxicity.* Chronic studies with indoxacarb were conducted on rats, mice, and dogs to determine oncogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90–day studies were seen in the chronic studies. Indoxacarb was not oncogenic in rats or mice. The chronic NOAEL in male rats was 5 mg/kg/day based on body weight and nutritional effects. In females, the NOAEL of 2.1 mg/kg/day was based on body weight and nutritional changes, as well as biologically significant hematologic changes at 3.6 mg/kg/day and above. Hemolytic effects were present only through the 6–month evaluation and only in females. The regenerative nature of indoxacarb-induced hemolytic anemia was demonstrated by the absence of significant changes in indicators of circulating erythrocyte mass at later evaluations. In mice, the chronic NOAEL of 2.6 mg/kg/day for males was based on deceased body weight and weight gain effects and food efficiency at 13.8 mg/kg/day and above. The NOAEL for females was 4.0 mg/kg/day based on body weight nutritional effects, neurotoxicity, and clinical signs at 20 mg/kg/day. In dogs, the chronic NOAEL was about 2.3 and 2.4 mg/kg/day in males and females, respectively based on hemolytic effects similar to those seen in the subchronic dog study.

6. *Animal metabolism.* —i. *Livestock animal metabolism.* Animal metabolism has been studied in the rat, hen, and cow and is well understood. In contrast to crops, indoxacarb is extensively metabolized in animals.

ii. *Poultry.* In poultry, hens were fed at 10 ppm/day for 5 days, 87–88% of the total administered dose was excreted; parent comprised 51–54% of the total dose in excreta. Concentration of residues in eggs were low, 0.3–0.4 of the total dose, as was the concentration of residues in muscle, 0.2% of the total dose. Parent and metabolite IN-JT333 were not detected in egg whites; only insecticidally inactive metabolites were identified. Parent and IN-JT333 were found in egg yolks; however, their concentrations were very low- 0.01–0.02 ppm. Concentrations of parent and IN-JT333 in muscle were at or below the limit of quantitation, (LOQ) (0.01 ppm).

iii. *Cattle.* For the cow study, the cattle were fed at 10 ppm/day for 5-days; approximately 20% of the total administered dose was excreted in urine and 53–60% was excreted in feces in 5-days. Four- tenths to 1.2% of the total dose in urine was parent indicating extensive metabolism; parent represented 46–68% of the fecal activity. Thus, most residues were not absorbed; those residues that were absorbed were extensively metabolized. Less than 1% of the total administered dose was in milk, most of which was parent compound. The insecticidally active metabolite IN-JT333 was not found in milk. Residues in muscle represented less than 0.01% of the total administered dose most of which was parent. IN-JT333 was not detected in muscle. No other metabolites were seen above 10% of the dose, thus only parent and IN-JT333 were monitored in the cattle feeding study.

iv. *Cattle feeding study.* A cattle feeding study was conducted with indoxacarb at doses of 7.5 ppm, 22.5 and 75 ppm. KN128/KN127 concentrations at the 22.5 ppm feeding level were 0.053 ppm for whole milk, 0.018 ppm for skim milk and 0.58 ppm for cream. The mean KN128/KN127 concentrations were proportional to the dosing level in whole milk, skim milk and cream. IN-JT333 concentrations at the 22.5 ppm feeding level were below the LOQ for whole milk and skim milk. The concentration of IN-JT333 in cream was 0.022 ppm. The mean IN-JT333 concentrations were proportional to the dosing level in cream. KN128/KN127 and IN-JT333 concentrations at the 22.5 ppm feeding level were below the level of LOQ for all tissues, except fat (0.45 ppm, KN128/KN127 and 0.03 ppm IN-JT333) and kidney (0.017 ppm KN128/KN127), throughout 28 days of dosing. The mean KN128/ KN127 residues in muscle, fat, liver, and kidney samples were proportional to the dosing level. The mean IN-JT333 residues in fat were proportional to the dosing level. Tolerances have been established at 0.75 ppm in fat (cattle, goat, horse, sheep and hog), 0.03 ppm in meat, 0.02 ppm in meat by-products, 0.10 ppm in milk and 3.0 ppm in milk fat.

7. *Metabolite toxicology.* In rats, indoxacarb was readily absorbed at low dose (5 mg/kg), but saturated at the high dose (150 mg/kg). Indoxacarb was metabolized extensively, based on very low excretion of parent compound in bile and extensive excretion of metabolized dose in the urine and feces. Some parent compound remained unabsorbed and was excreted in the feces. No parent compound was excreted in the urine. The retention and elimination of the metabolite IN-JT333 from fat appeared to be the overall rate determining process for elimination of radioactive residues from the body. Metabolites in urine were cleaved products (containing only one radiolabel), while the major metabolites in the feces retained both radiolabels. Major metabolic reactions included hydroxylation of the indanone ring, hydrolysis of the carboxylmethyl group from the amino nitrogen and the opening of the oxadiazine ring, which gave rise to cleaved products. Metabolites were identified by mass spectral analysis, NMR, UV and/or by comparison to standards chemically synthesized or produced by microsomal enzymes.

8. *Endocrine disruption.* Lifespan, and multigenerational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of indoxacarb is negligible.

C. Aggregate Exposure

Tolerances for indoxacarb are proposed to support agricultural uses on alfalfa, lettuce, peanuts, potatoes and soybean. There are no residential uses of indoxacarb.

1. *Dietary exposure.* The chronic RfD of 0.02 mg/kg bw/day is based on a NOAEL of 2.0 mg/kg bw/day from the subchronic rat feeding study, the subchronic rat neurotoxicity study, and the chronic/carcinogenicity study, using an uncertainty factor of 100. The acute RfD for the general population is 0.12 mg/kg/day, based on the NOAEL of 12.5 mg/kg in the acute neurotoxicity study and an uncertainty factor of 100. The acute RfD for females 13–50 years of age is 0.02 mg/kg/day, based on the NOAEL of 2 mg/kg/day observed in the developmental rat toxicity study and using an uncertainty factor of 100.

Food. Chronic dietary exposure assessment. Chronic dietary exposure resulting from the currently approved use of indoxacarb on apples, broccoli, cabbage, cauliflower, cotton, pears, peppers, sweet corn, tomatoes and the proposed uses on alfalfa, lettuce, peanuts, potatoes and soybeans are well within acceptable limits for all sectors

of the population. The Chronic Module of the Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1997 Version 7.075) was used to conduct the assessment with the reference dose (RfD) of 0.02 mg/kg/day. The analysis used overall mean field trial values and conservatively assumed that 100% of the crops on the proposed label would be treated with indoxacarb. The chronic dietary exposure to indoxacarb is 0.001428 mg/kg/day, and utilizes 7.1% of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.003929 mg/kg/day, and utilizes 19.6% of the RfD. The table below lists the results of this analysis, which indicate large margins of safety for each population subgroup and very low probability of effects resulting from chronic exposure to indoxacarb.

Subgroup	Maximum Dietary Exposure (mg/kg/day)	%RfD
U.S population	0.001428	7.1
Non-nursing infants (< 1 year old)	0.001707	8.5
Children (1–6 years)	0.003929	19.6
Children (7–12 years)	0.002233	11.2
Females (13+, pregnant/not nursing)	0.001353	6.8

2. *Acute dietary exposure.* Acute dietary exposure resulting from the currently approved use of indoxacarb on apples, broccoli, cabbage, cauliflower, cotton, pears, peppers, sweet corn, tomatoes and the proposed uses on alfalfa, lettuce, peanuts, and soybeans are well within acceptable limits for all sectors of the population. The Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1997 Version 7.075) was used to conduct the assessment. Margins of exposure (MOE) were calculated based on an acute NOAEL of 2 mg/kg/day for women of childbearing age and a NOAEL of 12 mg/kg/day for children and the general population (Pesticide Fact Sheet for Indoxacarb). The Tier 2 analysis used anticipated residues and conservatively assumed that 100% of the crops on the proposed label would be treated with indoxacarb. The results of this analysis are given in the table below. The percent of the acute population adjusted dose (a PAD) for all population subgroups shows that an adequate margin of safety exists in each case. Thus, the acute dietary safety of indoxacarb for established and follow-on uses clearly meets the FQPA standard of reasonable certainty of no harm and presents much lower acute dietary risk than many of its competitors.

Subgroup	95th Percentile of Exposure	
	Exposure (mg/kg/day)	% Acute Population Adjusted Dose (aPAD)
U.S. population	0.009013	7.5
Non-Nursing (< 1 year)	0.013429	11.9
Children (1–6 years)	0.018211	15.8
Children (7–12 years)	0.010682	8.9
Females (13+, pregnant/not nursing)	0.006256	31.3

Drinking water. Indoxacarb is highly unlikely to contaminate ground water resources due to its immobility in soil, low water solubility, high soil sorption, and moderate soil half-life. Based on the PRZM/EXAMS and SCI-GROW models the highly conservative, estimated environmental concentrations (EECs) of indoxacarb and its R-enantiomer for acute exposures are estimated to be 3.81 parts per billion (ppb) for surface water and 0.02 ppb for ground water (Indoxacarb Final Rule, 65 FR 58421). The EECs for chronic exposures are estimated to be 0.56 ppb for surface water and 0.02 ppb for ground water. Drinking water levels of comparison (DWLOCs), theoretical upper limits on the pesticides concentration in drinking water, were calculated to be much higher than the EEC's. Thus, exposures to drinking water are expected to be negligible.

3. *Non-dietary exposure.* Indoxacarb products are not labeled for residential non-food uses, thereby eliminating the potential for residential exposure. Non-occupational, non-dietary exposure for DPX-MP062 has not been estimated because the proposed products are limited to commercial crop production. Therefore, the potential for non-occupational exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of indoxacarb would be cumulative with those of any other chemical compounds. Oxadiazine chemistry is new, and indoxacarb has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population, and ample margins of safety have been demonstrated for both situations. The chronic dietary exposure to indoxacarb is 0.001428 mg/kg/day, which utilizes 7.1% of the RfD for the overall U.S. population, assuming 100% of the crops are treated and residues equivalent to overall mean field trial values. The percent of the acute population adjusted dose (7.5% aPAD) for all population subgroups shows that an adequate margin of safety exists. Using only PHED data levels A and B (those with a high level of confidence, MOEs for occupational exposure are 600 for mixer/loaders and 2,500 for applicators. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of indoxacarb including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Chronic dietary exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.003929 mg/kg/day or 19.6% of the RfD. For infants (non-nursing, >1 year), the exposure

accounts for 8.5% of the RfD. For acute exposure at the 95th percentile (based on a conservative Tier 2 assessment) the exposure was 0.018211 mg/kg/day (15.8% aPAD),for children 1–6 and 0.013429 mg/kg/day (11.9% aPAD) for non-nursing infants. There are no residential uses of indoxacarb and contamination of drinking water is extremely unlikely. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to indoxacarb, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of indoxacarb, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants andn children.

F. International Tolerances

To date, no international tolerances exist for indoxacarb.

[FR Doc. 02–1763 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50892; FRL–6815–4]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Hwy., Rm. 220, Crystal Mall #2, Arlington, VA; (703) 305–6502; e-mail address: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUP

EPA has issued the following EUP:

241–EUP–141. Extension. BASF Corporation, P.O. Box 400, Princeton, NJ 08543–0400. This EUP allows the use of 289.27 pounds of the termiticide chlorfenapyr (4–bromo–2–(4–chlorophenyl)–1–(ethoxymethyl)–5–(trifluoromethyl)–1H–pyrrole–3–carbonitrile) on less than 22 acres of residential/commercial structures to evaluate the control of termites. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Washington. The EUP extension is effective from November 26, 2001 to December 31, 2002.

Persons wishing to review this EUP are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–1765 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7132–9]

Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act of 1986; In Re: Pittsfield Economic Development Authority (''PEDA''), Related to CERCLA Site Known as the GE-Pittsfield/Housatonic River Site, Located in Pittsfield, MA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.,* notice is hereby given of a Prospective Purchaser Agreement and Covenant Not to Sue between the United States, on behalf of the U.S. Environmental Protection Agency (''EPA'' or the ''Agency''), and the Pittsfield Economic Development Authority (PEDA) (''Purchaser''). The Purchaser plans to acquire 52 acres of the GE-Pittsfield/Housatonic River Site for the purpose of redeveloping for the economic benefit of the City of Pittsfield. Pursuant to a Definitive Economic Development Agreement entered into by PEDA, the City, and the General Electric Company (''GE''), approximately 52 acres of the GE-Pittsfield/Housatonic River Site will be transferred to PEDA after the completion of removal actions pursuant to a CERCLA consent decree entered by the United States District Court in the matter of *United States* v. *General Electric Company,* Civil Docket No. 99–30225-MAP. PEDA will be the fee owner of property transferred to it by GE and will be responsible for managing future land uses thereon. Under the Proposed Agreement, the United States grants a Covenant Not to Sue to the Purchaser under provisions of CERCLA, the Resource Conservation and Recovery Act, the Oil Pollution Act, the Clean

Water Act, the Toxic Substances Control Act, and the Rivers and Harbors Act, with respect to existing contamination at the Site. In exchange, the Purchaser agrees to perform the following with respect to the property: grant access; abide by the terms of institutional controls; perform post-removal site control work for the response actions undertaken at the Property; and pay the natural resource trustees up to $4 million, consisting of in-kind services and/or a percentage of PEDA's net revenues. In addition, under the Agreement, PEDA will abide by its obligations in the Consent Decree and provide particular covenants not to sue the government.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02114.

DATES: Comments must be submitted on or before February 25, 2002.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: Pittsfield Economic Development Authority (PEDA) related to CERCLA Site known as the GE-Pittsfield/Housatonic River Site, U.S. EPA Docket No. CERCLA–01–2002–0007.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed Agreement and Covenant Not to Sue can be obtained from Rose Howell, Paralegal, U.S. Environmental Protection Agency, Region 1, One Congress Street, Mailcode HIO, Boston, Massachusetts 02214, (617) 918–1213.

Dated: January 3, 2002.

Robert W. Varney,

Regional Administrator, New England Region.

[FR Doc. 02–1881 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

January 15, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0999.

Expiration Date: 01/31/05.

Title: Exemption of Public Mobile Service Phones from the Hearing Aid Compatibility Act.

Form No.: N/A.

Respondents: Individuals or households; business or other for-profit.

Responses: 3,860.

Estimated Time Per Response: Between 2 hours and 8 hours.

Estimated Total Annual Burden: 20,265 hours.

Total Annual Cost: 0.

Description: The reporting requirement, if adopted, will be used by the Commission to monitor wireless carriers and handset and hearing aid manufacturers progress towards compliance with hearing aid compatibility requirements, if the current exemption is limited or revoked. Technical standards are mandated by the Hearing Aid Compatibility Act of 1988, if the Commission decides to limit or revoke the current exemption, and will be used as a guide to compliance with hearing aid compatibility requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1809 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–161]

Rescheduled Seventh Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the seventh meeting of the WRC–03 Advisory Committee that was originally scheduled for January 30, 2002 has been rescheduled and will now be held on February 6, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: February 6, 2002; 10:00 am—12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Planning and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the seventh meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the seventh meeting is as follows:

Agenda—Seventh Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

February 6, 2002; 10 am–12 noon

1. Opening Remarks

2. Approval of Agenda
3. Approval of the Minutes of the Sixth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Donald Abelson,

Chief, International Bureau.

[FR Doc. 02–1812 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, January 29, 2002, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule—Part 325—Risk-Based Capital Treatment for Claims on Securities Firms.

Discussion Agenda

Memorandum re: Special Examination Activities.

The meeting will be held on the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: January 22, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–2015 Filed 1–23–02; 2:01 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m.—January 30, 2002.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open and the remainder will be closed.

MATTERS TO BE CONSIDERED: The Open Portion of the Meeting:

1. Passenger Vessel Operator Program: Issues Regarding Financial Coverage for Performance of Cruises.

The Closed Portion of the Meeting:

1. Fact Finding Investigation No. 24—Exclusive Tug Arrangements in Florida Ports

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–2031 Filed 1–23–02; 2:00 pm]

BILLING CODE 6730–01–M

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 February 11, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Mildred M. Hansen Trust and Mildred M. Hansen, as an individual and trustee of the Mildred M. Hansen Trust, Currie, Minnesota; to retain voting shares of Currie Bancorporation, Inc., Currie, Minnesota, and thereby indirectly retain voting shares of Currie State Bank, Currie, Minnesota.

Board of Governors of the Federal Reserve System, January 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1932 Filed 1–24–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 2002.

A.Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Colony Bankcorp, Inc., Fitzgerald, Georgia; to acquire Quitman Bancorp, Inc., Quitman, Georgia, and thereby indirectly acquire Quitman Federal Savings Bank, Quitman, Georgia, and

thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–1931 Filed 1–24–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Funeral Industry Practices Rule (''Funeral Rule'' or ''Rule''). The FTC is seeking public comments on its proposal to extend through February 28, 2005 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on February 28, 2002.

DATES: Comments must be submitted on or before February 25, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission, and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned ''Funeral Rule: Paperwork comment.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Myra Howard, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2047.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On November 21, 2001, the FTC sought comment on the information collection requirements associated with the Funeral Rule, 16 CFR part 453 (OMB Control Number: 3084–0025). See 66 FR 58492. No comments were received on any aspect of the notice, including staff's PRA burden estimates. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

The Funeral Rule ensures that consumers who are purchasing funeral goods and service have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires the funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Estimated annual hours burden: The estimated burden associated with the collection of information required by the Rule is 22,300 hours for recordkeeping and 57,900 hours for disclosures, for a total of 80,000 hours, rounded to the nearest thousand. This estimate is based on the number of funeral providers (approximately 22,300), the number of funerals annually (approximately 2.3 million), and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 22,300 providers is 22,300 hours. This estimate is unchanged from 1998.

Disclosure: The Rule requires that funeral providers (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

Maintaining current price lists requires that funeral providers revise their price lists from time to time through the year to reflect price changes. Based on a maximum average burden of two hours per provider per year for this task, the total burden for 22,300 providers is 44,600 hours. This estimate is unchanged from the FTC's prior estimate in 1998.

The original rulemaking record indicated that 87 percent of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.[1] Accordingly, the Rule imposes a disclosure burden on 2,899 providers (13 percent of 22,300 providers). These providers are typically the smallest funeral homes. The disclosure requirement can be satisfied through the use of a standard form (an example of which is available to the industry in the Compliance Guide to the Funeral Rule). Based on an estimation that these smaller homes arrange, on average, approximately 20 funerals per year and that it would take each of them about 3 minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with this disclosure requirement is one hour per provider not already in compliance, for a total of 2,899 hours.

The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Industry data indicate that only about nine percent of funeral purchasers make telephone inquiries, with each call lasting an estimated three minutes. Only about half of that additional time is attributable to disclosures required solely by the Rule, since many providers would provide the requested information even without it. Thus, assuming that the average purchaser makes two calls per funeral to compare prices, the estimated burden is 10,350 hours [(½ × 3 minute call × 2 calls/funeral) × 207,000 funerals (nine percent of 2,300,000 funerals/year)]. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the disclosure total is 57,849 hours (44,600 + 2,899 + 10,350). The total estimated hours burden associated with the Rule for both recordkeeping and disclosure requirements is 80,000, rounded to the nearest thousand (22,300 hours for recordkeeping + 57,849 hours for disclosure).

Estimated annual cost burden: $3,900,000, rounded ($3,560,000 in labor costs and $340,000 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

[1] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate ''Statement of Funeral Goods and Services Selected.'' The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

Clerical personnel, at an hourly rate of $10, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 22,300 hours, the estimated cost burden for recordkeeping is $223,000 ($10 × 22,300 hours).

The two hours required of each provider, on average, to update price lists should consist of approximately 1.5 hours of managerial or professional time, at $75 per hour, and .5 hours of clerical time, at $10 per hour, for a total of $117.50 per provider. Thus, the estimated total cost burden for maintaining price lists is $2,620,250 ($117.50 × 22,300 providers).

The cost of providing written documentation of the goods and services selected by the consumer is 2,899 hours of managerial or professional time at approximately $75 per hour, or $217,425.

The cost of responding to telephone inquiries about offerings or prices is 10,350 hours of managerial or professional time at $75, or $776,250.

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $3,613,925 ($2,620,250 + $217,425 + $776,250). The total labor cost for recordkeeping and disclosures is $3,837,000 ($223,000 for recordkeeping + $3,613,925 for disclosures), rounded to the nearest thousand.

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of price lists. Based on a rough estimate of 300 pages per year per provider for copies of the various price lists, at 5 cents per page, and 22,300 providers, the total cost burden associated with printing and copying is $334,500. In addition, the estimated 2,899 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at 5 cents per page, at an average of 20 funerals per year, the added cost burden would be $5,798. Thus, estimated non-labor costs are $340,000, rounded to the nearest thousand.

The cost of training associated with Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, the FTC has provided its Compliance Guide to all funeral providers at no cost, and additional copies are available on the FTC web site or by mail. Accordingly, the Rule imposes no additional training costs.

William E. Kovacic,

General Counsel.

[FR Doc. 02–1889 Filed 1–24–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force: Meeting

Name: Task Force on Community Preventive Services.

Times and Dates: 9 a.m.–7 p.m., February 6, 2002, 8 a.m.–3 p.m., February 7, 2002.

Place: The Sheraton Colony Square, 188 14th Street, NE., Atlanta, Georgia 30361, telephone (404) 892–6000.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters to be discussed: Agenda items include: Presentations on the following chapters: Cancer (Informed Decision Making, School Based Interventions to Prevent Skin Cancer, and Interventions to Increase Breast, Cervical and Colorectal Cancer Screening), Nutrition and the Yale Obesity Reviews, Sexual Behavior, Vaccine Preventive Diseases (Expanding Access In Health Care Settings) and Violence Prevention (Early Childhood Home Visitation and Shall Issue Laws); presentations on the dissemination of the Physical Activity Chapter; dissemination and evaluation plans for the Cancer Chapter; and general updates on the evaluation plans and methods.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Peter Briss, M.D., M.P.H., Acting Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on February 1, 2002.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: January 18, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1848 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Conference Call: CDC Advisory Committee on HIV and STD Prevention.

Time and Date: 1 a.m.–2:30 p.m., February 15, 2002.

Bridge Number: 1–800–713–1971.

Conference Code: 896071.

Status: Open to the public, limited only by the phone space available. The bridge number will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be discussed: Agenda items include issues pertaining to how the meeting formats might be changed to enable CDC Advisory Committee on HIV and STD Prevention (ACHSP)to more actively participate in and guide CDC activities.

Contact Person for More Information: Paulette Ford-Knights, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, e-mail pbf7@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1846 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–5:30 p.m., February 20, 2002, 8 a.m.–3:45 p.m., February 21, 2002.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be discussed: The agenda will include a discussion on the adult harmonized schedule; yellow fever vaccine; update on 2001–2002 influenza season; update on 2001–2002 influenza vaccine supply; update on pediatric influenza vaccination feasibility study; economics of vaccinating children for influenza; 2002 options for recommending influenza vaccine for children; 2002 Recommendations for Control and Prevention of Influenza; update on supplemental recommendations for use of anthrax vaccine; update on anthrax events and response; vaccinia (smallpox) vaccine safety; smallpox containment strategies; use of smallpox vaccine in the pre-attack setting; role of jet injectors in the event of a smallpox emergency; update on supply of smallpox vaccine and vaccinia immune globulin; updates from the National Immunization Program, Food and Drug Administration, Vaccine Injury Compensation Program, National Institutes of Health, National Vaccine Program, and National Center for Infectious Diseases; a discussion on rotavirus vaccine and intussusception; process of formulating the childhood harmonized immunization schedule; update on vaccine supply; and update on thimerosal.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1845 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8:30 a.m.–5:30 p.m., February 28, 2002, 8 a.m.–5 p.m., March 1, 2002.

Place: Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, Louisiana 70131, telephone 504/586–0300.

Status: Open 8:30 a.m.–9:30 a.m., February 28, 2002, Closed 9:30 a.m.–5:00 p.m., February 28, 2002, Closed 8 a.m.–5 p.m., March 1, 2002.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas. It is the intent of the NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be discussed: The meeting will convene in open session from 8:30–9:30 a.m. on February 28, 2002, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the SOHSS to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Charles N. Rafferty, Ph.D., NIOSH Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, Maryland 20892, telephone 301/435–3562, fax 301/480–2644.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1844 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–5 p.m., February 5, 2002,8:30 a.m.–1:15 p.m., February 6, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent

procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 a.m. and 8:30 a.m. or 12:30 p.m. and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be discussed: Agenda items will include: A report from the National Vaccine Program Office (NVPO) and the Interagency Vaccine Workgroup; a report from the Acting Assistant Secretary for Health; a report from the Rotavirus Vaccine Workshop; Thimerasol in Vaccines—Followup; discussion of decisions in the face of uncertainty; discussions on Bioterrorism Issues, Departmental Initiatives, Smallpox Preparedness, & Anthrax Preparedness; an update on Vaccine Supply—Report from the NVAC Workgroup; Vaccine Safety and Communication Subcommittee report; Immunization Coverage Subcommittee report, Pediatric and Adolescent Immunization Standards; Future Vaccines Subcommittee report; Rotavirus Vaccine Workshop—Report; an update on Immunization Registries; a report on Polio Laboratory Containment, an update on Global Polio Eradication; reports from Advisory Commission on Childhood Vaccines/Division of Vaccine Injury Compensation, Vaccine Related Biological Products Advisory Committee/Food and Drug Administration, Advisory Committee on Immunization Practices/National Immunization Program/ National Center for Infectious Diseases.

Name: Subcommittee on Future Vaccines.

Time and Date: 2 p.m.–5 p.m., February 5, 2002.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters to be discussed: Agenda items will include a report from CDC Consultation on Partially Effective Vaccines for HIV; discussions on possible future topics including Pneumococcal Vaccine and Varicella in Immunocompromised hosts.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2 p.m.–5 p.m., February 5, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be discussed: Agenda items will include a report on the status of the adult immunization standards and the adolescent and child immunization standards; an update on the Mandatory Immunization Guidelines Workgroup; and a report on vaccine financing issues.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 2 p.m.–5 p.m., February 5, 2002.

Place: Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: Institute of Medicine Vaccine Safety Committee final report; Selection of Vaccine Safety Hypotheses for Year 2002; discussion of a Possible Alternative Standard for Adjudication of VICP Claims for Non-Table Injuries; follow-up to the ''Workshop on Vaccine Communications''.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 4770 Burford Highway M/S K–77, Atlanta, Georgia 30341, telephone 770/488–2040.

An unavoidable administrative delay meeting the 15-day publication requirement.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: January 18, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1847 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2139–N]

Medicaid Program; Infrastructure Grant Program To Support the Competitive Employment of People With Disabilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of funding, through grants, for eligible States under the Ticket to Work and Work Incentives Improvement Act of 1999. The grant program is designed to assist States in developing infrastructures to support the competitive employment of people with disabilities by extending necessary Medicaid coverage to these individuals. This notice also contains pertinent information where States may apply for the grant program.

DATES: States should submit a notice of intent to apply for a grant no later than March 15, 2002.

Deadline for Grant Submission: Grant applications must be submitted by June 7, 2002 to be considered under the Fiscal Year 2003 annual funding cycle.

ADDRESSES: Standard application forms and related instructions are available from and must be formally submitted to: Judith Norris, Centers for Medicare and Medicaid Services, Office of Internal Customer Support, Acquisition and Grants Group, C2–21–15 Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850. (410) 786–5130, E-mail: *Jnorris1@cms.hhs.gov.*

Please note: While State agencies are only required to submit an original and two copies, submission of an original and 14 copies will greatly expedite the application process.

Website: You may access up-to-date information about the Medicaid Infrastructure Grants and obtain a complete Grant Solicitation at: *http://www.hcfa.gov/medicaid/twwiia/twwiiahp.htm.*

FOR FURTHER INFORMATION CONTACT: Questions about the grants may be directed to: Joe Razes, TWWIIA Program Manager, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Center for Medicare and Medicaid Services, Room S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–6126, e-mail: *Jrazes@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of funding for the infrastructure grants for the Fiscal Year 2003 annual funding cycle and contains the filing dates for consideration of grant applications for this funding cycle. Please refer to our May 31, 2000 notice (65 FR 34715), in which we first solicited States to apply for these grants under the Ticket to Work and Work Incentives Improvement Act of 1999, for more information concerning the grant process. The May 31, 2000 notice includes detailed information on application requirements, review procedures, an explanation of timely submission, and other relevant information.

Authority: Section 203 of the Ticket to Work and Work Incentives Improvement Act

of 1999, Public Law 106–170. (Catalog of Federal Domestic Assistance Program No. 93.779, Centers for Medicare and Medicaid Services Research, Demonstration, and Evaluations).

Dated: January 23, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–2017 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

CMS–2087–PN

RIN 0938–AK91

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2001

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: The Social Security Act provides for the Medicaid program to pay all or part of the Medicare Part B premiums (for months during the period beginning with January 1998, and ending with December 2002) for two specific eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals. This notice announces the proposed allotments that would be available for State agencies to pay Medicare Part B premiums for these eligibility groups for Federal fiscal year 2001.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 26, 2002.

If the proposed allotments are adopted as final, they will be available for expenditures made during the Federal fiscal year 2001 (beginning October 1, 2000).

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2087–PN, PO Box 8010,Baltimore, MD 21244–8010.

To insure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

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, orRoom C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–8010.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–2087–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at 7500 Security Blvd, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 to 5 p.m. (phone: (410) 786–9994).

FOR FURTHER INFORMATION CONTACT: Miles McDermott, (410) 786–3722.

SUPPLEMENTARY INFORMATION:

I. Background

A. Before the Balanced Budget Act of 1997

Before the enactment of the Balanced Budget Act of 1997 (BBA), section 1902(a)(10)(E) of the Social Security Act (the Act) specified that a Medicaid State plan must provide for Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included Qualified Medicare Beneficiaries (QMBs), Specified Low-income Medicare Beneficiaries (SLMBs), and Qualified Disabled and Working Individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below the Federal poverty level and resources below $4,000 for an individual and $6,000 for a couple. An SLMB is an individual who meets the QMB criteria, except that his or her income is between a State-established level (at or below the Federal poverty level) and 120 percent of the Federal poverty level. A QDWI is an individual who is entitled to enroll in MedicarePart A, whose income does not exceed 200 percent of the Federal poverty level for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income (SSI) program, and who is not otherwise eligible for Medicaid. The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums for Medicare Part B.

B. After the Balanced Budget Act of 1997

Section 4732 of the BBA amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of all or part of the Medicare Part B premiums, during the period beginning January 1998 and ending December 2002, for selected members of two eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals (QIs).

Under section 1902(a)(10)(E)(iv)(I) of the Act, State agencies are required to pay the full amount of the Medicare Part B premium for selected QIs who would be QMBs except that their income level is at least 120 percent but less than 135 percent of the Federal poverty level for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan.

The second group of QIs, under section 1902(a)(10)(E)(iv)(II) of the Act, includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the Federal poverty level for a family of the size involved. These QIs may not be otherwise eligible for Medicaid under the approved State plan, but are eligible for a portion of Medicare cost-sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Section 4732(c) of the BBA also added section 1933 of the Act, which specifies the provisions for State coverage of the Medicare cost-sharing for additional low-income Medicare beneficiaries.

Section 1933(a) of the Act specifies that a State agency must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that State agencies must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State agency must permit all QIs to apply for assistance and must select individuals on a first-come, first-served basis in the order in which they apply. Under section 1933(b)(2)(B) of the Act, when selecting persons who will receive assistance in calendar years after 1998, State agencies must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be, or become, QIs. Under section 1933(b)(4), persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to

receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's allotment is limited by law, section 1933(b)(3) of the Act provides that the State agency must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the State's allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums each fiscal year and specifies the formula to be used to determine an allotment for each State from this total amount. For State agencies that execute a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

The Federal matching rate for Medicaid payment of Medicare Part B premiums for QIs is 100 percent for expenditures up to the amount of the State's allotment. No Federal matching funds are available for expenditures in excess of the State's allotment amount. Administrative expenses associated with the payment of Medicare Part B premiums for QIs remain at the 50 percent matching level and may not be taken from the State's allotment.

The amount available for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State agency that is to be based on each State's share of the Secretary's estimate of the ratio of—

(1) An amount equal to the sum of the following: (a) Twice the total number of individuals who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; and (b) The total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 135 percent but less than 175 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; to

(2) The sum of all of these individuals under item (1) for all eligible States.

II. Provisions of This Proposed Notice

This notice announces the proposed allotments to be made available to individual States for Federal fiscal year 2001 for the Medicaid payment of Medicare Part B premiums for QIs identified under sections 1902(a)(10)(E)(iv)(I) and (II) of the Act. The formula used to calculate these allotments was described in detail in the January 26, 1998 **Federal Register** (63 FR 3752, 3754) and, except for the incorporation of the latest data, has been used here without changes.

FY 2001 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS

[Under Sec. 4732 of the BBA of 1997]

State	(in thousands)			State share of (c) (percent)	State FY2001 allocation (dollars in thousands)
	(a) M1[1]	(b) M2[2]	(c) [2 × (a)] + (b)		
AK	1	4	6	0.10	340
AL	28	74	130	2.10	7,357
AR	21	46	88	1.42	4,980
AZ	21	66	108	1.75	6,112
CA	108	310	526	8.50	29,766
CO	10	27	47	0.76	2,660
CT	8	57	73	1.18	4,131
DC	2	5	9	0.15	509
DE	6	10	22	0.36	1,245
FL	113	282	508	8.21	28,747
GA	22	67	111	1.79	6,281
HI	4	14	22	0.36	1,245
IA	17	59	93	1.50	5,263
ID	6	19	31	0.50	1,754
IL	38	148	224	3.62	12,676
IN	41	80	162	2.62	9,167
KS	10	40	60	0.97	3,395
KY	20	65	105	1.70	5,942
LA	24	67	115	1.86	6,508
MA	34	79	147	2.38	8,319
MD	26	52	104	1.68	5,885
ME	7	16	30	0.49	1,698
MI	36	138	210	3.40	11,884
MN	23	46	92	1.49	5,206
MO	24	78	126	2.04	7,130
MS	15	44	74	1.20	4,188
MT	4	11	19	0.31	1,075
NC	46	111	203	3.28	11,487
ND	5	13	23	0.37	1,302
NE	10	34	54	0.87	3,056
NH	2	12	16	0.26	905
NJ	35	101	171	2.76	9,677
NM	7	25	39	0.63	2,207
NV	6	23	35	0.57	1,981
NY	94	236	424	6.86	23,994
OH	51	161	263	4.25	14,883
OK	23	61	107	1.73	6,055
OR	8	39	55	0.89	3,112

FY 2001 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS—Continued

[Under Sec. 4732 of the BBA of 1997]

State	(in thousands)			State share of (c) (percent)	State FY2001 allocation (dollars in thousands)
	(a) M1[1]	(b) M2[2]	(c) [2 × (a)] + (b)		
PA	81	195	357	5.77	20,202
RI	9	18	36	0.58	2,037
SC	28	61	117	1.89	6,621
SD	5	13	23	0.37	1,302
TN	36	58	130	2.10	7,357
TX	81	223	385	6.22	21,787
UT	7	18	32	0.52	1,811
VA	31	87	149	2.41	8,432
VT	3	8	14	0.23	792
WA	22	48	92	1.49	5,206
WI	21	95	137	2.22	7,753
WV	13	42	68	1.10	3,848
WY	3	7	13	0.21	736
Total	1296	3593	6185	100.00	350,000

[1] Three-year average (1998–2000) of number of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of FPL

[2] Three-year average (1998–2000) of number of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 135% but less than 175% of FPL

III. 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 notice, and, if we proceed with a subsequent document, we will respond to the major comments in that document.

IV. Regulatory Impact Statement

We have examined the impact of this proposed 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). A regulatory impact statement (RIA) must be prepared for major rules with economic effects of $100 million or more annually. Under 5 U.S.C. 804, we have determined this to be a major rule.

The RFA requires agencies to analyze options for regulatory relief for small entities. For purposes of the RFA, States and individuals are notconsidered to be small entities.

This proposed notice would allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for QIs. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. Because the formula for determination of State allotments is specified in the statute, there were not other options to be considered. Therefore, we have applied the statutory formula for the State allotments except for the use of specified data. Because the data specified in the law were not currently available, we have used comparable data from the U.S. Census Bureau on the number of possible QIs in the States, as described in detail in the January 26, 1998 **Federal Register**. These new allotments for FY 2001 incorporate the latest data from the Census Bureau covering 1998 through 2000, as specified in the footnotes to the preceding table.

We believe the statutory provisions that would be implemented in this proposed notice would have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for selected QIs, and a greater number of low-income Medicare beneficiaries would be eligible to have their Medicare Part B premiums paid under Medicaid.

Section 1102(b) of the Act requires us 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 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.

Section 605(b) of the RFA states that preparing an impact analysis is not necessary if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because this proposed notice would simply provide notice of funding ceilings, as determined under the statute, and is not proposing any new requirements, it would not have a significant impact on small entities or on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandate Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any proposed rule and a final rule preceded by a proposed rule that may result in an expenditure in any one year by State, local or tribal governments, in the aggregate, or any the private sector, or $110 million or more. This notice would have no consequential effect of the governments mentioned or on the private sector.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

We have reviewed this notice under the threshold criteria of Executive Order

13132, Federalism. Because this proposed notice would simply provide notice of funding ceilings, as determined under the statute, and is not proposing any new requirements, we have determined that this proposed notice would not significantly affect the rights, roles, and responsibilities of States.

Authority: Sections 1902(a)(10)(E) and 1933 of the Social Security Act (42 U.S.C. 1396a(a)(10)(E) and 1396x).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid, Services.

[FR Doc. 02–1304 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4025–FN]

RIN 0938–ZA15

Medicare Program; Medicare+Choice Organizations—Approval of the Deeming Authority of the National Committee for Quality Assurance (NCQA) for Medicare+Choice (M+C) Managed Care Organizations That Are Licensed as Health Maintenance Organizations (HMOs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the National Committee for Quality Assurance (NCQA) for deeming authority of Medicare+Choice (M+C) organizations that are licensed as health maintenance organizations (HMOs). We have found that NCQA's standards for managed care organizations (MCOs) submitted to us in the application process meet or exceed those established by the Medicare program. Therefore, M+C organizations that are licensed as HMOs and are accredited by NCQA may receive, at their request, deemed status for the M+C requirements in the six areas—Quality Assurance, Information on Advance Directives, Antidiscrimination, Access to Services, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records—that are specified in Section 1852(e)(4)(C) of the Social Security Act (the Act). Regulations set forth in 42 CFR 422.157(b)(2) specify that the Secretary will publish a **Federal Register** notice that indicates whether an accreditation organization's request for approval has been granted and the effective date and term of the approval, which may not exceed 6 years.

FOR FURTHER INFORMATION CONTACT: Trisha Kurtz, (410) 786–4670.

SUPPLEMENTARY INFORMATION:

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 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 Website address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a managed care organization (MCO) that has a Medicare+Choice (M+C) contract with the Centers for Medicare & Medicaid Services (CMS). To enter into an M+C contract, the organization must be licensed by the State as a risk bearing entity and must meet the requirements that are set forth in 42 CFR part 422. These regulations implement Part C of Title XVIII of the Social Security Act (the Act), which specifies the services that an MCO must provide and the requirements that the organization must meet to be an M+C contractor. Other relevant sections of the Act are Parts A and B of Title XVIII and Part A of Title XI pertaining to the provision of services by Medicare certified providers and suppliers.

Following approval of the M+C contract, CMS engages in routine monitoring of the M+C organization to ensure continuing compliance. The monitoring process is comprehensive and uses a written protocol that itemizes the Medicare requirements the M+C organization must meet.

An M+C organization may be exempt from CMS monitoring of the requirements that are in the areas listed in section 1852(e)(4)(C) of the Act as a result of the organization being accredited by a CMS-approved accrediting organization. In essence, the Secretary ''deems'' that the Medicare requirements are met based on a determination that the accrediting organization's standards are at least as stringent as Medicare requirements. Regulations for the M+C deeming program are set forth in §§ 422.156, 422.157, and 422.158. The term for which an accrediting organization may be approved by CMS may not exceed 6 years as stated in § 422.157(b)(2). For continuing approval, the accrediting organization will have to re-apply to CMS.

II. Provisions of the Proposed Notice

On August 1, 2001, we published a proposed notice in the **Federal Register** (66 FR 39775) announcing the receipt of an application from NCQA for approval of deeming authority for M+C organizations that are licensed as health maintenance organizations (HMOs). In the proposed notice, we provided the factors on which we would base our evaluation. In accordance with § 422.157(b)(iii) of the proposed notice, we provided a 30-day public comment period. We did not receive public comments in response to the proposed notice for NCQA.

III. Deeming Approval Review and Evaluation

As set forth in section 1852(e)(4) of the Act and our regulations at § 422.158, the review and evaluation of the NCQA's accreditation program was compared to the requirements set forth in part 422 for the M+C program.

A. Components of the Review Process

The review of NCQA's application for approval of M+C deeming authority included the following components.

1. Site Visit

A site visit to NCQA's headquarters to assess—

- Corporate policies and procedures that relate to the MCO accreditation program;
- The survey, decision-making, and report-writing processes used in NCQA's MCO accreditation program;
- The resources available for accreditation reviews and the ability to financially sustain an M+C deeming program;
- The staff and surveyor training and evaluation programs;

• The ability to investigate and respond appropriately to complaints against accredited MCOs; and

• Communication, customer support and release of accreditation information to the public.

2. Desk-Top Review

A desk-top review of NCQA's MCO accreditation program, including—

• A description of NCQA's survey process for MCOs, including the frequency of surveys performed, whether the surveys are announced or unannounced, surveyor instructions, the review and accreditation status decision-making process, procedures used to notify accredited M+C organizations of deficiencies and monitoring of the correction of deficiencies, and the procedures used to enforce compliance with accreditation requirements;

• Information about the individuals who perform MCO accreditation reviews, including the size and composition of the survey team, the methods of compensation, the education and experience requirements, the content and frequency of the in-service training, the evaluation system used to monitor performance, and conflict of interest requirements;

• A description of the data management and analysis system, the types (full, partial, or denial) and categories (provisional, conditional, temporary) of accreditation offered by NCQA, the duration of each category of accreditation, and a statement identifying the types and categories that would serve as a basis for accreditation if CMS grants NCQA M+C organization deeming authority;

• The procedures used to respond to and investigate complaints or identify other problems with accredited organizations, including coordination of these activities with licensing bodies and ombudsmen programs;

• A description of how NCQA provides accreditation information to the general public;

• The policies and procedures for (1) withholding, denying and removal of accreditation status, and the other actions NCQA may take in response to noncompliance with their standards and requirements, and (2) how NCQA deals with accreditation of organizations that are acquired by another organization, have merged with another organization, or that undergo a change of ownership or management;

• Lists of all (1) NCQA accredited M+C organizations, (2) MCOs surveyed by NCQA in the past 3 years, and (3) MCOs that were scheduled to be surveyed by NCQA within 3 months of submitting their application;

• A written presentation of NCQA ability to furnish data electronically, via telecommunications;

• A resource analysis that included financial statements for the past 3 years (audited, if possible) and the projected number of deemed status surveys for the upcoming year; and

• A statement acknowledging that, as a condition of approval, NCQA agreed to comply with the ongoing responsibility requirements stated in § 422.157(c).

3. Assessment of NCQA's Standards and Methods of Evaluation

As part of the application, NCQA submitted a crosswalk that compared their standards and methods of evaluations with corresponding M+C requirements. A multicomponent team of CMS regional and central office staffs then reviewed and evaluated NCQA's standards and processes and compared them to the M+C requirements in six areas: Quality Assurance, Access to Services, Antidiscrimination, Information on Advance Directives, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records.

4. Observation of an NCQA Accreditation

An observation of an NCQA accreditation of an MCO allowed CMS staff to (1) validate that the accreditation review methods described in NCQA's application were equal to (or exceeded) the corresponding Medicare requirements, and (2) resolve outstanding issues that were identified during the review of NCQA's application materials.

B. Results of the Review Process

We determined that NCQA's current accreditation program for MCOs did not either address or ''meet or exceed'' several of the M+C requirements that are contained in 5 of the 6 categories set forth in section 1852(e)(4)(C) of the Act. To address this issue, NCQA agreed to complement their current MCO accreditation program by applying a ''Medicare+Choice Module'' (M+C Module). Thus, when assessing M+C organizations that seek deemed status for the Medicare requirements contained in the six categories established in the Act, NCQA will complement their current accreditation program with the M+C Module. The M+C Module will include the following:

1. Quality Assurance (42 CFR 422.152)

• A statement that ''if/when'' CMS establishes minimum performance levels, the M+C organization must meet the performance level(s) and report them to CMS.

• A requirement that M+C organizations must meet the full range of CMS Quality Assessment and Performance Improvement project topic requirements.

2. Provider Participation Rules (42 CFR Subpart E)

• A requirement for a written notice of (1) material changes in participating rules before the changes are put into effect, (2) initial participation decisions that are adverse to physicians, and (3) the appeals process and reasons for the action when a participating provider is suspended or terminated.

• A requirement that the majority of the appeals hearing panel members are peers of the affected physician.

• A requirement that both the M+C organization and contracting provider provide at least 60 days written notice to each other before terminating the contract without cause.

• A requirement that participating providers and suppliers who provide services to Medicare enrollees are approved for participation in Medicare and that the M+C organization does not employ or contract with providers who have opted-out of Medicare participation.

• A requirement that M+C organizations do not discriminate against health care professionals who serve high-risk populations or who specialize in the treatment of costly conditions in the formal selection and retention criteria.

• A requirement that the M+C organization provide sufficient notice to CMS and enrollees, if they object to covering, furnishing or paying for counseling or referral service on the basis of moral or religious grounds and that the M+C organization provides conscience protection policies to enrollees.

• NCQA agreed to a Physician Incentive Plan (PIP) review strategy proposed by CMS. M+C organizations will continue to provide PIP information to CMS. CMS will notify accrediting organizations of M+C organizations that they have deemed are ''noncompliant'' for any of the PIP requirements; then the accrediting organization will contact the M+C organization to inform them that they must comply with the PIP provisions. If, at the end of the accrediting organization's corrective action process,

the M+C organization continues to be noncompliant, the accrediting organization will turn the case over to CMS. However, PIP disclosure for 2002 is delayed until further notice. CMS is working to modify the regulations for disclosure as part of the effort to reduce administrative burdens on managed care organizations.

• A requirement that addresses the limitation on provider indemnification that is stated in § 422.212.

3. Information on Advance Directives (42 CFR 422.128)

• NCQA agreed to add all the CMS requirements regarding information on advance directives to their M+C Module.

4. Antidiscrimination (42 CFR 422.110, 422.502(h))

• A requirement that an M+C organization may not deny, limit, or condition the coverage or furnishing of benefits to individuals eligible to enroll in an M+C plan offered by the organization on the basis of any factor that is related to health status.

• A requirement that an M+C organization may not enroll an individual who has been medically determined to have end-stage renal disease and a requirement that an enrollee who develops end-stage renal disease while enrolled in an M+C organization may not be disenrolled for that reason.

5. Access to Services (42 CFR 422.112)

• A requirement that M+C organizations have policies and procedures that allow an enrollee's representative to facilitate care or treatment decisions when the enrollee is unable to do so.

• A requirement that M+C organizations support a network of providers with written arrangements that address the provision of services covered under the M+C program.

• A requirement that M+C organizations provide direct access to women's health services for routine and preventive health care services.

• A statement that ensures that M+C organizations have procedures to identify individuals with complex needs and/or serious medical conditions.

• A requirement that M+C organizations should make a ''best effort'' attempt to conduct an initial assessment of enrollee health care needs within 90 days of the effective date of enrollment.

C. Term of Approval

Regulations at § 422.157(b)(2) permit us to grant a term of approval for deeming authority for accreditation organizations of up to 6 years. On January 18, 2002, we notified NCQA of our approval of their application as a national accreditation organization for MCOs that request participation in the M+C program. We are granting this deeming authority through January 17, 2008.

IV. Paperwork Reduction Act

The requirements associated with granting and withdrawal of deeming authority to national accreditation, codified in part 422, Medicare+Choice Program, are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of June 30, 2002. Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This notice merely recognizes NCQA as a national accreditation organization that has approval for deeming authority for HMOs that are participating in the M+C program. Since M+C organizations are monitored every 2 years by CMS's regional office staff to determine compliance with M+C requirements, we believe that the M+C deeming program has the potential to reduce both the regulatory and administrative burdens associated with the Medicare+Choice program. In FY 2001, there were 179 M+C contracts and 5,578,605 enrollees. Approximately, 75 of those M+C organizations were accredited by NCQA.

This notice, however, is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on small entities and will not have an effect on the operations of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or 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 expenditure in any 1 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. We believe the private sector costs of this notice fall below this threshold as well.

In accordance with Executive Order 13132, this notice will not significantly affect the rights of States and does not significantly affect State authority. This regulation describes only processes that must be undertaken to fulfill our obligation to conduct enforcement as required by the April 8, 1997 regulation.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by OMB.

Authority: Secs. 1851 and 1855 of the Social Security Act (42 USC 1395w–21 and 42 USC 1395w–25)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 10, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1874 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3081–N]

RIN 0938–ZA26

Medicare Program; Peer Review Organization Contracts: Solicitation of Statements of Interest From In-State Organizations—Alaska, Hawaii, Idaho, Illinois, Kentucky, Maine, Nebraska, South Carolina, Vermont, and Wyoming

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with section 1153(i) of the Social Security Act, gives at least 6 months advance notice of the expiration dates of contracts with out-of-State Utilization and Quality Control Peer Review Organizations. It also specifies the period of time in which in-State organizations may submit a statement of interest so that they may be eligible to compete for these contracts.

DATES: Written statements of interest must be received at the address specified no later than 5 p.m. EST February 11, 2002. Due to staffing and resource limitations, we cannot accept statements submitted by facsimile (FAX) transmission.

ADDRESSES: Statements of interest must be submitted to the Centers for Medicare & Medicaid Services, Acquisitions and Grants Groups, OICS, Attn.: Edward L. Hughes, 7500 Security Boulevard, Mail Stop C2–21–15, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Udo Nwachukwu, (410) 786–7234.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248) amended Part B of title XI of the Social Security Act (the Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program.

PROs currently review certain health care services furnished under title XVIII of the Act (Medicare) and under certain other Federal programs to determine whether those services are reasonable, medically necessary, provided in the appropriate setting, and are of a quality that meets professionally recognized standards. PRO activities are a part of the Health Care Quality Improvement Program (HCQIP), a program which supports our mission to ensure health care security for our beneficiaries. The HCQIP rests on the belief that a plan's, provider's, or practitioner's own internal quality management system is key to good performance. The HCQIP is carried out locally by the PRO in each State. Under the HCQIP, PROs provide critical tools (for example, quality indicators and information) for plans, providers, and practitioners to improve the quality of care provided to Medicare beneficiaries. The Congress created the PRO program in part to redirect, simplify, and enhance the cost-effectiveness and efficiency of the peer review process.

In June 1984, we began awarding contracts to PROs. We currently maintain 53 PRO contracts with organizations that provide medical review activities for the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The organizations that are eligible to contract as PROs have satisfactorily demonstrated that they are either physician-sponsored or physician-access organizations in accordance with sections 1152 and 1153 of the Act and our regulations at 42 CFR 475.102 and 475.103. A physician-sponsored organization is one that is both composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the respective review area, and who are representative of the physicians practicing in the review area. A physician-access organization is one that has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, a health care facility affiliate, or in most cases a payor organization. (Statutes and regulations provide that, in the event CMS determines no otherwise qualified nonpayor organization is available to undertake a given PRO contract, CMS may select a payor organization that otherwise meets requirements to be eligible to conduct PRO Utilization and Quality Control Peer Review.) The selected organization must have a consumer representative on its governing board.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1153 of the Act by adding a new paragraph (i) that prohibits us from renewing the contract of any PRO that is not an in-State organization without first publishing in the **Federal Register**, a notice announcing when the contract will expire. This notice must be published no later than 6 months before the date the contract expires and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submit a proposal within the specified period of time, we cannot automatically renew the contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. An in-State organization is defined as an organization that has its primary place of business in the State in which review will be conducted (or, that is owned by a parent corporation, the headquarters of which is located in that State).

There are currently 10 PRO contracts with entities that do not meet the statutory definition of an in-State organization. The areas affected for purposes of this notice along with their respective expiration dates are as follows:

Illinois, July 31, 2002
Vermont, July 31, 2002
Wyoming, July 31, 2002
Maine, July 31, 2002
Alaska, October 31, 2002
Idaho, October 31, 2002
Hawaii, January 31, 2003
Kentucky, January 31, 2003
Nebraska, January 31, 2003
South Carolina, January 31, 2003

II. Provisions of the Notice

The notice announces the scheduled expiration dates of the current contracts between CMS and out-of-State PROs responsible for review in the areas mentioned above.

Interested in-State organizations may submit statements of interest to be the PRO for these States. We must receive the statements no later than February 11, 2002, and in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted or be a subsidiary of a parent corporation, whose headquarters is located in that State. In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be Either a Physician-Sponsored or a Physician-Access Organization

1. Physician-Sponsored Organization

a. The organization must be composed of a substantial number of the licensed

doctors of medicine and osteopathy practicing medicine or surgery in the review area, and who are representative of the physicians practicing in the review area.

b. The organization must not be a health care facility, health care facility association, health care facility affiliate, or in most cases a payor organization.

c. In order to meet the ''substantial number of doctors of medicine and osteopathy'' requirement of paragraph A.1.a of this section, an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to meet the representation requirement of paragraph A.1.a of this section, an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. Alternatively, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, the organization must demonstrate in its statement of interest through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician-Access Organization

a. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties.

b. The organization must not be a health care facility, health care facility association, health care facility affiliate, or in most cases a payor organization.

c. An organization meets the requirements of paragraph A.2.a of this section if it demonstrates that it has available to it at least one physician in every generally recognized specialty and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have at Least One Individual Who Is a Representative of Consumers on Its Governing Board

If one or more organizations meet the above requirements in a PRO area and submit statements of interest in accordance with this notice, we will consider those organizations to be potential sources for the 10 contracts upon their expiration. These organizations will be entitled to participate in a full and open competition for the PRO contract to perform the PRO statement of work.

III. Information Collection Requirements

This notice contains information collection requirements that have been approved by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB Control Number 0938–0526.

Authority: Section 1153 of the Social Security Act (42 U.S.C. 1320c–2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: December 12, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1066 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4034–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education—February 13, 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. App. 2), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on Wednesday, February 13, 2002. This Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS), on opportunities for CMS to optimize the effectiveness of the National Medicare Education Program and other CMS programs that help Medicare beneficiaries understand Medicare and the range of Medicare options available with the passage of the Medicare+Choice program. The Panel meeting is open to the public.

DATES: The meeting is scheduled for Wednesday, February 13, 2002, from 9:00 am. to 5:00 pm.

ADDRESSES: The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC, 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Nancy Caliman, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.hcfa.gov/events/apme/homepage.htm*) for additional information and updates on committee activities, or contact Ms. Caliman via e-mail at *APME@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 and the charter renewing the Panel on January 18, 2001. The Advisory Panel on Medicare Education advises the Department of Health and Human Services and the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are to provide advice concerning optimal strategies for:

- Developing and implementing a national Medicare education program that describes the options for selecting a health plan under Medicare;
- Enhancing the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships;
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program;
- Assembling an information base of best practices for helping consumers evaluate health plan options and building a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Diane Archer, J.D., President, Medicare Rights Center; David Baldridge, Executive Director, National Indian Council on Aging; Bruce Bradley, M.B.A., Director, Managed Care Plans, General Motors Corporation; Carol

Cronin, Chairperson, Advisory Panel on Medicare Education; Joyce Dubow, M.U.P., Senior Policy Advisor, Public Policy Institute, AARP; Jennie Chin Hansen, Executive Director, On Lok Senior Health Services; Elmer Huerta, M.D., M.P.H., Director, Cancer Risk and Assessment Center, Washington Hospital Center; Bonita Kallestad, J.D., M.S., Mid Minnesota Legal Assistance; Steven Larsen, J.D., M.A., Maryland Insurance Commissioner, Maryland Insurance Administration; Brian Lindberg, M.M.H.S., Executive Director, Consumer Coalition for Quality Health Care; Heidi Margulis, B.A., Vice President, Government Affairs, Humana, Inc.; Patricia Neuman, Sc.D., Director, Medicare Policy Project, Henry J. Kaiser Family Foundation; Elena Rios, M.D., M.S.P.H., President, National Hispanic Medical Association; Samuel Simmons, B.A., President and CEO, The National Caucus and Center on Black Aged, Inc.; Nina Weinberg, M.A., President, National Health Council; and Edward Zesk, B.A., Executive Director, Aging 2000.

The agenda for the February 14, 2002 meeting will include the following:

- A recap of the previous (October 25, 2001) meeting;
- CMS update/issues;
- Update on the Fall Medicare Ad Campaign;
- Update on the State Health Insurance Assistance Program;
- Medicare Education Research Update;
- APME Annual Report;
- Public comment.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Caliman by 12 noon, Thursday, February 7, 2002. In conjunction, a written copy of the oral presentation should also be submitted to Ms. Caliman by 12 noon, Thursday, February 7, 2002. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Caliman by 12 noon, Thursday, February 7, 2002. 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 Ms. Caliman at least 15 days before the meeting.

(Section 222 of the Public Health Service Act (42 USC 217a) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a) and 41 CFR 102–3))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1687 Filed 1–18–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 66, No. 177, pp. 47497–47499 dated September 12, 2001) is amended to reflect changes to the Press Office and the Center for Medicaid and State Operations (CMSO). Specifically, the Press Office will be retitled as the Public Affairs Office (PAO) and the Intergovernmental and Tribal Affairs Group (ITAG) will be transferred from CMSO. The transfer of ITAG from CMSO to PAO will strengthen and improve the coordination of responses to the press, and local/national media, while integrating the State, local government, and tribal affairs programs into the PAO media relations and communications activities.

The specific amendments to part F are described below:

- Section F.10. (Organization) is amended to read as follows:

1. Public Affairs Office (FAC)
2. Center for Beneficiary Choices (FAE)
3. Office of Legislation (FAF)
4. Center for Medicare Management (FAH)
5. Office of Equal Opportunity and Civil Rights (FAJ)
6. Office of Strategic Planning (FAK)
7. Office of Communications and Operations Support (FAL)
8. Office of Clinical Standards and Quality (FAM)
9. Office of the Actuary (FAN)
10. Center for Medicaid and State Operations (FAS)
11. Northeastern Consortium (FAU)
12. Southern Consortium (FAV)
13. Midwestern Consortium (FAW)
14. Western Consortium (FAX)
15. Office of Internal Customer Support (FBA)
16. Office of Information Services (FBB)
17. Office of Financial Management (FBC)

- Section F.20. (Functions) is amended by deleting the functional statements in their entirety for the Press Office and the Center for Medicaid and State Operations. The new functional statements read as follows:

1. Public Affairs Office (FAC)

- Serves as the focal point for the Agency to the news media and provides leadership for the Agency in the area of intergovernmental affairs. Advises the Administrator and other Agency components in all activities related to the media and on matters which affect other units and levels of government.
- Coordinates CMS activities with the Office of the Assistant Secretary for Public Affairs and the Secretary's intergovernmental affairs officials.
- Serves as senior counsel to the Administrator in all activities related to the media. Provides consultation, advice, and training to the Agency's senior staff with respect to relations with the news media.
- Develops and executes strategies to further the Agency's relationship and dealings with the media. Maintains a broad based knowledge of the Agency's structure, responsibilities, mission, goals, programs, and initiatives in order to provide or arrange for rapid and accurate response to news media needs.
- Prepares and edits appropriate materials about the Agency, its policies, actions and findings, and provides them to the public through the print and broadcast media. Develops and directs media relations strategies for the Agency.
- Responds to inquiries from a broad variety of news media, including major newspapers, national television and radio networks, national news magazines, local newspapers and radio and television stations, publications directed toward the Agency's beneficiary populations, and newsletters serving the health care industry.
- Manages press inquiries, coordinates sensitive press issues, and develops policies and procedures for how press and media inquiries are handled.
- Arranges formal interviews for journalists with the Agency's Administrator or other appropriate senior Agency staff; identifies for interviewees the issues to be addressed, and prepares or obtains background materials as needed.
- For significant Agency initiatives, issues media advisories and arranges press conferences as appropriate; coordinates material and personnel as necessary.

• Serves as liaison with the Department of Health and Human Services and White House press offices.

• Serves as focal point for all Agency interactions with Native American and Alaskan Native tribes.

• Coordinates State program issues/concerns (i.e., waiver reviews, Medigap, Medicare-Select, survey and certification, Clinical Laboratory Improvement Act (CLIA), tribal affairs) with program staff and regional offices.

• Serves as coordinator of State health care policy and as liaison between CMS and State and local officials, and individual lobbyists representing State and local officials and advocate groups.

• Serves as coordinator of tribal affairs issues and liaison between CMS and State and local officials representing tribal affairs groups.

• Responsible for handling highly sensitive and complex correspondence from and to State and local elected officials. Reviews proposed regulations affecting States.

• Coordinates roll-out of waivers or other significant announcements relating to States.

10. Center for Medicaid and State Operations (FAS)

• Serves as the focal point for all Agency interactions with States and local governments (including the Territories).

• Develops national Medicaid policies and procedures which support and assure effective State program administration and beneficiary protection. In partnership with the States, evaluates the success of State agencies in carrying out their responsibilities and, as necessary, assists the States in correcting problems and improving the quality of their operations.

• Develops, interprets, and applies specific laws, regulations, and policies that directly govern the financial operation and management of the Medicaid program and the related interactions with the States and regional offices.

• Develops national policies and procedures to support and assure appropriate State implementation of the rules and processes governing group and individual health insurance markets and the sale of health insurance policies that supplement Medicare coverage.

• In coordination with other components, develops, implements, evaluates and refines standardized provider performance measures used within provider certification programs. Supports States in their use of standardized measures for provider feedback and quality improvement activities. Develops, implements and supports the data collection and analysis systems needed by States to administer the certification program.

• Reviews, approves and conducts oversight of Medicaid managed care waiver programs. Provides assistance to States and external customers on all Medicaid managed care issues.

• Develops national policies and procedures on Medicaid automated claims/encounter processing and information retrieval systems such as the Medicaid Management Information System (MMIS) and integrated eligibility determination systems.

• In coordination with the Office of Financial Management, directs, coordinates, and monitors program integrity efforts and activities by States and regions. Works with the Office of Financial Management to provide input in the development of program integrity policy.

• Through administration of the home and community based services program and policy collaboration with other Agency components and the States, promotes he appropriate choice and continuity of quality services available to frail elderly, disabled and chronically ill beneficiaries.

• Develops and tests new and innovative methods to improve the Medicaid program through demonstrations and best practices including managing review, approval, and oversight of the Section 1115 demonstrations.

• Directs the planning, coordination, and implementation of the survey, certification, and enforcement programs for all Medicare and Medicaid providers and suppliers, and for laboratories under the auspices of the Clinical Laboratory Improvement Act (CLIA). Reviews and approves applications by States for ''exemption'' from CLIA and applications from private accreditation organizations for deeming authority. Develops assessment techniques and protocols for periodically evaluating the performance of these entities. Monitors the performance of proficiency testing programs under the auspices of CLIA.

Dated: January 2, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1064 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0399]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by February 25, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Rapid Response Surveys (OMB Control No. 0910–0457)—Extension

Under section 519 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device related deaths, serious injuries, and malfunctions, and user facilities to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health, or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the

Commissioner of Food and Drugs (the Commissioner) to implement general powers (including conducting research) to effectively carry out the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical device usage that are not foreseen or apparent during the premarket notification and review process. FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch Reporting Systems using FDA Forms 3500 and 3500A (OMB Control No. 0910–0281).

FDA received a 1-year OMB approval on February 5, 2001, to implement Emergency Health Surveys (since that time, renamed ''Rapid Response Surveys''), via a series of surveys, thus implementing section 705(b) of the act and the Commissioner's authority as specified in section 903(d)(2) of the act. To date, FDA has initiated one Rapid Response Survey (66 FR 49391, September 27, 2001), with two more in development. FDA is now seeking OMB clearance to continue collecting this information. Participation in these surveys has been, and will continue to be, voluntary. This request covers Rapid Response Surveys for general type medical facilities and specialized medical facilities (those known for cardiac surgery, obstetric/gynecological services, pediatric services, etc.), and health professionals, but more typically risk managers working in medical facilities.

FDA currently uses the information gathered from these surveys to quickly obtain vital information from the appropriate clinical sources so that FDA may take appropriate public health or regulatory action. FDA projects 10 rapid response surveys per year with a sample of between 50 and 200 respondents per survey.

In the **Federal Register** of September 27, 2001 (66 FR 49391), the agency requested comments on the proposed collection of information. No comments were received.

FDA originally estimated the burden of this collection to be 2 hours per survey. However, FDA is revising the estimated burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	10 (maximum)	2,000	.5	1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the maximum sample size per questionnaire that FDA could analyze in a timely manner. The annual frequency per response was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while another respondent may be contacted several times—depending on the medical device under evaluation. Based on the questions developed for the one survey that has been conducted, and for the two under development, it is estimated, given the expected type of issues that will be addressed by the surveys, that at a maximum it will take 30 minutes for a respondent to gather the requested information and fill in the answers.

Dated: January 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1928 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1234]

Determination of Regulatory Review Period for Purposes of Patent Extension; SONATA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SONATA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all

of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SONATA (zaleplon). SONATA is indicated for the short-term treatment of insomnia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SONATA (U.S. Patent No. 4,626,538) from American Cyanamid Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 13, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SONATA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SONATA is 3,027 days. Of this time, 2,435 days occurred during the testing phase of the regulatory review period, while 592 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 2, 1991. The applicant claims May 16, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 2, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 30, 1997. The applicant claims January 13, 1998, as the date the new drug application (NDA) for SONATA (NDA 20–859) was initially submitted. However, FDA records indicate that NDA 20–859 was submitted on December 30, 1997.

3. *The date the application was approved*: August 13, 1999. FDA has verified the applicant's claim that NDA 20–859 was approved on August 13, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,835 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by March 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 24, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above). Three copies of any information are to be submitted, except that individuals may submit one copy. Comments and petitions are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1925 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0363]

Determination of Regulatory Review Period for Purposes of Patent Extension; MIFEPREX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MIFEPREX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MIFEPREX (mifepristone). MIFEPREX is indicated for the medical termination of intrauterine pregnancy through 49 days pregnancy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MIFEPREX (U.S. Patent No. 4,386,085) from the Population Council, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MIFEPREX represented the first permitted commercial marketing or use of the product. Shortly thereafter,

the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MIFEPREX is 2,249 days. Of this time, 593 days occurred during the testing phase of the regulatory review period, while 1,656 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: The applicant claims August 3, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 4, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: March 18, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for MIFEPREX (NDA 20–687) was initially submitted on March 18, 1996.

3. *The date the application was approved*: September 28, 2000. FDA has verified the applicant's claim that NDA 20–687 was approved on September 28, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by March 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 24, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 14, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1926 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1346]

Determination of Regulatory Review Period for Purposes of Patent Extension; KEPPRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for KEPPRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product KEPPRA (Levetiracetam). KEPPRA is indicated as adjunctive therapy in the treatment of partial onset seizures in adults with epilepsy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for KEPPRA (U.S. Patent No. 4,943,639) from UCB Societe Anonyme, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 3, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of KEPPRA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for KEPPRA is 2,010 days. Of this time, 1,707 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: June 1, 1994. The applicant claims May 3, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 1, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: February 1, 1999. FDA has

verified the applicant's claim that the new drug application (NDA) for KEPPRA (NDA 21–035) was initially submitted on February 1, 1999.

3. *The date the application was approved*: November 30, 1999. FDA has verified the applicant's claim that NDA 21–035 was approved on November 30, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,155 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by March 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 24, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1927 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 19, 2002, from 8 a.m. to 5:30 p.m. and on February 20, 2002, from 8 a.m. to 4 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 19, 2002, the committee will hear presentations on the proposed approach for selection of delta in noninferiority (equivalence) clinical trials. The impact of this approach on studies of anti-infective drug products will be considered, with a focus on acute exacerbation of chronic bronchitis and hospital-acquired-pneumonia. On February 20, 2002, the committee will discuss approaches to the development of antimicrobial agents for the treatment of resistant pathogens.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 11, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 16, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1814 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 27, 2002, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss: (1) Trial design considerations and appropriate patient populations for studies of investigational agents for adjuvant therapy of melanoma given the availability of an approved agent for this indication; and (2) the appropriate study design and control for the proposed phase 3 trial of investigational new drug (IND) 2885, MELACINE (melanoma vaccine), Corixa Corp., for adjuvant treatment of melanoma.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 20, 2002. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., and 1:15 p.m. and 1:45 p.m. Time allotted for each

presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 20, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by February 20, 2002, to address issues specific to the topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 18, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1924 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Grantee Reporting Requirements for the Rural Health Network Development Grant Program (OMB No. 0915–0218)—Revision

This is a request for revision of the reporting requirements for the Rural Health Network Development Grant Program authorized by section 330A of the Public Health Service Act as amended by the Health Centers Consolidation Act of 1996 (Pub. L. 104–229).

The purpose of the program is to assist in the development of integrated networks of health care providers in rural communities. Grantee networks work to strengthen the health care delivery system in their service areas thereby improving access to, restraining the cost of, and improving the quality of essential health care services for rural residents. Grantees submit annual reports that provide information on progress toward goals and objectives of the network, specific network activities, and certain financial data related to the grant budget.

The information is used to evaluate progress on the grants, to identify grantees in need of technical assistance, and to identify best practices in the development of rural health networks. The information is also used to evaluate the impact of networks on access of care and quality of care. To minimize the burden on grantees, the reports will be submitted electronically. The estimated burden is as follows:

HRSA form	Number of responses	Responses per respondent	Total reponses	Hours per responses	Total burden hours
Tracking	45	1	45	1.5	67.5

Written comments and recommendations concerning the proposed information collection should be sent within 60 days of this notice to: Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: January 18, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1850 Filed 1–24–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Healthy Schools, Healthy Communities User/Visit Surveys—NEW

The Bureau of Primary Health Care of HRSA is planning to conduct User/Visit Surveys of the Healthy Schools, Healthy Communities (HSHC) Program. The purpose of these surveys is to obtain nationally representative data about the patients of HSHC health centers and the services provided to them. The study consists of two parts. One is the User Survey, which involves interviewing HSHC patients or their parents about the patients' health and health care. The second is the Visit Survey, in which patient visit data will be collected from medical records in order to find out what health services are being used by

patients. The data collected will provide policymakers with a better understanding of the services students are receiving at HSHC health centers and how well these centers are meeting the needs of students. The surveys will provide new information about health care received in HSHC settings.

Data from the surveys will provide quantitative information on the population served by the HSHC program, specifically: (a) Sociodemographic characteristics, (b) health care access and utilization, (c) health status and morbidity, (d) health care experiences and risk behaviors, (e) content of medical encounters, (f) preventive care and (g) patient satisfaction. These surveys will provide data useful to the program and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993.

The estimated burden on respondents is as follows:

Respondents	Number of respondents	Hours per respondent	Total Hour burden
Adolescent Users	500	.5	250
Guardians (Proxies) of Users	500	.5	250
Medical Records	1000	.25	250
Total	1000	.....	750

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 18, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1851 Filed 1–24–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 2002.

The National Advisory Committee on Rural Health will convene its fortieth meeting at the time and place specified below:

Name: National Advisory Committee on Rural Health.

Date and Time: March 3, 2002; 2 p.m.–5 p.m., March 4, 2002; 8:30 a.m.–5 p.m., March 5, 2002; 8:30 a.m.–3 p.m.

Place: Grand Hyatt Capitol Hill, 100 H Street, NW, Washington, DC 20001–4520.

The meeting is open to the public.

Purpose: The National Advisory Committee on Rural Health provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health care services in rural areas.

Agenda: Sunday afternoon, March 3, 2002, at 2 p.m. the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. The first session will open with a discussion of the Meeting Agenda and Goals by the Office of Rural Health Policy (ORHP) Director, Dr. Marcia Brand. This will be followed by a discussion of the Committee's role in the Department, administrative business and the Committee's 2002 Agenda.

Monday morning at 8:30 a.m., the session will open with an update by ORHP. After the break, the Committee will discuss and approve the 2001 project, ''A Targeted Look at the Rural Safety Net.'' After lunch, there will be presentations on two topics relating to the Committee's 2002 workplan.

The final session will be convened on Tuesday, March 5. Beginning at 8:30 a.m. there will be a brief session with the National Rural Health Association's Policy Institute. This will be followed by a session discussing the Committee's strategic plan and future agenda and the selection of a Steering Committee. The strategic planning will continue after lunch. The meeting will conclude with a discussion of the June meeting. The meeting will be adjourned at 3:00 p.m.

Anyone requiring information regarding the subject Committee should contact Marcia K. Brand, Ph.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray, Office of Rural Health Policy (ORHP), (301) 443–0835. The National Advisory Committee meeting agenda will be posted on ORHP's Web site, *http://www.ruralhealth.hrsa.gov.*

Dated: January 18, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1852 Filed 1–24–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in February 2002.

A portion of the meeting will be open and will include a roll call, general announcements, and discussion about consumer affairs, the Administrator's priority areas for SAMHSA, emergency services and disaster relief, and products from the Homeless Programs Branch.

Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. & 10(d).

A summary of the meeting and a roster of Council members may be obtained from Ms. Eileen Pensinger, Executive Secretary, CMHS, Room 15–99, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–4823.

Committee Name: CMHS National Advisory Council.

Meeting Date: February 7–8, 2002.

Place The Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland.

Type:

Closed: February 7, 2002—8:30 a.m.–9:30 a.m.
Open: February 7, 2002—10 a.m.–4:30 p.m.
Open: February 8, 2002—9 a.m.–12:30 p.m.
Contact: Eileen S. Pensinger, M.Ed., Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 15–99, Rockville, Maryland 20857. Telephone: (301) 443–4823 and FAX (301) 443–5163.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: January 18, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–1929 Filed 1–24–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in February 2002. A portion of the meeting is open and includes discussion of the Center's policy issues and current administrative, legislative, and program developments. The Council will hear feature presentations by SAMHSA's Administrator Charles Curie, M.A., A.C.S.W., and CSAT Director H. Westley Clark, M.D., J.D., M.P.H., CAS, FASAM. Significant issues to be discussed with the Council include Trauma and Substance Abuse; Mental Health: Culture, Race, and Ethnicity—A Supplement to Mental Health: A Report of the Surgeon General; Parity; Guidance for Applicants (GFA) Update and Evaluation Review; the Health Insurance Portability and Accountability Act and its impact on substance abuse; an information exchange on the New Freedom Initiative; status reports on HIV/AIDS; OPIOID Accreditation; Buprenorhphine; CSAT's Faith and Community Partners Initiative; Healthcare Professional Impairment; and Health Disparities.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c), and (6) and 5 U.S.C. App. 2, section 10(d).

If special accommodations are needed for persons with disabilities, please notify the contact person listed below. Substantive program information, a summary of the meeting and roster of Council members may also be obtained from the contact person.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.
Meeting Date: February 21, 2002—9 a.m.–5:30 p.m. February 22, 2002—8:30 a.m.–1:00 p.m.
Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro, Bethesda, Maryland 20814.
Type:
Open: February 21, 2002—9 a.m.–5:30 p.m.
Closed: February 22, 2002—8:30 a.m.–9:30 a.m.
Open: February 22, 2002—9:30 a.m.–1 p.m.
Contact: Cynthia Graham, 5600 Fishers Lane, RW II, Ste 619, Rockville, MD 20857, Telephone: (301) 443–8923; FAX: (301) 480–6077, E-mail: cgraham@samhsa.gov.

Dated: January 18, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–1930 Filed 1–24–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register.**

The following persons will serve on the SAMHSA Performance Review Board, which oversees the evaluation of performance appraisals of SAMHSA's Senior Executive Service (SES) members:

Frank S. Sullivan, Ph.D., Chairperson
H. Westley Clark, M.D., J.D., M.P.H.
Ruth Sanchez-Way, Ph.D.
Randolph Wykoff, M.D., M.P.H., T.M.

For further information about the SAMHSA Performance Review Board, contact the Division of Human Resources Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 14 C–24, Rockville, Maryland 20857, telephone (301) 443–5030 (not a toll-free number).

Dated: October 29, 2001.

Joseph H. Autry III,

Acting Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–1854 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–04]

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 DATE: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, 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: January 18, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–1813 Filed 1–24–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance

Endangered Species

On December 27, 2001, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–051290) to Conservation International/IUCN Turtle Survival Alliance, Aiken, South Carolina, to import five river terrapin (*Batagur baska*) from Kadoorie Farms and Botanic Gardens, Tai Po, New Territories, Hong Kong. The 30-day comment period required by Section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of these terrapins existed, and that no reasonable alternative was available to the applicant for several reasons.

The terrapins were part of a seizure by the Agriculture, Fisheries and Conservation Department in Hong Kong, which took place on December 11, 2001. The seizure which included 12 different Asian species totaling 10,000 live turtles, were concealed in four 20-foot containers. The confiscated turtles were smuggled to Macau by air from Singapore, and then shipped to China. The shipment was destined for the illegal food trade. The river terrapin was the only species listed as Appendix I under the Convention on International Trade in Endangered Species (CITES) and classified as endangered under the U.S. Endangered Species Act (ESA). The balance of the shipment was comprised of three species that were listed as Appendix II under CITES, and the remaining eight species that were not CITES or ESA listed.

Because the exact origin of these specimens was not known, and based on information showing an increasing market demand for turtles in South China that poses a severe threat to wild turtle populations in Asian, returning these specimens to their natal country of origin and/or their possible release back into the wild was not an option. The terrapins were shipped in very poor conditions which also put their immediate health in question. The IUCN Turtle Survival Alliance is planning to establish viable assurance colonies of this species to allow the opportunity for later repatriation of the species to protected areas within the range states, once these areas become established.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: January 11, 2002.

Timothy J. Van Norman,

Chief, Branch of Permits (International), Division of Management Authority.

[FR Doc. 02–1877 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

PRT–051952

Applicant: Samuel M. Dollyhigh, Newport News, VA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–051994

Applicant: Thomas Henry Baird, Bowling Green, KY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–050691

Applicant: Underwater World Guam, Tumon, Guam.

The applicant requests a permit to import 0.0.2 captive held Hawksbill sea turtle (*Eretmochelys imbricata*) as well as 0.0.2 captive held green sea turtle (*Chelonia mydas*) currently at Underwater World Singapore, Sentosa, Singapore for the purpose of enhancement of the species through conservation education and support of on-going scientific research.

PRT–724540

Applicant: Archie Carr Center for Sea Turtle Research, University of Florida, Gainsville, FL.

The applicant requests re-issuance of a permit to import biological samples collected from wild, captive held, and/or captive hatched leatherback sea turtle (*Dermochelys coriacea*), hawksbill sea turtle (*Eretmochelys imbricata*), green sea turtle (*Chelonia mydas*), kemp's ridley sea turtle (Lepidochelys kempii), and olive ridley sea turtle (*L. olivacea*) for the purpose of scientific research. Samples are to be collected from live or salvaged specimens. This notification covers activities conducted by the applicant over a five year period.

PRT–051712

Applicant: Melanie Culver, Virginia Polytechnic Institute & State University, Blacksburg, VA.

The applicant requests a permit to import biological samples from wild specimens of Madagascar fish eagle (*Haliaeetus vociferoides*) from Ruth Tingay, University of Nottingham, United Kingdom, for scientific research.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: January 11, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–1878 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Moorpark Highlands Habitat Conservation Plan, Ventura County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Morrison-Fountainwood-Agoura (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Service proposes to issue a Permit to the applicant for a period of 10 years that would authorize take of the coastal California gnatcatcher (*Polioptila californica californica*) incidental to otherwise lawful activities at the northern terminus of Spring Road, Moorpark, California. Activities covered by the requested Permit and addressed by the proposed Plan include the construction and occupation of 570 residential units and appurtenant infrastructure on a 445-acre site north of the City of Moorpark, Ventura County, California.

The Service requests comment from the public on the application and Environmental Assessment which are available for review. The application includes the proposed Habitat Conservation Plan (HCP) and an accompanying Implementing Agreement (legal contract). The HCP describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of the coastal California gnatcatcher.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments must be received no later than March 26, 2002.

ADDRESSES: Written comments should be addressed to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Rick Farris, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of these documents by contacting the Ventura Fish and Wildlife Office at the above address and telephone number. Documents also will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office.

Background Information

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively.

The Applicant has proposed to construct 570 residential units and appurtenant infrastructure on a 445-acre site. The project site is located at the northern terminus of Spring Road, north of the city of Moorpark, Ventura County, California. Typical land uses in the area surrounding the project site include agriculture, residential development, commercial buildings, and undeveloped shrublands. Biologists surveyed the project site for special-status plants and wildlife in 1996, 1997, and periodically between 1998 and 2001. Based on these surveys, the Service concluded that the project may result in the take of two pairs of the threatened coastal California gnatcatcher.

The Applicant proposes to implement numerous measures to minimize and mitigate take of the coastal California gnatcatchers. These measures include: (1) Purchase of mitigation credits equivalent to the territories of two pairs at a mitigation bank; (2) placement into permanent open space 94 acres of the site as the Habitat Conservation Plan Conservation Area; (3) creation and implementation of a habitat enhancement program to preserve and improve habitat values within the conservation area; (5) establishment of a non-wasting endowment for funding of the habitat maintenance program; (6) controlling human access into the conservation area; (7) construction of the Spring Road extension to minimize impacts to habitat and the coastal California gnatcatcher; and (8) revegetation of disturbed areas with coastal sage scrub plant species. Other measures are defined in the Plan and implementing agreement.

The Environmental Assessment considers the environmental consequences of three alternatives in addition to the Proposed Project Alternative. The Proposed Project Alternative consists of the issuance of an incidental take permit and implementation of the Plan and its Implementing Agreement, which include measures to minimize and mitigate impacts of the project to the coastal California gnatcatcher. Under the No Action Project Alternative, the Permit would not be issued and no take of the coastal California gnatcatcher would occur. The Reduced Intensity Alternative would decrease the total number of dwelling units; however impacts to the coastal California gnatcatcher would be the same and the project would become economically infeasible. The No Development Alternative would still involve the construction of the Spring Road extension by the City of Moorpark and the loss of one pair of coastal California gnatcatchers; however, the second pair would not be taken because the residential development would not be built. Because the applicant would not be involved, it would suffer economic loss, and the City of Moorpark would have to apply for the Permit. In a single alternative, the EA also examines several variations on the proposed Spring Road alignment. All but the preferred alignment are deemed infeasible due to topography, circulation needs, fire department regulations, and impacts to the coastal California gnatcatcher.

This notice is provided pursuant to section 10(a) of the Act and regulations implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued to the Applicant for the incidental take of the coastal California gnatcatcher. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: January 16, 2002.

Miel R. Corbett,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–1849 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On August 7, 2001, a notice was published in the **Federal Register** (66 FR 41260) that an application had been filed with the Fish and Wildlife Service by Terri M. Williams, University of California, Santa Cruz, California, for a permit (PRT–045447) to take Southern sea otters (*Enhydra lutris nereis*) for the purpose of scientific research.

Notice is hereby given that on January 8, 2002, a permit (MA045447–0) was issued by the Fish and Wildlife Service, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: January 11, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–1879 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

[INT–DES–01–44]

Imperial Irrigation District Water Conservation and Transfer Project, Draft Habitat Conservation Plan, California

AGENCIES: Bureau of Reclamation and Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft environmental impact report/environmental impact statement (EIR/EIS).

SUMMARY: The Bureau of Reclamation (Reclamation) has issued a draft EIR/EIS on Imperial Irrigation District's (IID) proposed project that would conserve and transfer the right to use up to 300,000 acre-feet per year of Colorado River water, which IID is otherwise entitled to divert for use within IID's water service area in Imperial County, California. The conserved water would be transferred to San Diego County Water Authority (SDCWA), Coachella Valley Water District (CVWD) and/or The Metropolitan Water District (MWD). These transfers, which are to remain in effect for up to 75 years, would facilitate efforts to reduce California's diversion of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment. Approval of the Secretary of the Interior (Secretary) will be required to change the point of delivery for the transferred water. In addition, IID has applied for a permit with Fish and Wildlife Service (FWS) pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA). This Section 10 permit would authorize the incidental take of covered species associated with the proposed water conservation and transfer project, as well as IID's ongoing operation and maintenance activities. As a condition of applying for a Section 10 permit, IID has developed a Habitat Conservation Plan (HCP) in consultation with FWS and the California Department of Fish and Game, which is appended to the draft EIR/EIS. The HCP would provide measures to minimize and mitigate the effects of the proposed taking of listed and sensitive species and the habitats upon which they depend.

Both Reclamation's approval of the change in point of delivery of Colorado River water and FWS' approval of the HCP and issuance of a Section 10 permit are Federal actions that require compliance with the National Environmental Policy Act (NEPA) of 1969, as amended. This draft EIR/EIS has been prepared pursuant to NEPA and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, and is being issued by Reclamation as the lead agency. The FWS is a cooperating agency. Both agencies intend to use the EIR/EIS document to issue separate Records of Decision. This document also serves as IID's compliance with the California Environmental Quality Act (CEQA), and is therefore a combined draft EIR/EIS. Public hearings will be held to receive written or verbal comments on the draft EIR/EIS. Notice of hearings will appear at a future date.

DATES: A 90-day public review and comment period begins with the filing of the draft EIR/EIS with the Environmental Protection Agency. Written comments must be received no later than April 12, 2002 (see **ADDRESSES** below).

ADDRESSES: Send written comments to one of the following: Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; fax number (602) 216–4006; Mr. Elston Grubaugh, Manager, Resource Planning and Management Department, Imperial Irrigation District, PO Box 937, Imperial, CA 92251, fax number (760) 339–9009.

A read-only downloadable copy of the draft EIR/EIS document is available on the Internet at *http://www.is.ch2m.com/iidweb.* A copy of the draft EIR/EIS is also available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIR/EIS is also available for public inspection and review at the locations listed under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Questions regarding the draft EIS should be directed to Mr. Ellis at the address provided above, or telephone (602) 216–3854. For information related to the HCP, please contact Ms. Carol Roberts at the Carlsbad FWS office, telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION: The terms of IID's water conservation and transfer transactions are set forth in the ''Agreement for Transfer of Conserved Water'' (IID/SDCWA Transfer Agreement), executed by IID and SDCWA in 1998 (as amended), and a proposed Quantification Settlement Agreement (QSA) to be executed by IID, CVWD, and MWD. The QSA establishes a framework of conservation measures and water transfers within southern California for up to 75 years, and would facilitate California's efforts to reduce its diversions of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment, thus benefiting the entire Colorado River Basin. It would authorize the transfer of up to 200,000 acre-feet to SDCWA pursuant to the IID/SDCWA Transfer Agreement, and provide for the transfer of up to 100,000 acre-feet of water conserved by IID to CVWD and/or MWD.

The Secretary of the Interior (Secretary), pursuant to the Boulder Canyon Project Act of 1928 and *Arizona* v. *California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support

California's efforts. One of these actions is execution of an Implementation Agreement (IA) that would commit the Secretary to make Colorado River water deliveries to facilitate implementation of the QSA. The Secretary's execution of the IA is the subject of Reclamation's IA, Inadvertent Overrun and Payback Policy, and Related Federal Actions Draft EIS (INT–DES 01–44), which was recently distributed for public review and comment (67 FR 1988). Impacts to the Colorado River, that would result from the change in point of delivery of IID's conservation and transfer of up to 300,000 acre-feet of Colorado River water, are incorporated into an analysis of all changes in the point of delivery proposed in the IA and included in the QSA.

The draft EIR/EIS identifies and summarizes the impacts to the Colorado River associated with IID's proposed change in point of delivery of up to 300,000 acre-feet of Colorado River water, under either the IID/SDCWA Transfer Agreement or QSA. It also describes the anticipated impacts associated with the water conservation measures to be undertaken. IID's proposed methods of conserving the water to be transferred, and use of that water, are also described in the draft EIR/EIS.

IID has applied for a Section 10 permit under which FWS would authorize the incidental take of a number of federally listed species, as well as other sensitive species that are being considered for listing, within the IID water service area, the right-of-way of the All American Canal, and the Salton Sea. The draft EIR/EIS also includes a description of impacts that are anticipated to occur from IID's implementation of an HCP for affected species, once it is approved by FWS.

Copies of the draft EIR/EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006.
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628.
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225.
- San Bernardino County Library, 104 W. 4th St., San Bernardino, CA 92401.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- IID Offices, 1284 Broadway, El Centro, CA 92243.
- IID Offices, 81–600 Avenue 58, La Quinta, CA 92253.
- El Centro Public Library, 539 State Street, El Centro, CA 92243.
- Brawley Public Library, 400 Main Street, Brawley, CA 92227.

Written comments received by Reclamation or IID become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: January 8, 2002.

Terence Martin,

Acting Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–1888 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–436]

Apparel Inputs in ''Short Supply'' (2002): Effect of Providing Preferential Treatment to Apparel From Sub-Saharan African and Caribbean Basin Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on January 14, 2002, the Commission instituted investigation No. 332–436, *Apparel Inputs in ''Short Supply'' (2002): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African and Caribbean Basin Countries,* under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice in connection with requests filed in 2002 with respect to the ''short supply'' provisions of the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA). The Commission conducted a similar investigation in 2001 to provide advice with respect to requests filed that year. During 2001, the Commission conducted 10 ''short supply'' reviews under investigation No. 332–428, *Apparel Inputs in ''Short Supply'' (2001): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African and Caribbean Basin Countries.*

FOR FURTHER INFORMATION CONTACT: For general information, contact Jackie W. Jones (202–205–3466; *jones@usitc.gov*) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091; *wgearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may 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. General information about the Commission may 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) *http://dockets.usitc.gov/eol/public/.*

Background

Section 112(b)(5) of the AGOA and section 213(b)(2)(A)(v) of the Caribbean Basin Economic Recovery Act, as added by section 211(a) of the CBTPA, allow preferential treatment for apparel made in beneficiary countries from certain fabrics or yarns to the extent that apparel of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement. These sections also authorize the President, on request of an interested party, to proclaim preferential treatment for apparel made in beneficiary countries from additional fabrics or yarns, if the President determines that such fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and the President complies with certain procedural requirements, one of which is to obtain the advice of the Commission. The President is required to submit a report to the House Ways and Means and Senate Finance Committees that sets forth the action proposed to be proclaimed, the reasons for such action, and the advice obtained from the Commission and the appropriate advisory committee, within 60 days after a request is received from an interested party.

In Executive Order No. 13191, the President delegated to the Committee for the Implementation of Textile Agreements (CITA) the authority to determine whether particular fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. He authorized CITA and the USTR to submit the required report to the Congress, and delegated to USTR the authority to obtain advice from the Commission.

As requested by the USTR, the Commission will provide advice regarding the probable economic effect of providing preferential treatment for apparel made in AGOA and/or CBTPA beneficiary countries from fabrics or yarns, regardless of the source of the fabrics or yarns, which allegedly cannot be supplied by the domestic industry in commercial quantities in a timely manner (i.e., which allegedly are in ''short supply''). The advice will be provided as to the probable economic effect of such action on affected segments of the U.S. textile and apparel industries, workers in these industries, and consumers of affected goods.

The Commission will follow the same procedures as it did in conducting ''short supply'' reviews in 2001 under Investigation No. 332–428. Thus, during 2002, the Commission will provide advice for each ''short supply'' review under a single investigation number. The Commission will not publish notices in the **Federal Register** of receipt of individual requests for advice. Instead, the Commission will issue a news release each time it initiates an analysis, and the news release will identify the article(s) under consideration, indicate the deadline for submission of public comments on the proposed preferential treatment, and provide the name, telephone number, and Internet e-mail address of staff who will be able to provide additional information on the request. CITA publishes a summary of each request from interested parties in the **Federal Register**. To view these notices, see the Internet site of the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA), at *http://otexa.ita.doc.gov/fr.stm.*

The Commission has developed a special area on its Internet site (*http://www.usitc.gov/shortsup/shortsupintro.htm*) to provide the public with information on the status of each request for which the Commission initiated analysis. The Commission has also developed a group list of facsimile addresses of interested parties or individuals who wish to be automatically notified via facsimile about any requests for which the Commission initiated analysis. Interested parties may be added to this list by notifying Jackie W. Jones (202–205–3466; *jones@usitc.gov*).

The Commission will submit its reports to the USTR not later than the 42nd day after receiving a request for advice. The Commission will issue a public version of each report as soon thereafter as possible, with any confidential business information deleted.

Written Submissions: Because of time constraints, the Commission will not hold public hearings in connection with the advice provided under this investigation number. However, interested parties will be invited to submit written statements (original and 3 copies) concerning the matters to be addressed by the Commission in this investigation. The Commission is particularly interested in receiving input from the private sector on the likely effect of any proposed preferential treatment on affected segments of the U.S. textile and apparel industries, their workers, and consumers. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted in accordance with § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in the reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that could reveal the individual operations of the firms supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects: African, Apparel, Caribbean, Fabric, Imports, Tariffs, and Yarn.

By order of the Commission.

Issued: January 18, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1838 Filed 1–24–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–003]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 8, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–920 (Final) (Certain Welded Large Diameter Line Pipe from Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on February 19, 2002.)
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

By order of the Commission.

Issued: January 22, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1972 Filed 1–23–02; 11:57 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Alcoa, Inc.,* Civ. No. 4:99CV61 AS, was lodged with the United States District Court for the Northern District of Indiana, Hammond Division at Lafayette, on January 16, 2002. The action was brought by the United States against Alcoa, Inc. (''Alcoa'') under section 309(b) and (d) of the Clean Water Act (''the Act''), 33 U.S.C. 1319(b) and (d), for injunctive relief and assessment of civil penalties. The complaint alleges that Alcoa violated the Act and its National Pollutant Discharge Elimination System permit (''NPDES Permit'') issued pursuant to the Act, by failing to comply with numerical limitations governing specific pollutants established by Alcoa's NPDES Permit, including Five-Day Biochemical Oxygen Demand (''BOD5''), polychlorinated biphlenyls (''PCB''), Total Residual Chlorine, Fecal Coliform, Total Suspended Solids (''TSS''), Oil & Grease, and Total Aluminum, discharged by Alcoa to Elliott Ditch at its aluminum manufacturing facility located in Lafayette, Indiana.

Under the proposed consent decree, Alcoa will pay a civil penalty of $550,000; comply with all applicable NPDES Permit requirements by implementing five delineated corrective measures, other corrective measures as necessary to ensure continued compliance, additional corrective measures including enhanced monitoring, and contingent corrective measures if compliance with NPDES Permit requirements for TSS and PCB are not maintained for a 12 month period; perform a Supplemental Environmental Project (''SEP'') valued at $2 million; perform other injunctive relief in the form of instituting an Environmental Management System at its facility; and conduct an Elliott Ditch/Wea Creek Investigation to evaluate sources, fate and transport of PCBs in the water column, sediments and fish in these water bodies.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Clifford D. Johnson, Assistant U.S. Attorney, Office of the United States Attorney for the Northern District of Indiana, Robert A. Grant Federal Building, 204 South Main Street, Room M–01, South Bend, Indiana 46601, (219–236–8287); and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Alcoa, Inc.,* D.J. Ref. No. 90–5–1–1–06358.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Indiana, Robert A. Grant Federal Building, 204 South Main Street, Room M–01, South Bend, Indiana 46601, and at the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact: Joseph Williams (312–886–6631)). A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cents per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $10.75 for the consent decree including one appendix (43 pages) to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Alcoa, Inc.,* D.J. Ref. No. 90–5–1–1–06358.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1836 Filed 1–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on December 20, 2001, a proposed Complaint and Consent Decree in *United States* v. *Conoco Inc.,* Civil Action No. H–01–4430, was lodged with the United States District Court for the Southern District of Texas. Notice of this proposed settlement was first published in the **Federal Register** on January 2, 2002 (Volume 67, Number 1, page 107), opening a public comment period for thirty (30) days on the Consent Decree and instructing that comments be sent by regular first class mail to the U.S. Department of Justice. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which were addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. This notice is to provide revised instructions for the submission of comments, to extend the public comment period, and to request that persons resubmit comments on this settlement that were previously addressed to the Washington, DC post office box.

In this action the United States sought civil penalties and injunctive relief against Conoco Inc. (''Conoco'') pursuant to section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991), alleged violations at Conoco's 4 refineries in Colorado, Montana, Oklahoma and Louisiana. Under the settlement, Conoco will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides (''NO_X'') and sulfur dioxide (''SO_2'') from refinery process units and adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Koch will pay a civil penalty of $1.5 million and spend $5.5 million on supplemental and beneficial environmental projects. The states of Colorado, Montana, Oklahoma and Louisiana will join in this settlement as signatories to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Persons who have already submitted comments pursuant to the January 2, 2002 notice

are requested to resubmit their comments in accordance with these revised instructions. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Gordon M. Speights Young, Assistant United States Attorney, Southern District of Texas, PO Box 61129, Houston, TX 77208; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Conoco Inc.,* D.J. Ref. 90–5–2–1–07295/1.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, and at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $36.50, to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Conoco Inc.,* D.J. Ref. 90–5–2–1–07295/1.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1837 Filed 1–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Re-Published Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.), was lodged with the United States District Court for the Eastern District of New York on December 13, 2001, pertaining to the payment of a civil penalty, compliance and other injunctive relief, and implementation of a supplemental environmental project in connection with the Mobil Oil Corporation's (''Mobil'') violations of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, at the Port Mobil facility in Staten Island, New York City, New York. Notice of this proposed consent decree was published in the **Federal Register** on January 2, 2002 (67 FR 109). This notice is being re-published, and the public comment period extended, because of continuing serious disruptions of mail delivery at the Department of Justice in Washington, DC that have resulted from measures taken in response to the receipt of anthrax-contaminated mail in various facilities. Persons who submitted comments to the address given in the January 2, 2002 notice should assume they have not been received and should resubmit them to the address given below.

Under the proposed consent decree, Mobil will pay a civil penalty of $8.2 million, will agree to comply with RCRA at the Port Mobil facility and implement corrective action as directed by the U.S. Environmental Protection Agency, will agree to refrain from making certain legal arguments under specified circumstances, and will agree to implement a supplemental environmental project—purchasing land for preservation in the Staten Island or New York City harbor area—at a cost of at least $3 million. the Consent Decree includes a release of claims alleged in the complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Commenters may request an opportunity for a public meeting in the affected area, in accordance with RCRA section 7003(d), 42 U.S.C. 6973(d). Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, should refer to *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.) and to DOJ Reference No. 90–7–1–794, and should be submitted in one of the following ways: (1) By mail c/o the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201; or (2) by facsimile to (202) 353–0296; or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Any comments that were submitted by mail to the Assistant Attorney General at the Department of Justice address in Washington, DC 20530, should be re-submitted in one of the three ways listed above, in order to ensure that they are considered.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201, (718) 254–7000; and (2) the United States Environmental Protection Agency (Region 2), 290 Broadway, New York, New York 10007 (contact Stuart Keith, Office of Regional Counsel). A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood (202) 616–6584 (phone confirmation number (202) 514–1547). There is a charge for the copy. When you request a copy, please mail a check payable to ''U.S. Treasury'' in the amount of $6.00 (24 pages at 25 cents per page copying costs) to: Consent Decree Library, PO Box 7611, Washington, DC 20044. The check should refer to *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.) and to DOJ Reference No. 90–7–1–794.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02–1835 Filed 1–24–02; 8:45 am]

BILLING CODE 4410–15–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 the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause as hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration 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 Determination Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

None

Volume III:

None

Volume IV:

None

Volume VI:

None

Volume VII:

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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 value-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 16th day of January 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–1726 Filed 1–24–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–2001]

TUV America, Inc., Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of TUV America, Inc., for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on January 25, 2002, and will be valid until January 25, 2007, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of TUV America, Inc. (TUVAM), as a Nationally Recognized Testing Laboratory (NRTL). The scope of this recognition includes testing and certification of the equipment or materials (i.e., products), and includes the sites, described later in this notice. The recognition also includes TUVAM's use of certain supplemental programs, also described later herein. The applicant's NRTL

activities will be handled by its TUV Product Services division. OSHA will detail TUVAM's scope of recognition on an informational web page for the NRTL, as further explained below.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

TUVAM applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required preliminary notice in the **Federal Register** on November 23, 2001 (66 FR 58756) to announce the application. The notice included a preliminary finding that TUVAM could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by December 24, 2001. OSHA received one comment in response to the notice, which was supportive of the recognition (see Exhibit 4–1).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL2–2001, the permanent record of public information on the TUVAM recognition.

The current addresses of the facilities (sites) that OSHA recognizes for TUVAM are:

TUV Product Services (TUVAM), 5 Cherry Hill Drive, Danvers, Massachusetts 01923

TUV Product Services (TUVAM), 10040 Mesa Rim Road, San Diego, California 92121

TUV Product Services (TUVAM), 1775 Old Highway 8 NW, Suite 104, New Brighton (Minneapolis), Minnesota 55112

Background on the Applicant and the Application

According to the application, TUV America, Inc., is a ''privately held Massachusetts'' corporation. At time of application, the applicant was TUV Product Services, Inc., a wholly-owned subsidiary of TUVAM and also a ''privately held Massachusetts'' corporation, according to the application. However, TUVAM informed OSHA recently that TUV Product Services, Inc. (TPS), no longer exists as a separate legal entity but is now a division within TUVAM. As stated above, this division would handle TUVAM's NRTL activities. As a result, OSHA primarily evaluated the testing and certification capabilities of this division and former separate entity.

The application states that TUV Product Services, Inc., was incorporated in 1990, and that it has ''10 years of experience with [testing] medical, telecommunications, computing, industrial machinery and controls, software, consumer electronics, sporting, and appliance products.'' The applicant submitted information that traces its origins to German steam boiler inspection associations founded in the 1870's ''to help regulate and supervise the safety of steam installations in the interest of public safety.'' TUV Product Services GmbH (TUVPSG), which is organizationally part of TUVAM's parent company, included similar information in its application for recognition. OSHA already processed TUVPSG's application and granted it recognition on July 20, 2001 (*see* **Federal Register** notice: 66 FR 38032).

Although TUVAM and TUVPSG are affiliated, they have separate operations and are legally distinct, and their recognition is separate. However, by their own arrangement, both organizations will utilize the same registered certification mark for purposes of their NRTL certifications. OSHA imposed a condition on TUVPSG regarding use of this mark and imposes a related condition on TUVAM, as described later in this notice.

The application showed that TUVAM was owned by TUV Suddeutschland and TUV Nord, both based in Germany. However, as mentioned in the March 16 notice for TUVPSG, TUV Suddeutschland has since become sole owner of TUVAM. Also, TUV Suddeutschland provides testing and other technical services in a number of areas throughout the world. The on-site review report (*see* Exhibit 3) indicates that TUVAM ''receives administrative and technical direction'' from TUVPSG. Moreover, the report indicates that TUVAM owns, and its TPS division operates, laboratories at additional U.S. locations, i.e., sites not listed above. The recognition only covers the three sites listed above, of which the Danvers site is currently TUVAM's headquarters.

TPS and therefore TUVAM submitted an application for recognition, dated February 1, 1999 (*see* Exhibit 2). In response to a request from OSHA for clarification and additional information, TUVAM supplemented its application in a submission dated November 9, 1999 (*see* Exhibit 2–1). In addition, the applicant provided additional documents on April 28 and May 1, 2000. It also supplemented its application on May 9, 2001 (*see* Exhibit 2–2), clarifying the test standards it requests for recognition and the supplemental programs it wishes to use.

The applicant originally requested recognition for 18 test standards. However, the NRTL Program staff determined that 3 of these test standards are not ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing NRTL applications. Therefore, OSHA recognizes TUVAM for the 15 test standards listed below (*see* List of Test Standards).

Some documents in the November 9 submission, and virtually all of its documents in the original application, have been designated as ''confidential'' by the applicant. We follow provisions of 29 CFR part 70 in determining whether we can or must disclose application information. This part generally deals with procedures to process a request for disclosure under the Freedom of Information Act (FOIA). Under Subpart B of this Part 70, information designated as confidential by a business submitter may be afforded protection under Exemption 4 of the FOIA. This exemption protects commercial or financial information, the disclosure of which would cause substantial competitive harm to the submitter.

As part of our normal process for handling applications, OSHA requested that the applicant provide reasons for designating application documents as confidential, and specifically whether disclosure would cause it substantial competitive harm. The applicant

provided the necessary justification in its response dated November 9, 1999 (*see* Exhibit 2–1). Generally, the applicant maintains the 4 levels of operational documentation mentioned in international quality standards. It generally considers its level 3 and 4 documents to be confidential or privileged, and so stated in revising the designations in its November 9 response. These documents are detailed internal procedures that explain more specifically how the applicant does or will operate.

OSHA has evaluated the applicant's designations and determined that disclosure of certain documents in the original application, and all or a portion of the documents in the November 9, April 28, and May 1 supplements to the application described above, could potentially give to prospective or current competitors knowledge that could cause the applicant substantial competitive harm. Therefore, under the provisions of 29 CFR part 70, those documents could be withheld from disclosure under Exemption 4 of the Freedom of Information Act (FOIA). Accordingly, we are not making them available for public review and have not included those documents in the public docket for the application, which we further describe later in this notice. OSHA has previously withheld from disclosure similar such documents in response to FOIA requests received concerning documents submitted by other NRTLs.

Staff of the NRTL Program performed an on-site review (assessment) of the Danvers, Massachusetts, facility on October 23–26, 2000. The staff performed the reviews of the sites at San Diego and New Brighton on December 4–8, 2000. In the on-site review report (*see* Exhibit 3), the program staff recommended a ''positive finding,'' signifying that the applicant appears to meet the requirements for recognition in 29 CFR 1910.7.

Regarding the merits of the application, the applicant presented detailed documentation that describes how it currently performs its testing and certification activities. The policies, procedures, work instructions, methods, and other practices described in this documentation will be used in its operations as an NRTL. Where appropriate, it has supplemented or modified the policies and procedures to conform to OSHA's requirements for an NRTL under 29 CFR 1910.7.

TUVAM currently performs product testing and certification activities, primarily for purposes of showing conformity to European based testing standards, such as EN and IEC standards, as indicated in the review report. It provided forms it uses when performing tests required under EN 60950. One of the test standards for which it requests recognition is UL 1950, which is equivalent to EN60950 but includes the US deviations. TUVAM has also performed testing to US-based test standards, such as UL 1950. As part of its current certification activities, it conducts initial and follow-up inspections at manufacturers' facilities, one facet of the activities that NRTLs recognized by OSHA must perform. It also authorizes the use of certification marks, another aspect of the work that NRTLs must perform. For purposes of its certifications under OSHA's NRTL Program, TUVAM will utilize a US certification mark. At the time of preparation of this notice, the registration of this mark is still pending. As already mentioned, both TUVAM and TUVPSG will utilize the same registered certification mark for purposes of their NRTL certifications.

The four recognition requirements of 29 CFR 1910.7 are presented below, along with an explanation illustrating how TUVAM has met or plans to meet each of these requirements.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The application and on-site review report indicate that TUVAM has adequate testing equipment and adequate facilities to perform the tests required under the test standards for which it seeks recognition. Security measures are in place to restrict or control access to their facility, and procedures exist for handling test samples. The application and report also indicate that testing and processing procedures are in place, and the application describes the program for the development of new testing procedures. The applicant submitted a listing and examples of specific test methods that it currently uses and will utilize for its NRTL testing activities.

It utilizes outside calibration sources and does not intend to perform internal calibrations of equipment used for its NRTL testing activities. The application indicates that TUVAM maintains records on testing equipment, which include information on repair, routine maintenance, and calibrations. The application and on-site review report address personnel qualifications and training, and identify the applicant's staff involved with product testing, along with a summary of their education and experience. Also, the report indicates that TUVAM personnel have adequate technical knowledge for the work they perform. Moreover, the review report describes the applicant's quality assurance program, which is explained in more detail in its Integrated Management System (IMS) manual. Finally, the applicant performs internal system and internal technical audits of its operations on a regular basis.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The applicant has procedures and related documentation for initially qualifying a manufacturer and for performing the required follow-up inspections at a manufacturer's facility. In its procedures, TUVAM identifies criteria it will use to determine the frequency for performing these follow-up factory inspections. It has adopted the criteria detailed in OSHA policies for NRTLs, which specify that NRTLs perform no fewer than four (4) inspections per year at certain facilities and no fewer than two (2) inspections per year under certain conditions. The factory inspections would be one part of the activities that the applicant will utilize in controlling its certification mark. In its application, TUVAM included evidence of its application for registration of a TUV certification mark with the U.S. Patent and Trademark Office (USPTO). As previously mentioned, this mark is still pending approval by the USPTO.

The applicant has procedures for control and issuance of product certifications. According to the review report, TPS ''has been involved in a certification program for over ten years.'' As indicated in the report, the TPS Certification Body has been recently established under the TPS division but will operate in a manner consistent with the applicant's current certification practices, under which a Technical Certifier issues the formal

product certification. As stated in the report, only those certifiers that are ''[TPS] employees and reside at one of the recognized sites will be authorized to certify'' a product for purposes of TUVAM's NRTL operations. The applicant maintains a detailed database of the product certifications, which will serve as its listing record. The application contains policies and terms and conditions to address control of a certification mark, and the procedures for such control are integral to more detailed procedures that the applicant uses for processing its certification certificates. For purposes of OSHA's NRTL Program, tight control by the NRTL of its certification mark is essential and procedures for such control must ensure that the NRTL's registered mark is applied to those products that the NRTL has certified. Such control must be proactive and not just reactive. TUVAM's control of a U.S. registered certification mark under the type of certification process required in OSHA's NRTL Program regulations will be a new activity for the applicant, and we include a condition related to this control.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

As previously stated, TUV Suddeutschland is currently the sole owner of TUVAM. In addition, the information reviewed by OSHA has not indicated that TUVAM has the kinds of relationships described in OSHA policy that would cause the applicant to fail to meet the independence requirement. This information shows that TUVAM does not own or control and is not owned or controlled by the kind of entities of concern to OSHA. In addition, OSHA's review of information on business activities and subsidiaries of TUVAM's parent company has not revealed any apparent conflicts of interest that could adversely influence the applicant's testing and certification activities. TUVAM has policies to protect against conflicts of interest by its employees.

Credible Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The applicant utilizes standardized formats for recording and reporting testing data and inspection data. It has procedures for evaluating and reporting the findings for testing and inspection activities to check conformance to all requirements of a test standard. The applicant provided examples of its test and inspection reporting forms.

Regarding the handling of complaints and disputes, the applicant's complaint and error management procedure provides the framework to handle complaints it receives from its clients or from the public or other interested parties. It maintains a detailed database that it uses as part of its quality assurance activities, which provides for recording and tracking complaint information. According to the review report, ''there have not been any complaints received concerning any of the certifications that have issued'' through the date of the review.

Supplemental Programs

TUV America, Inc., also seeks to use the supplemental programs listed below, subject to the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). That notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition always includes the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that TUVAM appears to meet the criteria for use of the following supplemental programs for which it has applied:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Additional Conditions

As already indicated, TUVAM and TUVPSG plan to utilize the same U.S. registered certification mark for purposes of their NRTL certifications. This is a new undertaking for the applicant and although it has procedures for controlling a certification mark, it still needs to further develop and refine the detailed procedures it will use to control this particular mark. As a result, OSHA will conditionally recognize TUVAM subject to an assessment of the detailed procedures and practices for controlling this mark once they are in place.

The U.S. registered mark is the only one that OSHA will recognize for TUVAM. In addition, only the sites listed in this notice will be able to authorize use of this mark for the TUVAM product certifications under the NRTL Program. Conversely, no other TUVAM laboratories or locations may authorize the use of this mark for product certifications under the NRTL Program. To ensure the applicant and the public understand this fact, OSHA will impose a condition to this effect. A similar condition was imposed in the July 20, 2001, recognition notice for TUVPSG, mentioned above.

As also noted, the applicant has recently adopted procedures concerning the criteria for the frequency at which it will conduct factory follow-up inspections. Here, too, it needs to refine these procedures to effectively and properly implement the criteria. OSHA will have to review TUVAM's approach in implementing the criteria for the twice-per-year inspections before it begins to conduct inspections at this frequency. As a result, OSHA will conditionally recognize TUVAM subject to an assessment of the details of this approach once it is in place.

Imposing these conditions is consistent with OSHA's past recognition of certain organizations as NRTLs that met the basic requirements but needed to further develop or refine their procedures (for example, *see* 63 FR 68306 12/10/1998; and 65 FR 26637, 05/08/2000). Given the applicant's current

breadth of activities in testing and certification, OSHA is confident that TUVAM will develop and implement procedures and practices to appropriately perform the activities in the areas noted above.

Therefore, OSHA will impose the three conditions noted above in this final notice. These conditions apply solely to TUVAM's operations as an NRTL and solely to those products that it certifies for purposes of enabling employers to meet OSHA product approval requirements. These three conditions, listed first under Conditions below, are in addition to all other conditions that OSHA normally imposes in its recognition of an organization as an NRTL.

Final Decision and Order

The NRTL Program staff has examined the application, the additional submissions, the on-site review report, and other pertinent documents. Based upon this examination and the program staff recommendation, OSHA finds that TUV America, Inc., has met the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory. The recognition applies to the sites listed above. In addition, it covers the test standards, listed below, and it is subject to the limitations and conditions, also listed below.

Limitations

OSHA hereby limits the recognition of TUVAM to testing and certification of products for demonstration of conformance to the test standards listed below. OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

UL 45 Portable Electric Tools
UL 50 Enclosures for Electrical Equipment
UL 67 Panelboards
UL 73 Motor-Operated Appliances
UL 508 Industrial Control Equipment
UL 751 Vending Machines
UL 813 Commercial Audio Equipment
UL 1004 Electric Motors
UL 1012 Power Units Other Than Class 2
UL 1244 Electrical and Electronic Measuring and Testing Equipment
UL 1950 Technology Equipment Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

The designations and titles of the above test standards were current at the time of the preparation of the preliminary notice.

The Agency's recognition of TUVAM, or any other NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. Conversely, OSHA's recognition of an NRTL for a test standard excludes the testing of any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

Many of the Underwriters Laboratories (UL) test standards listed above are also approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we use the designation of the standards developing organization (*e.g.,* UL 1004) for the standard, as opposed to the ANSI designation (*e.g.,* ANSI/UL 1004). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI Web site, *http://www.ansi.org,* and click ''NSSN'' to find out whether or not a test standard is currently ANSI-approved.

Conditions

TUV Product Services GmbH must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, TUVAM will notify the OSHA NRTL Program Director so that OSHA may review TUVAM's implementation of its procedures for controlling its US registered certification mark in conjunction with use of this mark by TUV Product Services GmbH of Germany;

Only TUV America, Inc., or TUV Product Services GmbH may authorize the US registered certification mark currently owned by TUVAM, provided each one is recognized as an NRTL by OSHA. TUVAM may authorize the use of this mark, for purposes of its product certifications under the NRTL Program, only at the TUVAM sites recognized by OSHA;

Prior to conducting inspections of manufacturing facilities based on a frequency of twice per year, OSHA must review and accept the detailed procedures that TUVAM will utilize to determine when to use this frequency for such inspections;

OSHA must be allowed access to TUVAM's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUVAM has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUVAM must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVAM agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

TUVAM will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVAM will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 17th day of January, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–1887 Filed 1–24–02; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–008)]

NASA Advisory Committees; Renewal of the Centennial of Flight Commission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice renewal of the charter of the Centennial of Flight Commission.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of the Centennial of Flight Commission (Commission) is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of the Commission remain unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Foster, Code I, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

SUPPLEMENTARY INFORMATION: Information regarding the Centennial of Flight Commission is available on the World Wide Web at *http://www.centennialofflight.gov.*

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–1914 Filed 1–24–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336 and 50–423]

Dominion Nuclear Connecticut, Inc.; Millstone Nuclear Power Station, Units 1, 2, and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Dominion Nuclear Connecticut, Inc. (the licensee) for the Millstone Nuclear Power Station, Unit 1, a permanently shutdown nuclear facility located in Waterford, Connecticut, and to Facility Operating License Nos. DPR–65 and NPF–49, issued to Dominion Nuclear Connecticut, Inc., for operation of the Millstone Nuclear Power Station, Units 2 and 3, located in Waterford, Connecticut. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the physical protection (security) related license condition to indicate that the physical security program plans listed may, rather than do, contain safeguards information; and change the name of the 'Millstone Nuclear Power Station' to the 'Millstone Power Station.'

The proposed action is in accordance with the licensee's application dated August 8, 2001.

The Need for the Proposed Action

Currently, License Condition 2.C.(4) for Units 1 and 2 and License Condition 2.E for Unit 3, identifies the plans which describe the NRC approved program for physical protection of Millstone Units 1, 2, and 3. They are the Millstone Nuclear Power Station Physical Security Plan, the Millstone Nuclear Power Station Suitability, Training, and Qualification Plan, and the Millstone Nuclear Power Station Safeguards Contingency Plan. License Conditions 2.C.(4) and 2.E also indicate that the plans contain safeguards information protected under 10 CFR 73.21. However, Revision 15 to the Millstone Nuclear Power Station Suitability, Training, and Qualification Plan removed safeguards information to allow declassification of the document. The proposed revision to the license conditions would allow declassification of the document. Additionally, the licensee also proposed the deletion of the word ''Nuclear'' from the title of the physical security program plans listed under the security related license condition and when it is used in the phrase ''Millstone Nuclear Power Station'' elsewhere in the operating license. This change is purely administrative and does not alter any regulatory requirements or commitments made by the licensee.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed amendment will not have an environmental impact. The proposed changes to the licenses are considered editorial or administrative in nature. The licensee does not propose any changes to structures, systems, components, site boundaries or operational practices.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station.

Agencies and Persons Consulted

On December 12, 2001, the staff consulted with the State of Connecticut official, Mr. Michael Firsick of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 8, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 18th day of January 2002.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1893 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–1113 (which should be mentioned in all correspondence concerning this draft guide), is ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light-Water Nuclear Power Reactors.'' This draft guide is being developed to provide guidance to licensees of operating power reactors on acceptable methods and assumptions for performing evaluations of fission product releases and radiological consequences of several postulated light-water reactor design basis accidents.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by April 30, 2002.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC homepage, http://www.nrc.gov. This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about the draft guide and the related documents, contact Mr. W.M. Blumberg at (301) 415–1083; e-mail *WMB1@NRC.GOV.*

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800)397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV*; or by fax to (301)415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 15th day of January, 2002.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff,Office of Nuclear Regulatory Research.

[FR Doc. 02–1892 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:00 A.M., Monday, February 4, 2002; 8:30 a.m., Tuesday, February 5, 2002.

PLACE: Phoenix, Arizona, at the Biltmore Hotel, 24th Street and Missouri, in the Canyon and Grand Rooms.

STATUS: February 4—10 a.m. (Closed); February 5—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, February 4—10 a.m. (Closed)

1. Financial Performance.
2. Preliminary Annual Performance Plan Target FY 2003.
3. Strategic Planning.
4. Personnel Matters and Compensation Issues.

Tuesday, February 5—8:30 a.m. (Open).

1. Minutes of the Previous Meeting, January 7–8, 2002.
2. Remarks of the Postmaster General and CEO.
3. Appointment of Members to Board Committees.
4. Report on the Western Area and Phoenix Performance Cluster.
5. Tentative Agenda for the March 4–5, 2002, 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. 02–2014 Filed 1–23–02; 2:01 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25372; 812–12702]

The Hartford Mutual Funds Inc.; Notice of Application

January 18, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(f)(1)(A) of the Act.

Summary of Application: Applicants request an order to permit certain registered open-end investment companies advised by HL Investment Advisors, LLC and Hartford Investment Financial Services, LLC (together, the ''Hartford Advisers'') not to reconstitute their boards of trustees to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act, following the acquisition of the assets of certain other registered open-end investment companies.

Applicants: The Hartford Mutual Funds, Inc., (''Mutual Funds''), Hartford Series Fund, Inc., (''Series Fund''), Hartford Advisers HLS Fund, Inc., (''Advisers HLS''), Hartford Money Market HLS Fund, Inc., (''Money Market HLS''), Hartford Bond HLS Fund, Inc., (''Bond HLS''), Hartford Index HLS Fund, Inc., (''Index HLS'') (collectively, the ''Hartford Funds''), and the Hartford Advisers.

Filing Dates: The application was filed on November 21, 2001, and amended on January 16, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 12, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 60 South Sixth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Janet M. Grossnickle, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Hartford Funds are open-end management investment companies registered under the Act. Mutual Funds, a Maryland corporation, consists of 23 series. Series Fund, a Maryland corporation, consists of 14 series. Advisers HLS, Money Market HLS, Bond HLS, and Index HLS are all Maryland corporations. The Hartford Advisers, indirect subsidiaries of the Hartford Life and Accident Insurance Company (''Hartford Life'') serve as investment advisers to the Hartford Funds. The Hartford Advisers are registered under the Investment Advisers Act of 1940 (the ''Advisers Act'').

2. Hartford-Fortis Series Fund, Inc. (''Hartford-Fortis Series Fund''), a Maryland corporation, offers 14 separate series. Fortis Series Fund, Inc. (''Fortis Series Fund''), a Minnesota corporation, offers 23 separate series. At the time of the Acquisition (as defined below), Fortis Advisers Inc. (''Fortis'') (now known as Hartford Administrative Services Company) served as investment adviser to the Hartford-Fortis Series Fund and the Fortis Series Fund. Fortis was registered under the Advisers Act.

3. Hartford Life purchased all of the outstanding stock of Fortis on April 2, 2001, (the ''Acquisition''), and shareholders of each of the Fortis Funds approved an investment management agreement with the Hartford Advisers at a shareholder meeting held on May 31, 2001. It is now proposed that certain series of the Hartford Funds would acquire the assets of six series of the Hartford-Fortis Series Fund, and seven series of Fortis Series Fund (the ''Reorganization'').[1] The series of the Hartford-Fortis Series Fund and the Fortis Series Fund proposed to be acquired by the Hartford Funds are referred to as the ''Fortis Funds.''

4. Applicants state that the Acquisition resulted in a change of control of Fortis and an assignment under the Act of the investment advisory agreements between the Fortis Funds and Fortis, resulting in their automatic termination in accordance with their terms, as required by section 15(a)(4) of the Act. The boards of directors (''Boards'') of the Fortis Funds, at a meeting held on March 23, 2001, approved interim advisory agreements which remained in effect from the date of the Acquisition until investment advisory agreements for each of the Fortis Funds were approved by their shareholders on May 31, 2001 in reliance on rule 15a–4 under the Act.

5. On August 9, 2001 and August 2, 2001, the Hartford Funds' Boards (including all of the directors who are not ''interested persons'' of the Hartford Advisers) and the Fortis Funds' Boards (all of whom are not ''interested persons'' of the Hartford Advisers or the Hartford Funds), respectively, unanimously approved the proposed Reorganization. Participation in the Reorganization will require approval by a majority of the outstanding shares of each of the Fortis Funds. The Fortis Funds' Boards have called a special meeting of the Hartford-Fortis Series Fund's shareholders to be held on January 31, 2002, and intend to call a special meeting of the Fortis Series Fund's shareholders to be held in April 2002, for the purpose of considering the Reorganization. If approved by shareholders, the Reorganization is scheduled to be effective on or about February 19, 2002, in the case of the Hartford-Fortis Series Fund, and in the case of Fortis Series Fund is proposed to be effective in April 2002.

6. In connection with the Acquisition and the Reorganization, applicants have determined to seek to comply with the ''safe harbor'' provisions of section 15(f) of the Act. Applicants state that following consummation of the Reorganization, more than twenty-five percent of the Boards of Directors of the Hartford Funds, which have identical membership, would be ''interested persons'' for purposes of section 15(f)(1)(A) of the Act.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions, set forth in section 15(f)(1)(A), provides that, for a period of three years after the sale, at least seventy-five percent of the board of directors of the investment company may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company. Applicants state that, without the requested exemption, following the Reorganization, Hartford Funds would have to reconstitute their Boards to meet the seventy-five percent non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by a registered company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the 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.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of December 31, 2001, Fortis Funds had approximately

[1] Applicants state that it is not anticipated that any of the remaining series of the Hartford-Fortis Series Fund or the Fortis Series Fund not party to the Reorganization will be reorganized into the Hartford Funds within the three years following the Acquisition.

$2,345,000,000 in aggregate net assets. Applicants also state that, as of December 31, 2001, the aggregate net assets of the Hartford Funds were approximately $33,077,000,000. Applicants thus assert that the Fortis Funds' assets would represent approximately 7.09% of the aggregate net assets of the Hartford Funds.

5. Applicants state that two of the seven directors who serve on the Boards of Hartford Funds are ''interested persons,'' within the meaning of section 2(a)(19) of the Act, of the Hartford Advisers. Applicants state that none of the directors owns any interest in or is otherwise an ''interested person'' of Fortis or the Fortis Funds.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Hartford Funds would have to alter the composition of their Boards, either by asking experienced directors to resign or by adding a new director. Applicants, further state that adding a new director could require a shareholder vote, not only of shareholders of the acquiring Hartford Funds but also the shareholders of the other series of the Hartford Funds not otherwise affected by the Reorganization. Applicants assert that adding an additional non-interested director to the Boards of Hartford Funds could entail a lengthy process and increase the ongoing costs of Hartford Funds.

7. For the reasons stated above, applicants submit that the requested relief is necessary and 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.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1898 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25371; 812–12656]

Wells Fargo Funds Management LLC and Wells Fargo Funds Trust; Notice of Application

January 18, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from section 12(d)(3) of the Act.

Summary of the Application: Applicants request an order to permit a registered open-end management investment company to: (a) Acquire securities of an entity involved in securities-related activities in connection with a merger with another non-affiliated registered open-end management investment company and; (b) continue to hold the securities for up to two years to effect their orderly liquidation following the merger.

Filing Dates: The application was filed on October 9, 2001, and amended on January 7, 2002. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 11, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 525 Market Street, 12th Floor, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, 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 SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Wells Fargo Funds Trust, a Delaware business trust, is registered under the Act as an open-end management investment company and consists of multiple series, including Wells Fargo Specialized Financial Services Fund (the ''Acquiring Fund''). Wells Fargo Funds Management, LLC (''WFFM''), a Delaware limited liability company, is an investment adviser registered under the Investment Advisers Act of 1940 and is an indirect wholly owned subsidiary of Wells Fargo & Company (''Wells Fargo''), a publicly-traded Delaware corporation, whose principal businesses are retail and commercial banking and providing financial services. Although a significant majority of Wells Fargo's annual revenues derive from its core banking business, Wells Fargo may also be deemed to be engaged in ''securities related activities,'' as defined by rule 12d3–1 under the Act.

2. SIFE Trust Fund (the ''Acquired Fund,'' and together with the Acquiring Fund, the ''Funds'') is registered under the Act as an open-end management investment company. The Acquired Fund has investment objectives and policies substantially similar to the Acquiring Fund and has been in continuous operation since July 2, 1962. SIFE, a California corporation, currently acts as investment adviser to the Acquired Fund. Pursuant to an Agreement and Plan of Reorganization, SIFE is expected to merge with and into a wholly-owned subsidiary of Wells Fargo on February 22, 2002. In addition, in February, 2002, the Acquired Fund will transfer all of its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund (the ''Reorganization''). Upon the effectiveness of the Reorganization, WFFM will act as investment adviser to the Acquiring Fund.

3. Between May, 1989, and September, 1999, the Acquired Fund made 14 separate purchases of Wells Fargo stock totaling 680,000 shares, in compliance with the Act and the rules thereunder. Each purchase was made on the open market at prices ranging from $4.57 per share to $44.34 per share, at a total cost of $19,774,452. All such purchases were made prior to the time that Wells Fargo and SIFE began negotiating the purchase of SIFE by Wells Fargo. The Acquired Fund currently holds 500,000 shares of Wells Fargo stock equal to approximately 3% of its total net assets and these shares represents an unrealized gain to the Acquired Fund of $8,844,244 (the ''Wells Fargo Position''). In connection with the Reorganization, the Acquired Fund will transfer the Wells Fargo Position to the Acquiring Fund (the ''Transfer''). The Reorganization is expected to qualify as a tax-free reorganization under the Internal Revenue Code, and accordingly, the tax basis of all securities holdings and other

assets of the Acquired Fund will be transferred to the Acquiring Fund.

4. Each Fund's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, approved the Reorganization and concluded that the Reorganization was in the best interest of the respective Fund. In approving the Reorganization, each Board considered the Wells Fargo Position. To effect the Reorganization, a shareholder meeting of the Acquired Fund's shareholders will be held on or about January 31, 2002. A proxy statement soliciting shareholder approval, which discussed the Wells Fargo Position, was mailed in November, 2001.

Applicants' Legal Analysis

1. Section 12(d)(3) of the Act, in relevant part, prohibits a registered investment company from purchasing or otherwise acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if specified conditions are met. Rule 12d3–1(c) provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person thereof.

2. Applicants state that because Wells Fargo is an affiliated person of WFFM, the Acquiring Fund's investment adviser, the Transfer and the Acquiring Fund's continued holding of the Wells Fargo Position would not meet the conditions of rule 12d3–1(c).[1] Applicants request relief from section 12(d)(3) to permit the Acquiring Fund to effect the Transfer and the continued holding for up to two years of the Wells Fargo Position following the Reorganization in order to permit the Acquiring Fund to effect its orderly liquidation.

3. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard.

4. Applicants state that the relief is warranted because none of the abuses that section 12(d)(3) was intended to prevent are present in the instant situation and the two-year disposition period will permit the Acquiring Fund to maximize the realization of gain on the orderly sale of the Wells Fargo Position while minimizing the tax effects of the disposition. Applicants also state that the Acquired Fund obtained the Wells Fargo Position in compliance with the Act and the rules thereunder.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will seek to liquidate the Wells Fargo Position as soon as possible, consistent with the maximization of shareholder return and the best interests of the Acquiring Fund, and in any case, within two years of the date of the Reorganization.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1900 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Investment Company Act Release No. 3542. (Sep. 21, 1962).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

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 meeting during the week of January 28, 2002: a closed meeting will be held on Tuesday, January 29, 2002, at 10 a.m.

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)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, January 22, 2002, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders of investigation.

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: January 22, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–1987 Filed 1–23–02; 11:57 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8056; 34–45321; FR–61]

Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Commission statement.

SUMMARY: The Commission today is issuing a statement regarding Management's Discussion and Analysis of Financial Condition and Results of Operations. The release sets forth certain views of the Commission regarding disclosure that should be considered by registrants. Disclosure matters addressed by the release are liquidity and capital resources including off-balance sheet arrangements; certain trading activities that include non-exchange traded contracts accounted for at fair value; and effects of transactions with related and certain other parties.

FOR FURTHER INFORMATION CONTACT: Questions about this statement should be referred to Jackson Day or Robert Bayless, Office of the Chief Accountant (202 942–4400) or Paula Dubberly, Division of Corporation Finance (202 942–2900), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 2001, the Commission received a petition from the accounting firms of Arthur Andersen LLP, Deloitte and Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP.[1] The petition, which was endorsed by the

[1] The petition is posted on the Commission's web page (*www.sec.gov*) under Regulatory Actions, Petitions for Rulemaking.

American Institute of Certified Public Accountants, requested that the Commission issue additional interpretive guidance regarding Item 303 of Regulation S–K, *Management's Discussion and Analysis of Financial Condition and Results of Operations*,[2] Item 303 of Regulation S–B, *Management's Discussion and Analysis or Plan of Operations*,[3] and Item 5 of Form 20–F, *Operating and Financial Review and Prospects*[4] (collectively, ''MD&A'' or ''the MD&A rules'').[5] The petition requested that additional guidance be provided to public companies preparing their annual reports for the fiscal year just ended.

The petition identified three areas of concern regarding disclosure in MD&A:

- Liquidity and capital resources, including off-balance sheet arrangements;
- Certain trading activities involving non-exchange traded contracts accounted for at fair value; and
- Relationships and transactions with persons or entities that derive benefits from their non-independent relationship with the registrant or the registrant s related parties.

Generally, we believe that the quality of information provided by public companies in the three areas identified in the petition should be improved. Because many companies are currently preparing disclosures for fiscal 2001 annual reports, the Commission believes it is appropriate to issue this statement so that public companies can consider the petition and this statement in preparing year-end and interim financial reports and other disclosures made after the issuance of this release.

While the Commission intends to consider rulemaking regarding the topics addressed in this statement and other topics covered by MD&A, the purpose of this statement is to suggest steps that issuers should consider in meeting their current disclosure obligations with respect to the topics described. This statement does not create new legal requirements, nor does it modify existing legal requirements.

II. Regulation S–K. Item 303. Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)

Paragraph (a) of Item 303 of Regulation S–K identifies a basic and overriding requirement of MD&A: to ''provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations.'' The Commission has explained this requirement on a number of occasions. In 1987, we said:

The Commission has long recognized the need for a narrative explanation of the financial statements, because numerical presentations and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. MD&A is intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company.[6]

And, as we said in 1989, ''[t]he MD&A requirements are intended to provide in one section of a filing, material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant's prospects for the future.''[7]

Disclosure is mandatory where there is a known trend or uncertainty that is reasonably likely to have a material effect on the registrant's financial condition or results of operations.[8] Accordingly, the development of MD&A disclosure should begin with management's identification and evaluation of what information, including the potential effects of known trends, commitments, events, and uncertainties, is important to providing investors and others an accurate understanding of the company's current and prospective financial position and operating results.[9]

Investors have become increasingly concerned about the sufficiency of disclosure regarding liquidity risk, market price risks, and effects of ''off-balance sheet'' transaction structures. Also, many readers of financial statements have cited a lack of transparent disclosure about transactions with unconsolidated entities and other parties where that information appeared necessary to understand how significant aspects of the business were conducted.

Accordingly, the Commission is reminding companies of the requirements of MD&A as they relate to (1) liquidity and capital resources, including off-balance sheet arrangements; (2) certain trading activities involving non-exchange traded contracts accounted for at fair value; and (3) relationships and transactions on terms that would not be available from clearly independent third parties on an arm's-length basis. This statement suggests steps that companies should consider in meeting their disclosure obligations.

We also want to remind registrants that disclosure must be both useful and understandable. That is, management should provide the most relevant information and provide it using language and formats that investors can be expected to understand. Registrants should be aware also that investors will often find information relating to a particular matter more meaningful if it is disclosed in a single location, rather than presented in a fragmented manner throughout the filing.

A. Disclosures Concerning Liquidity and Capital Resources, Including ''Off-Balance Sheet'' Arrangements

Paragraphs (a)(1) and (a)(2)(ii) of Item 303 of Regulation S–K set forth certain requirements for disclosures about ''Liquidity'' and ''Capital Resources.''

(1) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way.

* * * * *

(2)(ii) *Capital Resources.* Describe any known material trends, favorable or

[2] 17 CFR 229.303.

[3] 17 CFR 228.303.

[4] *See* 17 CFR 249.220f.

[5] The accounting profession has made previous petitions to improve MD&A disclosure. *See, e.g.*, Securities Act Release No. 6711 (April 17, 1987), Concept Release on Management's Discussion and Analysis of Financial Condition and Results of Operations, 52 FR 13715; and Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427.

[6] Securities Act Release No. 6711 (April 17, 1987), Concept Release on Management's Discussion and Analysis of Financial Condition and Results of Operations, 52 FR 13715.

[7] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, 22438 (footnote omitted).

[8] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, 22429 (''Required disclosure is based on currently known trends, events, and uncertainties that are reasonably expected to have material effects. * * * In contrast, optional forward-looking disclosure involves anticipating a future trend or event or anticipating a less predictable impact of a known event, trend or uncertainty.'').

[9] See Instructions to Item 303 (''The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.'').

unfavorable, in the registrant's capital resources. Indicate any expected material changes in the mix and relative cost of such resources. The discussion shall consider changes between equity, debt and any off-balance sheet financing arrangements.

A registrant's liquidity and capital resources are closely aligned. Disclosures about each are likely to be affected by many of the same facts and circumstances. And off-balance sheet financing arrangements often are integral to both.[10] Management should consider all of these items together, as well as individually, when drafting disclosures responsive to the MD&A rules.

1. Liquidity Disclosures

MD&A disclosures should not be overly general. For example, disclosure that the registrant has sufficient short-term funding to meet its liquidity needs for the next year provides little useful information. Instead, registrants should consider describing the sources of short-term funding and the circumstances that are reasonably likely to affect those sources of liquidity.

For example, a registrant that identifies its principal source of liquidity as operating cash flows may need also to disclose the extent of the risk that a decrease in demand for the company's products would reduce the availability of funds. That risk might arise, to further the example, where customer demand is reasonably likely to fluctuate in response to rapid technological changes. Similarly, if commercial paper is a principal source of liquidity, the registrant should consider the need to disclose how this facility could be adversely affected by a debt rating downgrade or deterioration in certain of the company's financial ratios or other measures of financial performance. The discussion should be limited to material risks, and, as with MD&A generally, should be sufficiently detailed and tailored to the company's individual circumstances, rather than ''boilerplate.''

If the registrant's liquidity is dependent on the use of off-balance sheet financing arrangements, such as securitization of receivables or obtaining access to assets through special purpose entities, the registrant should consider disclosure of the factors that are reasonably likely to affect its ability to continue using those off-balance sheet financing arrangements.[11] Registrants also should make informative disclosures about matters that could affect the extent of funds required within management's short- and long-term planning horizons.

Registrants are reminded that identification of circumstances that could materially affect liquidity is necessary if they are ''reasonably likely'' to occur. This disclosure threshold is lower than ''more likely than not.'' Market price changes, economic downturns, defaults on guarantees, or contractions of operations that have material consequences for the registrant's financial position or operating results can be reasonably likely to occur under some conditions. Material effects on liquidity as a result of any reasonably likely changes should be disclosed pursuant to Item 303(a).

In 1989, the Commission identified two assessments management must make where a trend, demand, commitment, event or uncertainty is known:

1. Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.

2. If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.[12]

The Commission further reminded registrants that each final determination resulting from the assessments made by management must be objectively reasonable, as viewed at the time the determination is made.[13]

To identify trends, demands, commitments, events and uncertainties that require disclosure, management should consider the following:

- Provisions in financial guarantees or commitments, debt or lease agreements or other arrangements that could trigger a requirement for an early payment, additional collateral support, changes in terms, acceleration of maturity, or the creation of an additional financial obligation, such as adverse changes in the registrant's credit rating, financial ratios, earnings, cash flows, or stock price, or changes in the value of underlying, linked or indexed assets;
- Circumstances that could impair the registrant's ability to continue to engage in transactions that have been integral to historical operations or are financially or operationally essential, or that could render that activity commercially impracticable, such as the inability to maintain a specified investment grade credit rating, level of earnings, earnings per share, financial ratios, or collateral;
- Factors specific to the registrant and its markets that the registrant expects to be given significant weight in the determination of the registrant's credit rating or will otherwise affect the registrant's ability to raise short-term and long-term financing;
- Guarantees of debt or other commitments to third parties; and
- Written options on non-financial assets (for example, real estate puts).

2. Off-Balance Sheet Arrangements

Registrants should consider the need to provide disclosures concerning transactions, arrangements and other relationships with unconsolidated entities or other persons that are reasonably likely to affect materially liquidity or the availability of or requirements for capital resources. Specific disclosure may be necessary regarding relationships with unconsolidated entities that are contractually limited to narrow activities that facilitate the registrant's transfer of or access to assets. These entities are often referred to as structured finance or special purpose entities. These entities may be in the form of corporations, partnerships or limited liability companies, or trusts.

Material sources of liquidity and financing, including off-balance sheet arrangements and transactions with unconsolidated, limited purpose entities, should be discussed pursuant to Item 303(a).[14] The extent of the registrant's reliance on off-balance sheet arrangements should be described fully and clearly where those entities provide financing, liquidity, or market or credit risk support for the registrant; engage in

[10] *See* Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, particularly Section III.C.

[11] ''The scope of the discussion should thus address liquidity in the broadest sense, encompassing internal as well as external sources, current conditions as well as future commitments and known trends, changes in circumstances and uncertainties.'' [Securities Act Release No. 6349 (September 28, 1981)].

[12] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, 22430.

[13] *Id.*

[14] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, at III.C.

leasing, hedging, research and development services with the registrant; or expose the registrant to liability that is not reflected on the face of the financial statements. Where contingencies inherent in the arrangements are reasonably likely to affect the continued availability of a material historical source of liquidity and finance, registrants must disclose those uncertainties and their effects.

Registrants should consider the need to include information about the off-balance sheet arrangements such as: their business purposes and activities; their economic substance; the key terms and conditions of any commitments; the initial and ongoing relationships with the registrant and its affiliates; and the registrant's potential risk exposures resulting from its contractual or other commitments involving the off-balance sheet arrangements.

For example, a registrant may be economically or legally required or reasonably likely to fund losses of an unconsolidated, limited purpose entity, provide it with additional funding, issue securities pursuant to a call option held by that entity, purchase the entity's capital stock or assets, or the registrant otherwise may be financially affected by the performance or non-performance of an entity or counterparty to a transaction or arrangement. In those circumstances, the registrant may need to include information about the arrangements and exposures resulting from contractual or other commitments to provide investors with a clear understanding of the registrant's business activities, financial arrangements, and financial statements. Other disclosures that registrants should consider to explain the effects and risks of off-balance sheet arrangements include:

- Total amount of assets and obligations of the off-balance sheet entity, with a description of the nature of its assets and obligations, and identification of the class and amount of any debt or equity securities issued by the registrant;
- The effects of the entity's termination if it has a finite life or it is reasonably likely that the registrant's arrangements with the entity may be discontinued in the foreseeable future;
- Amounts receivable or payable, and revenues, expenses and cash flows resulting from the arrangements;
- Extended payment terms of receivables, loans, and debt securities resulting from the arrangements, and any uncertainties as to realization, including repayment that is contingent upon the future operations or performance of any party;
- The amounts and key terms and conditions of purchase and sale agreements between the registrant and the counterparties in any such arrangements; and
- The amounts of any guarantees, lines of credit, standby letters of credit or commitments or take or pay contracts, throughput contracts or other similar types of arrangements, including tolling, capacity, or leasing arrangements, that could require the registrant to provide funding of any obligations under the arrangements, including guarantees of repayment of obligors of parties to the arrangements, make whole agreements, or value guarantees.

Although disclosure regarding similar arrangements can be aggregated, important distinctions in terms and effects should not be lost in that process. The relative significance to the registrant's financial position and results of the arrangements with unconsolidated, non-independent, limited purpose entities should be clear from the disclosures to the extent material. While legal opinions regarding ''true sale'' issues or other issues relating to whether a registrant has contingent, residual or other liability can play an important role in transactions involving such entities, they do not obviate the need for the registrant to consider whether disclosure is required. In addition, disclosure of these matters should be clear and individually tailored to describe the risks to the registrant, and should not consist merely of recitation of the transactions' legal terms or the relationships between the parties or similar boilerplate.

3. Disclosures About Contractual Obligations and Commercial Commitments

Accounting standards [15] require disclosure concerning a registrant's obligations and commitments to make future payments under contracts, such as debt and lease agreements, and under contingent commitments, such as debt guarantees. Disclosures responsive to these requirements usually are located in various parts of a registrant's filings. We believe investors would find it beneficial if aggregated information about contractual obligations and commercial commitments [16] were provided in a single location so that a total picture of obligations would be readily available. One aid to presenting the total picture of a registrant's liquidity and capital resources and the integral role of on- and off-balance sheet arrangements may be schedules of contractual obligations and commercial commitments as of the latest balance sheet date. Examples that could be adapted to the registrant's particular facts are presented below.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	4–5 years	After 5 years
Long-Term Debt					
Capital Lease Obligations					
Operating Leases					
Unconditional Purchase Obligations					
Other Long-Term Obligations					
Total Contractual Cash Obligations					

The preceding table could be accompanied by footnotes to describe provisions that create, increase or accelerate liabilities, or other pertinent data.

[15] *See, e.g.*, Statement of Financial Accounting Standards Nos. 5, *Accounting for Contingencies*, 13, *Accounting for Leases*, 47, *Disclosure of Long-Term Obligations*, and 129, *Disclosure of Information about Capital Structure*.''

[16] Commercial commitments are intended to include lines of credit, guarantees, and other potential cash outflows resulting from a contingent event that requires registrant performance pursuant to a funding commitment.

Other commercial commitments	Total amounts committed	Amount of commitment expiration per period			
		Less than 1 year	1–3 years	4–5 years	Over 5 years
Lines of Credit Standby Letters of Credit Guarantees Standby Repurchase Obligations Other Commercial Commitments Total Commercial Commitments					

B. Disclosures About Certain Trading Activities That Include Non-Exchange Traded Contracts Accounted for at Fair Value

The Commission is concerned that there may be a lack of transparency and clarity with respect to the disclosure of trading activities involving commodity contracts that are accounted for at fair value but for which a lack of market price quotations necessitates the use of fair value estimation techniques. These contracts may be indexed to measures of weather, commodities prices, or quoted prices of service capacity, such as energy storage and bandwidth capacity contracts. Companies engaged to a material extent in trading activities [17] involving these contracts should consider providing disclosures in MD&A that supplement those required in the financial statements by applicable accounting standards. Investor understanding and financial reporting transparency may depend on additional statistical and other information about these business activities and transactions. That information should include any contracts that are derivatives involving the same commodities that are part of those trading activities (for example, energy derivatives that are part of energy trading activities [18]).

The Commission reminds registrants that accounting standards require disclosures in financial statements of material energy trading and risk management activities.[19] Discussion in MD&A of material trends and uncertainties arising from those activities is also required. Information about these trading activities, contracts and modeling methodologies, assumptions, variables and inputs, along with explanations of the different outcomes reasonably likely under different circumstances or measurement methods, should be considered for inclusion in management's discussion of how the activities affect reported results for the latest annual period and subsequent interim period and how financial position is affected as of the latest balance sheet date. The Commission recently issued cautionary advice encouraging companies to include in their MD&A full explanations, in plain English, of their ''critical accounting policies,'' the judgments and uncertainties affecting the application of those policies, and the likelihood that materially different amounts would be reported under different conditions or using different assumptions.[20]

Consistent with that advice, registrants should consider the need to furnish information, quantified to the extent practicable, that does the following:

- Disaggregates realized and unrealized changes in fair value;
- Identifies changes in fair value attributable to changes in valuation techniques;
- Disaggregates estimated fair values at the latest balance sheet date based on whether fair values are determined directly from quoted market prices or are estimated; and
- Indicates the maturities of contracts at the latest balance sheet date (*e.g.,* within one year, within years one through three, within years four and five, and after five years).

An example of this disclosure in the form of a schedule is provided below.

Fair value of contracts outstanding at the beginning of the period—xxxxxx
Contracts realized or otherwise settled during the period—xxxxxx
Fair value of new contracts when entered into during the period—xxxxxx
Changes in fair values attributable to changes in valuation techniques and assumptions—xxxxxx
Other changes in fair values—xxxxxx
Fair value of contracts outstanding at the end of the period—xxxxxx

Source of fair value	Fair value of contracts at period-end				
	Maturity less than 1 year	Maturity 1–3 years	Maturity 4–5 years	Maturity in excess of 5 years	Total fair value
Prices actively quoted. Prices provided by other external sources. Prices based on models and other valuation methods.					

[17] Companies that may find the suggested disclosures particularly valuable are those engaged to a material extent in (a) energy trading activities as defined in Emerging Issues Task Force Issue 98–10 (EITF 98–10), *Accounting for Contracts Involved in Energy Trading and Risk Management Activities*, (b) weather trading activities as defined in Emerging Issues Task Force Issue No. 99–2, *Accounting for Weather Derivatives*, or (c) non-exchange traded commodity trading contracts that are marked to fair value through earnings and are part of analogous trading activities (for example, nonderivative trading contracts on pulp, bandwidth, newsprint, and so on).

[18] Emerging Issues Task Force No. 98–10 (September 23, 1999) identifies factors that distinguish energy trading activities from other activities that involve the purchase or sale of energy.

[19] Emerging Issues Task Force Issue 98–10 (September 23, 1999), *Accounting for Contracts Involved in Energy Trading and Risk Management Activities.*

[20] Financial Reporting Release No. 60, *Cautionary Advice Regarding Disclosure About Critical Accounting Policies (December 12, 2001) 66 FR 65013.*

In addition, issuers should consider the need to disclose the fair value of net claims against counterparties that are reported as assets at the most recent balance sheet date, based on the credit quality of the contract counterparty (*e.g.,* investment grade; noninvestment grade; and no external ratings).

Registrants should also consider their disclosure obligations regarding risk management in connection with the trading activities discussed above. Registrants should consider whether they should provide fuller disclosure regarding the management of risks related to, for example, changes in credit quality or market fluctuations of underlying, linked or indexed assets or liabilities, especially where such assets are illiquid or susceptible to material uncertainties in valuation.

C. Disclosures About Effects of Transactions With Related and Certain Other Parties

Statement of Financial Accounting Standards No. 57 (FAS 57), *Related Party Disclosures,* sets forth the requirements under GAAP concerning transactions with related parties.[21] As noted in that standard, ''[t]ransactions involving related parties cannot be presumed to be carried out on an arm's length basis, as the requisite conditions of competitive, free-market dealings may not exist.'' [22] Accordingly, where related party transactions are material, MD&A should include discussion of those transactions to the extent necessary for an understanding of the company's current and prospective financial position and operating results. In addition, Item 404 of Regulation S–K and Item 404 of Regulation S–B require disclosure of certain relationships and transactions with related parties.[23]

Registrants should consider whether investors would better understand financial statements in many circumstances if MD&A included descriptions of all material transactions involving related persons or entities, with clear discussion of arrangements that may involve transaction terms or other aspects that differ from those which would likely be negotiated with clearly independent parties.[24] Registrants should consider describing the elements of the transactions that are necessary for an understanding of the transactions' business purpose and economic substance, their effects on the financial statements, and the special risks or contingencies arising from these transactions. Discussion of the following may be necessary:

- The business purpose of the arrangement;
- Identification of the related parties transacting business with the registrant;
- How transaction prices were determined by the parties;
- If disclosures represent that transactions have been evaluated for fairness, a description of how the evaluation was made; and
- Any ongoing contractual or other commitments as a result of the arrangement.

Registrants should also consider the need for disclosure about parties that fall outside the definition of ''related parties,'' but with whom the registrant or its related parties have a relationship that enables the parties to negotiate terms of material transactions that may not be available from other, more clearly independent, parties on an arm's-length basis. For example, an entity may be established and operated by individuals that were former senior management of, or have some other current or former relationship with, a registrant. The purpose of the entity may be to own assets used by the registrant or provide financing or services to the registrant. Although former management or persons with other relationships may not meet the definition of a related party pursuant to FAS 57, the former management positions may result in negotiation of terms that are more or less favorable than those available on an arm's-length basis from clearly independent third parties that are material to the registrant's financial position or results of operations. In some cases, investors may be unable to understand the registrant's reported results of operations without a clear explanation of these arrangements and relationships.

Dated: January 22, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1899 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–U

[21] Statement of Financial Accounting Standard No. 57, *Related Party Disclosures* (March 1982). See also 17 CFR 210.4–08(k)(1), which states, ''Related party transactions should be identified and the amounts stated on the face of the balance sheet, income statement, or statement of cash flows.''

[22] *Id.,* paragraph 3.

[23] 17 CFR 229.404 and 17 CFR 228.404, which require, with certain exceptions, disclosure of transactions or series of transactions in which the company was, or is to be, a party, the amount involved exceeds $60,000, and a director, executive officer, nominee for election as director, security holder of more than five percent of any class of the company's voting securities, or any member of the immediate family of any of such persons, had or will have a direct or indirect material interest. Required disclosures include the name of the person and the person's relationship with the registrant, the nature of the person's interest, the amount of the transaction(s), and, where practicable, the amount of the person's interest in the transaction(s). In addition, section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1, requires that each audit of financial statements pursuant to that Act include procedures designed to identify related party transactions that are material to the financial statements or that require disclosure. Statement on Auditing Standards No. 45, *Related Parties,* published by the Auditing Standards Board and effective for periods ended after September 30, 1983, provides guidance on auditing related party transactions.

[24] Audit committees may wish to include a review of such relationships and transactions in their discussions with management and auditors, including a review of their terms and internal corporate and Board actions involving the transactions, prior to their recommendation that the financial statements be included in the company's Form 10–K. *See generally,* Regulation S–K Item 306, 17 CFR 229.306, and Regulation S–B Item 306, 17 CFR 228.306.

SECURITIES AND EXCHANGE COMMISSION

Tel-One, Inc., File No. 500–1; Order of Suspension of Trading

January 23, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tel-One, Inc. (''Tel-One''), because of questions regarding the accuracy of assertions by Tel-One, and by others, in documents sent to and statements made to market makers of the stock of Tel-One, other broker-dealers, and investors concerning, among other things: (1) The company's claims about its prospects in the video teleconferencing industry; (2) the future price of Tel-One's stock; and (3) the involvement of persons in control of the operations and management of the company in efforts to tout, and inflate artificially the price of, Tel-One's stock.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, January 23, 2002, through 11:59 p.m. EST, on February 5, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–1986 Filed 1–23–02; 12:50 pm]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45312; File No. SR–Amex–2001–42]

Self-Regulatory Organizations; Order Granting Accelerated Approval To Proposed Rule Change by American Stock Exchange LLC To Increase Position And Exercise Limits For Nasdaq-100 Index Tracking Stock Options

January 18, 2002.

I. Introduction

On June 27, 2001, the American Stock Exchange LLC (the ''Amex'' or ''Exchnge'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to position and exercise limits for the Nasdaq-100 Index Trading Stock (''QQQ'') options. On December 26, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on January 10, 2002.[3] To date, no comment letters have been received. This order approves the proposal, as amended, on an accelerated basis.

II. Description of Proposal

The Exchange is proposing to increase position and exercise limits for QQQ options from 75,000 contracts to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 906. Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. Finally, the Exchange will add a commentary to reiterate its authority under paragraph (d)(2)(K) of Rule 462 to impose a higher margin requirement upon a member or member organization when the Exchange determines that a higher requirement is warranted.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[4] in that it is designed 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in liquid options classes.[5]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[6]

The Commission has carefully considered the Amex's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange, and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable depth and liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the Amex notes that the average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The Amex also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[7] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45236 (January 4, 2002), 67 FR 1378.

[4] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[5] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[6] *Id.*

[7] The Amex has noted that the QQQ is designed to closely track the performance of the Nasdaq-100 Index. According to the Amex, as of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion. In its filing, the Amex stated that the Commission should apply an analysis similar to what was used in connection with broad-based index options. The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalization's of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contrast, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

or capital that a member must maintain for a large position held by itself or by its customer. Further, the Amex, under its rules, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements are sufficient to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under Amex Rule 906(b), each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. This information should help Amex to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged position, as provided under its rules. In this regard, the Commission believes the Amex's adoption of Commentary .11 under Amex Rule 906 is appropriate and will reiterate its authority under Amex Rule 462 to require additional margin for under-hedged positions.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current Amex rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[9] to approve the proposal on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–AMEX–2001–42), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1903 Filed 1–24–02; 8:45 am]

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[8] Of course, the Commission expects that Amex will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ should any unanticipated adverse market effects develop due to the increased limits.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45305;File No. SR–Amex–2001–108]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Biotech-Pharmaceutical Notes

January 17, 2002.

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 December 20, 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 and II 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 and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade notes, the return on which is based upon the Biotech-Pharmaceutical Index. The Biotech-Pharmaceutical Index is based upon the blended performance of the Amex Biotechnology index (the ''Biotech Index'') and the Amex Pharmaceutical Index (the ''Pharmaceutical Index'') (each, an ''Underlying Index'' and together, the ''Underlying Indices''), discussed more fully below. Initially, the Underlying Indices will each have a weighting of 50% of the Biotech-Pharmaceutical Index, and the Biotech-Pharmaceutical Index will be rebalanced annually to reset the weighting of the Underlying Indices to 50% each.

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 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 III below. The Amex has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Biotech-Pharmaceutical Index (the ''Notes''). The Biotech-Pharmaceutical Index will be determined, calculated, and maintained solely by the Amex.[4]

The Notes will conform to the initial listing guidelines under Section 107[5] and continued listing guidelines under Sections 1001–1003[6] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. (''Merrill Lynch'') that provide for single payment at maturity. The Notes will have a term of not less than one nor more than ten years and will entitle the owner at maturity to receive an amount based upon the percentage change between the ''Starting Index Value'' and the ''Ending Index Value'' (the ''Redemption Amount''). The ''Starting Index Value'' is the value of the Biotech-Pharmaceutical Index on the date on which the issuer prices the Notes issue for the initial offering to the public. The ''Ending Index Value'' is the value of the Biotech-Pharmaceutical Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During a two-week period in the designated month each year, the investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Biotech-Pharmaceutical Index at such repurchase date. The Notes are not callable by the issuer.

The Notes are cash-settled in U.S. dollars. The holder of a Note does not have any right to receive any of the securities comprising the Underlying Indices or any other ownership right or interest in these securities. The Notes are designed for investors who want to participate or gain exposure to the U.S. biotechnology and pharmaceutical industries and who are willing to forgo market interest payments on the Notes during such term.

The Biotech-Pharmaceutical Index is based upon the combined performance of the Biotech Index and the Pharmaceutical Index. The Biotech Index is designed to measure the performance of a cross section of companies in the biotechnology industry that are primarily involved in the use of biological processes to develop products or provide services. The Biotech Index is an equal-dollar weighted index, designed to ensure that each of its component securities is represented in approximate equal dollar value. Equal-dollar weighting was established by designating the number of shares of each component security that represented approximately $10,000 in market value, based on closing prices on October 18, 1991.[7] The aggregate value of the stocks was reduced by a divisor[8] to establish a Biotech Index benchmark value of 200.00. To ensure that each component stock continues to represent approximate equal market value, adjustments are made quarterly after the close of trading on the third Friday of January, April, July and October. As of December 13, 2001, the market capitalization of the securities included in the Biotech Index ranged from a high of $59.3 billion to a low of $1.7 million. The average daily trading volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 8.9 million shares to a low of .531 million shares.[9] The Commission has previously approved the listing and trading of options on the Biotech Index.[10]

The Pharmaceutical Index is designed to represent a cross section of widely held, highly capitalized companies involved in various phases of the pharmaceutical industry. The Pharmaceutical Index is a market-value (capitalization) weighted index reflecting the total market value of fifteen stocks.[11] The Pharmaceutical Index was developed with a base value of 200.00 as of July 31, 1999. A 2-for-1 split of the Pharmaceutical Index occurred on March 23, 1999. The securities included in the Pharmaceutical Index are listed on the Amex, New York Stock Exchange, Inc. or traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation System (''Nasdaq'') and reported National Market System securities. As of December 13, 2001, the market capitalization of the securities included in the Pharmaceutical Index ranged from a high of $247.7 billion to a low of $3.9 billion. The average daily trading

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Subject to the criteria described in the prospectus supplement regarding the construction of the Biotech-Pharmaceutical Index, the Exchange has sole discretion regarding changes to the Biotech-Pharmaceutical Index.

[5] The initial listing standards for Industrial 15 Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[6] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Industrial 15 Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[7] For example, a stock that closed at $20 per share would be represented in the Biotech Index by 500 shares for a total market value of $10,000.

[8] The divisor for the Biotech Index was initially set to 750.1506 on October 18, 1991.

[9] As of December 13, 2001, the Biotech Index was composed of shares of the following companies: Affymetrix, Inc. (AFFX); Amgen Inc. (AMGN); Applera Corporation (CRA); Biogen, Inc. (BGEN); Cephalon, Inc. (CEPH); Chiron Corporation (CHIR); COR Therapeutics, Inc. (CORR); Genentech Inc. (DNA); Genzyme Corporation (GENZ); Gilead Sciences Inc. (GILD); Human Genome Sciences, Inc. (HGSI); IDEC Pharmaceuticals Corporation (IDPH); Immunex Corporation (IMNX); Medimmune Inc. (MEDI); Millennium Pharmaceuticals, Inc. (MLNM); Protein Design Labs, Inc. (PDLI) and Vertex Pharmaceuticals Incorporated (VRTX).

[10] *See* Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844 (October 5, 1992) (approving the listing and trading of long-term options (''LEAPS'') based on the Biotech Index and a reduced value Biotech Index) (''Biotech LEAPS Order'').

[11] As of December 13, 2001, the Pharmaceutical Index was composed of shares of the following companies: Abbott Laboratories (ABT); American Home Products Corporation (AHP); Amgen, Inc. (AMGN); AstraZeneca PLC (AZN); Bristol-Myers Squibb Company (BMY); Forest Laboratories Inc. (FRX); Glaxo Smith Kline Plc (GSK); IVAX Corporation (IVX); Johnson & Johnson (JNJ); King Pharmaceuticals, Inc. (KG); Lilly (Eli) & Company (LLY); Merck & Company, Inc. (MRK); Pfizer, Inc. (PFE); Pharmacia Corporation (PHA) and Schering-Plough Corporation (SGP).

volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 10.6 million shares to a low of .458 million shares. The Commission has previously approved the listing and trading of options on the Pharmaceutical Index.[12]

At the outset, the Underlying Indices will each represent 50% of the Starting Index Value. Specifically, both the Biotech Index and Pharmaceutical Index will be assigned a multiplier on the date of issuance so that each Underlying Index represents an equal percentage of the value of the Biotech-Pharmaceutical Index on the date the Notes are priced for initial sale to the public. The multiplier indicates the percentage of the Underlying Index, given its current value, to be included in the calculation of the Biotech-Pharmaceutical Index. The Biotech-Pharmaceutical Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day the Notes are priced for initial sale to the public.

The value of the Biotech-Pharmaceutical Index at any time will equal: (1) The sum of the values of each Underlying Index multiplied by their respective multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.[13] Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by an issuer represented in the Underlying Indices, multiplied by the number of shares of stock in the respective Underlying Index on the ex-dividend date, divided by the index divisor applicable to such Underlying Index, multiplied by the multiplier applicable to such Underlying Index on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each respective Underlying Index in the Biotech-Pharmaceutical Index. Thus, the value of the dividends is allocated to each respective Underlying Index. The share multiplier of each Underlying Index will be adjusted to reflect a reinvestment of such current quarter dividends into each Underlying Index based on the closing market price of the Underlying Index on the last day in the immediate preceding calendar quarter.

As of the close of business on each anniversary date (anniversary of the day the Biotech-Pharmaceutical Index was initially calculated and set to 100) the Biotech-Pharmaceutical Index will be rebalanced so that each Underlying Index will represent approximately 50% of the value of the Biotech-Pharmaceutical Index. To effectuate this, the multiplier for each Underlying Index will be determined by the Amex and will indicate the percentage for each index, given the closing value of each index on the anniversary date, so that each index represents an equal percentage of the Biotech-Pharmaceutical Index value at the close of business on such anniversary date. For example, if the Biotech-Pharmaceutical Index value at the close of business on an anniversary date was 200, then each of the Underlying Indices would be allocated a portion of the value of the Biotech-Pharmaceutical Index equal to 100, and if the closing market price of one Underlying Index on the anniversary date was 160, the applicable share multiplier would be reset to 0.625. Conversely, if the Biotech-Pharmaceutical Index value was 80, then each of the Underlying Indices would be allocated a portion of the value of the Biotech-Pharmaceutical Index equal to 40 and if the closing market price of one Underlying Index on the anniversary date was 20, the applicable share multiplier would be reset to 2.

The Exchange will calculate the Biotech-Pharmaceutical Index and, similar to other stock index values published by the Exchange, the value of the Biotech-Pharmaceutical Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to equity indices, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[14] Second, the Notes will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. Furthermore, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.[16]

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[17] in general and furthers the objectives of Section 6(b)(5)[18] 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.

[12] *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221 (June 24, 1992) (approving the listing and trading of long-term options (''LEAPS'') based on the Pharmaceutical Index and a reduced value Pharmaceutical Index) (''Pharmaceutical LEAPS Order'').

[13] At the end of each day, the Biotech-Pharmaceutical Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (*i.e.,* 1.5%/365 days = 0.0041% daily). This reduction to the value of the Biotech-Pharmaceutical Index will reduce the total return to investors upon the exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

[14] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or accounted accepted.

[15] *See* Amex Rule 462 and Section 107B of the Company Guide.

[16] Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on January 8, 2002.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2001–108 and should be submitted by February 15, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[19] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[20] Accordingly, the Commission finds that the listing and trading of the Notes based on the Biotech-Pharmaceutical Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[21]

As described more fully above, at maturity, or upon redemption, the holder of a Note will receive an amount based upon the percentage change in the value of the Biotech-Pharmaceutical Index, less the index adjustment factor. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate in the U.S. biotechnology and pharmaceutical industries. As described by the Amex, the value of the dividends is allocated to each respective Underlying Index.

The Notes are not leveraged, non-principal protected instruments. The Notes are debt instruments whose price will still be derived and based upon the value of the Biotech-Pharmaceutical Index. The Notes do not have a minimum principal amount that will be repaid at maturity and the payments on the Notes prior to or at maturity may be less than the original issue price of the Notes.[22] Thus, if the Biotech-Pharmaceutical Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced, based on the performance of the Underlying Indices, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Notes. The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Commission notes that the Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have at least $4 million in market value.[23] In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Indices comprising the Biotech-Pharmaceutical Index, will be publicly available.[24]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary

[19] *Id.*

[20] *See* Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001), (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000), (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities (''MITTS'')) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[21] 15 U.S.C. 78F(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] The Commission recognizes that during a two-week period in the designated month investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Biotech-Pharmaceutical Index at such repurchase date.

[23] *See* Company Guide Section 107A.

[24] The companies that comprise the Biotech-Pharmaceutical Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[25] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Indices of the Biotech-Pharmaceutical Index or raise manipulative concerns. As discussed more fully above, the Biotech-Pharmaceutical Index is based upon the return of the Underlying Indices. Each of the Underlying Indices will have a weighting of 50% of the weight of the Biotech-Pharmaceutical Index, initially, and immediately following each annual rebalancing of the Biotech-Pharmaceutical Index. In addition, the Biotech Index's equal-dollar weighting and the Pharmaceutical Index's market-value (capitalization) weighting methodologies are commonly applied index calculation methods. Moreover, Amex's listing and trading of other products on both of the Underlying Indices have been previously approved by the Commission.[26] In approving the listing and trading of these other products on the Underlying Indices, the Commission noted in its approval orders that the Amex has developed several composition and maintenance criteria for the Underlying Indices that the Commission believes will minimize the potential for manipulation of the Underlying Indices.[27] In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Biotech-Pharmaceutical Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Biotech-Pharmaceutical Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[28] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[29] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–2001–108), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

J. Lynn Taylor,

Assistant Secretary.

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[25] *See, e.g.,* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[26] *See* Biotech LEAPS Order, *supra* note 10; and Pharmaceutical LEAPS Order, *supra* note 12.

[27] Among other things, the Amex would be required to submit a rule filing with the Commission pursuant to Section 19(b) of the Act prior to expanding either of the Underlying Indices to greater than twenty stocks or reducing either of the Underlying Indices to less than ten stock. The Commission finds that this requirement will protect against the design of the Underlying Indices from being materially changed without Commission review and approval, and that it is unlikely that attempted manipulations of prices of the issues in the Underlying Indices would affect significantly the Underlying Indices' value. *See* Biotech LEAPS Order, *supra* note 10; and Pharmaceutical LEAPS Order, *supra* note 12.

[28] *See supra* note 20.

[29] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45309; File No. SR–CBOE–2001–44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Increasing Position and Exercise Limits on QQQ Options

January 18, 2002.

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 August 9, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On December 19, 2001, the CBOE filed Amendment No. 1 to the proposed rule change,[3] and on January 14, 2002, the CBOE filed Amendment No. 2 to the proposed rule change.[4]

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock℠ (''QQQ'') options. The Exchange represents that its reporting requirements for QQQ options will serve to identify options holdings and information concerning the hedging of these positions.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

[4] Amendment No. 2 removes language added to Rule 4.13(b) by the proposed rule change that increased the reporting requirement level specified in Rule 4.13 for QQQ options.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Commission has stated that position and exercise limits ''must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.'' [5]

The Exchange represents that the QQQs are by far the most actively-traded options product. Average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to April 30, 2001 were 70.5 million shares and 189,046 contracts, respectively. The current standard position and exercise limits for QQQ options were recently adjusted from 75,000 contracts to 150,000 contracts, due to a 2-for-1 split in the value of the underlying QQQ. In January 2002, however, the current limits are scheduled to revert to 75,000 contracts.

Based on the large trading volume in both the underlying QQQ and QQQ options, the Exchange believes that position and exercise limits of the QQQ option are too restrictive and may adversely affect the Exchange's ability to provide liquidity in this popular product. In addition, the CBOE believes that current base limits for the QQQ options may not be adequate in many instances for the hedging needs of certain institutions which engage in trading strategies differing from those covered under the equity hedge exemption policy in Interpretation .04 to Exchange Rule 4.11 (*e.g.,* delta hedges; OTC vs. listed hedges).

To accommodate the need for continued liquidity in this product, the Exchange proposes to increase position and exercise limits for QQQ options to 300,000 contracts. The Exchange will require both that member organizations report all QQQ options positions exceeding 200 contracts pursuant to existing Exchange Rule 4.13(a), and that they report information on the hedging of all positions in excess of 10,000 contracts on the same side of the market, pursuant to an amended Exchange Rule 4.13(b). The Exchange believes that increasing position limits for this product will lead to a more liquid and competitive market environment for QQQ options that will benefit customers interested in the product.

Reporting Requirements

Consistent with Exchange Rule 4.13(b), the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. Once the 10,000 contract reporting threshold is attained, member or member organizations must similarly report each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options.[6] Lastly, it is important to note that the 10,000 contract reporting requirement is above and beyond what is currently required in the OTC market. NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [7] in general and furthers the objectives of Section 6(b)(5) [8] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 –0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the office of the CBOE. All submissions should refer File No. SR–CBOE–2001–44 and should be submitted by February 15, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of section 6(b)(5) of the Act [9] in that it is

[5] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[6] *See* Exchange Rule 4.13(a).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency,

designed to promote just and equitable principles of trades, 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[10]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of the position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[11]

The Commission has carefully considered the CBOE's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specially, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable liquidity of both the underlying cash and options market for QQQ options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the CBOE notes that the average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to April 30, 2001 were 70.5 million shares and 189,046 contracts, respectively. CBOE has also noted that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[12] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margins and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the CBOE, under CBOE Rules 4.13 and 12.10, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange under CBOE Rule 4.13, which will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information, will help protect against potential manipulation. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. This information should help the CBOE to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.[13]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current CBOE rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Commission believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limits to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[14] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2001–

competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[10] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[11] *Id.*

[12] As noted by the CBOE, the QQQ is designed to closely track the performance of the Nasdaq-100 Index. As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

[13] Of course, the Commission expects that CBOE will take prompt action, including timely communicational with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

44) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1906 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45311; File No. SR–ISE–2001–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by International Securities Exchange LLC To Increase Position and Exercise Limits for Nasdaq-100 Index Tracking Stock Options

January 18, 2002.

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 October 8, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock (''QQQ'') options to 300,000 contracts on the same side of the market. The text of the proposed rule change is available at the Office of the Secretary, ISE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE 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 III below. The ISE 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 is proposing to increase position and exercise limits for options on the Nasdaq 100 Index Tracking Stock (''QQQ options'') up to 300,000 contracts on the same side of the market. As discussed below, the Exchange believes that the current limits for non-flex equity options are no longer appropriate for QQQ options given the liquidity of the options, the underlying security, and the securities that comprise the Nasdaq-100 Index.

QQQ options are popular hedging instruments in today's market and by far the most active listed option product. The average daily trading volume for QQQ options was 243,763 contracts during the first quarter of 2001, 330,786 contracts during the second quarter, and 316,425 contracts during the third quarter. As of October 2001, the average daily trading volume of QQQ options is 298,858 contracts.[4]

One of the primary purposes for imposing position and exercise limits is to minimize the opportunity for mini-manipulation, which is an attempt to influence the price movement of an underlying stock to benefit a previously established options position.[5] The Nasdaq 100 Index Tracking Stock represents ownership in a long-term unit investment trust that holds a portfolio of the equity securities that track and Nasdaq-100 Index. Thus, while QQQ options are not technically index options (for which the Commission has previously approved the elimination of position limits for options on certain enormously capitalized indexes),[6] the ISE believes that they are economically similar and are used by investors in the same manner and with the same investment objectives as index options.[7] The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on Nasdaq, each of which has an average daily trading volume of at least 100,000 shares and a market capitalization of at least $500 million.[8] The Exchange believes that it would be extremely difficult for an investor to influence the price of the Nasdaq-100 Index in order to benefit a previously established options position.

The reporting requirements in ISE Rule 415(b) will continue to apply to QQQ options.[9] Rule 415(b) requires Electronic Access Members to report end of day positions in all non-FLEX equity options in excess of 10,000 contracts on the same side of the market. The report must specify whether such position is hedged and provide documentation as to how such position is hedged, including a description of any collateral used to carry the position. This report is required at the time the account exceeds the 10,000 contract threshold and thereafter, for customer accounts, when

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

[4] The ISE notes that in comparison, the Commission approved the total elimination of position limits for options traded on the SPX, OEX and DJX, all of which are broadbased indexes traded solely on the Chicago Board of Options Exchange (''CBOE''). Year to date the average daily trading volume of options on these three indexes is 92,814 contracts, 43,544 contracts, and 35,365 contracts respectively. Thus, daily average volume in QQQ options is more than 3.2 times that of the SPX and nearly 8.5 times that of the DJX. *See* Securities Exchange Act Release No. 41011 (Feb. 1, 1999) (Order approving elimination of position and exercise limits for XMI and XII options on a two-year pilot basis); and Securities Exchange Act Release No. 40969 (Feb. 1, 1999) (Order approving the elimination of position and exercise limits for SPX, OEX, DJX on a two-year pilot basis).

[5] *See* Securities Exchange Act Release No. 39489 (Dec. 24, 1997), 63 FR 276 (Jan. 5, 1998)

[6] *See supra* note 4.

[7] The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalizations of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contrast, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23,96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

[8] According to information available on Bloomberg, L.P., an information company, the average daily trading volume for the Nasdaq 100 Index Tracking Stock was 66.8 million shares during the first quarter of this year, 69.8 million shares during second quarter, and 64.6 million during the third quarter.

[9] The general reporting requirement contained in ISE Rule 415(a) for customer accounts that maintain a position in excess of 200 contracts also will remain applicable for QQQ options.

the position increases by 2,500 contracts and for proprietary accounts, when the position increases by 5,000. Exchange market-makers are not required to report under ISE Rule 415(b) as market-makers account positions can be accessed through the Exchange's market surveillance systems.

Finally, the Exchange proposes to explicitly state in Supplementary Material to ISE Rule 412 that it may use its authority under ISE Rule 1204(b) to impose additional margin requirements upon an account that maintains under-hedged options positions.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [10] in general and furthers the objectives of section 6(b)(5) [11] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer File No. SR–ISE–2001–26 and should be submitted by February 15, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of section 6(b)(5) of the Act [12] in that it is designed 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[13]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[14]

The Commission has carefully considered the ISE's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying product that a lower position limit may protect against. In this regard, the ISE notes that the average daily trading volume for QQQ options was 243,763 contracts during the third quarter of 2001, 330,786 contracts during the second quarter, and 316,425 contracts during the third quarter. The ISE also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[15] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[13] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[14] *Id.*

[15] As noted by the ISE, the QQQ is designed to closely track the performance of the Nasdaq-100 Index. As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. In this regard, the Commission believes the ISE's adoption of Supplementary Material to ISE Rule 412, to state that the ISE has the authority to impose additional margin on options positions if it determines that this is warranted, is appropriate.

Finally, the Commission believes that the reporting requirements imposed by the Exchange under ISE Rule 415(b), which will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information, will help protect against potential manipulation. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. The information should help the ISE to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules. The Commission believes that these financial requirements are sufficient to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements coupled with the special trading characteristics of the QQQ options and the underlying QQQs noted above, warrant approval of the Exchange's proposal.[16]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current Exchange rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Commission notes that limits of 75,000 contracts for the QQQ options could reduce depth and liquidity in the QQQ market. The Commission believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[17] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–ISE–2001–26) is hereby approved, as amended, on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1907 Filed 1–24–02; 8:45 am]

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[16] Of course, the Commission expects that ISE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45299; File No. SR–MBSCC–2001–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Implementing a Real-Time Trade Matching Service

January 17, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 19, 2001, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') and on September 26, 2001, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will implement a real-time trade matching service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In furtherance of MBSCC's mission to reduce the costs and risks associated with trading in the mortgage-backed securities market, MBSCC has enhanced its services to enable its participants to submit executed trade terms and to receive comparison results from MBSCC in a more timely manner. The cornerstone of this objective is the implementation of the Real-Time Trade Matching (''RTTM'') service that will replace MBSCC's current twice-daily match process with respect to trade input information. MBSCC anticipates that the RTTM service will provide more certainty, will reduce execution/market risk, and will eliminate the redundancy between the verbal checkout process (which is described below) and the current MBSCC matching process.[3]

MBSCC's objective in implementing the RTTM service is to match all trade input in real-time within minutes of trade execution while providing participants with the greatest flexibility and least amount of disruption in the

[2] The Commission has modified parts of these statements.

[3] One of the main objectives of the RTTM service is to significantly reduce the risks associated with a prolonged period of time between trade execution and achievement of legal and binding confirmation. The elapsed time between trade execution and verbal checkout, followed by a legal and binding confirmation, is a known and serious risk to the ultimate settlement of the trade for all trading organizations. Reducing the elapsed time between trade execution and achievement of a legal and binding confirmation increases certainty and reduces risk.

migration towards this goal. MBSCC will retire its batch trade matching process with respect to trade input information upon implementation of the RTTM service. All trade activity for all participants, regardless of the form of trade input, will be matched solely by the RTTM service upon its implementation. Therefore, participants that increase the frequency of submission and reconciliation throughout the business day will be able to realize the benefits of the RTTM service.

MBSCC's Current Matching Process

Currently, MBSCC participants submit details of executed trades daily to MBSCC by means of terminal or batch submissions. While participants may submit trade input to MBSCC anytime during published business hours, MBSCC performs its matching process of participant submitted data twice per day: at 10:30 a.m. (''AM Pass'') and at 11:30 p.m. (''PM Pass'').

Output reports/files detailing the results of the matching process are available to participants at 11:30 a.m. for the AM Pass and at 4:00 a.m., for the PM Pass. The primary outputs are the ''Purchase and Sale Report'' listing submitted trades that successfully compared and the ''Transaction Summary Report'' listing, among other things, submitted trades that did not compare. The Purchase and Sale Report serves as the sole and binding confirmation of trades and provides data for Rule 10b–10 compliance purposes as well.

Given that the majority of trades are submitted after the AM Pass, the timing limitations of a twice-daily matching/reporting process mean that participants generally are notified, at the earliest, that a trade has achieved ''binding confirmation'' status during the morning following submission to MBSCC. To overcome this time delay, participants engage in a process known as ''verbal checkout.'' Shortly after execution, participants contact each other and verbally confirm executed trade details. The verbal checkout process is important to participants to ascertain, with some degree of certainty, their intraday trading positions. While generally effective, the verbal checkout process is cumbersome, error-prone, and lacks the ''binding'' status afforded by the two-sided matching and confirmation through MBSCC.

The RTTM Service and the Requisite Rules Changes

In order to provide more certainty, to reduce execution/market risk, and to eliminate the redundancy between the verbal checkout process and MBSCC's trade input matching process, MBSCC will offer the RTTM service. As stated above, MBSCC currently processes transaction information in two batch processing passes. One segment of that processing, the matching of trade input information, will be processed by the RTTM service. The other segments of the daily processing, including the matching of clearance information, will continue to be done in either one or both of the two existing batch processing passes.

The RTTM service will provide trade input matching for dealer-to-dealer trades and inter-dealer broker trades. The RTTM service will support all of the trade types currently supported by MBSCC (settlement balance order destined, trade-for-trade, comparison only, and option) as well as the various trade functions used by participants, such as the ''Don't Know'' or ''DK'' function.

Participants will be able to submit transaction information for processing through the RTTM service using the batch file submission method that is used today, which is called ''File Transmission Service.'' In addition, participants will also be able to use a batch file transmission method that employs SWIFT formats, the RTTM terminal service, and interactive messaging. Regardless of the input method, MBSCC will make available to participants real-time updates on all transactions entered into the system.

The following rule changes are necessary to accommodate the introduction of the RTTM service:

i. *General provisions on the RTTM service:* MBSCC is proposing to add two provisions to its rules to provide generally for the RTTM service. One of these provisions (new Section 1 or Rule 3 of Article II) will provide taht MBSCC's comparison of trade input will occur in real time, and the other (new Section 1 of Rule 4 of Article II) will distinguish the RTTM processing from the current processing passes.

ii. *New reports provided by the RTTM service:* MBSCC's RTTM processing will produce output via the RTTM terminal service as well as via interactive messages. MBSCC is proposing to add a definition for the term ''Report'' to encompass any type of output in any form that is provided by MBSCC to its participants. As a result specifically of RTTM processing, there will be ''Reports'' that will indicate the transactions whose trade input has compared (''RTTM Compare Reports''),[4] and ''Reports'' that will indicate the transactions whose trade input has not compared (''RTTM Uncompare Reports'').

iii. *Changes to existing reports:* MBSCC will continue to provide the reports that are created as a result of its current two processing passes, with some modifications in one case. The Purchase and Sale Report details the results of the current batch trade processing, which includes the matching of trade input submissions, as well as the matching of clearance information. No changes are proposed to the information provided by the Purchase and Sale Report. Like the Purchase and Sale Report, the Transaction Summary Report is also provided as a result of the current twice-daily processing passes. Upon implementation of RTTM processing, the Transaction Summary Report will no longer provide details of unmatched trade terms. Unmatched trade terms will be available to participants via the RTTM Uncompare Reports (which as stated above, will be in the form of output provided by MBSCC via the RTTM terminal service as well as via interactive messages). MBSCC is proposing to modify its rules to delete references to the Transmission Summary Report as notification of unmatched trades and to provide for this notification to occur by means of the RTTM Uncompare Reports.

iv. *Sole and binding confirmation of trades:* The rules currently provide that the Purchase and Sale Report is the sole and binding confirmation of the trade. In addition, the Purchase and Sale Report currently fulfills Rule 10b–10 requirements for generation of trade confirms. As stated above, upon implementation of RTTM, the Purchase and Sale Report will continue to be purchased twice daily displaying matched trades. Participants will, however, have received notice of trade input matching prior to the production of the Purchase and Sale report by means of the RTTM Compare Reports. To enable participants to rely upon the results of the RTTM processing, MBSCC is proposing to amend its rules to confer sole and binding trade confirmation status on the RTTM Compare Reports. Since the Purchase and Sale Report covers the matching of clearing information (which is not covered by the RTTM processing and thus would not be reported in the RTTM Compare Reports), it will remain the sole and binding confirmation with respect to that information. The Purchase and Sale Report will remain the Rule 10b–10 complaint confirmation.

[4] These reports will also indicate cancellations of previously compared trades.

v. *Trade input submission by inter-dealer brokers (''IDBs''):* Certain RTTM trade input formats require that an IDB submit two separate transactions linked together by a common reference number per trade. Under the current trade submission format, IDBs submit two transactions, one identifying one dealer (buyer) and one identifying the other dealer (seller), on give-up trades. The rule on IDB trade input (current Section 1 of Rule 3of Article II) speaks generally in terms of trade input and does not specify the number of submissions required. The only rule change that is proposed in this respect is a reference to MBSCC's procedures, which will describe in detail the trade input submission requirements.

vi. *Retirement of maximum match mode:* MBSCC's rules provide that each dealer must select a match mode to govern the comparison of each such dealer's MBSCC-eligible transactions involving an IDB. The rules currently provide for three match modes: theexact match mode, the net position match mode, and the maximum match mode.[5] Upon implementation of the RTTM service, only the exact and net position match modes will be available. MBSCC is proposing to retire the maximum match mode due to lack of participant demand for this feature. The proposed rule changes delete all references to the maximum match mode.

vii. *Review of reports by participants:* MBSCC's rules currently contain a provision that requires participants and limited purpose participants to review the reports that they receive from MBSCC. MBSCC desires to expand the provision to cover any type of communication provided to participants by MBSCC and to require participants to inform MBSCC promptly, and in no event later than ten calendar days upon receipt of the communication, if there is any error, omission, or other problem with respect to the communication. MBSCC believes that the ten-day timeframe will provide participants with a sufficient amount of time within which to detect problems in a communication from MBSCC.

viii. *New definitions:* MBSCC is proposing to add definitions for the following new terms: ''Real Time'' and ''RTTM Processing'' to encompass the new real-time processing concepts that will be introduced in the rules; ''RTTM Compare Report'' and ''RTTM Uncompare Report'' to specify the reports that will be available under the RTTM service; and ''Report'' to encompass all of the different types of output that can be provided by MBSCC to participants. The proposed amendments to existing definitions are incidental to the changes described above.

ix. *Amendment to MBSCC's Schedule of Charges for IDBs:* MBSCC is proposing to amend its Schedule of Charges to give IDBs a service-fee based incentive to move to interactive messaging. MBSCC believes that it is important to offer the incentive to its IDB participants because their early participation is critical to a successful implementation of the RTTM service. From a dealer perspective, lack of participation by one or more of the IDBs severely dilutes the benefits the dealer will gain from RTTM usage because a large percentage of the dealers' matching activity is against IDBs. The perception of reduced benefit leads to delays in dealer participation and a protracted rollout process. Therefore, MBSCC is proposing to waive, for a period of one year commencing with putting the RTTM service into production, all trade recording ''Give-Up Trade Create'' fees for IDBs that participate in MBSCC's testing (or ''beta'') phase of the RTTM service and subsequently move to production (IDBs must be interactive in order to participate in the testing phase, which is scheduled to take place during the first quarter of 2002).

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder, because they will reduce execution/market risk and eliminate the redundancy between the verbal checkout process and MBSCC's trade input matching process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(a) By order approve 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to file No. SR–MBSCC 2001–02 and should be submitted by February 15, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1901 Filed 1–24–02; 8:45 am]

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[5] The ''exact match mode'' means that trade input that matches in all other respects will be compared only if the par amount of the eligible securities reported to have been sold or purchased by the dealer for a particular transaction is identical to the par amount of a particular transaction reported by the broker. The ''net position match mode'' means that trade input that matches in all other respects will be compared only if the aggregate par amount of one or more transactions in eligible securities reported to have been sold or purchased by the dealer equals the aggregate par amount for one or more transactions reported by the broker. The ''maximum match mode'' means that trade input that matches in all other respects will be compared to the extent that the par amount of eligible securities reported to have been sold or purchased by the dealer does not exceed the aggregate par amount for one ore more transactions reported by the broker with transactions reported by the broker in any excess par amount remaining uncompared.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45313; File No. SR–PCX–2002–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Pacific Exchange, Inc. To Increase Position and Exercise Limits for Nasdaq-100 Index Tracking Stock Options

January 18, 2002.

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 January 17, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock (''QQQ'') options to 300,000 contracts on the same side of the market.[3] The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 III below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PCX also proposed a non-substantive amendment to Rule 6.9(a) clarifying that options on securities such as unit investment trusts must follow equity position and exercise limit rules.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to increase position and exercise limits for QQQ options up to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 6.6. Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. The PCX believes that increasing position and exercise limits from 75,000 to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks.[4] In addition, Exchange staff will be able to re-focus efforts and resources to other notable areas.

Manipulation

Position limits restrict the number of options contracts that an investor, or a group of investors acting in concert, may own or control. Similarly, exercise limits prohibit the exercise of more than specified a number of contracts on a particular instrument within five (5) business days. The Commission, by imposing these limits on exchange-traded options, has sought to: (1) Minimize the potential for mini-manipulations,[5] as well as other forms of market manipulations; (2) impose a ceiling on the position that an investor with inside corporate or market information can establish; and (3) reduce the possibility of disruption in the options and underlying cash markets.[6] The PCX believes that the structure of the QQQ option and the tremendous liquidity of both the underlying cash and options market for QQQs should allay regulatory concerns of potential manipulation. The PCX further believes that QQQ options are not readily susceptible to manipulation based largely on the liquidity and activity of the underlying QQQ as well as the securities comprising the QQQ. Therefore, the Exchange submits that increasing position and exercise limits to 300,000 contracts may generate greater order flow for the PCX and provide members with greater flexibility in fulfilling their obligations to customers and the market.

Although the QQQ option is not itself an index option product, it nonetheless is designed to closely track the price and yield performance of the Nasdaq-100 index.[7] Therefore, the PCX believes that in evaluating this proposal to increase position and exercise limits for QQQ options, the Commission should apply an analysis similar to what was used in connection with broadbased index options.[8]

The PCX believes in connection with QQQ options that the restrictive

[4] Although the current position limit is 75,000 contracts due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000.

[5] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established options position.

[6] *See* Becker and Burns, Regulation of Exchange-Traded Options in *The Handbook of Derivatives and Synthetics* (1994), Probus Publishing Company, and Regulating the Options Market, *Institutional Investor Forum* (November 1991).

[7] QQQ represents ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least $500 million and an average daily trading volume of at 100,000 shares. QQQ is intended to provide investment results that generally correspond to the Nasdaq-100 Index with an initial market value approximated at 1/40th the value of the underlying Nasdaq-100 Index. A description and analysis of the Nasdaq-100 Index is set forth by the Commission in Securities Exchange Act Release No. 33428 (January 4, 1994), 59 FR 1576 (January 11, 1994) (order approving trading of Nasdaq-100 options by the CBOE). As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was approximately $1.875 trillion, while the QQQ had net assets of $23.96 billion and 559.1 million shares outstanding. By far the largest economic sector represented is technology amounting to 68.91%. The top QQQ holding is Microsoft, accounting, for 11.97% while the top ten holdings constitute 43.22%.

[8] *See* Securities Exchange Act Release Nos. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (order approving the elimination of position and exercise limits for XMI and XII options on a two-year pilot basis) and 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (order approving the elimination of position and exercise limits for SPX, OEX, DJX and related FLEX options on a two-year pilot basis).

The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalization's of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26, 2001) 66 FR 55722 (November 2, 2001) (permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contrast, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

position and exercise limits no longer serve their stated purpose. The Commission has stated that:

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

The Exchange believes that both the size and breadth of the market for QQQs dispels concerns regarding market manipulation and disruption. The average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The QQQ option is by far the most actively-traded option product in the U.S., and therefore, the most liquid. The underlying QQQ is the most actively-traded equity security in the U.S. with greater trading volume than both Microsoft and Intel.[10] Accordingly, the Exchange believes that the liquidity of the QQQ option and the underlying cash market for QQQs greatly reduces the potential for manipulations in both the options and underlying cash market.

To date, there has not been a single disciplinary action involving manipulation or potential manipulation in the QQQ or the QQQ option on the Exchange. The PCX further believes that its extensive experience conducting surveillance of derivative products and program trading activity is sufficient to identify improper activity. Routine oversight inspections of the PCX's regulatory programs by the Commission should uncover any inconsistencies or shortcomings in the manner in which derivative and options surveillance is conducted. These procedures entail a daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both the options and underlying cash markets.

Competition

The Commission has stated that ''limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.'' [11] Based on the large trading volume apparent in both the underlying QQQ and QQQ options, the Exchange believes that current position and exercise limits of the QQQ option are too restrictive and may adversely affect the PCX's ability to compete with the OTC market. The Exchange believes that investors who trade listed options on the QQQ at the Exchange may be placed at a serious disadvantage in comparison to certain Nasdaq-100 index derivative products traded in the OTC market where some index-based derivatives are not currently subject to position and exercise limits.[12] Member firms also continue to express their concern that position limits on popular, actively-traded products, such as QQQ options, are an impediment to business development on the Exchange. Accordingly, a portion of this business is believed to have moved to the OTC market where some index-based derivative products are not subject to position limit requirements. In addition, the PCX believes that current base limits for the QQQ option may not be adequate in many instances for the hedging needs of certain institutions, which engage in trading strategies differing from those covered under the current index hedge exemption policy (*e.g.,* delta hedges; OTC vs listed hedges).[13]

Financial Requirements

The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under PCX Rules 2.16 and 6.8 to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

Reporting Requirements

Consistent with PCX Rule 6.6, the PCX will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data includes, but is not limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers are exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. Once the 10,000 contract reporting threshold is attained, the PCX will require members and member organizations to similarly report each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. The Exchange believes that the reporting level of 10,000 contracts on the same side of the market for members other than Exchange market-makers is consistent with the designation of the QQQ as an equity option, and therefore, the existing regulatory regime. Pursuant to PCX Rule 6.6, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options. Lastly, the Phlx believes that the 10,000 contract reporting requirements is above and beyond what is currently required in the OTC market. According to the Exchange, NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Basis

The Exchange believes that the proposed rule change is consistent with

[9] Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[10] For the period of January 1, 2001 to November 30, 2001, Microsoft and Intel had average daily trading volumes of 39.38 and 53.98 million shares, respectively, compared to the QQQ with an average daily trading volume of 71.21 million shares.

[11] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[12] The Commission notes, however, that as an equity product, options on the QQQ are subject to position limits in the OTC market. *See* NASD Rule 2860.

[13] The current limit for QQQ options is 150,000 contracts due to the 50% reduction in the underlying value of the QQQ that occurred on March 20, 2000. At this limit, the QQQ options equate to 15,000,000 QQQ shares or an aggregate value of $59.47 billion as of November 30, 2001. At the time of approval of QQQ options, position and exercise limits were set at 25,000 (250,000 QQQ shares) equating to an aggregate value of $2,500,000 as of March 9, 1999 (commencement of trading). When QQQs commenced trading, the volume was 10.4 million shares with an opening price of $100.00 per share. The average daily trading volumes for the QQQ during 1999, 2000 and year-to-day 2001 were 13.9 million, 30.9 million and 71.21 million shares respectively, while for the same periods the average daily trading contract volume for the QQQ option were 9,206, 91,656, and 148,181. As of November 30, 2001, the price of a single QQQ was $39.65.

Section 6(b) of the Act [14] in general and furthers the objectives of Section 6(b)(5) [15] 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, to remove impediments to and perfect and mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer File No. SR–PCS–2002–03 and should be submitted by February 15, 2002.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

IV. Commissions Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act [16] in that it is designed 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognize that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[17]

The Commission has carefully considered the PCX's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the PCX notes that the average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The PCX also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[18] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the PCX, under Rules 2.16 and 6.8, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under PCX Rule 6.6, each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in position limits, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things,

[16] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[17] *Id.*

[18] The PCX has noted that the QQQ is designed to closely track the performance of the Nasdaq-100 Index. According to the PCX, as of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

whether or not the options position is hedged, and if so, a description of the hedge. This information should help the PCX to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increasing position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options noted above, warrant approval of the Exchanges proposal.[19]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current PCX rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. The Commission also believes it is appropriate to approve the clarifying language proposed for Exchange Rule 6.9(a) noted above. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[20] to approve the proposal on an accelerated basis.

[19] Of course, the Commission expects that PCX will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[20] 15 U.S.C. 78f(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–PCX–2002–03) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

J. Lynn Taylor,

Assistant Secretary.

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[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45310; File No. SR–Phlx–2002–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Philadelphia Stock Exchange, Inc. to Increase Position And Exercise Limits for Nadsaq-100 Index Tracking Stock Options

January 18, 2002.

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 January 15, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock[4] (''QQQ'') options to 300,000 contracts on the same side of the market. The Phlx represents that its reporting requirements for QQQ options will serve to identify options holdings and information concerning the hedging of these positions.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III 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 Exchange is proposing to increase position and exercise limits for QQQ options up to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 1003(a). Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. The Phlx believes that increasing position and exercise limits from 75,000 to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks.[5] In addition, Exchange staff will be able to re-focus efforts and resources to other notable areas.

Potential Manipulation

Position limits restrict the number of options contracts that an investor, or a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

[4] The Phlx represents that Nasdaq-100, Nasdaq-100 Index (''Index''), Nasdaq, The Nasdaq Stock Market, Nasdaq-100 Shares, Nasdaq-100 Trust, Nasdaq-100 Index Tracking Stock, and QQQ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes of the Phlx (''Licensee'') pursuant to a License Agreement with Nasdaq. The Index determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust, or the beneficial owners of Nasdaq-100 Shares. The Phlx represents that Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

[5] Although the current position limit is 75,000 contracts, due to a 50% reduction in the value of the underlying QQQ on March 20, 2002, the limit was adjusted to 150,000.

group of investors acting in correct, may own or control. Similarly, exercise limits prohibit the exercise of more than specified a number of contracts on a particular instrument within five (5) business days. The Commission, by imposing these limits on exchange-traded options, has sought to: (1) Minimize the potential for mini-manipulations,[6] as well as other forms of market manipulations; (2) impose a ceiling on the position that an investor with inside corporate or market information can establish; and (3) reduce the possibility of disruption in the options and underlying cash markets.[7] The Phlx believes that the structure of the QQQ option and the tremendous liquidity of both the underlying cash and options market for QQQs should allay regulatory concerns of potential manipulation. The Phlx further believes that QQQ options are not readily susceptible to manipulation based largely on the liquidty and activity of the underlying QQQ as well as the securities comprising the QQQ. Therefore, the Exchange submits that increasing position and exercise limits to 300,000 contracts may generate greater order flow for the Phlx and provide members with greater flexibility in fulfilling their obligations to customers and the market.

Although the QQQ option is not itself an index option product, it nonetheless is designed to closely track the price and yield performance of the Nasdaq-100 index.[8] Therefore, the Phlx believes that in evaluating this proposal to increase position and exercise limits for QQQ options, the Commission should apply an analysis similar to what was used in connection with broadbased index options.[9]

The Phlx believes in connection with QQQ options that the restrictive position and exercise limits no longer serve their stated purpose. The Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[10]

The Exchange believes that both the size and breadth of the market for QQQs dispels concerns regarding market manipulation and disruption. The average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The QQQ option is by far the most actively-traded option product in the U.S., and therefore, the most liquid. The underlying QQQ is the most actively-traded equity security in the U.S. with greater trading volume than both Microsoft and Intel.[11] Accordingly, the Exchange believes that the liquidity of the QQQ option and the underlying cash market for QQQs greatly reduces the potential for manipulation in both the options and underlying cash market.

To date, the Exchange has not experienced significant disciplinary issues in the QQQ or the QQQ option on the Exchange. The Exchange represents that it conducts appropriate surveillance of options products, such as the QQQ options, to identify improper activity.

Competition

The Commission has stated that ''limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.''[12] Based on the large trading volume apparent in both the underlying QQQ and QQQ options, the Exchange believes that current position and exercise limits of the QQQ option are too restrictive and may adversely affect the Exchange's ability to compete with the OTC market. The Exchange believes that investors who trade listed options on the QQQ at the Phlx may be placed at a serious disadvantage in comparison to certain Nasdaq-100 index derivative products traded in the OTC market where some index-based derivatives are not currently subject to position and exercise limits.[13] Members firms also continue to express their concern that position limits on popular, actively-traded products, such as QQQ options, are an impediment to business development on the Exchange. Accordingly, a portion of this business is believed to have moved to the OTC market where some index-based derivative products are not subject to position limit requirements. In addition, the Phlx believes that current base limits for the QQQ option may not be adequate in many instances for the hedging needs of certain institutions, which engage in trading strategies

[6] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established options position.

[7] *See* Becker and Burns, Regulation of Exchange-Traded Options in *The Handbook of Derivatives and Symthetics* (1994), Probus Publishing Company, and Regulating the Options Market, *Institutional Investor Forum* (November 1991).

[8] QQQ represents ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least $500 million and an average daily trading volume of at 100,000 shares. QQQ is intended to provide investment results that generally correspond to the Nasdaq-100 Index with an initial market value approximated at ¼0th the value of the underlying Nasdaq-100 Index. A description and analysis of the Nasdaq-100 Index is set forth by the Commission in Securities Exchange Act Release No. 33428 (January 4, 1994), 59 FR 1576 (January 11, 1994)(order approving trading of Nasdaq-100 options by the CBOE). As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was approximately $1.875 trillion, while the QQQ had net assets of $23.96 billion and 559.1 million shares outstanding. By far the largest economic sector represented in technology amounting to 68.91%. The top QQQ holdings Microsoft, accounting, for 11.97% while the top ten holdings constitute 43.22%.

[9] *See* Securities Exchange Act Release Nos. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999)(order approving the elimination of position and exercise limits for XMI and XII options on a two-year pilot basis) and 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999)(order approving the elimination of position and exercise limits for SPX, OEX, DJX and related FLEX options on a two-year pilot basis). The Phlx does not currently list any broad based index products.

The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalization's of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26 2001), 66 FR 55722 (November 2, 2001)(permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contract, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlyingQQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

[10] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[11] For the period of January 1, 2001 to November 30, 2001, Microsoft and Intel had average daily trading volumes of 39.38 and 53.98 billion shares, respectively, compared to the QQQ with an average daily trading volume of 71.21 million shares.

[12] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[13] The Commission notes, however, that as an equity product, options on the QQQ are subject to position limits in the OTC market. *See* NASD Rule 2860.

differing from those covered under the current index hedge exemption policy (*e.g.,* delta hedges; OTC vs. listed hedges).[14]

Financial Requirements

The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under Phlx Rule 722(d) and 722(i)(8) to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

Reporting Requirements

Consistent with Phlx Rule 1003(b), the Phlx will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data includes, but is not limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers are exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. This Phlx proposes to require members organizations, once the 10,000 contract reporting threshold is attained, to report similarly each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. The Exchange believes that the reporting level of 10,000 contracts on the same side of the market for members other than Exchange market-makers is consistent with the designation of the QQQ as an equity option, and therefore, the existing regulatory regime. Pursuant to Phlx Rule 1003(a), the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options. Lastly, the Phlx believes that the 10,000 contract reporting requirement is above and beyond what is currently required in the OTC market. According to the Exchange, NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[15] in general and furthers the objectives of Section 6(b)(5)[16] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer File No. SR–Phlx–2002–06 and should be submitted by February 15, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[17] in that it is designed 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[18]

The Commission has carefully considered the Phlx's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes

[14] The current limit for QQQ options is 150,.000 contracts due to the 50% reduction in the underlying value of the QQQ that occurred on March 20, 2000. At this limit, the QQQ options equate to 15,000,000 QQQ shares or an aggregate value of $59.47 billion as of November 30, 2001.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[18] *Id.*

the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits form 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable depth and liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the Phlx notes that the average daily trading volumes of the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The Phlx also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[19] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the Phlx, under Phlx Rule 722(d) and 722(i)(8), may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under Phlx Rule 1003(b), each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the option position is hedged, and if so, a description of the hedge. This information should help the Phlx to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.[20]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register.** The Commission notes that under the current Phlx rules, the position and exercise limits applicable to QQQ options are 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that a limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits form 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contract son January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[21] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Phlx–2002–06), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1904 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–M

[19] The Phlx has noted that the QQQ is designed to closely track the performance of the Nasdaq-100 Index. According to the Phlx, as of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

[20] Of course, the Commission expects that Phlx will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45304; File No. SR–Phlx–2001–112]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Reducing Exchange Fees for Trading Floor Members Participating in the Wireless Phone System

January 17, 2002.

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 December 17, 2001, the Philadelphia Stock Exchange, Inc., (''Phlx'' 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 Phlx. 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 Phlx proposes to amend its schedule of dues, fees and charges to decrease from $200 to $100 the fee per month for each phone used by Phlx members on the equity and options floors of the Exchange participating in the Exchange's Ericsson Wireless Phone

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

System (''system''). [3] The proposed amended fee will be implemented beginning January 1, 2002. [4]

II. Self-regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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 decrease from $200 to $100 the fee per month for each phone used by members on the equity and options floors participating in the system. Each member user of the wireless phones has to agree to pay a monthly fee per phone (which will be reduced to $100 commencing January 1, 2002) for a period of twelve months, or, if an agreement has been already signed, for the remainder of the twelve month period. At the end of the twelve-month period, a new agreement will be presented to the user. Phlx Rule 50 will govern payment of the monthly fees.

The Exchange believes that the proposed decrease in the monthly wireless phone fee is reasonable and equitable to all members on the equity and options floors of the Exchange that use the wireless phone system. This fee will help to offset the expense incurred in using and maintaining the system.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) [5] of the Act in general, and furthers the objectives of section 6(b)(4) [6] in particular, in that it is an equitable allocation of reasonable fees among the Exchange's members, because the members who pay the reduced monthly fee incur the benefit of using the phones on the Exchange's wireless phone system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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 Phlx 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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A) [7] of the Act and Rule 19b–4(f)(2) [8] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concering the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–112 and should be submitted by February 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1908 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–M

[3] A $200 fee per month for each phone used on the system has been in effect since 1999. *See* Securities Exchange Act Release No. 41449 (May 25, 1999), 64 FR 29725 (June 2, 1999) (SR–Phlx–99–10). Users of the system are also assessed a one-time fee to purchase a handset, headset, battery, and accessories. While the system is available for use on both the equity and options floors, at this time it is used only on the options floor.

[4] This fee will continue to be ineligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed 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).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9O14]

State of Florida

Charlotte and Lee Counties and the contiguous counties of Collier, De Soto, Glades, Hendry, Highlands, and Sarasota in the State of Florida constitute an economic injury disaster loan area as a result of a Red Tide condition and subsequent closure of the Gasparilla Sound beginning August 22, 2001 and continuing. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on October 17, 2002, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The number assigned for economic injury for the State of Florida is 9O1400.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: January 17, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–1894 Filed 1–24–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3390]

State of Texas

Travis County and the contiguous Counties of Bastrop, Blanco, Burnet, Caldwell, Hays, and Williamson in the State of Texas constitute a disaster area as a result of damages caused by severe storms, flooding, and tornadoes that occurred November 15 through 18, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 18, 2002, and for economic injury until the close of business on October 17, 2002, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.500
Homeowners Without Credit Available Elsewhere	3.250
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-profit Organizations Without CreditAvailable Elsewhere	4.000
Others (Including Non-profit Organizations) With CreditAvailable Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ...	4.000

The numbers assigned to this disaster are 339011 for physical damage and 9O1500 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 17, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–1895 Filed 1–24–02; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Environmental Assessment or Environmental Impact Statement—Proposed Commercial and Recreational Developments on the Muscle Shoals and Wilson Dam Reservations, Colbert and Lauderdale Counties, AL

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508), section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800), and TVA's procedures implementing the National Environmental Policy Act. TVA will prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) on alternatives for commercial and recreational development requested by local governments in the jurisdictions surrounding TVA property in the Shoals area of northwestern Alabama (Colbert County, city of Florence, Lauderdale County, city of Muscle Shoals, city of Sheffield, and city of Tuscumbia). The local governments have requested that TVA make available 263 hectares (650 acres) of federal property on the Muscle Shoals Reservation and 6 ha (15 acres) of federal property on the Wilson Dam Reservation for their use in constructing a hotel, conference center, and golf course development. The project would be funded by the Retirement System of Alabama (RSA), a state agency, and the local governments.

DATES: Comments on the scope of the environmental review must be received on or before February 25, 2002.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail *hmdraper@tva.gov.*

SUPPLEMENTARY INFORMATION: TVA acquired control of the Muscle Shoals and Wilson Dam reservation properties, consisting of about 1229 hectares (3036 acres), from the U.S. War Department in 1933. During the past few years, TVA has received a variety of proposals for development and use of the two reservation properties by nonfederal entities. Local governments have been interested in promoting regional economic development and have provided TVA with several concepts for evaluation. In 1996, TVA prepared a land plan to identify portions of the two reservations that could be made available to non-federal entities for development. The land plan contemplated that TVA would reserve the majority of the property for the agency's own use, but would make available limited property for regional development. TVA subsequently made available a site for construction of a chamber of commerce headquarters for the region on the Wilson Dam Reservation, and a site for commercial development at the junction of two major streets on the Muscle Shoals Reservation.

In 2001, responding to a local government request to invest in the Shoals region. RSA proposed to partially fund construction of a first class hotel, conference center, and 36-hole golf course, as part of an Alabama tourism development effort called the Robert Trent Jones Golf Trail. The hotel, conference center, and golf course would be constructed on TVA land. In addition, an existing city park, known as Florence Veterans Park and now used for a campground and for dispersed day uses, would be converted to a zoo, water theme park, marina, and other improvements. Under the terms of the easement to the City of Florence for the Florence Veterans Park, TVA approval also would be needed for the Veterans Park improvements. Finally, a ''river heritage trail'' would be developed on the north side of the Tennessee River. Because TVA has received a unified request from the local governments and the request supports regional development goals, TVA has decided to evaluate the Shoals proposal in more detail. Although detailed concept plans have not yet been presented to TVA, the agency is providing early notice of the proposal to facilitate the identification of issues to be addressed and the development of alternatives to be assessed in the environmental review. The alternatives to be analyzed have not been developed at this time, but at a minimum involve no action, full or partial development of the 665 acres specifically requested by the local governments, and other potential sites. The property proposed for the golf course is now available to the public for dispersed recreational use, including foot and bicycle trails and a picnic area. The property proposed for the hotel and

conference center is now open space on the north side of Wilson Dam.

Based on the results of the previous public interaction for projects on the Muscle Shoals and Wilson Reservations, TVA anticipates that the EA or EIS will include discussion of the potential effects of alternatives on the following resources: visual resources, cultural resources, threatened and endangered species, terrestrial ecology, wetlands, recreation, water quality, aquatic ecology, and socioeconomics.

TVA is interested in receiving additional comments on the issues to be addressed. Written comments on the scope of the environmental review should be received on or before February 25, 2002.

TVA will begin by developing an EA for the proposed project. In the event that information gathered or analyses conducted in preparing this EA indicate that the proposal could have a significant impact on the environment, the agency will prepare an EIS. If TVA decides to prepare an EIS, the scoping process now underway for the EA will be used for the EIS and will not be repeated.

TVA will hold public meetings to provide more information and to receive comments on the Shoals proposals the week of February 11, 2002. Times, locations, and places will be announced in local newspapers, and may be obtained by contacting the persons listed above.

Dated: January 17, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 02–1840 Filed 1–24–02; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Correction to notice of request for written submissions from the public.

SUMMARY: The Office of the United States Trade Representative published a document in the **Federal Register** on December 26, 2001, concerning request for submissions on foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act. The document contained incorrect address details for submission and reviews of those comments and an incorrect title for one of the contacts for further information.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property (202) 395–6864; Kira Alvarez, Director for Intellectual Property (202) 395–6864; Stephen Kho or Victoria Espinel, Assistant General Counsels (202) 395–7305, Office of the United States Trade Representative.

Correction

In the **Federal Register** of December 26, 2001, in 66 FR 66492, correct the address to read:

ADDRESSES: FR0012@USTR.GOV.

In the **Federal Register** of December 26, 2001, in 66 FR 66492, correct the contact details to read: Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property.

In the **Federal Register** of December 26, 2001, in 66 FR 66493, correct the contact details to read:

All comments should be sent to Sybia Harrison Special Assistant to the Section 301 committee, at the following email address: FR0012@USTR.GOV. Please note, only electronic submissions will be accepted.

In the **Federal Register** of December 26, 2001, in 66 FR 66493, correct the contact details for the Public Inspection of Submissions to read:

An appointment to review the file may be made by calling Sybia Harrison, (202) 395–9411.

Joseph Papovich,

Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 02–1890 Filed 1–24–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–11351]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0539, 2115–0504, 2115–0576, 2115–0581, and 2115–0626

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise Requirements for Lightering of Oil and Hazardous Material Cargoes, Tank Vessel Examination Letters, Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers, Instructional Material for Lifesaving, Fire Protection and Emergency Equipment, Vapor Control Systems for Facilities and Tank Vessels, and Alternate Compliance Program. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before March 26, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–11351] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(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 and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of

Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2002–11351], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Requirements for Lightering of Oil and Hazardous Material Cargoes.

OMB Control Number: 2115–0539.

Summary: The information for this report allows the Coast Guard to provide timely response to an emergency and minimize the environmental damage from an oil or hazardous material spill. The information also allows the Coast Guard to control the location and procedures for lightering activities.

Need: 46 U.S.C. 3715 authorizes the Coast Guard to establish lightering rules. 33 CFR 156.200 to 156.330 prescribes the Coast Guard rules for lightering, including pre-arrival notice, reporting of incidents and operating conditions.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 228 hours a year.

2. *Title*: Tank Vessel Examination Letters, Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 2115–0504.

Summary: This information is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under 46 U.S.C. The affected public includes some owners and operators of large merchant vessels and all foreign-flag tankers calling at U.S. ports.

Need: 46 U.S.C. 3301, 3305, 3306, 3702, 3703, 3711, and 3714 authorizes the Coast Guard to establish marine safety regulations to protect life, property, and the environment. 46 CFR prescribe these Coast Guard rules. The requirements for reporting Boiler/Pressure Valve Repairs, maintaining Cargo Gear Records, maintaining Shipping Papers, issuance of Certificates of Compliance (CG–3585) and Tank Vessel Examination Letters (CG–840S–1/CG–840S–2, as appropriate) provide the marine inspector with available information as to the condition of a vessel and its equipment. It also contains information on the vessel owner and lists the type and amount of cargo that has been or is being transported. These requirements all relate to the promotion of safety of life at sea and protection of the marine environment.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 17,555 hours a year.

3. *Title:* Instructional Material for Lifesaving, Fire Protection and Emergency Equipment.

OMB Control Number: 2115–0576.

Summary: This information is needed to ensure that vessel crews have instructional material for lifesaving, firefighting and emergency equipment. The material is used during training sessions and during emergencies. It is needed because crew members must have complete information on the proper operation of equipment.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to establish regulations concerning lifesaving, fire protection and other equipment. 46 CFR Subchapters Q and W prescribes regulations that include the instructional materials needed to ensure a vessel's crew has the necessary information on the proper use of lifesaving, fire protection and emergency equipment.

Respondents: Manufacturers of Equipment.

Frequency: On occasion.

Burden Estimate: The estimated burden is 22,516 hours a year.

4. *Title:* Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 2115–0581.

Summary: The information is needed to ensure compliance with U.S. rules for the design of facility and tank vessel vapor control systems (VCS). The information is also needed to determine the qualifications of a certifying entity.

Need: 33 U.S.C. 1225 and 46 U.S.C. 3703 authorize the Coast Guard to establish rules to promote the safety of life and property of facilities and vessels. 33 CFR part 154.800 prescribes the Coast Guard rules for VCS and certifying entities.

Respondents: Owners, operators of facilities and tank vessels, and certifying entities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,073 hours a year.

5. *Title:* Alternate Compliance Program.

OMB Control Number: 2115–0626.

Summary: This information is used by the Coast Guard to assess vessels participating in the voluntary Alternate Compliance Program (ACP) prior to issuance of a Certificate of Inspection.

Need: 46 U.S.C. 3306, 3316, and 3703 authorize the Coast Guard to establish vessel inspection regulations and inspection alternatives. 46 CFR part 8 prescribes the Coast Guard regulations for recognizing classification societies and enrollment of U.S.-flag vessels in ACP.

Respondents: Recognized classification societies.

Frequency: On occasion.

Burden Estimate: The estimated burden is 150 hours a year.

Dated: January 17, 2002.

D.F. Shuell,

Acting Director of Information Technology.

[FR Doc. 02–1870 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Two Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on two currently approved public information collections which received emergency clearances and now will be submitted to OMB for extensions of those clearances.

DATES: Comments must be received on or before March 26, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden,

the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0673, Criminal History Records Checks, 14 CFR 107&108. Public Law 106–528 provided for fingerprinting of all individuals on and after December 23, 2000, unescorted access and those individuals who perform certain screening functions at Category X airports. The rule requires that the airport operators and aircraft operators fingerprint those covered individuals at all categories of airports who, previous to November 14, 2001, were not subject to a criminal history records check. The current estimated annual reporting burden is 123,471 hours.

2. 2120–0674, Special Federal Aviation Regulation (SFAR) 92, Flightcrew Compartment Access and Door Designs. SFAR 92 (to part 119) temporarily authorizes variances for certain air carriers from existing design standards for the flightcrew compartment doors and allows for return to service of modified airplanes without prior approved data. This allows certain air carriers to modify their flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. The modifications are conditional on submitting a detailed description of the changes within 90 days, and within 180 days providing a schedule for accomplishing changes to comply with all applicable airworthiness requirements. Current estimated annual reporting burden is 6480 hours.

Issued in Washington, DC, on January 18, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–1869 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; San Antonio International Airport, San Antonio, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of San Antonio for San Antonio International Airport, San Antonio, Texas, under the provisions of Title 49, U.S.C., Chapter 475 (hereinafter referred to as ''Title 49'') and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps is January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5607.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for San Antonio International Airport, San Antonio, Texas are in compliance with applicable requirements of Part 150, effective January 16, 2002.

Under Title 49, an airport operator may submit to the FAA noise exposure maps, which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The city of San Antonio submitted to the FAA on January 7, 2002, noise exposure maps, descriptions and other documentation, which were produced during the update to the part 150 Study. It was requested that the FAA review this material as the noise exposure maps, as described in Title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of San Antonio. The specific maps under consideration are *Noise Exposure Map: 1998 and Noise Exposure Map: 2004* in the submission. The FAA has determined that these maps for San Antonio International Airport are in compliance with applicable requirements. This determination is effective on January 16, 2002. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Title 49, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposures contours onto the map depicting properties on the surface rests exclusively with the airport operator, which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

City of San Antonio, Aviation Department, 9800 Airport Boulevard, San Antonio, Texas 78216

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, January 16, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–1867 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Record of Decision, Piedmont Triad International Airport, Greensboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability—Record of Decision (ROD).

The Federal Aviation Administration (FAA) has published a Final Environmental Impact Statement (FEIS) for proposed airport development at Piedmont Triad International Airport, Greensboro, North Carolina. The proposed development consists of constructing and operating a new Runway 5L/23R, an overnight air cargo sorting and distribution facility and associated development. Further, the FAA has prepared a Record of Decision that clearly communicates FAA's consideration of all reasonable alternatives, communicates FAA's findings and rationale for selecting the chosen alternative, and identifies any mitigation measures to be implemented as a part of the selected alternative. The ROD was signed by the Regional Administrator, Southern Region, on December 31, 2001, announcing FAA's decision of the Preferred Alternative, W1–A1. The ROD is being made available to interested parties at the following locations:

Greensboro Public Library, 219 N. Church Street, Greensboro, NC

Guilford County, Branch Library, 619 Dolly Madison Road, Greensboro, NC

High Point Public Library, 901 North Main Street, High Point, NC

Forsyth County Library, 660 West Fifth Street, Winston-Salem, NC

Piedmont Triad International Airport, 6415 Airport Parkway, Greensboro, NC

Federal Aviation Administration, 1701 Columbia Avenue, Suite C–260, College Park, GA

In addition, the ROD can be viewed at the Piedmont Triad Airport Authority's web page *www.gsoair.org.*

For additional information contact Mr. Scott L. Seritt, Manager, FAA Southern Region, Atlanta Airports District Office, 1701 Columbia Avenue, Suite C–260, College Park, Georgia.

Issued in College Park, Georgia, January 9, 2001.

Scott L. Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 02–1868 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9707; Notice 2]

Decision That Nonconforming Model Years 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 PassengerCars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming model years (''MY'') 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of January 25, 2002.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (''FMVSS'') shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, MD, (''J.K.'') (Registered Importer 90–006) petitioned NHTSA to decide whether MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on June 12, 2001 (66 FR 31749) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Mercedes Benz USA, Inc., (''Mercedes''), the manufacturer of MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars. In this comment, Mercedes stated that, for the vehicles in question, the symbols found on the European version of the cruise control lever on the steering column have to be changed to words to satisfy FMVSS 101 Controls and Displays. Mercedes also noted that, under FMVSS 206 Door Locks and door retention components, the inside door locks for the European versions of the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars are not identical to the versions originally manufactured for importation into and sale in the United States. The European versions of the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars have cylindrical interior door lock push buttons that submerge into the door panel when in the ''lock'' position, but the U.S. versions have mushroom shaped push buttons.

NHTSA accorded J.K. an opportunity to respond to Mercedes' comments. J.K. stated that for FMVSS 101 and FMVSS 206, it would replace the cruise control lever and the door lock push buttons, respectively, with the correct U.S. part numbers in the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars that are the subject of its petition.

In view of Mercedes' comments and J.K.''s response, NHTSA has decided to grant import eligibility to the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–370 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 22, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety, Compliance.

[FR Doc. 02–1861 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2002–11270, Notice No. 02–01]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

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

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA and the Department of Transportation's Office of Inspector General (OIG) are investigating the unauthorized marking of high-pressure compressed gas cylinders by Bev Con International (Bev Con), 6400 and 6420 Highway 51 South, Brighton, Tennessee. Bev Con is also known as or has done business as Bev-con, BCI Inc., BCI Industries and BCI Industries, Inc. All companies are located at the Brighton, Tennessee address listed above. RSPA and the OIG have determined that Bev Con marked and certified an undetermined number of cylinders with invalid Retester Identification Numbers (RINs), apparently without conducting hydrostatic retests of the cylinders in accordance with the Hazardous Materials Regulations (HMR). The cylinders at issue are mostly used in the beverage service industry.

On December 13, 2001, a Federal Grand Jury in Tennessee handed down a 31-count indictment against Bev Con and two of its principals. The indictment includes charges for the unauthorized cylinder marking described in this safety advisory.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material.

FOR FURTHER INFORMATION CONTACT: Cheryl K. Johnson, Senior Inspector, Southern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 1701 Columbia Avenue, Suite 520, College Park, GA 30337. Telephone: (404) 305–6120, Fax: (404) 305–6125.

SUPPLEMENTARY INFORMATION: Through an investigation of Bev Con, RSPA and the OIG have determined that Bev Con marked and certified an undetermined number of cylinders with two expired RINs. In addition, it does not appear that Bev Con conducted proper hydrostatic testing of the cylinders, as required by the HMR. The HMR requires that a cylinder retester obtain a RIN from RSPA. Bev Con has never been issued a RIN by RSPA, and any cylinders marked by Bev Con as having been tested in accordance with the HMR are unauthorized for use in hazardous materials service until properly retested by a DOT-authorized retester.

The cylinders in question are stamped with one of the following two RINs: C173 or C137. The markings appear in the following pattern:

(1)

C1
M Y
37

(2)

C1
M Y
73

M is the month of retest (e.g., 10), and Y is the year of the retest (e.g., 01).

RIN C173 was issued to Cee Kay Supply, 4241 Folsum Avenue, St. Louis, Missouri, on October 28, 1987. Cee Kay Supply was granted renewal of that RIN on August 27, 1992. Authorization for RIN C173 expired on August 27, 1997, and any use of that RIN to mark DOT specification or exemption cylinders after that date is unauthorized.

RIN C137 was issued to Koch Carbonic Corporation, 433 Raymond Boulevard, Newark, New Jersey, on July 8, 1987. Koch Carbonic Corporation last renewed the RIN on October 8, 1992. Authorization for RIN C137 expired on October 8, 1997, and any use of that RIN to mark DOT specification or exemption cylinders after that date is unauthorized.

Anyone who has a cylinder that has been serviced by or purchased from Bev Con and that is marked with RIN C173 and stamped with a retest date after August 1997, or that is marked with RIN C137 and stamped with a retest date after October 1997, should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility. Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Cylinders described in this safety advisory that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Under no circumstance should a cylinder described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and retested by a DOT-authorized retest facility.

It is further recommended that persons finding or possessing a cylinder described in this safety advisory or with questions concerning other cylinders sold or serviced by Bev Con contact Ms. Johnson for additional information.

Issued in Washington, DC, on January 22, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–1863 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub–No. 9X)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in LaMoure and Barnes Counties, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR part 1152, subpart F-*Exempt Abandonments* to abandon approximately 32.9 miles of rail line from approximately milepost 27.4 in or near Lucca, ND, to the end of the line at approximately milepost 60.3 in or near Marion, ND, in LaMoure and Barnes Counties, ND. The line traverses United States Postal Service Zip Codes 58049, 58466 and 58461.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance(OFA) has been received, this exemption will be effective on February 26, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 4, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 14, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Troy W. Garris, Weiner Brodsky Sidman Kider PC, 1300 19th Street NW, 5th Floor, Washington, DC 20036–1609.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by February 1, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by January 25, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1635 Filed 1–24–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,000. See 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–262–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–262–82 (TD 8600), Definition of an S Corporation. (§ 1.136–1).

DATES: Written comments should be received on or before March 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Definition of an S Corporation.

OMB Number: 1545–0731.

Regulation Project Number: PS–262–82.

Abstract: This regulation provides the procedures and the statements to be filed by certain individuals for making the election under Internal Revenue Code section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed are used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,005.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,005.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1921 Filed 1–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105312–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–105312–98, Reporting of Gross Proceeds Payments to Attorneys.

DATES: Written comments should be received on or before March 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Gross Proceeds Payments to Attorneys.

OMB Number: 1545–1644.

Regulation Project Number: REG–105312–98.

Abstract: The information is required to implement section 1021 of the Taxpayer Relief Act of 1997. This information will be used by the IRS to verify compliance with section 6045 and to determine that the taxable amount of these payments has been computed correctly.

Current Actions: There is no change to this proposed regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

The burden is reflected in the burden of Form 1099–MISC.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 16, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1922 Filed 1–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–1214]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–1214 (TD 7430), Discharge of Liens (§ 301.7425–3(b)(2)).

DATES: Written comments should be received on or before March 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Discharge of Liens.

OMB Number: 1545–0854.

Regulation Project Number: LR–1214.

Abstract: The Internal Revenue Service needs this information in processing a request to sell property subject to a tax lien to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1923 Filed 1–24–02; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 67, No. 17
Friday, January 25, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Pacific Southwest Region; California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Pacific Southwest Region to publish legal notices of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR parts 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers listed will begin with decisions subject to appeal that are made after publication of this notice in the **Federal Register**. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Regional Appeals Manager, Pacific Southwest Region, 1323 Club Drive, Vallejo, California 94592, 707–562–8945.

SUPPLEMENTARY INFORMATION: On November 4, 1993, 36 CFR parts 215 and 217 were published requiring publication of legal notice of decisions subject to appeal. Sections 215.5 and 217.5 require notice published in the **Federal Register** advising the public of the principal newspapers to be utilized for publishing legal notices. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day publication of the notice.

In addition to the primary newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (primary) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Regional Forester Decisions

Sacremento Bee, published daily in Sacramento, Sacramento County, California, for decisions affecting National Forest System lands and for any decision of Region-wide impact.

Angeles National Forest, California

Forest Supervisor Decisions

Los Angeles Times, published daily in Los Angeles, Los Angeles County, California.

District Rangers Decisions

Los Angeles Ranger District *Daily News,* published daily in Los Angeles, Los Angeles County, California.

Newspapers providing additional notice of Los Angeles District Ranger decisions: *Pasadena Star News,* published in Pasadena, California; and *Foothill Leader,* published in Glendale, California.

San Gabriel River Ranger District: *Inland Valley Bulletin,* published daily in Los Angeles, Los Angeles County, California.

Newspaper providing additional notice of San Gabriel River District Ranger decisions: *San Gabriel Valley Tribune,* published in the eastern San Gabriel Valley, California.

Santa Clara/Mojave Ranger District: *Daily News,* published daily in Los Angeles, Los Angeles County, California.

Newspapers providing additional notice of Santa Clara/Mojave Rivers District Ranger decisions: *Antelope Valley Press*, published in Palmdale, California; and *Mountaineer Progress,* published in Wrightwood, California.

Cleveland National Forest, California

Forest Supervisor Decisions

San Diego Union-Tribune, published daily in San Diego, San Diego County, California.

District Rangers Decisions

Descanso Ranger District: *San Diego Union-Tribune,* published daily in San Diego, San Diego County, California.

Palomar Ranger District: *San Diego Union-Tribune,* published daily in San Diego, San Diego County, California.

Newspaper providing additional notice of Palomar District Ranger decisions: *Riverside Press Enterprise,* published daily in Riverside, Riverside County, California.

Trabuco Ranger District: *Riverside Press Enterprise,* published daily in Riverside, Riverside County, California.

Newspaper providing additional notice of Trabuco District Ranger decisions: *Orange County Register,* published daily in Santa Ana, Orange County, California

Eldorado National Forest, California

Forest Supervisor Decisions

Mountain Democrat published four-times weekly in Placerville, El Dorado County, California.

District Rangers Decisions

Mountain Democrat published four-times weekly in Placerville, El Dorado County, California.

Inyo National Forest, California

Forest Supervisor Decisions

Inyo Register published three-times weekly in Bishop, Inyo County, California.

District Rangers Decisions

Inyo Register published three-times weekly in Bishop, Inyo County, California.

Klamath National Forest, California

Forest Supervisor Decisions

Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.

District Rangers Decisions

Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.

Lake Tahoe Basin Management Unit, California and Nevada

Forest Supervisor Decisions

Tahoe Daily Tribune, published daily (five-times weekly) in South Lake Tahoe, El Dorado County, California.

Lassen National Forest, California

Forest Supervisor Decisions

Lassen County Times, published weekly in Susanville, Lassen County, California.

District Rangers Decisions

Eagle Lake Ranger District: *Lassen County Times,* published weekly in Susanville, Lassen County, California.

Almanor Ranger District: *Chester Progressive,* published weekly in Chester, Plumas County, California.

Hat Creek Ranger District: *Intermountain News,* published weekly in Burney, Shasta County, California.

Los Padres National Forest, California

Forest Supervisor Decisions

Santa Barbara News Press, published daily in Santa Barbara, Santa Barbara County, California.

District Rangers Decisions

Monterey Ranger District: *Monterey County Herald,* published daily in Monterey, Monterey County, California.

Santa Lucia Ranger District: *Telegram Tribune,* published daily in San Luis Obispo, San Luis Obispo County, California.

Santa Barbara Ranger District: *Santa Barbara News Press,* published daily in Santa Barbara, Santa Barbara County, California.

Ojai Ranger District: *Ventura Star,* published daily in Ventura, Ventura County, California.

Mt. Pinos Ranger District: *The Bakersfield Californian,* published daily in Bakersfield, Kern County, California.

Mendocino National Forest, California

Forest Supervisor Decisions

Chico Enterprise-Record, published daily in Chico, Butte County, California.

District Rangers Decisions

Grindstone Ranger District: *Chico Enterprise-Record,* published daily in Chico, Butte County, California.

Upper Lake and Covelo Districts: *Ukiah Daily Journal,* published daily in Ukiah, Mendocino County, California.

Modoc National Forest, California

Forest Supervisor Decisions

The Modoc County Record, published weekly in Alturas, Modoc County, California.

District Rangers Decisions

The Modoc County Record, published weekly in Alturas, Modoc County, California.

Plumas National Forest, California

Forest Supervisor Decisions

Feather River Bulletin, published weekly in Quincy, Plumas County, California.

Newspaper providing additional notice for Environmental Impact Statements: *Sacramento Bee,* published daily in Sacramento, Sacramento County, California.

District Rangers Decisions

Beckwourth Ranger District: *Portola Reporter,* published weekly in Portola, Plumas County, California.

Newspaper occasionally providing additional notice of Beckwourth District Ranger decisions: *Feather River Bulletin,* published weekly in Quincy, Plumas County, California.

Feather River Ranger District: *Oroville Mercury Register,* published daily in Oroville, Butte County, California.

Newspaper occasionally providing additional notice of Feather River District Ranger decisions: *Feather River Bulletin,* published weekly in Quincy, Plumas County, California.

Mt. Hough Ranger District: *Feather River Bulletin,* published weekly in Quincy, Plumas County, California.

Newspaper occasionally providing additional notice of Mt. Hough District Ranger decisions: *Portola Reporter,* published weekly in Portola, Plumas County, California.

San Bernardino National Forest, California

Forest Supervisor Decisions

San Bernardino Sun, published daily in San Bernardino, San Bernardino County, California.

District Rangers Decisions

Mountaintop Ranger District—Arrowhead Area: *Mountain News*, published weekly in Blue Jay, San Bernardino County, California.

Mountaintop Ranger District—Big Bear Area: *Big Bear Life and Grizzly,* published weekly in Big Bear, San Bernardino County, California.

Front Country Ranger District: *San Bernardino Sun,* published daily in San Bernardino, San Bernardino County, California.

San Jacinto Ranger District: *Idyllwild Town Crier,* published weekly in Idyllwind, Riverside County, California.

Sequoia National Forest, California

Forest Supervisor Decisions

Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.

District Rangers Decisions

Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.

Shasta-Trinity National Forest, California

Forest Supervisor Decisions

Record Searchlight, published daily in Redding, Shasta County, California

District Rangers Decisions

Record Searchlight, published daily in Redding, Shasta County, California.

Sierra National Forest, California

Forest Supervisor Decisions

Fresno Bee, published daily in Fresno, Fresno County, California.

District Rangers Decisions

Fresno Bee, published daily in Fresno, Fresno County, California.

Six Rivers National Forest, California

Forest Supervisor Decisions

Times Standard, published daily in Eureka, Humboldt County, California.

District Rangers Decisions

Smith River National Recreation Area: *Del Norte Triplicate,* published daily in Crescent City, Del Norte County, California.

Orleans and Lower Trinity Districts: *The Kourier,* published weekly in Willow, Humboldt County, California.

Mad River District: *Times Standard,* published daily in Eureka, Humboldt County, California.

Stanislaus National Forest, California

Forest Supervisor Decisions

The Union Democrats, published daily (five-times weekly) in Sonora, Tuolumne County, California.

District Rangers Decisions

The Union Democrat, published daily (five-times weekly) in Sonora, Tuolumne County, California.

Newspaper sometimes providing additional notice of Groveland District

Rangers decisions: *Mariposa Gazette,* published weekly in Mariposa, California.

Newspaper sometimes providing additional notice of Calaveras District Ranger decisions: *Calaberas Enterprise,* published twice weekly in San Andrea, California.

Tahoe National Forest, California

Forest Supervisor Decisions

*The Union,*published daily (except Sunday) in Grass Valley, Nevada County, California.

District Rangers Decisions

Downieville and Sierraville Ranger Districts: *Mountain Messenger,* published weekly in Downieville, Sierra County, California.

Newspapers providing additional notice of Sierraville District Ranger decisions: *Sierra Booster,* published weekly in Loyalton, Sierra County, California; and *Portola Recorder,* published weekly in Portola, Plumas County, California.

Foresthill Ranger District: *Auburn Journal,* published daily in Auburn, Placer County, California.

Nevada City Ranger District: *The Union,* published daily (except Sunday) in Grass Valley, Nevada County, California.

Truckee Ranger District: *Sierra Sun,* published weekly in Truckee, Nevada County, California.

Newspaper providing additional notice of Truckee District Ranger decisions: *Tahoe World,* published weekly in Tahoe City, Placer County, California.

Dated: January 17, 2002.

Gilbert J. Espinosa,

Deputy Regional Forester.

[FR Doc. 02–1714 Filed 1–24–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on February 14–15, 2002 in John Day, Oregon. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 14 from 9:30 a.m. to 4 p.m. and February 15, 2002 from 8 a.m. until 2 p.m.

ADDRESSES: The meeting will be held in Juniper Hall, at the Malheur National Forest Headquarters Office located at 431 Patterson Bridge Road, John Day, Oregon.

FOR FURTHER INFORMATION CONTACT: Bonnie Wood, Designated Federal Official, USDA, Malheur National Forest, PO Box 909, John Day, Oregon 97845. Phone: (541) 575–3100.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on meeting other RAC members, becoming familiar with duties and responsibilities, selecting a chairperson, and reviewing Title II project proposals for funding under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000. The meeting is open to the public. A public input opportunity will be provided, and individuals will have the opportunity to address the committee at that time.

Dated: January 18, 2002.

William T. Supulski II,

Ecosystem Staff Officer.

[FR Doc. 02–1843 Filed 1–24–02; 8:45 am]

BILLING CODE 3410–DK–M

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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 25, 2002.

ADDRESSES: 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 will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Janitorial/Custodial, Environmental Protection Agency/Western Ecology Division, National Health and Environmental Effects Research Laboratory,Main Site and Research Station, Corvallis, Oregon.

NPA: Williamette Valley Rehabilitation Center, Inc., Lebanon, Oregon.

Government Agency: Environmental Protection Agency.

Service

Janitorial/Custodial, VA Medical Center, Salem Primary Care Clinic,Salem, Oregon.

NPA: The Garten Foundation, Salem, Oregon.

Government Agency: Portland Veterans Affairs Medical Center.

Service

Laundry Service, Naval Air Station, Patuxent River, Maryland.

NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.

Government Agency: Department of the Navy.

Service

Transcription Services, Equal Employment

Office, Federal Bureau of Prisons, Washington, DC.
NPA: The Lighthouse of Houston, Houston, Texas.
Government Agency: Federal Bureau of Prisons.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–1885 Filed 1–24–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: February 25, 2002.

ADDRESSES: 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 October 5, November 9, November 16, November 23 and November 30, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 51005, 56638, 57703, 58712 and 59778) of proposed additions to and deletions from the Procurement List:

The following comments pertain to Brush, Tooth Brush Style: Comments were received from the current contractor for this brush. The contractor indicated that it has been providing the brush to the Government for over thirty years. Government sales of the brush are a large minority of the company's total sales of the brush, allowing for economies of scale in purchasing brush components which could be lost if the brush were added to the Procurement List. While Government sales of the brush do not represent a large percentage of the company's total sales, the contractor stated that losing the Government contract for the brush would exacerbate the losses the company has suffered in the past year because of the economy and the company's debt burden, resulting in severe adverse impact on the company. The contractor noted that it has already substantially reduced employment and cut pay because of these economic factors, and it anticipates further employee terminations if the Committee adds the brush to the Procurement List.

The percentage of the contractor's current total sales, taking into account the losses of the past year, which its Government sales of this brush represent is less than half the minimum percentage which the Committee normally considers to be likely to constitute severe adverse impact on a contractor. Even taking into account the contractor's long history of dependence on Government sales of this brush, and the economies of scale in purchasing materials which may be lost because of addition of this brush to the Procurement List, the Committee does not believe that the effects of the addition rise to a level which is likely to be severe adverse impact on this contractor.

The unemployment rate for people with severe disabilities exceeds sixty-five percent, well above that for the groups represented by the contractor's employees. Consequently, the Committee believes that the creation of jobs for people with severe disabilities through addition of the brush to the Procurement List outweighs the possibility of job losses by people who might more easily find replacement work.

The following material pertains to all of the items being added to the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are added to the Procurement List:

Commodity

Stapler, 7520–00–240–5727.

Commodity

Brush, Tooth Brush Style, 7920–00–900–3577.

Commodity

Mop, Twist-Wring and Twist-Wring Head, 7920–01–448–0218, 7920–01–448–0220.

Commodity

Undershirt, Man's, Brown, 8420–01–112–1472, 8420–01–112–1473,8420–01–112–1474, 8420–01–112–1475,8420–01–112–1476, 8420–01–112–1477,8420–01–112–1478, 8420–01–112–1479
(Additional 500,000 shirts/increase from 1,600,000 to 2,100,000).

Commodity

Cleaner, Tobacco Pipe, 9920–00–292–9946.

Service

Grounds Maintenance, Basewide, Fort Bragg, North Carolina.

Service

Janitorial/Custodial, Naval Sea Systems Command (NAVSEA), Buildings 22, 28, 104, 176, 197, 201, 213 and 214,Washington Navy Yard, DC.

Service

Janitorial/Custodial, Naval Reserve Readiness Command, Regional North Central,715 Apollo Avenue,Minneapolis, Minnesota.

Service

Janitorial/Custodial, Missouri Air National Guard, 10800 Lambert International Boulevard,Bridgeton, Missouri.

Service

Janitorial/Custodial, U.S. Marshals Service, Will Rogers World Airport,5900 Air Cargo Road,Oklahoma City, Oklahoma.

Service

Laundry Service, At the following locations: Naval Air Station, Brunswick, Maine; Naval Shipyard, Portsmouth, New Hampshire.

Service

Office Supply Store, at the following locations: Defense Supply Service—Washington, Hoffman Building II,

Alexandria, Virginia; Defense Supply Service—Washington,Army Material Command,Alexandria, Virginia; Defense Supply Service—Washington,Pentagon,Rooms 1E700 and 3C157,Arlington, Virginia.

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.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are deleted from the Procurement List:

Commodity

Sheath, Ax, 8465–01–110–2078.

Commodity

Sheath, Brush Hook (Brush), 8465–01–136–4720.

Commodity

Tissue, Facial, 8540–00–900–4891.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–1886 Filed 1–24–02; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Friday, February 22, 2002, at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57104. The purpose of the meeting is to be briefed on current projects, hold new member orientation, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 18, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–1857 Filed 1–24–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the California Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 3 p.m. on Wednesday, February 13, 2002, at the Crowne Plaza Union Square Hotel, 480 Sutter Street, San Francisco, California 94108. The purpose of the meeting is to hold new member orientation and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 17, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–1855 Filed 1–24–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Tuesday, February 12, 2002 at the Embassy Suites Hotel, 425 South 7th Street, Minneapolis, Minnesota 55415. The purpose of the meeting is to discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC January 18, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–1856 Filed 1–24–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–2002]

Foreign-Trade Zone 61—San Juan, Puerto Rico Expansion of Manufacturing Authority-Subzone 61G IPR Pharmaceuticals, Inc. Plant (Pharmaceuticals) Carolina, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by IPR Pharmaceuticals, Inc., requesting to expand the scope of manufacturing authority under zone procedures within Subzone 61G, at the IPR plant in Carolina, Puerto Rico. It was formally filed on January 17, 2002.

Subzone 61G was approved by the Board in 1995 at a single site (2 bldgs./135,552 square feet, on 6.78 acres)

located at Sabana Gardens Industrial Park, Main Street, Carolina, Puerto Rico, with authority granted for the manufacture of a range of human health products (Board Order 787, 60 FR 63499, December 11, 1995).

IPR is now proposing to expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 61G to include additional general categories of inputs that have recently been approved by the Board for other pharmaceutical plants. They include chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, colloidal precious metals, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic and ethylene polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances. Materials sourced from abroad represent some 50%–65% of finished product value.

Zone procedures would exempt IPR from Customs duty payments on foreign materials used in production for export. Some 30–40 percent of the plant's shipments are exported. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (duty free—14.2%) instead of the rates otherwise applicable to the foreign input materials (duty free—20%)(noted above). The application indicates that the savings from zone procedures would help improve IPR's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is March 11, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 5-day period (to March 18, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: January 16, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–1911 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty review.

SUMMARY: In accordance with 19 CFR 351.216(b), Okaya (U.S.A.), Inc. (''Okaya''), a U.S. importer of subject merchandise filed a request for a changed circumstances review of the antidumping order on certain tin mill products from Japan with respect to certain tin–free steel as described below. Weirton Steel, the only petitioner producer in the underlying investigation, filed a letter with the Department of Commerce (''the Department'') stating that they do not object to the exclusion of this product from the order. In response to the apparent lack of interest in this product from the domestic industry, the Department of Commerce (''the Department'') is initiating a changed circumstances review with respect to this request for all future entries of certain tin–free steel as described below.

EFFECTIVE DATES: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1394.

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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 C.F.R. Part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the Federal Register the antidumping duty order on certain tin mill products from Japan. See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan 65 FR 52067 (August 28, 2000). On December 3, 2001, Okaya, a U.S. importer requested that the Department revoke in part the antidumping duty order on certain tin mill products from Japan. Okaya also requested that the partial revocation apply retroactively for all unliquidated entries. Specifically, the U.S. importer requested that the Department revoke the order with respect to imports meeting the following specifications: Steel coated with a metallic chromium layer between 100–200 mg/mFD and a chromium oxide layer between 5–30 mg/mFD; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (''Br'') of 10 kg minimum and a coercive force (''Hc'') of 3.8 Oe minimum. The U.S. importer indicated that, based on its consultations with domestic producers, the domestic producers lack interest in producing this specialized product.

On January 16, 2002, Weirton Steel, the only petitioner producer in the underlying investigation filed a letter

stating that they do not object to the exclusion of this product from the order. Weirton Steel, a domestic producer of tin mill products, together with the Independent Steelworkers Union and the United Steelworkers of America, AFL–CIO, were the petitioners in the underlying sales at less–than–fair–value investigation (see 65 FR 52067). The Department notes that Weirton Steel is a producer of tin mill products, but individually does not account for substantially all of the production of the domestic like product. See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review, 66 FR 52109 (October 12, 2001). However, the Department has no information on the record that the other known domestic producers of tin mill products, Bethlehem Steel Corp., National Steel Corp., Midwest Division, Ohio Coatings Co., U.S. Steel Group, a Unit of USX Corp., and USS–Posco Industries, Inc., have no interest in maintaining the antidumping duty order with respect to certain tin–free steel described in Okaya's request. Therefore, we are not combining this initiation with the preliminary determination, which is our normal practice under section 351.221(c)(3)(ii). This initiation will accord all interested parties an opportunity to address this proposed exclusion.

Scope of Review

The products covered by this antidumping order are tin mill flat–rolled products that are coated or plated with tin, chromium or chromium oxides. Flat–rolled steel products coated with tin are known as tin plate. Flat–rolled steel products coated with chromium or chromium oxides are known as tin–free steel or electrolytic chromium–coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single– or double–reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

– Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (ι10%) or 0.251 mm (90 pound base box) (ι10%) or 0.255 mm (ι10%) with 770 mm (minimum width) (ι1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (ι 1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 1/2 anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m–FD; with a chrome oxide coating restricted to 6 to 25 mg/m–FD with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut–off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m–FD as type DOS, or 3.5 to 6.5 mg/m–FD as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

– Single reduced electrolytically chromium–or tin–coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

– Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

– Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/mFD, with a chromium oxide layer of 5–30 mg/mFD , with a tensile strength of 260–440 N/mmFD , with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

– Bright finish tin–coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of 3/4 pound (0.000045 inch) and 1 pound (0.00006 inch).

– Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of 1/4 inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m–FD and chromium oxide of 10 mg/m–FD, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of ι 1/8 inch, with a thickness tolerance of ι0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag)

per coil, with a surface free of scratches, holes, and rust.

– Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

– Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS''), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non–alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Initiation of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to sections 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. To the Department's knowledge the following are U.S. producers of tin mill products: Bethlehem Steel Corp., National Steel Corp., Midwest Division, Ohio Coatings Co., U.S. Steel Group, a Unit of USX Corp., and USS–Posco Industries, Inc. Based upon Weirton's statement of no interest and the silence of other domestic producers, we believe there is information sufficient to warrant initiation of this changed circumstances review.

The Department will publish in the Federal Register a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the Federal Register. While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or other administrative review.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: January 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1910 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011702C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given that the State of Washington through Washington State Department of Transportation (WSDOT), King, Pierce, Snohomish, Clallam, Kitsap, Mason, and Thurston Counties, and the Cities of Bellevue, Bremerton, Burien, Covington, Edgewood, Everett, Kenmore, Kent, Lake Forest Park, Lakewood, Maple Valley, Newcastle, Renton, Sammamish, Shoreline, Tacoma, and University Place have jointly submitted a Routine Road Maintenance Program (RMP) pursuant to protective regulations promulgated under the ESA. The RMP would affect 12 Evolutionarily Significant Units (ESUs) of threatened salmonids identified in the

SUPPLEMENTARY INFORMATION. This document serves to notify the public of the availability of the RMP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft RMP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on February 25, 2002.

ADDRESSES: Written comments should be sent to Laura Hamilton, Habitat Conservation Division, National Marine Fisheries Service, 510 Desmond Drive, Suite 103, Lacey, Washington 98503. Comments may also be faxed to 360–753–9517. Copies of the entire RMP are available on the Internet at http://www.metrokc.gov/roadcon/bmp/pdfguide.htm, or from the address posted on that site. Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Laura Hamilton at phone number 360-753-5820, or e-mail: Laura.Hamilton@noaa.gov.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following 12 threatened salmonid ESUs: Puget Sound, Lower Columbia River, Upper Willamette River, Snake River spring/summer, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); Hood Canal summer-run and Columbia River chum salmon (*O. Keta*); Ozette Lake sockeye salmon (*O. Nerka*), and; Snake River Basin, Lower Columbia River, Upper Willamette River, and Middle Columbia River steelhead (*O. mykiss*).

Background

WSDOT and the counties and cities named above, submitted the RMP for routine road maintenance activities that might affect certain salmonid ESUs listed as threatened in Washington State. The RMP was designed so that routine road maintenance activities would be protective of salmonids and their habitat.

In Part 1, the RMP describes the program framework including the 10 program elements that comprise the program (Regional Forum, Program Review, Best Management Practices (BMPs) and Conservation Outcomes (element 3), Training, Compliance Monitoring, Research, Adaptive Management, Emergency Response, Biological Data Collection, and Reporting). In Part 2, the RMP elaborates on element 3, the BMPs, in much greater detail and provides detailed instructions to crews, supervisors, environmental support staff, design personnel and managers. Part 3 describes a process by which additional counties, cities, and ports in Washington State may develop routine road maintenance programs by adopting RMP parts 1 and 2, and then submit their RMP to NMFS for review, public comment, and approval or disapproval.

The RMP defines what activities are routine road maintenance. These consist of maintenance activities that are conducted on currently serviceable structures, facilities, and equipment, involve no expansion of or change in use, and do not result in significant negative hydrological impact.

Finally, the RMP includes a biological review of the RMP prepared by WSDOT and the other entities named above. The biological review analyzes the effects of the RMP on listed salmonids and their habitat statewide. The biological review concludes that the identified routine road maintenance activities conducted throughout Washington State under the RMP will not impair properly functioning habitat, nor appreciably reduce the functioning of already impaired habitat, nor retard the long-term progress of impaired habitat toward PFC. Approval or disapproval of the RMP will depend on NMFS' findings after public review and comment.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve a routine road maintenance program of any state, city, county, or port, provided that NMFS finds the activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of properly functioning condition. Prior to final approval of a routine road maintenance program, NMFS must publish notification in the **Federal Register** announcing the program's availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with routine road maintenance provided that a state or local program has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000).

Dated: January 18, 2002.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1873 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402H]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: A meeting of the SEP will be held beginning at 8:30 a.m. on Thursday, February 7, 2002, and will conclude at 4 p.m. on Friday, February 8, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SEP will meet to review a regulatory amendment on rebuilding the red grouper stock and to review a study of the charter and party boat fishing industry of Alabama, Mississippi, Louisiana, and Texas. The SEP will also discuss bioeconomic modeling as an approach to future economic assessments.

A report will be prepared by the SEP containing their conclusions and recommendations. This report will be presented for review to the Council's Reef Fish Advisory Panel and Standing and Special Reef Fish Scientific and Statistical Committee at meetings to be held on the week of February 25th, 2002. Also, the SEP report will be presented to the Council at its meeting on the week of March 11th, 2002 in Mobile, AL.

Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other non-emergency issues not on the agendas may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by January 31, 2002.

Dated: January 22, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1897 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011102F]

North Pacific Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of correction of a public meeting notice.

SUMMARY: The North Pacific Fishery Management Council's (Council) Essential Fish Habitat (EFH) Committee will meet in Juneau, AK.

DATES: The meeting will be held on January 29-30, 2002.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Office, 709 W. 9th Street, 4th Floor, Juneau, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Cathy Coon, North Pacific Fishery Management Council; 907–271–2809.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on January 16, 2002 (67 FR 2198). This notice serves as a correction to the address of the meeting. The original notice stated that the meeting would be held at the Alaska Fisheries Science Center in Seattle, WA.

All other previously-published information remains the same.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 22, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 02–1896 Filed 1–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153]

Federal Acquisition Regulation; Submission for OMB Review; OMB Circular A–119

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 (9000–0153).

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 OMB Circular A–119. A request for public comments was published at 66 FR 58493, November 21, 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 February 25, 2002.

ADDRESSES: 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 Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

On February 19, 1998, a revised OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' was published in the **Federal Register** at 63 FR 8545, February 19, 1998. FAR Subparts 11.1 and 11.2 were revised and a solicitation provision was added at 52.211–7, Alternatives to Government-Unique Standards, to implement the requirements of the revised OMB circular. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 1.
Total Burden Hours: 100.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0153, OMB Circular A–119, in all correspondence.

Dated: January 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–1912 Filed 1–24–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043]

Federal Acquisition Regulation; Submission for OMB Review; Delivery Schedules

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.

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 delivery schedules. A request for public comments was published at 66 FR 58454, November 21, 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 February 25, 2002.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Respondents: 3,440.
Responses Per Respondent: 5.
Total Responses: 17,200.
Hours Per Response: .167.
Total Burden Hours: 2,872.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: January 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–1913 Filed 1–24–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 10 a.m. to 4 p.m., February 27, 2002.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

10 a.m. Meeting—Board of Regents

(1) Approval of Minutes—November 14, 2001
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: January 18, 2002.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–1951 Filed 1–22–02; 4:37 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Thursday, February 21, 2002, 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion

6 p.m.—Call to Order; Approve Minutes
6:10 p.m.—DDFO's Comments; Board Response; Public Comments
7 p.m.—Presentations
8:30 p.m.—Task Force and Subcommittee Reports; Board Response; Public Comments
9 p.m.—Administrative Issues
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on January 21, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1853 Filed 1–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with a meeting of the IEA's Emergency Response Exercise 2 Design Group will be held on February 1, 2002, at the headquarters of the IEA in Paris, France.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with a meeting of the IEA's Emergency Response Exercise 2 (ERE 2) Design Group will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on February 1, 2002, beginning at approximately 9:15 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at the ERE 2 Design Group meeting. The purpose of this meeting is to develop scenarios for an oil supply disruption simulation exercise in connection with the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA between March 12–14, 2002.

The Agenda for the meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

Introductions

1. Introductions by the Chair.
2. Introduction by OME [IEA Secretariat Oil Markets and Emergency Preparedness staff]: Background and Objectives of IEA Objectives of Emergency Response Exercises.
3. Presentation of goals and objectives of the ERE 2 Simulation Exercise

Scenario Building: Oil Disruption Scenarios in the Wake of September 11, 2001.

4. Presentation on Scenario Building and Risk Assessments.
5. Discussion on Scenario Building for the ERE 2 Simulation Exercise.

Design Group Meeting on ERE 2 Training and Simulation Exercise

6. Discussion led by the Chair.

Points for Discussion include:

- Approve the half-day training agenda for distribution to the SEQ.
- Approve goals and objectives for scenario building for the Simulation Exercise.
- Approve agenda for the Simulation Exercise.
- Discussion on operational issues.
- Briefing on the outcome of the December 12, 2001, SEQ/SLT [Standing Group on Long-Term Cooperation] Interfuels Workshop.

7. Chairman's Conclusion.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, January 22, 2002.

Lee Liberman Otis,

General Counsel.

[FR Doc. 02–1979 Filed 1–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–415–000]

East Tennessee Natural Gas Company; Notice of Site Visit

January 18, 2002.

Between January 28 and 31, 2002 the staff will be conducting site visits and an overflight of the project route alternatives for the proposed Patriot Extension in Wythe, Carroll, Floyd, Patrick, and Henry Counties, Virginia, and Rockingham County, North Carolina. Representatives of East Tennessee Natural Gas Company will accompany Commission staff. Anyone interested in participating in the site visits may contact the Commission's Office of External Affairs at (201) 208–1088 for more details and must provide their own transportation.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 02–1824 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2060–005, 2084–020, 2320–005, and 2330–007]

Erie Boulevard Hydropower, L.P.; Notice of Teleconference

January 18, 2002.

a. *Date and Time of Meeting:* January 24, 2002, 12 noon EST.

b. *FERC Contact:* Tom Dean at (202) 219–2778; *thomas.dean@ferc.fed.us* or John Costello at (202) 219–2914; *john.costello@ferc.fed.us.*

c. *Purpose of the Teleconference:* As follow-up to discussions during the January 18, 2002, teleconference regarding four projects on the Raquette River, the Federal Energy Regulatory Commission, the New York State Historic Preservation Office, and the Advisory Council on Historic Preservation intend to discuss agency concerns regarding consultation with the St. Regis Mohawk Tribe.

d. *Proposed Agenda:*

A. Introduction, Recognition of Participants, Teleconference Objectives

B. Discussion of PA, Appendices, and License Orders

C. Summary of meeting

D. Follow-up actions

E. Information regarding the teleconference including the toll free telephone number will be provided later.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1831 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP02–65–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

(January 18, 2002)

Take notice that on January 14, 2002, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP02–65–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon by sale and transfer to Kokomo Gas & Fuel Company (Kokomo) a portion of Panhandle's piping downstream of Panhandle's Kokomo Meter Station, located in Tipton County, Indiana, under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Panhandle proposes to transfer approximately 352 feet of certain pipeline segments and appurtenances constituting a portion of Panhandle's Tipton Lateral, Line No. 45–06–0001–0023, located in Tipton County, Indiana. Specifically, Panhandle proposes to transfer the last 352 feet of Line No. 45–06–0001–0023, which consists of approximately 64 feet of 16-inch outlet meter station header pipe, 243 feet of 12-inch, 37 feet of 16-inch, and 8 feet of 10-inch diameter pipelines. Panhandle indicates that these segments of the Tipton Lateral extend from the outlet side of Panhandle's Kokomo measuring station to the inlet side of Kokomo's facilities. Panhandle declares that currently, this portion of the lateral is used to deliver gas to Kokomo for its local distribution system. Panhandle states that Kokomo has indicated that its acquisition of the last 352 feet and appurtenances of the Tipton Lateral would provide better continuity for its distribution facilities and enhance the operation of its distribution system.

Panhandle avers that during the past twelve months, there have been three customers (NESI Energy Marketing L.L.C., Energy USA-TPC Corporation, and Northern Indiana Public Service Company) receiving firm service from Panhandle delivered at Panhandle's Kokomo Meter Station for further transportation on Kokomo's distribution system, and these three customers are all affiliated with Kokomo. Panhandle states that there are no other connections along the 352-foot segment of pipe. Panhandle asserts that since all transportation services which utilize these facilities are affiliated with Kokomo, the proposed abandonment will have no effect on the service Panhandle is providing to these customers through this short segment of pipe.

Panhandle states that Kokomo will acquire all rights, title, and interest in the last 352 feet of pipeline and appurtenances and incorporate the facilities as part of its distribution system.

Any questions regarding the prior notice request should be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs , Panhandle Eastern Pipe Line Company, 5444 Westheimer Road, Houston, Texas 77056–5306, at (713) 989–7000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. Comments and protests 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1826 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2942–005; 2931–002; 2941–002; 2932–003; and 2897–003]

S.D. Warren Company; Notice of Commission Staff's 10(j) Meeting With Representatives of the Fish and Wildlife Service

January 18, 2002.

The staff of the Office of Energy Projects, Federal Energy Regulatory Commission will hold a Section 10(j) meeting on Tuesday, February 19, 2002, at the Holiday Inn West, 81 Riverside Street, in the city of Portland, Maine. The meeting is scheduled to begin at 12:30 p.m. to end no later than 3 p.m.

The purpose of the meeting is to discuss and resolve with the Fish and Wildlife Service that agency's following two Section 10(j) recommendations for the relicensing of the Presumpscot River Projects.

(1) Maintain minimum flows in the bypassed reaches of the Dundee, Gambo, and Mallison Falls projects as

follows: 57 cubic feet per second (cfs) year round at Dundee; 40 cfs year round at Gambo; and 63 cfs year round at Mallison Falls.

(2) Develop a detailed shoreline management plan for licensee-owned lands abutting project waters within 500 feet of the high water elevation that are determined to be needed for project-related purposes, such as fish and wildlife habitat protection, providing public access for recreation, or protecting sensitive, unique, or scenic areas.

Representatives of the licensee and the State of Maine's fish and wildlife agencies are encouraged to participate in meeting discussions; due to the nature of the 10(j) process, representatives of concerned non-governmental organizations and other interested persons are invited to attend the meeting as observers.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1829 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–245–000 and RP01–253–000]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

January 18, 2002.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Monday, February 4, 2002 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Bill Collins at (202) 208–0248 or Irene Szopo at (202) 208–1602.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1832 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–93–002]

Virginia Electric and Power Company; Notice of Filing

January 18, 2002.

Take notice that on January 10, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) with GenPower Earleys, L.L.C. (GenPower) that complies with the Commission's December 11, 2001 Letter Order in Docket No. ER02–93–000.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the Interconnection Agreement effective as of December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11th Order. pies of the filing were served upon GenPower, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: January 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1827 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–63–000]

White Rock Pipeline, L.L.C.; Notice of Application

January 18, 2002.

Take notice that on January 11, 2002, White Rock Pipeline, L.L.C. (White Rock), 426 East Missouri Avenue, Pierre, South Dakota 57501, filed in Docket No. CP02–63–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations (Commission), for a certificate of public convenience and necessity authorizing White Rock to operate an existing single-use pipeline that is approximately 10.5 miles long and 4.5 inches in diameter, all as more fully set forth in the application which is on file with the Commission and open to 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).

White Rock states that the proposed pipeline is to be used for the sole purpose of transporting natural gas from an interconnection with the Alliance Pipeline in North Dakota, to a end-use customer, the Tri-State Ethanol Company, L.L.C. (Tri-State), which is White Rock's affiliate. White Rock states that Tri-State is a farmer-owned company that is in the process of building a facility near Rosholt, South Dakota that will produce ethanol from locally-produced corn. It is stated that the plant will be operational by mid-February. According to White Rock, Tri-State will be the majority owner and will exercise ownership and operational control over the pipeline.

White Rock states that the proposed pipeline is located in a sparsely-populated agricultural area in the extreme southeast corner of North Dakota and the extreme northeast corner of South Dakota. According to White Rock, the pipeline passes through farms and under rural roads; it will not pass through any residential areas. The sole

purpose and use of the pipeline will be to transport natural gas to White Rock's affiliate, Tri-State.

White Rock states that the proposed pipeline has already been constructed. It was built in October and November 2001 because, at that time, it was conceived that there would be two companies that would own the pipeline—White Rock, which would own the portion of the pipeline in South Dakota, and another company, Fairmount Natural Gas Pipeline Company, L.L.C. (Fairmount), which would own the pipeline running from the Alliance interconnection to the North Dakota-South Dakota border. White Rock and Fairmount believed this arrangement would not be subject to FERC jurisdiction because the White Rock pipeline (as then conceived) would be a non-jurisdictional, intra-state plant line located wholly within South Dakota, and the Fairmount pipeline would be an intrastate pipeline located wholly in North Dakota, only interconnecting with the White Rock pipeline at the state border.

As a result, according to White Rock, the pipeline running from Alliance to the Tri-State facility was constructed in the Fall of 2001. No landowners expressed concern with the construction, as all easements and rights-of-way already had been purchased from consenting landowners.

According to White Rock, in accordance with Alliance's suggestion expressed during negotiations of an interconnect development agreement, White Rock agreed to obtain either an NGA certificate of public convenience and necessity, or a FERC determination that the pipelines were not required to obtain an NGA certificate.

According to White Rock, as a result and because the owners of these pipelines wish to put the entire pipeline into service as promptly as possible, White Rock has filed the subject application to operate the pipeline. Furthermore, and to simplify this application and its intent, the entire pipeline running from the Alliance interconnection to the Tri-State facility has been consolidated and now is owned and will be operated as a single pipeline—i.e., the White Rock pipeline, and the Fairmount entity will be or has been dissolved. The entire 10.5 mile pipeline is now owned by White Rock.

White Rock states that in addition to approving its request for a certificate, White Rock requests that the Commission grant a waiver of any regulations and requirements that White Rock may not have complied with in constructing its pipeline as it did. White Rock further requests waiver of various otherwise-applicable FERC regulations and requirements.

Any questions regarding this application should be directed to James Robbennolt, Olinger, Lovald, Robbennolt, McCahren & Reimers, P.C., 117 E. Capitol, P. O. Box 66, Pierre, S.D. 57501, at (605) 224–8851.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 25, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene 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 NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1825 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5376–062]

Horseshoe Bend Hydroelectric Company; Notice of Availability of Environmental Assessment

January 18, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, the Division of Hydropower Administration and Compliance, Office of Energy Projects has reviewed an application to amend the license for the Horseshoe Bend Hydroelectric Project. The amendment application is for the modification of existing facilities and construction of new facilities in two phases to control sediment accumulation in the project's power canal. The proposed Phase I facilities include (a) widening of the entrance of the canal bottom width from 79 feet to 360 feet, (b) installing a 540-foot long elevated sill at the canal entrance, (c) constructing a diverging channel downstream of the sill and a sluice way on the river side of the sill, with trash racks over sluiceway boxes. Features of the Phase II include (a) a desanding/settling basin in the canal area, (b) desander sluice boxes end-to-end across the canal bed, and (c) access ramp for the maintenance of desander and other facilities. Phase II facilities will be constructed only if required after evaluating the effectiveness of Phase I facilities.

An Environmental Assessment (EA) has been prepared by staff for the proposed Phase I activities only, because the implementation of Phase II actions is uncertain and would depend upon the effectiveness of the facilities under Phase I. In the EA, staff does not identify any significant impacts that would result from the Commission's approval of the construction of Phase I facilities. Thus, staff concludes that approval of the proposed amendment of license would not cause a major federal action significantly affecting the quality of the human environment.

The EA has been attached and made part of an Order Amending the License

Under Article 2, issued January 18, 2002, for the Horseshoe Bend Project (FERC No. 5376–062). Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The EA may also be viewed on the Web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1828 Filed 1–24–02; 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 and Protests

January 18, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2782–006.

c. *Date filed:* October 30, 2001.

d. *Applicant:* Parowan City.

e. *Name of Project:* Red Creek Hydroelectric Project.

f. *Location:* On Red Creek near the City of Paragonah, in Iron County, Utah. The project occupies 19.06 acres of lands of the U.S. Department of the Interior, Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Travis S. Taylor, P.E., Sunrise Engineering, Inc., 25 East 500 North, Fillmore, Utah 84631, (435) 743–6151.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 219–2756 or *gaylord.hoisington@FERC.fed.us.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests 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 (http://www.ferc.gov) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Red Creek Hydroelectric Project consists of: (1) (a) The South Fork 8-foot-high, 29-foot-long concrete overflow type diversion dam; a radial gate and trash racks incorporating an intake structure connected to a 4,263-foot-long, 10-inch-diameter steel penstock extending from the diversion structure to a pump-house located at the junction of the South Fork and the Red Creek Canyon penstock; and (b) the Red Creek Canyon 8-foot-high, 48-foot-long concrete overflow type diversion dam; a radial gate and trash racks incorporating an intake structure connected to a 16,098-foot-long steel penstock that consists of 7,838-foot, 18-inch-diameter 12 gauge; 1,408-foot, 18-inch-diameter 10-gauge; 2,620-foot, 16-inch-diameter 10-gauge; and 4,232-foot, 16-inch-diameter 7-gauge steel pipe, (2) a pump station, at the junction of the South Fork penstock and the Red Creek penstock, housing a 15 horsepower and a 20 horsepower pump with control equipment, (3) a 27-foot by 32-foot concrete block powerhouse housing a 500-kilowatt (kW) generator having a total installed capacity of 500 kW; and (3) appurtenant facilities.

m. A copy of the application is on file with the Commission and is 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). A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1830 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

January 18, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the

document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may 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).

Exempt

1. Project Nos. 20, 2401 and 472, 01–08–02, John G. Carter
2. Project No. 2000–036, 01–08–02, David L Dickinson
3. CP01–361–000, 01–08–02, Susan Smillie
4. Project No. 10942–001, 01–08–02, John Phipps
5. Project No. 2342, 01–08–02, Loree Randall
6. Project No. 2055, 01–10–02, Susan Pengilly Neitzel
7. Project No. 2342, 01–14–02, Jim Rhoads
8. Project No. 2342, 01–14–02, Jerry Smith
9. Project Nos. 10461 and 10462, 01–16–02, Janet Hutzel

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1822 Filed 1–24–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–9]

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 (66 FR 27647).

Draft EISs

ERP No. D–USA–D11032–PA Rating EC2, Fort Indiantown Gap National Guard Training Center, To Enhance Training and Operations, Pennsylvania National Guard (PANG), Annville, Dauphin and Lebanon Counties, PA.

Summary: EPA expressed environmental concerns regarding wetlands, noise and prime and unique farmland issues. EPA requested that the FEIS include wetlands delineation, the type and quality of wetland habitat and functions/values. In addition, EPA recommended the use of a noise map that depicts the land use areas below the noise contours (including sensitive receptors), the acreage of land affected by noise and the number of people living within the impacted area. Regarding farmland issues, EPA requested that prime and unique farmland impacted by the project be delineated.

Final EISs

ERP No. F–AFS–J65343–MT, North Elkhorns Vegetation Project, Elkhorn Wildlife Management Unit, Implementation, Strawberry Butte Area, Helena National Forest, Jefferson County, MT.

Summary: EPA did not identify potential environmental impacts requiring substantive changes to the selected alternative.

ERP No. F–AFS–J65347–MT, Gold/Boulder/Sullivan (GBS), Implementation of Timber Harvest and Associated Activities Prescribed Burning, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about impacts to watersheds and wildlife habitat and security from proposed timber harvest and road management, with particular concern over exceedances of Forest Standards for open road density.

ERP No. F–BLM–L65318–OR, Southeastern Oregon Resource Management Plan, Implementation, Comprehensive Framework of Managing Public Land, Malheur, Jordan and Andrew Resource Areas, Vale and Burns Districts, Malheur, Harney and Grant Counties, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–HUD–K89062–CA North Hollywood Arts and Entertainment District Project, Construction and Operation, North Hollywood Redevelopment Project, City of Los Angeles, and Los Angeles County, CA.

Summary: EPA found the FEIS adequately addresses most of the issues raised in its comment letter on the DEIS. However, EPA

ERP No. F–UAF–D11048–VA Initial F–22 Operational Wing Beddown Replacing the Existing F–15C at Langley (AFB) or one of the Four Alternative Locations, VA.

Summary: EPA has determined that the United States Air Force has adequately addressed its comments within the FEIS.

ERP No. FS–COE–K36098–CA Prado Dam Water Conversion Plan, Implementation, New Information Concerning New Modified Flood Protection Features, Remaining Features of the Santa Ana River Project (SARP) and Stabilization of the Bluff Toe at Norco Bluffs, Riverside, Orange and San Bernardino Counties, CA.

Summary: EPA expressed continuing environmental concerns regarding potential impacts associated with toxic air contaminants (due to project construction), mitigation for toxic air contaminants and criteria air pollutants, consistency with the Clean Water Act section 404, and analyzing cumulative impacts under the National Environmental Policy Act.

Dated: January 22, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1883 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed January 14, 2002 Through January 18, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020022, FINAL EIS, AFS, MT, Dry Fork Vegetation Restoration Project, To Improve Forest and Watershed Health and Sustainability, King Hill Ranger District, Lewis and Clark National Forest, Cascade and Judith Basin Counties, MT, Wait Period Ends: February 25, 2002, Contact: Jennifer Johnsten (406) 791–7765.

EIS No. 020023, DRAFT SUPPLEMENT, AFS, ID, North Lochsa Face Ecosystem Management Project,

Updated Information on the Potential Effects of the Vegetation and Aquatic Restoration, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID, Comment Period Ends: March 11, 2002, Contact: Lois Foster (208) 935–4258.

EIS No. 020024, DRAFT EIS, BLM, OR, Coos County Natural Gas Transmission Pipeline, Construction, Operation and Maintenance, Proposed Natural Gas Pipeline from Roseburg to Coos Bay, Right-of-Way Permit, Coos Bay District, Coos County, OR, Comment Period Ends: March 26, 2002, Contact: Bob Gunther (541) 751–4295. This document is available on the Internet at: (*www.or.blm.gov/coosbay*) and (*http://www.co.coos.or.us*).

EIS No. 020025, FINAL EIS, AFS, ID, West Fork Potlatch Timber Harvesting, Road Construction, Reforestation and Watershed Restoration, Palouse Ranger District, Latah County, ID, Wait Period Ends: February 25, 2002, Contact: Larry W. Ross (208) 875–1131.

EIS No. 020026, DRAFT EIS, FRC, ID, Four Mid-Snake River Hydroelectric Projects, Applications for New License for the Existing Projects: Shoshane Falls-FERC No. 2778, Upper Salmon Falls-FERC No. 2777, Lower Salmon Falls-FERC No. 2061 and Bliss-FERC No. 1975, Snake River, ID, Comment Period Ends: March 26, 2002, Contact: John Blair (202) 219–2845. This document is available on the Internet at: *http://www.ferc.gov/hydro/hydro2.htm.*

EIS No. 020027, FINAL EIS, AFS, ID, Little Blacktail Ecosystem Restoration Project, Health and Productivity of Terrestrial and Aquatic Habitats Improvement, Implementation, Idaho PanhandleNational Forests, Sandpoint Ranger District,Bonner County, ID, Wait Period Ends: February 25,2002, Contact: Nancy Kertis (208) 263–5111.This document is available on the Internet at: *http:/www.fs.fed.us/ipnf/eco/manage/nepa/index.html.*

EIS No. 020028, DRAFT EIS, NRS, OK, Lower ClearBoggy Creek Watershed Project, FloodwaterRetarding Structure (FWRS) Site 32B Construction,Atoka County, OK, Comment Period Ends: March 11,2002, Contact: M. Darrel Dominick (405) 742–1227.

EIS No. 020029, FINAL EIS, USN, HI, ProgrammaticEIS—Ford Island Development Program, ProposedConsolidation of Selected Operations at PearlHarbor by Locating and Relocating CertainActivities, Ford Island, HI, Wait Period Ends:February 25, 2002, Contact: Stanley Uehara(808) 474–5909.

EIS No. 020030, DRAFT EIS, IBR, CA, ImperialIrrigation District Water Conservation andTransfer Project and Draft Habitat ConservationPlan (HCP), To Implement a Grant and Section 10Permit to Authorize the Incidental Take, ColoradoRiver, Imperial County, CA, Comment Period Ends:April 26, 2002, Contact: Bruce Ellis (602) 216–3854.This document is available on the Internet at: *www.is.ch2m.com/iidweb.*

Amended Notices

EIS No. 010541, DRAFT EIS, COE, TX, Texas City'sProposed Shoal Point Container Terminal Project,Containerized Cargo Gateway Development, US ArmyCOE Section 404 and 10 Permits Issuance, MaterialPlacement Area (DMPA), City of Texas, GalvestonCounty, TX, Comment Period Ends: February 19, 2002,Contact: Sharon Manella Tirpak (409) 766–3136.Published FR 01–04–02 Correction to Contact Person telephone number.

EIS No. 020017, DRAFT EIS, BLM, WY, Powder RiverBasin Oil and Gas Project, To Extract, Transport, and Sell Oil and Natural Gas Resource,Application of Permit to Drill (APD), Special UsePermit and Right-of-Way Grant, Campbell,Converse, Johnson and Sheridan Counties, WY ,Comment Period Ends: April 18, 2002, Contact:Paul Beels (307) 684–1100.Published FR 01–18–02—Correction to Website Address.This document is available on the Internet at: *www.wy.blm.gov.*

Dated: January 22, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1884 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34203J; FRL–6819–6–]

Chlorpyrifos; End-Use Products Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the cancellations, as requested by the companies, that hold the registrations of pesticide end-use products containing the active ingredient chlorpyrifos and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a December 5, 2001, notice of receipt of requests for registration cancellations. In that notice, EPA indicated that it would issue an order confirming the voluntary registration cancellations. Any distribution, sale, or use of canceled chlorpyrifos products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8589; fax number: (703) 308–8041; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use chlorpyrifos products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). 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.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment

for chlorpyrifos, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/chlorpyrifos.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34203J. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

In a memorandum of agreement (''Agreement'') effective June 7, 2000, EPA and the basic manufacturers of the active ingredient chlorpyrifos agreed to several voluntary measures that will reduce the potential exposure to children associated with chlorpyrifos containing products. EPA initiated the negotiations with registrants after finding chlorpyrifos, as currently registered, was an exposure risk especially to children. As a result of the Agreement, registrants that hold the pesticide registrations of end-use products containing chlorpyrifos (who are in large part the customer of these basic manufacturers) have asked EPA to cancel their registrations for these products.

In the **Federal Register** of December 5, 2001 (66 FR 63237) (FRL–6811–4), EPA published a notice of the Agency's receipt of end-use product cancellation requests from registrants that hold the pesticide registrations containing chlorpyrifos (who are in large part the customer of the basic manufacturers). These requests were submitted as a result of the Memorandum of Agreement that was signed on June 7, 2000, between EPA and the basic manufacturers of chlorpyrifos. A copy of the Memorandum of Agreement that was signed on June 7, 2000, is located in OPP docket control number 34203D.

B. Requests for Voluntary Cancellation of End-Use Products

Pursuant to the Agreement and FIFRA section 6(f)(1)(A), several registrants have submitted requests for voluntary cancellation of registrations for their end-use products. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1. END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Dragon Chemical Corporation	16–101 16–123 16–139 16–146 16–163 16–172	Dursban ½ Granular Insecticide Dragon Home Pest Control Dragon Home Pest Killer Dragon Termite and Soil Insect Killer Dragon Crawling Insect Killer Dragon Dursban 1% Granular Insecticide
The Scotts Company	239–2423 239–2490 239–2513 239–2517 239–2520 239–2521 239–2570 239–2633 239–2635	Ortho Lawn Insect Spray Ortho Home Pest Insect Control Ortho-Klor Soil Insect and Termite Killer Ortho-Klor Indoor & Outdoor Insect Killer Ortho Mole Cricket Bait Formula II Ortho Mole Cricket Bait Formula III Ortho-Klor 1% Dursban Lawn & Soil Granules Ortho Dursban Lawn Insect Formula II Ortho Multipurpose Borer & Insect Spray
Amvac Chemical Corporation	5481–68 5481–121 5481–216 5481–217 5481–221 5481–222 5481–240	Alco Chlorpyrifos 1E Emulsifiable Insecticide Chlorpyrifos Granules 1 Dursban-DDVP 2.50 Pest Control Dursban-DDVP 1.25 Dursban 2E Insecticide Bilco Dursban 4E Insecticide Alco Bug Spray Flea, Ant and Roach Killer
Contact Industries, a Division of Safeguard Chemical Corporation	10806–52 10806–99 10806–100 10806–101 10806–102	Contact Roach & Ant Killer II Contact Ant and Roach Killer IV Contact Ant and Roach Killer XV Contact Liquid Ant & Roach Killer V Contact Roach and Ant Killer XVI
Amrep, Incorporated	10807–116 10807–187	Misty Ant, Roach, & Spider Residual Insecticide with Dursban Misty Aqueous Residual Spray
Drexel Chemical Company	19713–229 19713–341	Drexel Chlorpyrifos 0.5G Leisur and Lawn Insect Control

In the **Federal Register** notice of December 5, 2001 (66 FR 63237), EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30–day comment period. The registrants requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C).

No public comments were submitted to the docket in response to EPA's request for comments.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested registration cancellations. The Agency orders that the registrations identified in Table 1 are hereby canceled. After January 25, 2002, any distribution, sale, or use of existing stocks of the products identified in Table 1 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV of this **Federal Register** notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

1. *Distribution or sale by registrants.* Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal, the distribution or sale of existing stocks by registrants of any product identified in Table 1 will not be lawful under FIFRA after January 25, 2002.

2. *Retail and other distribution or sale.* The retail sale of existing stocks of products listed in Table 1 will not be lawful under FIFRA after January 25, 2002. Except as otherwise provided in this order, any other distribution or sale (for example, return to the manufacturer for relabeling) is permitted until stocks are exhausted.

3. *Use of existing stocks.* The use of existing stocks of products listed in Table 1 is permitted until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Memorandum of Agreement, Pesticides andpests.

Dated: January 15, 2002.

Jack Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–1764 Filed 1–24–02; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1066; FRL–6819–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1066, must be received on or before February 25, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1066 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Geri McCann, Insecticide/Rodenticide Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8375; e-mail address: mccann.geri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1066. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The PIRIB telephone number is (703) 305–5805.

C. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1066 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1066. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 14, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 1F6301

EPA has received a pesticide petition (PP 1F6301) from E. I. du Pont de Nemours and Company (DuPont), P.O. Box 30, Newark, DE 19714, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for combined residues of indoxacarb, [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino] carbonyl]indeno[1,2e][1,3,4]oxadiazine-4a(3H)- carboxylate] and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl] amino] carbonyl] indeno [1,2-e] [1,3,4]oxadiazine-4a(3H)-carboxylate] in a 75:25 mixture (DPX MP062), respectively, in or on the raw agricultural commodities as follows: Alfalfa forage at 12 parts per million (ppm), alfalfa hay at 50 ppm, peanut at 0.01 ppm, peanut hay at 40 ppm, potato at 0.02 ppm, soybean aspirated grain fractions at 70 ppm, soybean hulls at 6.5 ppm, head lettuce at 5 ppm, meat (of cattle, goats, hogs, horses and sheep) at 0.05 ppm, fat (of cattle, goats, hogs, horses and sheep) at 1.5 ppm, meat by-products (of cattle, goats, hogs, horses and sheep) at 0.03 ppm and milk at 0.15 ppm. Two analytical enforcement methods are available for determining these plant and animal residues. They are GC-MSD and HPLC column-switching with UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

The active ingredient in the end-use formulations, Steward® and Avaunt™, is a 75:25 mixture of two isomers, indoxacarb (IN-KN128) and IN-KN127. Only one of the isomers, indoxacarb (DPX-KN128), has insecticidal activity. Since the insecticidal efficacy is based

on the concentration of indoxacarb (DPX-KN128), the application rates have been normalized on an indoxacarb (DPX-KN128) basis. The proposed tolerance expression includes both indoxacarb (DPX-KN128) and IN-KN127 and the residue method does not distinguish between the enantiomers, therefore residues are reported as the sum of indoxacarb (DPX-KN128) combined with IN-KN127. Residues of indoxacarb (DPX-KN128) combined with IN-KN127 will be referred to as ''KN128/KN127.''

1. *Plant metabolism* The metabolism of indoxacarb in plants is adequately understood to support these tolerances. Plant metabolism studies in cotton, lettuce, grapes and tomatoes showed no significant metabolites. The only significant residue was parent compound.

2. *Analytical method.* One plant residue enforcement method detects and quantitates indoxacarb in cotton and sweet corn matrices by HPLC with UV detection. The other plant residue enforcement method detects and quantitates indoxacarb in various matrices including lettuce, tomato, pepper, cabbage, broccoli, cauliflower, apple, pear, grape, cottonseed, tomato and apple processed commodity samples by GC-MSD. The analytical method for detecting and quantitating indoxacarb in animal matrices including whole and skim milk, cream, fat, muscle, liver and kidney is an HPLC column-switching method using UV detection. The limit of quantitation in each method allows monitoring of crops and animal matrices with indoxacarb residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues—i. Alfalfa.* Residue studies were conducted at a total of 12 field sites. All studies were done using Steward® Insecticide. One broadcast application of Steward® Insecticide was made for each alfalfa cutting at each test site. Each application was made at a maximum rate of 0.11 lb. a.i. DPX-KN128/A. After application, the plant was cut at a PHI of 7 days and samples of forage were taken. Additional forage was allowed to dry to proper moisture content to produce hay samples (cutting 1). Plants were allowed to regrow and were retreated with 0.11 lb. a.i. DPX-KN128 seven days prior to the next cutting. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in individual duplicate forage samples were 9.0 ppm at a PHI of 7 days (range 0.8–9.0 ppm). Maximum residues of KN128/KN127 in individual duplicate hay samples were 39 ppm at a PHI of 7 days (range 3.2–39 ppm).

ii. *Lettuce.* Residue studies were conducted at a total of 18 field sites. All studies were done using Avaunt™ Insecticide. Avaunt™ contains 30% active ingredient (a.i.) (300 g DPX-KN128 per kg, w/w). Four broadcast applications of Avaunt ™ Insecticide were made at each test site. Each application was made at a maximum rate of 0.111 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.444 lb. a.i./A). Applications were made approximately 3 days apart. The target PHI was 3 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in individual duplicate head lettuce samples collected from the field with wrapper leaves were 4.4 ppm at a PHI of 3 days (range < 0.40–4.4 ppm). Maximum residues of KN128/KN127 in individual duplicate head lettuce samples without wrapper leaves were 1.1 ppm at a PHI of 3 days (range < 0.02–1.1 ppm). Maximum residues of KN128/KN127 in individual duplicate leaf lettuce samples were 8.7 ppm at a PHI of 3 days (range 2.7–8.7 ppm). Head lettuce and leaf lettuce were each grown at 9 field sites.

iii. *Peanuts.* Residue studies were conducted at a total of 12 field sites. All studies were done using Steward® Insecticide. Steward® contains 15% a.i (150 g DPX-KN128 per liter, w/v). Four broadcast applications of Steward Insecticide were made at each test site. Each application was made at a maximum rate of 0.110 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.440 lb. a.i./A). Applications were made approximately 5 days apart. The target PHI was 14 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in peanut hay were 32 ppm at a PHI of 14 days (range 2.1–32 ppm). No detectable residues of KN128/KN127 were found in peanut nutmeat at a PHI of 14 days at any of the 12 test sites in the study (residues < 0.003 ppm).

iv. *Peanuts, process fractions.* A processing study was conducted to determine the magnitude of KN128/KN127 residues in peanut nutmeat and their possible concentration in peanut processed fractions (refined oil and meal). Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Peanuts were treated with Steward Insecticide (see description above). Four broadcast applications were made each at a rate of 0.110 and 0.550 lb. a.i./A (1X and 5X the proposed maximum seasonal use rate of 0.440 lb. a.i./A). The application interval was 5 days and the pre-harvest interval (PHI) was 14 days. At 5X the maximum seasonal use rate, quantifiable residues of KN128/KN127 were found in peanut nutmeat (0.013 ppm). Residues of KN128/KN127 in refined oil were 0.013 ppm. Quantifiable residues were not found in meal (residues < 0.0075 ppm). Residues of KN128/KN127 did not concentrate in refined oil or meal to levels greater than those on the raw agricultural commodity (concentration factors =1 or < 1, respectively).

v. *Potatoes.* Residue studies were conducted at a total of 16 field sites. All studies were done using Avaunt™ Insecticide. Avaunt™ contains 30% a.i. (300 g DPX-KN128 per kg, w/w). Four broadcast applications of Avaunt™ Insecticide were made at each test site. Each application was made at a maximum rate of 0.065 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.26 lb. a.i./A). Applications were made approximately 5 days apart. The target PHI was 7 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). No quantifiable residues of KN128/KN127 were found in potato tubers at a PHI of 7 days at any of the 16 test sites in the study (residues < 0.010 ppm).

vi. *Potatoes, process fractions.* A processing study was conducted state to determine the magnitude of KN128/KN127 residues in unwashed and washed potato tubers and culls and their possible concentration in potato tuber processed fractions (wet peel, chips and flakes). Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Potatoes were treated with Avaunt Insecticide (see description above). Four broadcast applications were made each at a rate of 0.065 and 0.325 lb. a.i./A (1X and 5X the proposed maximum seasonal use rate of 0.26 lb. a.i./A). The application interval was 5 days and the pre-harvest interval (PHI) was 7 days. At 5X, the maximum seasonal use rate, no quantifiable residues of KN128/KN127 were found in unwashed or washed potatoes, culls or in wet peel, chips or flakes (residues < 0.010 ppm). Residues of KN128/KN127 did not concentrate in any potato processed fraction to levels greater than those on the raw agricultural commodity.

vii. *Soybeans.* Residue studies were conducted at a total of 20 field sites. All

studies were done using Steward® Insecticide. Steward® contains 15% a.i. (150 g DPX-KN128 per liter, w/v). Four broadcast applications of Steward® Insecticide were made at each test site. Each application was made at a maximum rate of 0.111 lb. a.i. DPX-KN128/A (maximum seasonal use rate of 0.444 lb. a.i./A). Applications were made approximately 5 days apart. The target PHI was 21 days. Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Maximum residues of KN128/KN127 in soybean seed were 0.59 ppm at a PHI of 21 days (range < 0.010–0.59 ppm). As part of this study, large samples of soybean seed were collected and subsequently processed into aspirated grain fraction (dust). Analysis of the seed showed a residue of 0.032 ppm. Analysis of the aspirated grain fraction (dust) showed a residue of 2.8 ppm (concentration factor of 88:1).

viii. *Soybean, process fractions.* A processing study was conducted to determine the magnitude of KN128/KN127 residues in soybean seed and their possible concentration in processed fractions (hulls, meal and refined oil). Residues were measured as the combination of DPX-KN128 and IN-KN127 (enantiomers not resolved by the analytical method). Soybeans were treated with Steward® Insecticide (see description above). Four broadcast applications were made each at a rate of 0.111 and 0.555 lb. a.i./A (1X and 5X the proposed maximum seasonal use rate of 0.444-lb. a.i./A). The application interval was 5 days and the pre-harvest interval (PHI) was 21 days. At 5X the maximum seasonal use rate, residues of KN128/KN127 in soybean seed were 0.077 ppm. Quantifiable residues were found in hulls (0.63 ppm) and refined oil (0.049 ppm). Quantifiable residues were not found in meal (residues < 0.010 ppm). Residues of KN128/KN127 concentrated in hulls (concentration factor = 8.12) but did not concentrate in refined oil or meal to levels greater than those on the raw agricultural commodity (concentration factors < 1).

B. Toxicological Profile

1.*Acute toxicity* Based on EPA criteria, indoxacarb is classified as follows for Toxicity Categories

Guideline	Title	Results	Category
81–1	Acute oral txicity	LD_{50} 1,730 mg/kg (M Rat) LD_{50} 268 mg/kg/(F Rat)	Category II
81–2	Acute dermal toxicity	LD_{50} > 5,000 mg/kg (Rat)	Category IV
81–3	Acute inhalation toxicity	LC_{50} > 5.5 mg/L (M Rat) (70% MUP)	Category IV
81–4	Primary eye irritation	Effects reversed within 72 hours (Rabbit)	Category III
81–5	Primary Dermal Irritation	No irritation (Rabbit)	Category IV
81–6	Skin Sensitization	Sensitizer (Guinea Pig)	----------

Formulated products are slightly less acutely toxic than indoxacarb.

In an acute neurotoxicity study, indoxacarb exhibited decreased forelimb grip strength, decreased foot splay, and some evidence of slightly reduced motor activity, but only at the highest doses tested. The NOAEL was 100 mg/kg for males and 12.5 mg/kg for females based on body weight effects in females 50 mg/kg.

2. *Genotoxicty.* Indoxacarb has shown no genotoxic activity in the following listed *in-vitro* and *in-vivo* tests:

i. Ames--Negative

ii. *In-vitro* mammalian gene mutation (CHO/HGPRT)-- Negative

iii. *In-vitro* unscheduled DNA synthesis-- Negative

iv. *In-vitro* chromosomal aberration--Negative

v. *In-vivo* mouse micronucleus--Negative

3. *Reproductive and developmental toxicity.* The results of a series of studies indicated that there were no reproductive, developmental or teratogenic hazards associated with the use of indoxacarb. In a 2-generationrat reproduction study, the parental no observed adverse effect level (NOAEL) was 1.5 mg/kg/day. The parental NOAEL was based on observations of reduced weight gain and food consumption for the higher concentration groups of the F0 generation and potential treatment-related changes in spleen weights for the higher groups of the F1 generation. There was no effect on mating or fertility. The NOAEL for fertility and reproduction was 6.4 mg/kg/day. The offspring NOAEL was 1.5 mg/kg/day, and was based on the reduced mean pup weights noted for the F1 litters of the higher concentration groups. The effects on pup weights occurred only at a maternal effect level and may have been due to altered growth and nutrition in the dams. In studies conducted to evaluate developmental toxicity potential, indoxacarb was neither teratogenic nor uniquely toxic to the conceptus (i.e., not considered a developmental toxin). Developmental studies conducted in rats and rabbits demonstrated that the rat was more susceptible than the rabbit to the maternal and fetal effects of DPX-MP062. Developmental toxicity was observed only in the presence of maternal toxicity. The NOAEL for maternal and fetal effects in rats was 2 mg/kg/day based on body weight effects and decreased food consumption at 4 mg/kg/day. The NOAEL for developmental effects in fetuses was >4 mg/kg/day. In rabbits, the maternal and fetal NOAELS were 500 mg/kg/day based on body weight effects, decreased food consumption in dams and decreased weight and delayed ossification in fetuses at 1,000 mg/kg/day.

4. *Subchronic toxicity.* Subchronic (90–day) feeding studies were conducted with rats, mice, and dogs. In a 90–day feeding study in rats, the NOAEL was 3.1 and 2.1 mg/kg/day for males and females, respectively. In male rats, the NOAEL was based on decreased body weight and nutritional parameters, mild hemolytic anemia and decreased total protein and globulin concentration. In female rats, the NOAEL was based on decreased body weight and food efficiency. In a subchronic neurotoxicity study in rats, there was no evidence of neurotoxicity at 11.9 and 6.09 mg/kg/day, the highest dose tested for males and females, respectively. The subchronic NOAEL in dogs (5.0 mg/kg/day, M/F) was based on hemolytic anemia. Erythrocyte values for most dogs were within a range that would be considered normal for dogs in

a clinical setting. Mice were less sensitive to indoxacarb than the rats or dogs. NOAELs (23 mg/kg/day, males, 16 mg/kg/day, females) were based on mortality (males only); increased reticulocytes and Heinz bodies and decreased body weight, weight gain, food consumption, food efficiency; and increased clinical signs (leaning to one side and/or with abnormal gait or mobility) (females only). In a 28–day repeated dose dermal study, the NOAEL was 50 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters, the spleen and clinical signs of toxicity in both sexes in rats.

5. *Chronic toxicity.* Chronic studies with indoxacarb were conducted on rats, mice, and dogs to determine oncogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90–day studies were seen in the chronic studies. Indoxacarb was not oncogenic in rats or mice. The chronic NOAEL in male rats was 5 mg/kg/day based on body weight and nutritional effects. In females, the NOAEL of 2.1 mg/kg/day was based on body weight and nutritional changes, as well as biologically significant hematologic changes at 3.6 mg/kg/day and above. Hemolytic effects were present only through the 6–month evaluation and only in females. The regenerative nature of indoxacarb-induced hemolytic anemia was demonstrated by the absence of significant changes in indicators of circulating erythrocyte mass at later evaluations. In mice, the chronic NOAEL of 2.6 mg/kg/day for males was based on deceased body weight and weight gain effects and food efficiency at 13.8 mg/kg/day and above. The NOAEL for females was 4.0 mg/kg/day based on body weight nutritional effects, neurotoxicity, and clinical signs at 20 mg/kg/day. In dogs, the chronic NOAEL was about 2.3 and 2.4 mg/kg/day in males and females, respectively based on hemolytic effects similar to those seen in the subchronic dog study.

6. *Animal metabolism.* —i. *Livestock animal metabolism.* Animal metabolism has been studied in the rat, hen, and cow and is well understood. In contrast to crops, indoxacarb is extensively metabolized in animals.

ii. *Poultry.* In poultry, hens were fed at 10 ppm/day for 5 days, 87–88% of the total administered dose was excreted; parent comprised 51–54% of the total dose in excreta. Concentration of residues in eggs were low, 0.3–0.4 of the total dose, as was the concentration of residues in muscle, 0.2% of the total dose. Parent and metabolite IN-JT333 were not detected in egg whites; only insecticidally inactive metabolites were identified. Parent and IN-JT333 were found in egg yolks; however, their concentrations were very low- 0.01–0.02 ppm. Concentrations of parent and IN-JT333 in muscle were at or below the limit of quantitation, (LOQ) (0.01 ppm).

iii. *Cattle.* For the cow study, the cattle were fed at 10 ppm/day for 5-days; approximately 20% of the total administered dose was excreted in urine and 53–60% was excreted in feces in 5-days. Four- tenths to 1.2% of the total dose in urine was parent indicating extensive metabolism; parent represented 46–68% of the fecal activity. Thus, most residues were not absorbed; those residues that were absorbed were extensively metabolized. Less than 1% of the total administered dose was in milk, most of which was parent compound. The insecticidally active metabolite IN-JT333 was not found in milk. Residues in muscle represented less than 0.01% of the total administered dose most of which was parent. IN-JT333 was not detected in muscle. No other metabolites were seen above 10% of the dose, thus only parent and IN-JT333 were monitored in the cattle feeding study.

iv. *Cattle feeding study.* A cattle feeding study was conducted with indoxacarb at doses of 7.5 ppm, 22.5 and 75 ppm. KN128/KN127 concentrations at the 22.5 ppm feeding level were 0.053 ppm for whole milk, 0.018 ppm for skim milk and 0.58 ppm for cream. The mean KN128/KN127 concentrations were proportional to the dosing level in whole milk, skim milk and cream. IN-JT333 concentrations at the 22.5 ppm feeding level were below the LOQ for whole milk and skim milk. The concentration of IN-JT333 in cream was 0.022 ppm. The mean IN-JT333 concentrations were proportional to the dosing level in cream. KN128/KN127 and IN-JT333 concentrations at the 22.5 ppm feeding level were below the level of LOQ for all tissues, except fat (0.45 ppm, KN128/KN127 and 0.03 ppm IN-JT333) and kidney (0.017 ppm KN128/KN127), throughout 28 days of dosing. The mean KN128/ KN127 residues in muscle, fat, liver, and kidney samples were proportional to the dosing level. The mean IN-JT333 residues in fat were proportional to the dosing level. Tolerances have been established at 0.75 ppm in fat (cattle, goat, horse, sheep and hog), 0.03 ppm in meat, 0.02 ppm in meat by-products, 0.10 ppm in milk and 3.0 ppm in milk fat.

7. *Metabolite toxicology.* In rats, indoxacarb was readily absorbed at low dose (5 mg/kg), but saturated at the high dose (150 mg/kg). Indoxacarb was metabolized extensively, based on very low excretion of parent compound in bile and extensive excretion of metabolized dose in the urine and feces. Some parent compound remained unabsorbed and was excreted in the feces. No parent compound was excreted in the urine. The retention and elimination of the metabolite IN-JT333 from fat appeared to be the overall rate determining process for elimination of radioactive residues from the body. Metabolites in urine were cleaved products (containing only one radiolabel), while the major metabolites in the feces retained both radiolabels. Major metabolic reactions included hydroxylation of the indanone ring, hydrolysis of the carboxylmethyl group from the amino nitrogen and the opening of the oxadiazine ring, which gave rise to cleaved products. Metabolites were identified by mass spectral analysis, NMR, UV and/or by comparison to standards chemically synthesized or produced by microsomal enzymes.

8. *Endocrine disruption.* Lifespan, and multigenerational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of indoxacarb is negligible.

C. Aggregate Exposure

Tolerances for indoxacarb are proposed to support agricultural uses on alfalfa, lettuce, peanuts, potatoes and soybean. There are no residential uses of indoxacarb.

1. *Dietary exposure.* The chronic RfD of 0.02 mg/kg bw/day is based on a NOAEL of 2.0 mg/kg bw/day from the subchronic rat feeding study, the subchronic rat neurotoxicity study, and the chronic/carcinogenicity study, using an uncertainty factor of 100. The acute RfD for the general population is 0.12 mg/kg/day, based on the NOAEL of 12.5 mg/kg in the acute neurotoxicity study and an uncertainty factor of 100. The acute RfD for females 13–50 years of age is 0.02 mg/kg/day, based on the NOAEL of 2 mg/kg/day observed in the developmental rat toxicity study and using an uncertainty factor of 100.

Food. Chronic dietary exposure assessment. Chronic dietary exposure resulting from the currently approved use of indoxacarb on apples, broccoli, cabbage, cauliflower, cotton, pears, peppers, sweet corn, tomatoes and the proposed uses on alfalfa, lettuce, peanuts, potatoes and soybeans are well within acceptable limits for all sectors

of the population. The Chronic Module of the Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1997 Version 7.075) was used to conduct the assessment with the reference dose (RfD) of 0.02 mg/kg/day. The analysis used overall mean field trial values and conservatively assumed that 100% of the crops on the proposed label would be treated with indoxacarb. The chronic dietary exposure to indoxacarb is 0.001428 mg/kg/day, and utilizes 7.1% of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.003929 mg/kg/day, and utilizes 19.6% of the RfD. The table below lists the results of this analysis, which indicate large margins of safety for each population subgroup and very low probability of effects resulting from chronic exposure to indoxacarb.

Subgroup	Maximum Dietary Exposure (mg/kg/day)	%RfD
U.S population	0.001428	7.1
Non-nursing infants (< 1 year old)	0.001707	8.5
Children (1–6 years)	0.003929	19.6
Children (7–12 years)	0.002233	11.2
Females (13+, pregnant/not nursing)	0.001353	6.8

2. *Acute dietary exposure.* Acute dietary exposure resulting from the currently approved use of indoxacarb on apples, broccoli, cabbage, cauliflower, cotton, pears, peppers, sweet corn, tomatoes and the proposed uses on alfalfa, lettuce, peanuts, and soybeans are well within acceptable limits for all sectors of the population. The Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1997 Version 7.075) was used to conduct the assessment. Margins of exposure (MOE) were calculated based on an acute NOAEL of 2 mg/kg/day for women of childbearing age and a NOAEL of 12 mg/kg/day for children and the general population (Pesticide Fact Sheet for Indoxacarb). The Tier 2 analysis used anticipated residues and conservatively assumed that 100% of the crops on the proposed label would be treated with indoxacarb. The results of this analysis are given in the table below. The percent of the acute population adjusted dose (a PAD) for all population subgroups shows that an adequate margin of safety exists in each case. Thus, the acute dietary safety of indoxacarb for established and follow-on uses clearly meets the FQPA standard of reasonable certainty of no harm and presents much lower acute dietary risk than many of its competitors.

Subgroup	95th Percentile of Exposure	
	Exposure (mg/kg/day)	% Acute Population Adjusted Dose (aPAD)
U.S. population	0.009013	7.5
Non-Nursing (< 1 year)	0.013429	11.9
Children (1–6 years)	0.018211	15.8
Children (7–12 years)	0.010682	8.9
Females (13+, pregnant/not nursing)	0.006256	31.3

Drinking water. Indoxacarb is highly unlikely to contaminate ground water resources due to its immobility in soil, low water solubility, high soil sorption, and moderate soil half-life. Based on the PRZM/EXAMS and SCI-GROW models the highly conservative, estimated environmental concentrations (EECs) of indoxacarb and its R-enantiomer for acute exposures are estimated to be 3.81 parts per billion (ppb) for surface water and 0.02 ppb for ground water (Indoxacarb Final Rule, 65 FR 58421). The EECs for chronic exposures are estimated to be 0.56 ppb for surface water and 0.02 ppb for ground water. Drinking water levels of comparison (DWLOCs), theoretical upper limits on the pesticides concentration in drinking water, were calculated to be much higher than the EEC's. Thus, exposures to drinking water are expected to be negligible.

3. *Non-dietary exposure.* Indoxacarb products are not labeled for residential non-food uses, thereby eliminating the potential for residential exposure. Non-occupational, non-dietary exposure for DPX-MP062 has not been estimated because the proposed products are limited to commercial crop production. Therefore, the potential for non-occupational exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of indoxacarb would be cumulative with those of any other chemical compounds. Oxadiazine chemistry is new, and indoxacarb has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population, and ample margins of safety have been demonstrated for both situations. The chronic dietary exposure to indoxacarb is 0.001428 mg/kg/day, which utilizes 7.1% of the RfD for the overall U.S. population, assuming 100% of the crops are treated and residues equivalent to overall mean field trial values. The percent of the acute population adjusted dose (7.5% aPAD) for all population subgroups shows that an adequate margin of safety exists. Using only PHED data levels A and B (those with a high level of confidence, MOEs for occupational exposure are 600 for mixer/loaders and 2,500 for applicators. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of indoxacarb including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Chronic dietary exposure of the most highly exposed subgroup in the population, children age 1–6 years, is 0.003929 mg/kg/day or 19.6% of the RfD. For infants (non-nursing, >1 year), the exposure

accounts for 8.5% of the RfD. For acute exposure at the 95th percentile (based on a conservative Tier 2 assessment) the exposure was 0.018211 mg/kg/day (15.8% aPAD),for children 1–6 and 0.013429 mg/kg/day (11.9% aPAD) for non-nursing infants. There are no residential uses of indoxacarb and contamination of drinking water is extremely unlikely. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to indoxacarb, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of indoxacarb, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants andn children.

F. International Tolerances

To date, no international tolerances exist for indoxacarb.

[FR Doc. 02–1763 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50892; FRL–6815–4]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Hwy., Rm. 220, Crystal Mall #2, Arlington, VA; (703) 305–6502; e-mail address: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUP

EPA has issued the following EUP:

241–EUP–141. Extension. BASF Corporation, P.O. Box 400, Princeton, NJ 08543–0400. This EUP allows the use of 289.27 pounds of the termiticide chlorfenapyr (4–bromo–2–(4–chlorophenyl)–1–(ethoxymethyl)–5–(trifluoromethyl)–1H–pyrrole–3–carbonitrile) on less than 22 acres of residential/commercial structures to evaluate the control of termites. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Washington. The EUP extension is effective from November 26, 2001 to December 31, 2002.

Persons wishing to review this EUP are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–1765 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7132–9]

Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act of 1986; In Re: Pittsfield Economic Development Authority (''PEDA''), Related to CERCLA Site Known as the GE-Pittsfield/Housatonic River Site, Located in Pittsfield, MA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.,* notice is hereby given of a Prospective Purchaser Agreement and Covenant Not to Sue between the United States, on behalf of the U.S. Environmental Protection Agency (''EPA'' or the ''Agency''), and the Pittsfield Economic Development Authority (PEDA) (''Purchaser''). The Purchaser plans to acquire 52 acres of the GE-Pittsfield/Housatonic River Site for the purpose of redeveloping for the economic benefit of the City of Pittsfield. Pursuant to a Definitive Economic Development Agreement entered into by PEDA, the City, and the General Electric Company (''GE''), approximately 52 acres of the GE-Pittsfield/Housatonic River Site will be transferred to PEDA after the completion of removal actions pursuant to a CERCLA consent decree entered by the United States District Court in the matter of *United States* v. *General Electric Company,* Civil Docket No. 99–30225-MAP. PEDA will be the fee owner of property transferred to it by GE and will be responsible for managing future land uses thereon. Under the Proposed Agreement, the United States grants a Covenant Not to Sue to the Purchaser under provisions of CERCLA, the Resource Conservation and Recovery Act, the Oil Pollution Act, the Clean

Water Act, the Toxic Substances Control Act, and the Rivers and Harbors Act, with respect to existing contamination at the Site. In exchange, the Purchaser agrees to perform the following with respect to the property: grant access; abide by the terms of institutional controls; perform post-removal site control work for the response actions undertaken at the Property; and pay the natural resource trustees up to $4 million, consisting of in-kind services and/or a percentage of PEDA's net revenues. In addition, under the Agreement, PEDA will abide by its obligations in the Consent Decree and provide particular covenants not to sue the government.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02114.

DATES: Comments must be submitted on or before February 25, 2002.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: Pittsfield Economic Development Authority (PEDA) related to CERCLA Site known as the GE-Pittsfield/Housatonic River Site, U.S. EPA Docket No. CERCLA–01–2002–0007.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed Agreement and Covenant Not to Sue can be obtained from Rose Howell, Paralegal, U.S. Environmental Protection Agency, Region 1, One Congress Street, Mailcode HIO, Boston, Massachusetts 02214, (617) 918–1213.

Dated: January 3, 2002.

Robert W. Varney,

Regional Administrator, New England Region.

[FR Doc. 02–1881 Filed 1–24–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

January 15, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0999.

Expiration Date: 01/31/05.

Title: Exemption of Public Mobile Service Phones from the Hearing Aid Compatibility Act.

Form No.: N/A.

Respondents: Individuals or households; business or other for-profit.

Responses: 3,860.

Estimated Time Per Response: Between 2 hours and 8 hours.

Estimated Total Annual Burden: 20,265 hours.

Total Annual Cost: 0.

Description: The reporting requirement, if adopted, will be used by the Commission to monitor wireless carriers and handset and hearing aid manufacturers progress towards compliance with hearing aid compatibility requirements, if the current exemption is limited or revoked. Technical standards are mandated by the Hearing Aid Compatibility Act of 1988, if the Commission decides to limit or revoke the current exemption, and will be used as a guide to compliance with hearing aid compatibility requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1809 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–161]

Rescheduled Seventh Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the seventh meeting of the WRC–03 Advisory Committee that was originally scheduled for January 30, 2002 has been rescheduled and will now be held on February 6, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: February 6, 2002; 10:00 am—12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Planning and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the seventh meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the seventh meeting is as follows:

Agenda—Seventh Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

February 6, 2002; 10 am–12 noon

1. Opening Remarks

2. Approval of Agenda
3. Approval of the Minutes of the Sixth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Donald Abelson,

Chief, International Bureau.

[FR Doc. 02–1812 Filed 1–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, January 29, 2002, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule—Part 325—Risk-Based Capital Treatment for Claims on Securities Firms.

Discussion Agenda

Memorandum re: Special Examination Activities.

The meeting will be held on the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: January 22, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–2015 Filed 1–23–02; 2:01 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m.—January 30, 2002.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open and the remainder will be closed.

MATTERS TO BE CONSIDERED: The Open Portion of the Meeting:

1. Passenger Vessel Operator Program: Issues Regarding Financial Coverage for Performance of Cruises.

The Closed Portion of the Meeting:

1. Fact Finding Investigation No. 24—Exclusive Tug Arrangements in Florida Ports

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–2031 Filed 1–23–02; 2:00 pm]

BILLING CODE 6730–01–M

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 February 11, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Mildred M. Hansen Trust and Mildred M. Hansen, as an individual and trustee of the Mildred M. Hansen Trust, Currie, Minnesota; to retain voting shares of Currie Bancorporation, Inc., Currie, Minnesota, and thereby indirectly retain voting shares of Currie State Bank, Currie, Minnesota.

Board of Governors of the Federal Reserve System, January 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1932 Filed 1–24–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 2002.

A.Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Colony Bankcorp, Inc., Fitzgerald, Georgia; to acquire Quitman Bancorp, Inc., Quitman, Georgia, and thereby indirectly acquire Quitman Federal Savings Bank, Quitman, Georgia, and

thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–1931 Filed 1–24–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Funeral Industry Practices Rule (''Funeral Rule'' or ''Rule''). The FTC is seeking public comments on its proposal to extend through February 28, 2005 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on February 28, 2002.

DATES: Comments must be submitted on or before February 25, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission, and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned ''Funeral Rule: Paperwork comment.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Myra Howard, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2047.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On November 21, 2001, the FTC sought comment on the information collection requirements associated with the Funeral Rule, 16 CFR part 453 (OMB Control Number: 3084–0025). See 66 FR 58492. No comments were received on any aspect of the notice, including staff's PRA burden estimates. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

The Funeral Rule ensures that consumers who are purchasing funeral goods and service have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires the funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Estimated annual hours burden: The estimated burden associated with the collection of information required by the Rule is 22,300 hours for recordkeeping and 57,900 hours for disclosures, for a total of 80,000 hours, rounded to the nearest thousand. This estimate is based on the number of funeral providers (approximately 22,300), the number of funerals annually (approximately 2.3 million), and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 22,300 providers is 22,300 hours. This estimate is unchanged from 1998.

Disclosure: The Rule requires that funeral providers (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

Maintaining current price lists requires that funeral providers revise their price lists from time to time through the year to reflect price changes. Based on a maximum average burden of two hours per provider per year for this task, the total burden for 22,300 providers is 44,600 hours. This estimate is unchanged from the FTC's prior estimate in 1998.

The original rulemaking record indicated that 87 percent of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.[1] Accordingly, the Rule imposes a disclosure burden on 2,899 providers (13 percent of 22,300 providers). These providers are typically the smallest funeral homes. The disclosure requirement can be satisfied through the use of a standard form (an example of which is available to the industry in the Compliance Guide to the Funeral Rule). Based on an estimation that these smaller homes arrange, on average, approximately 20 funerals per year and that it would take each of them about 3 minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with this disclosure requirement is one hour per provider not already in compliance, for a total of 2,899 hours.

The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Industry data indicate that only about nine percent of funeral purchasers make telephone inquiries, with each call lasting an estimated three minutes. Only about half of that additional time is attributable to disclosures required solely by the Rule, since many providers would provide the requested information even without it. Thus, assuming that the average purchaser makes two calls per funeral to compare prices, the estimated burden is 10,350 hours [(½ × 3 minute call × 2 calls/funeral) × 207,000 funerals (nine percent of 2,300,000 funerals/year)]. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the disclosure total is 57,849 hours (44,600 + 2,899 + 10,350). The total estimated hours burden associated with the Rule for both recordkeeping and disclosure requirements is 80,000, rounded to the nearest thousand (22,300 hours for recordkeeping + 57,849 hours for disclosure).

Estimated annual cost burden: $3,900,000, rounded ($3,560,000 in labor costs and $340,000 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

[1] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate ''Statement of Funeral Goods and Services Selected.'' The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

Clerical personnel, at an hourly rate of $10, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 22,300 hours, the estimated cost burden for recordkeeping is $223,000 ($10 × 22,300 hours).

The two hours required of each provider, on average, to update price lists should consist of approximately 1.5 hours of managerial or professional time, at $75 per hour, and .5 hours of clerical time, at $10 per hour, for a total of $117.50 per provider. Thus, the estimated total cost burden for maintaining price lists is $2,620,250 ($117.50 × 22,300 providers).

The cost of providing written documentation of the goods and services selected by the consumer is 2,899 hours of managerial or professional time at approximately $75 per hour, or $217,425.

The cost of responding to telephone inquiries about offerings or prices is 10,350 hours of managerial or professional time at $75, or $776,250.

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $3,613,925 ($2,620,250 + $217,425 + $776,250). The total labor cost for recordkeeping and disclosures is $3,837,000 ($223,000 for recordkeeping + $3,613,925 for disclosures), rounded to the nearest thousand.

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of price lists. Based on a rough estimate of 300 pages per year per provider for copies of the various price lists, at 5 cents per page, and 22,300 providers, the total cost burden associated with printing and copying is $334,500. In addition, the estimated 2,899 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at 5 cents per page, at an average of 20 funerals per year, the added cost burden would be $5,798. Thus, estimated non-labor costs are $340,000, rounded to the nearest thousand.

The cost of training associated with Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, the FTC has provided its Compliance Guide to all funeral providers at no cost, and additional copies are available on the FTC web site or by mail. Accordingly, the Rule imposes no additional training costs.

William E. Kovacic,

General Counsel.

[FR Doc. 02–1889 Filed 1–24–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force: Meeting

Name: Task Force on Community Preventive Services.

Times and Dates: 9 a.m.–7 p.m., February 6, 2002, 8 a.m.–3 p.m., February 7, 2002.

Place: The Sheraton Colony Square, 188 14th Street, NE., Atlanta, Georgia 30361, telephone (404) 892–6000.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters to be discussed: Agenda items include: Presentations on the following chapters: Cancer (Informed Decision Making, School Based Interventions to Prevent Skin Cancer, and Interventions to Increase Breast, Cervical and Colorectal Cancer Screening), Nutrition and the Yale Obesity Reviews, Sexual Behavior, Vaccine Preventive Diseases (Expanding Access In Health Care Settings) and Violence Prevention (Early Childhood Home Visitation and Shall Issue Laws); presentations on the dissemination of the Physical Activity Chapter; dissemination and evaluation plans for the Cancer Chapter; and general updates on the evaluation plans and methods.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Peter Briss, M.D., M.P.H., Acting Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on February 1, 2002.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: January 18, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1848 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Conference Call: CDC Advisory Committee on HIV and STD Prevention.

Time and Date: 1 a.m.–2:30 p.m., February 15, 2002.

Bridge Number: 1–800–713–1971.

Conference Code: 896071.

Status: Open to the public, limited only by the phone space available. The bridge number will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be discussed: Agenda items include issues pertaining to how the meeting formats might be changed to enable CDC Advisory Committee on HIV and STD Prevention (ACHSP)to more actively participate in and guide CDC activities.

Contact Person for More Information: Paulette Ford-Knights, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, e-mail pbf7@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1846 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–5:30 p.m., February 20, 2002, 8 a.m.–3:45 p.m., February 21, 2002.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be discussed: The agenda will include a discussion on the adult harmonized schedule; yellow fever vaccine; update on 2001–2002 influenza season; update on 2001–2002 influenza vaccine supply; update on pediatric influenza vaccination feasibility study; economics of vaccinating children for influenza; 2002 options for recommending influenza vaccine for children; 2002 Recommendations for Control and Prevention of Influenza; update on supplemental recommendations for use of anthrax vaccine; update on anthrax events and response; vaccinia (smallpox) vaccine safety; smallpox containment strategies; use of smallpox vaccine in the pre-attack setting; role of jet injectors in the event of a smallpox emergency; update on supply of smallpox vaccine and vaccinia immune globulin; updates from the National Immunization Program, Food and Drug Administration, Vaccine Injury Compensation Program, National Institutes of Health, National Vaccine Program, and National Center for Infectious Diseases; a discussion on rotavirus vaccine and intussusception; process of formulating the childhood harmonized immunization schedule; update on vaccine supply; and update on thimerosal.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1845 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8:30 a.m.–5:30 p.m., February 28, 2002, 8 a.m.–5 p.m., March 1, 2002.

Place: Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, Louisiana 70131, telephone 504/586–0300.

Status: Open 8:30 a.m.–9:30 a.m., February 28, 2002, Closed 9:30 a.m.–5:00 p.m., February 28, 2002, Closed 8 a.m.–5 p.m., March 1, 2002.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas. It is the intent of the NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be discussed: The meeting will convene in open session from 8:30–9:30 a.m. on February 28, 2002, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the SOHSS to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Charles N. Rafferty, Ph.D., NIOSH Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, Maryland 20892, telephone 301/435–3562, fax 301/480–2644.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 17, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1844 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–5 p.m., February 5, 2002,8:30 a.m.–1:15 p.m., February 6, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent

procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 a.m. and 8:30 a.m. or 12:30 p.m. and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be discussed: Agenda items will include: A report from the National Vaccine Program Office (NVPO) and the Interagency Vaccine Workgroup; a report from the Acting Assistant Secretary for Health; a report from the Rotavirus Vaccine Workshop; Thimerasol in Vaccines—Followup; discussion of decisions in the face of uncertainty; discussions on Bioterrorism Issues, Departmental Initiatives, Smallpox Preparedness, & Anthrax Preparedness; an update on Vaccine Supply—Report from the NVAC Workgroup; Vaccine Safety and Communication Subcommittee report; Immunization Coverage Subcommittee report, Pediatric and Adolescent Immunization Standards; Future Vaccines Subcommittee report; Rotavirus Vaccine Workshop—Report; an update on Immunization Registries; a report on Polio Laboratory Containment, an update on Global Polio Eradication; reports from Advisory Commission on Childhood Vaccines/Division of Vaccine Injury Compensation, Vaccine Related Biological Products Advisory Committee/Food and Drug Administration, Advisory Committee on Immunization Practices/National Immunization Program/ National Center for Infectious Diseases.

Name: Subcommittee on Future Vaccines.

Time and Date: 2 p.m.–5 p.m., February 5, 2002.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters to be discussed: Agenda items will include a report from CDC Consultation on Partially Effective Vaccines for HIV; discussions on possible future topics including Pneumococcal Vaccine and Varicella in Immunocompromised hosts.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2 p.m.–5 p.m., February 5, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be discussed: Agenda items will include a report on the status of the adult immunization standards and the adolescent and child immunization standards; an update on the Mandatory Immunization Guidelines Workgroup; and a report on vaccine financing issues.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 2 p.m.–5 p.m., February 5, 2002.

Place: Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: Institute of Medicine Vaccine Safety Committee final report; Selection of Vaccine Safety Hypotheses for Year 2002; discussion of a Possible Alternative Standard for Adjudication of VICP Claims for Non-Table Injuries; follow-up to the ''Workshop on Vaccine Communications''.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 4770 Burford Highway M/S K–77, Atlanta, Georgia 30341, telephone 770/488–2040.

An unavoidable administrative delay meeting the 15-day publication requirement.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: January 18, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1847 Filed 1–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2139–N]

Medicaid Program; Infrastructure Grant Program To Support the Competitive Employment of People With Disabilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of funding, through grants, for eligible States under the Ticket to Work and Work Incentives Improvement Act of 1999. The grant program is designed to assist States in developing infrastructures to support the competitive employment of people with disabilities by extending necessary Medicaid coverage to these individuals. This notice also contains pertinent information where States may apply for the grant program.

DATES: States should submit a notice of intent to apply for a grant no later than March 15, 2002.

Deadline for Grant Submission: Grant applications must be submitted by June 7, 2002 to be considered under the Fiscal Year 2003 annual funding cycle.

ADDRESSES: Standard application forms and related instructions are available from and must be formally submitted to: Judith Norris, Centers for Medicare and Medicaid Services, Office of Internal Customer Support, Acquisition and Grants Group, C2–21–15 Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850. (410) 786–5130, E-mail: *Jnorris1@cms.hhs.gov.*

Please note: While State agencies are only required to submit an original and two copies, submission of an original and 14 copies will greatly expedite the application process.

Website: You may access up-to-date information about the Medicaid Infrastructure Grants and obtain a complete Grant Solicitation at: *http://www.hcfa.gov/medicaid/twwiia/twwiiahp.htm.*

FOR FURTHER INFORMATION CONTACT: Questions about the grants may be directed to: Joe Razes, TWWIIA Program Manager, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Center for Medicare and Medicaid Services, Room S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–6126, e-mail: *Jrazes@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of funding for the infrastructure grants for the Fiscal Year 2003 annual funding cycle and contains the filing dates for consideration of grant applications for this funding cycle. Please refer to our May 31, 2000 notice (65 FR 34715), in which we first solicited States to apply for these grants under the Ticket to Work and Work Incentives Improvement Act of 1999, for more information concerning the grant process. The May 31, 2000 notice includes detailed information on application requirements, review procedures, an explanation of timely submission, and other relevant information.

Authority: Section 203 of the Ticket to Work and Work Incentives Improvement Act

of 1999, Public Law 106–170. (Catalog of Federal Domestic Assistance Program No. 93.779, Centers for Medicare and Medicaid Services Research, Demonstration, and Evaluations).

Dated: January 23, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–2017 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

CMS–2087–PN

RIN 0938–AK91

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2001

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: The Social Security Act provides for the Medicaid program to pay all or part of the Medicare Part B premiums (for months during the period beginning with January 1998, and ending with December 2002) for two specific eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals. This notice announces the proposed allotments that would be available for State agencies to pay Medicare Part B premiums for these eligibility groups for Federal fiscal year 2001.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 26, 2002.

If the proposed allotments are adopted as final, they will be available for expenditures made during the Federal fiscal year 2001 (beginning October 1, 2000).

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2087–PN, PO Box 8010,Baltimore, MD 21244–8010.

To insure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

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, orRoom C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–8010.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–2087–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at 7500 Security Blvd, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 to 5 p.m. (phone: (410) 786–9994).

FOR FURTHER INFORMATION CONTACT: Miles McDermott, (410) 786–3722.

SUPPLEMENTARY INFORMATION:

I. Background

A. Before the Balanced Budget Act of 1997

Before the enactment of the Balanced Budget Act of 1997 (BBA), section 1902(a)(10)(E) of the Social Security Act (the Act) specified that a Medicaid State plan must provide for Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included Qualified Medicare Beneficiaries (QMBs), Specified Low-income Medicare Beneficiaries (SLMBs), and Qualified Disabled and Working Individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below the Federal poverty level and resources below $4,000 for an individual and $6,000 for a couple. An SLMB is an individual who meets the QMB criteria, except that his or her income is between a State-established level (at or below the Federal poverty level) and 120 percent of the Federal poverty level. A QDWI is an individual who is entitled to enroll in MedicarePart A, whose income does not exceed 200 percent of the Federal poverty level for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income (SSI) program, and who is not otherwise eligible for Medicaid. The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums for Medicare Part B.

B. After the Balanced Budget Act of 1997

Section 4732 of the BBA amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of all or part of the Medicare Part B premiums, during the period beginning January 1998 and ending December 2002, for selected members of two eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals (QIs).

Under section 1902(a)(10)(E)(iv)(I) of the Act, State agencies are required to pay the full amount of the Medicare Part B premium for selected QIs who would be QMBs except that their income level is at least 120 percent but less than 135 percent of the Federal poverty level for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan.

The second group of QIs, under section 1902(a)(10)(E)(iv)(II) of the Act, includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the Federal poverty level for a family of the size involved. These QIs may not be otherwise eligible for Medicaid under the approved State plan, but are eligible for a portion of Medicare cost-sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Section 4732(c) of the BBA also added section 1933 of the Act, which specifies the provisions for State coverage of the Medicare cost-sharing for additional low-income Medicare beneficiaries.

Section 1933(a) of the Act specifies that a State agency must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that State agencies must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State agency must permit all QIs to apply for assistance and must select individuals on a first-come, first-served basis in the order in which they apply. Under section 1933(b)(2)(B) of the Act, when selecting persons who will receive assistance in calendar years after 1998, State agencies must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be, or become, QIs. Under section 1933(b)(4), persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to

receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's allotment is limited by law, section 1933(b)(3) of the Act provides that the State agency must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the State's allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums each fiscal year and specifies the formula to be used to determine an allotment for each State from this total amount. For State agencies that execute a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

The Federal matching rate for Medicaid payment of Medicare Part B premiums for QIs is 100 percent for expenditures up to the amount of the State's allotment. No Federal matching funds are available for expenditures in excess of the State's allotment amount. Administrative expenses associated with the payment of Medicare Part B premiums for QIs remain at the 50 percent matching level and may not be taken from the State's allotment.

The amount available for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State agency that is to be based on each State's share of the Secretary's estimate of the ratio of—

(1) An amount equal to the sum of the following: (a) Twice the total number of individuals who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; and (b) The total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 135 percent but less than 175 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; to

(2) The sum of all of these individuals under item (1) for all eligible States.

II. Provisions of This Proposed Notice

This notice announces the proposed allotments to be made available to individual States for Federal fiscal year 2001 for the Medicaid payment of Medicare Part B premiums for QIs identified under sections 1902(a)(10)(E)(iv)(I) and (II) of the Act. The formula used to calculate these allotments was described in detail in the January 26, 1998 **Federal Register** (63 FR 3752, 3754) and, except for the incorporation of the latest data, has been used here without changes.

FY 2001 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS

[Under Sec. 4732 of the BBA of 1997]

State	(in thousands)			State share of (c) (percent)	State FY2001 allocation (dollars in thousands)
	(a) M1[1]	(b) M2[2]	(c) [2 × (a)] + (b)		
AK	1	4	6	0.10	340
AL	28	74	130	2.10	7,357
AR	21	46	88	1.42	4,980
AZ	21	66	108	1.75	6,112
CA	108	310	526	8.50	29,766
CO	10	27	47	0.76	2,660
CT	8	57	73	1.18	4,131
DC	2	5	9	0.15	509
DE	6	10	22	0.36	1,245
FL	113	282	508	8.21	28,747
GA	22	67	111	1.79	6,281
HI	4	14	22	0.36	1,245
IA	17	59	93	1.50	5,263
ID	6	19	31	0.50	1,754
IL	38	148	224	3.62	12,676
IN	41	80	162	2.62	9,167
KS	10	40	60	0.97	3,395
KY	20	65	105	1.70	5,942
LA	24	67	115	1.86	6,508
MA	34	79	147	2.38	8,319
MD	26	52	104	1.68	5,885
ME	7	16	30	0.49	1,698
MI	36	138	210	3.40	11,884
MN	23	46	92	1.49	5,206
MO	24	78	126	2.04	7,130
MS	15	44	74	1.20	4,188
MT	4	11	19	0.31	1,075
NC	46	111	203	3.28	11,487
ND	5	13	23	0.37	1,302
NE	10	34	54	0.87	3,056
NH	2	12	16	0.26	905
NJ	35	101	171	2.76	9,677
NM	7	25	39	0.63	2,207
NV	6	23	35	0.57	1,981
NY	94	236	424	6.86	23,994
OH	51	161	263	4.25	14,883
OK	23	61	107	1.73	6,055
OR	8	39	55	0.89	3,112

FY 2001 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS—Continued

[Under Sec. 4732 of the BBA of 1997]

State	(in thousands)			State share of (c) (percent)	State FY2001 allocation (dollars in thousands)
	(a) M1[1]	(b) M2[2]	(c) [2 × (a)] + (b)		
PA	81	195	357	5.77	20,202
RI	9	18	36	0.58	2,037
SC	28	61	117	1.89	6,621
SD	5	13	23	0.37	1,302
TN	36	58	130	2.10	7,357
TX	81	223	385	6.22	21,787
UT	7	18	32	0.52	1,811
VA	31	87	149	2.41	8,432
VT	3	8	14	0.23	792
WA	22	48	92	1.49	5,206
WI	21	95	137	2.22	7,753
WV	13	42	68	1.10	3,848
WY	3	7	13	0.21	736
Total	1296	3593	6185	100.00	350,000

[1] Three-year average (1998–2000) of number of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of FPL

[2] Three-year average (1998–2000) of number of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 135% but less than 175% of FPL

III. 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 notice, and, if we proceed with a subsequent document, we will respond to the major comments in that document.

IV. Regulatory Impact Statement

We have examined the impact of this proposed 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). A regulatory impact statement (RIA) must be prepared for major rules with economic effects of $100 million or more annually. Under 5 U.S.C. 804, we have determined this to be a major rule.

The RFA requires agencies to analyze options for regulatory relief for small entities. For purposes of the RFA, States and individuals are notconsidered to be small entities.

This proposed notice would allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for QIs. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. Because the formula for determination of State allotments is specified in the statute, there were not other options to be considered. Therefore, we have applied the statutory formula for the State allotments except for the use of specified data. Because the data specified in the law were not currently available, we have used comparable data from the U.S. Census Bureau on the number of possible QIs in the States, as described in detail in the January 26, 1998 **Federal Register**. These new allotments for FY 2001 incorporate the latest data from the Census Bureau covering 1998 through 2000, as specified in the footnotes to the preceding table.

We believe the statutory provisions that would be implemented in this proposed notice would have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for selected QIs, and a greater number of low-income Medicare beneficiaries would be eligible to have their Medicare Part B premiums paid under Medicaid.

Section 1102(b) of the Act requires us 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 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.

Section 605(b) of the RFA states that preparing an impact analysis is not necessary if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because this proposed notice would simply provide notice of funding ceilings, as determined under the statute, and is not proposing any new requirements, it would not have a significant impact on small entities or on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandate Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any proposed rule and a final rule preceded by a proposed rule that may result in an expenditure in any one year by State, local or tribal governments, in the aggregate, or any the private sector, or $110 million or more. This notice would have no consequential effect of the governments mentioned or on the private sector.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

We have reviewed this notice under the threshold criteria of Executive Order

13132, Federalism. Because this proposed notice would simply provide notice of funding ceilings, as determined under the statute, and is not proposing any new requirements, we have determined that this proposed notice would not significantly affect the rights, roles, and responsibilities of States.

Authority: Sections 1902(a)(10)(E) and 1933 of the Social Security Act (42 U.S.C. 1396a(a)(10)(E) and 1396x).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid, Services.

[FR Doc. 02–1304 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4025–FN]

RIN 0938–ZA15

Medicare Program; Medicare+Choice Organizations—Approval of the Deeming Authority of the National Committee for Quality Assurance (NCQA) for Medicare+Choice (M+C) Managed Care Organizations That Are Licensed as Health Maintenance Organizations (HMOs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the National Committee for Quality Assurance (NCQA) for deeming authority of Medicare+Choice (M+C) organizations that are licensed as health maintenance organizations (HMOs). We have found that NCQA's standards for managed care organizations (MCOs) submitted to us in the application process meet or exceed those established by the Medicare program. Therefore, M+C organizations that are licensed as HMOs and are accredited by NCQA may receive, at their request, deemed status for the M+C requirements in the six areas—Quality Assurance, Information on Advance Directives, Antidiscrimination, Access to Services, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records—that are specified in Section 1852(e)(4)(C) of the Social Security Act (the Act). Regulations set forth in 42 CFR 422.157(b)(2) specify that the Secretary will publish a **Federal Register** notice that indicates whether an accreditation organization's request for approval has been granted and the effective date and term of the approval, which may not exceed 6 years.

FOR FURTHER INFORMATION CONTACT: Trisha Kurtz, (410) 786–4670.

SUPPLEMENTARY INFORMATION:

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I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a managed care organization (MCO) that has a Medicare+Choice (M+C) contract with the Centers for Medicare & Medicaid Services (CMS). To enter into an M+C contract, the organization must be licensed by the State as a risk bearing entity and must meet the requirements that are set forth in 42 CFR part 422. These regulations implement Part C of Title XVIII of the Social Security Act (the Act), which specifies the services that an MCO must provide and the requirements that the organization must meet to be an M+C contractor. Other relevant sections of the Act are Parts A and B of Title XVIII and Part A of Title XI pertaining to the provision of services by Medicare certified providers and suppliers.

Following approval of the M+C contract, CMS engages in routine monitoring of the M+C organization to ensure continuing compliance. The monitoring process is comprehensive and uses a written protocol that itemizes the Medicare requirements the M+C organization must meet.

An M+C organization may be exempt from CMS monitoring of the requirements that are in the areas listed in section 1852(e)(4)(C) of the Act as a result of the organization being accredited by a CMS-approved accrediting organization. In essence, the Secretary ''deems'' that the Medicare requirements are met based on a determination that the accrediting organization's standards are at least as stringent as Medicare requirements. Regulations for the M+C deeming program are set forth in §§ 422.156, 422.157, and 422.158. The term for which an accrediting organization may be approved by CMS may not exceed 6 years as stated in § 422.157(b)(2). For continuing approval, the accrediting organization will have to re-apply to CMS.

II. Provisions of the Proposed Notice

On August 1, 2001, we published a proposed notice in the **Federal Register** (66 FR 39775) announcing the receipt of an application from NCQA for approval of deeming authority for M+C organizations that are licensed as health maintenance organizations (HMOs). In the proposed notice, we provided the factors on which we would base our evaluation. In accordance with § 422.157(b)(iii) of the proposed notice, we provided a 30-day public comment period. We did not receive public comments in response to the proposed notice for NCQA.

III. Deeming Approval Review and Evaluation

As set forth in section 1852(e)(4) of the Act and our regulations at § 422.158, the review and evaluation of the NCQA's accreditation program was compared to the requirements set forth in part 422 for the M+C program.

A. Components of the Review Process

The review of NCQA's application for approval of M+C deeming authority included the following components.

1. Site Visit

A site visit to NCQA's headquarters to assess—

- Corporate policies and procedures that relate to the MCO accreditation program;
- The survey, decision-making, and report-writing processes used in NCQA's MCO accreditation program;
- The resources available for accreditation reviews and the ability to financially sustain an M+C deeming program;
- The staff and surveyor training and evaluation programs;

• The ability to investigate and respond appropriately to complaints against accredited MCOs; and

• Communication, customer support and release of accreditation information to the public.

2. Desk-Top Review

A desk-top review of NCQA's MCO accreditation program, including—

• A description of NCQA's survey process for MCOs, including the frequency of surveys performed, whether the surveys are announced or unannounced, surveyor instructions, the review and accreditation status decision-making process, procedures used to notify accredited M+C organizations of deficiencies and monitoring of the correction of deficiencies, and the procedures used to enforce compliance with accreditation requirements;

• Information about the individuals who perform MCO accreditation reviews, including the size and composition of the survey team, the methods of compensation, the education and experience requirements, the content and frequency of the in-service training, the evaluation system used to monitor performance, and conflict of interest requirements;

• A description of the data management and analysis system, the types (full, partial, or denial) and categories (provisional, conditional, temporary) of accreditation offered by NCQA, the duration of each category of accreditation, and a statement identifying the types and categories that would serve as a basis for accreditation if CMS grants NCQA M+C organization deeming authority;

• The procedures used to respond to and investigate complaints or identify other problems with accredited organizations, including coordination of these activities with licensing bodies and ombudsmen programs;

• A description of how NCQA provides accreditation information to the general public;

• The policies and procedures for (1) withholding, denying and removal of accreditation status, and the other actions NCQA may take in response to noncompliance with their standards and requirements, and (2) how NCQA deals with accreditation of organizations that are acquired by another organization, have merged with another organization, or that undergo a change of ownership or management;

• Lists of all (1) NCQA accredited M+C organizations, (2) MCOs surveyed by NCQA in the past 3 years, and (3) MCOs that were scheduled to be surveyed by NCQA within 3 months of submitting their application;

• A written presentation of NCQA ability to furnish data electronically, via telecommunications;

• A resource analysis that included financial statements for the past 3 years (audited, if possible) and the projected number of deemed status surveys for the upcoming year; and

• A statement acknowledging that, as a condition of approval, NCQA agreed to comply with the ongoing responsibility requirements stated in § 422.157(c).

3. Assessment of NCQA's Standards and Methods of Evaluation

As part of the application, NCQA submitted a crosswalk that compared their standards and methods of evaluations with corresponding M+C requirements. A multicomponent team of CMS regional and central office staffs then reviewed and evaluated NCQA's standards and processes and compared them to the M+C requirements in six areas: Quality Assurance, Access to Services, Antidiscrimination, Information on Advance Directives, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records.

4. Observation of an NCQA Accreditation

An observation of an NCQA accreditation of an MCO allowed CMS staff to (1) validate that the accreditation review methods described in NCQA's application were equal to (or exceeded) the corresponding Medicare requirements, and (2) resolve outstanding issues that were identified during the review of NCQA's application materials.

B. Results of the Review Process

We determined that NCQA's current accreditation program for MCOs did not either address or ''meet or exceed'' several of the M+C requirements that are contained in 5 of the 6 categories set forth in section 1852(e)(4)(C) of the Act. To address this issue, NCQA agreed to complement their current MCO accreditation program by applying a ''Medicare+Choice Module'' (M+C Module). Thus, when assessing M+C organizations that seek deemed status for the Medicare requirements contained in the six categories established in the Act, NCQA will complement their current accreditation program with the M+C Module. The M+C Module will include the following:

1. Quality Assurance (42 CFR 422.152)

• A statement that ''if/when'' CMS establishes minimum performance levels, the M+C organization must meet the performance level(s) and report them to CMS.

• A requirement that M+C organizations must meet the full range of CMS Quality Assessment and Performance Improvement project topic requirements.

2. Provider Participation Rules (42 CFR Subpart E)

• A requirement for a written notice of (1) material changes in participating rules before the changes are put into effect, (2) initial participation decisions that are adverse to physicians, and (3) the appeals process and reasons for the action when a participating provider is suspended or terminated.

• A requirement that the majority of the appeals hearing panel members are peers of the affected physician.

• A requirement that both the M+C organization and contracting provider provide at least 60 days written notice to each other before terminating the contract without cause.

• A requirement that participating providers and suppliers who provide services to Medicare enrollees are approved for participation in Medicare and that the M+C organization does not employ or contract with providers who have opted-out of Medicare participation.

• A requirement that M+C organizations do not discriminate against health care professionals who serve high-risk populations or who specialize in the treatment of costly conditions in the formal selection and retention criteria.

• A requirement that the M+C organization provide sufficient notice to CMS and enrollees, if they object to covering, furnishing or paying for counseling or referral service on the basis of moral or religious grounds and that the M+C organization provides conscience protection policies to enrollees.

• NCQA agreed to a Physician Incentive Plan (PIP) review strategy proposed by CMS. M+C organizations will continue to provide PIP information to CMS. CMS will notify accrediting organizations of M+C organizations that they have deemed are ''noncompliant'' for any of the PIP requirements; then the accrediting organization will contact the M+C organization to inform them that they must comply with the PIP provisions. If, at the end of the accrediting organization's corrective action process,

the M+C organization continues to be noncompliant, the accrediting organization will turn the case over to CMS. However, PIP disclosure for 2002 is delayed until further notice. CMS is working to modify the regulations for disclosure as part of the effort to reduce administrative burdens on managed care organizations.

• A requirement that addresses the limitation on provider indemnification that is stated in § 422.212.

3. Information on Advance Directives (42 CFR 422.128)

• NCQA agreed to add all the CMS requirements regarding information on advance directives to their M+C Module.

4. Antidiscrimination (42 CFR 422.110, 422.502(h))

• A requirement that an M+C organization may not deny, limit, or condition the coverage or furnishing of benefits to individuals eligible to enroll in an M+C plan offered by the organization on the basis of any factor that is related to health status.

• A requirement that an M+C organization may not enroll an individual who has been medically determined to have end-stage renal disease and a requirement that an enrollee who develops end-stage renal disease while enrolled in an M+C organization may not be disenrolled for that reason.

5. Access to Services (42 CFR 422.112)

• A requirement that M+C organizations have policies and procedures that allow an enrollee's representative to facilitate care or treatment decisions when the enrollee is unable to do so.

• A requirement that M+C organizations support a network of providers with written arrangements that address the provision of services covered under the M+C program.

• A requirement that M+C organizations provide direct access to women's health services for routine and preventive health care services.

• A statement that ensures that M+C organizations have procedures to identify individuals with complex needs and/or serious medical conditions.

• A requirement that M+C organizations should make a ''best effort'' attempt to conduct an initial assessment of enrollee health care needs within 90 days of the effective date of enrollment.

C. Term of Approval

Regulations at § 422.157(b)(2) permit us to grant a term of approval for deeming authority for accreditation organizations of up to 6 years. On January 18, 2002, we notified NCQA of our approval of their application as a national accreditation organization for MCOs that request participation in the M+C program. We are granting this deeming authority through January 17, 2008.

IV. Paperwork Reduction Act

The requirements associated with granting and withdrawal of deeming authority to national accreditation, codified in part 422, Medicare+Choice Program, are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of June 30, 2002. Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This notice merely recognizes NCQA as a national accreditation organization that has approval for deeming authority for HMOs that are participating in the M+C program. Since M+C organizations are monitored every 2 years by CMS's regional office staff to determine compliance with M+C requirements, we believe that the M+C deeming program has the potential to reduce both the regulatory and administrative burdens associated with the Medicare+Choice program. In FY 2001, there were 179 M+C contracts and 5,578,605 enrollees. Approximately, 75 of those M+C organizations were accredited by NCQA.

This notice, however, is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on small entities and will not have an effect on the operations of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or 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 expenditure in any 1 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. We believe the private sector costs of this notice fall below this threshold as well.

In accordance with Executive Order 13132, this notice will not significantly affect the rights of States and does not significantly affect State authority. This regulation describes only processes that must be undertaken to fulfill our obligation to conduct enforcement as required by the April 8, 1997 regulation.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by OMB.

Authority: Secs. 1851 and 1855 of the Social Security Act (42 USC 1395w–21 and 42 USC 1395w–25)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 10, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1874 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3081–N]

RIN 0938–ZA26

Medicare Program; Peer Review Organization Contracts: Solicitation of Statements of Interest From In-State Organizations—Alaska, Hawaii, Idaho, Illinois, Kentucky, Maine, Nebraska, South Carolina, Vermont, and Wyoming

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with section 1153(i) of the Social Security Act, gives at least 6 months advance notice of the expiration dates of contracts with out-of-State Utilization and Quality Control Peer Review Organizations. It also specifies the period of time in which in-State organizations may submit a statement of interest so that they may be eligible to compete for these contracts.

DATES: Written statements of interest must be received at the address specified no later than 5 p.m. EST February 11, 2002. Due to staffing and resource limitations, we cannot accept statements submitted by facsimile (FAX) transmission.

ADDRESSES: Statements of interest must be submitted to the Centers for Medicare & Medicaid Services, Acquisitions and Grants Groups, OICS, Attn.: Edward L. Hughes, 7500 Security Boulevard, Mail Stop C2–21–15, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Udo Nwachukwu, (410) 786–7234.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248) amended Part B of title XI of the Social Security Act (the Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program.

PROs currently review certain health care services furnished under title XVIII of the Act (Medicare) and under certain other Federal programs to determine whether those services are reasonable, medically necessary, provided in the appropriate setting, and are of a quality that meets professionally recognized standards. PRO activities are a part of the Health Care Quality Improvement Program (HCQIP), a program which supports our mission to ensure health care security for our beneficiaries. The HCQIP rests on the belief that a plan's, provider's, or practitioner's own internal quality management system is key to good performance. The HCQIP is carried out locally by the PRO in each State. Under the HCQIP, PROs provide critical tools (for example, quality indicators and information) for plans, providers, and practitioners to improve the quality of care provided to Medicare beneficiaries. The Congress created the PRO program in part to redirect, simplify, and enhance the cost-effectiveness and efficiency of the peer review process.

In June 1984, we began awarding contracts to PROs. We currently maintain 53 PRO contracts with organizations that provide medical review activities for the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The organizations that are eligible to contract as PROs have satisfactorily demonstrated that they are either physician-sponsored or physician-access organizations in accordance with sections 1152 and 1153 of the Act and our regulations at 42 CFR 475.102 and 475.103. A physician-sponsored organization is one that is both composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the respective review area, and who are representative of the physicians practicing in the review area. A physician-access organization is one that has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, a health care facility affiliate, or in most cases a payor organization. (Statutes and regulations provide that, in the event CMS determines no otherwise qualified nonpayor organization is available to undertake a given PRO contract, CMS may select a payor organization that otherwise meets requirements to be eligible to conduct PRO Utilization and Quality Control Peer Review.) The selected organization must have a consumer representative on its governing board.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1153 of the Act by adding a new paragraph (i) that prohibits us from renewing the contract of any PRO that is not an in-State organization without first publishing in the **Federal Register**, a notice announcing when the contract will expire. This notice must be published no later than 6 months before the date the contract expires and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submit a proposal within the specified period of time, we cannot automatically renew the contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. An in-State organization is defined as an organization that has its primary place of business in the State in which review will be conducted (or, that is owned by a parent corporation, the headquarters of which is located in that State).

There are currently 10 PRO contracts with entities that do not meet the statutory definition of an in-State organization. The areas affected for purposes of this notice along with their respective expiration dates are as follows:

Illinois, July 31, 2002
Vermont, July 31, 2002
Wyoming, July 31, 2002
Maine, July 31, 2002
Alaska, October 31, 2002
Idaho, October 31, 2002
Hawaii, January 31, 2003
Kentucky, January 31, 2003
Nebraska, January 31, 2003
South Carolina, January 31, 2003

II. Provisions of the Notice

The notice announces the scheduled expiration dates of the current contracts between CMS and out-of-State PROs responsible for review in the areas mentioned above.

Interested in-State organizations may submit statements of interest to be the PRO for these States. We must receive the statements no later than February 11, 2002, and in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted or be a subsidiary of a parent corporation, whose headquarters is located in that State. In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be Either a Physician-Sponsored or a Physician-Access Organization

1. Physician-Sponsored Organization

a. The organization must be composed of a substantial number of the licensed

doctors of medicine and osteopathy practicing medicine or surgery in the review area, and who are representative of the physicians practicing in the review area.

b. The organization must not be a health care facility, health care facility association, health care facility affiliate, or in most cases a payor organization.

c. In order to meet the ''substantial number of doctors of medicine and osteopathy'' requirement of paragraph A.1.a of this section, an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to meet the representation requirement of paragraph A.1.a of this section, an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. Alternatively, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, the organization must demonstrate in its statement of interest through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician-Access Organization

a. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties.

b. The organization must not be a health care facility, health care facility association, health care facility affiliate, or in most cases a payor organization.

c. An organization meets the requirements of paragraph A.2.a of this section if it demonstrates that it has available to it at least one physician in every generally recognized specialty and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have at Least One Individual Who Is a Representative of Consumers on Its Governing Board

If one or more organizations meet the above requirements in a PRO area and submit statements of interest in accordance with this notice, we will consider those organizations to be potential sources for the 10 contracts upon their expiration. These organizations will be entitled to participate in a full and open competition for the PRO contract to perform the PRO statement of work.

III. Information Collection Requirements

This notice contains information collection requirements that have been approved by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB Control Number 0938–0526.

Authority: Section 1153 of the Social Security Act (42 U.S.C. 1320c–2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: December 12, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1066 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4034–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education—February 13, 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. App. 2), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on Wednesday, February 13, 2002. This Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS), on opportunities for CMS to optimize the effectiveness of the National Medicare Education Program and other CMS programs that help Medicare beneficiaries understand Medicare and the range of Medicare options available with the passage of the Medicare+Choice program. The Panel meeting is open to the public.

DATES: The meeting is scheduled for Wednesday, February 13, 2002, from 9:00 am. to 5:00 pm.

ADDRESSES: The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC, 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Nancy Caliman, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.hcfa.gov/events/apme/homepage.htm*) for additional information and updates on committee activities, or contact Ms. Caliman via e-mail at *APME@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 and the charter renewing the Panel on January 18, 2001. The Advisory Panel on Medicare Education advises the Department of Health and Human Services and the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are to provide advice concerning optimal strategies for:

- Developing and implementing a national Medicare education program that describes the options for selecting a health plan under Medicare;
- Enhancing the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships;
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program;
- Assembling an information base of best practices for helping consumers evaluate health plan options and building a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Diane Archer, J.D., President, Medicare Rights Center; David Baldridge, Executive Director, National Indian Council on Aging; Bruce Bradley, M.B.A., Director, Managed Care Plans, General Motors Corporation; Carol

Cronin, Chairperson, Advisory Panel on Medicare Education; Joyce Dubow, M.U.P., Senior Policy Advisor, Public Policy Institute, AARP; Jennie Chin Hansen, Executive Director, On Lok Senior Health Services; Elmer Huerta, M.D., M.P.H., Director, Cancer Risk and Assessment Center, Washington Hospital Center; Bonita Kallestad, J.D., M.S., Mid Minnesota Legal Assistance; Steven Larsen, J.D., M.A., Maryland Insurance Commissioner, Maryland Insurance Administration; Brian Lindberg, M.M.H.S., Executive Director, Consumer Coalition for Quality Health Care; Heidi Margulis, B.A., Vice President, Government Affairs, Humana, Inc.; Patricia Neuman, Sc.D., Director, Medicare Policy Project, Henry J. Kaiser Family Foundation; Elena Rios, M.D., M.S.P.H., President, National Hispanic Medical Association; Samuel Simmons, B.A., President and CEO, The National Caucus and Center on Black Aged, Inc.; Nina Weinberg, M.A., President, National Health Council; and Edward Zesk, B.A., Executive Director, Aging 2000.

The agenda for the February 14, 2002 meeting will include the following:

- A recap of the previous (October 25, 2001) meeting;
- CMS update/issues;
- Update on the Fall Medicare Ad Campaign;
- Update on the State Health Insurance Assistance Program;
- Medicare Education Research Update;
- APME Annual Report;
- Public comment.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Caliman by 12 noon, Thursday, February 7, 2002. In conjunction, a written copy of the oral presentation should also be submitted to Ms. Caliman by 12 noon, Thursday, February 7, 2002. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Caliman by 12 noon, Thursday, February 7, 2002. 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 Ms. Caliman at least 15 days before the meeting.

(Section 222 of the Public Health Service Act (42 USC 217a) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a) and 41 CFR 102–3))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1687 Filed 1–18–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 66, No. 177, pp. 47497–47499 dated September 12, 2001) is amended to reflect changes to the Press Office and the Center for Medicaid and State Operations (CMSO). Specifically, the Press Office will be retitled as the Public Affairs Office (PAO) and the Intergovernmental and Tribal Affairs Group (ITAG) will be transferred from CMSO. The transfer of ITAG from CMSO to PAO will strengthen and improve the coordination of responses to the press, and local/national media, while integrating the State, local government, and tribal affairs programs into the PAO media relations and communications activities.

The specific amendments to part F are described below:

- Section F.10. (Organization) is amended to read as follows:

1. Public Affairs Office (FAC)
2. Center for Beneficiary Choices (FAE)
3. Office of Legislation (FAF)
4. Center for Medicare Management (FAH)
5. Office of Equal Opportunity and Civil Rights (FAJ)
6. Office of Strategic Planning (FAK)
7. Office of Communications and Operations Support (FAL)
8. Office of Clinical Standards and Quality (FAM)
9. Office of the Actuary (FAN)
10. Center for Medicaid and State Operations (FAS)
11. Northeastern Consortium (FAU)
12. Southern Consortium (FAV)
13. Midwestern Consortium (FAW)
14. Western Consortium (FAX)
15. Office of Internal Customer Support (FBA)
16. Office of Information Services (FBB)
17. Office of Financial Management (FBC)

- Section F.20. (Functions) is amended by deleting the functional statements in their entirety for the Press Office and the Center for Medicaid and State Operations. The new functional statements read as follows:

1. Public Affairs Office (FAC)

- Serves as the focal point for the Agency to the news media and provides leadership for the Agency in the area of intergovernmental affairs. Advises the Administrator and other Agency components in all activities related to the media and on matters which affect other units and levels of government.
- Coordinates CMS activities with the Office of the Assistant Secretary for Public Affairs and the Secretary's intergovernmental affairs officials.
- Serves as senior counsel to the Administrator in all activities related to the media. Provides consultation, advice, and training to the Agency's senior staff with respect to relations with the news media.
- Develops and executes strategies to further the Agency's relationship and dealings with the media. Maintains a broad based knowledge of the Agency's structure, responsibilities, mission, goals, programs, and initiatives in order to provide or arrange for rapid and accurate response to news media needs.
- Prepares and edits appropriate materials about the Agency, its policies, actions and findings, and provides them to the public through the print and broadcast media. Develops and directs media relations strategies for the Agency.
- Responds to inquiries from a broad variety of news media, including major newspapers, national television and radio networks, national news magazines, local newspapers and radio and television stations, publications directed toward the Agency's beneficiary populations, and newsletters serving the health care industry.
- Manages press inquiries, coordinates sensitive press issues, and develops policies and procedures for how press and media inquiries are handled.
- Arranges formal interviews for journalists with the Agency's Administrator or other appropriate senior Agency staff; identifies for interviewees the issues to be addressed, and prepares or obtains background materials as needed.
- For significant Agency initiatives, issues media advisories and arranges press conferences as appropriate; coordinates material and personnel as necessary.

• Serves as liaison with the Department of Health and Human Services and White House press offices.

• Serves as focal point for all Agency interactions with Native American and Alaskan Native tribes.

• Coordinates State program issues/concerns (i.e., waiver reviews, Medigap, Medicare-Select, survey and certification, Clinical Laboratory Improvement Act (CLIA), tribal affairs) with program staff and regional offices.

• Serves as coordinator of State health care policy and as liaison between CMS and State and local officials, and individual lobbyists representing State and local officials and advocate groups.

• Serves as coordinator of tribal affairs issues and liaison between CMS and State and local officials representing tribal affairs groups.

• Responsible for handling highly sensitive and complex correspondence from and to State and local elected officials. Reviews proposed regulations affecting States.

• Coordinates roll-out of waivers or other significant announcements relating to States.

10. Center for Medicaid and State Operations (FAS)

• Serves as the focal point for all Agency interactions with States and local governments (including the Territories).

• Develops national Medicaid policies and procedures which support and assure effective State program administration and beneficiary protection. In partnership with the States, evaluates the success of State agencies in carrying out their responsibilities and, as necessary, assists the States in correcting problems and improving the quality of their operations.

• Develops, interprets, and applies specific laws, regulations, and policies that directly govern the financial operation and management of the Medicaid program and the related interactions with the States and regional offices.

• Develops national policies and procedures to support and assure appropriate State implementation of the rules and processes governing group and individual health insurance markets and the sale of health insurance policies that supplement Medicare coverage.

• In coordination with other components, develops, implements, evaluates and refines standardized provider performance measures used within provider certification programs. Supports States in their use of standardized measures for provider feedback and quality improvement activities. Develops, implements and supports the data collection and analysis systems needed by States to administer the certification program.

• Reviews, approves and conducts oversight of Medicaid managed care waiver programs. Provides assistance to States and external customers on all Medicaid managed care issues.

• Develops national policies and procedures on Medicaid automated claims/encounter processing and information retrieval systems such as the Medicaid Management Information System (MMIS) and integrated eligibility determination systems.

• In coordination with the Office of Financial Management, directs, coordinates, and monitors program integrity efforts and activities by States and regions. Works with the Office of Financial Management to provide input in the development of program integrity policy.

• Through administration of the home and community based services program and policy collaboration with other Agency components and the States, promotes he appropriate choice and continuity of quality services available to frail elderly, disabled and chronically ill beneficiaries.

• Develops and tests new and innovative methods to improve the Medicaid program through demonstrations and best practices including managing review, approval, and oversight of the Section 1115 demonstrations.

• Directs the planning, coordination, and implementation of the survey, certification, and enforcement programs for all Medicare and Medicaid providers and suppliers, and for laboratories under the auspices of the Clinical Laboratory Improvement Act (CLIA). Reviews and approves applications by States for ''exemption'' from CLIA and applications from private accreditation organizations for deeming authority. Develops assessment techniques and protocols for periodically evaluating the performance of these entities. Monitors the performance of proficiency testing programs under the auspices of CLIA.

Dated: January 2, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–1064 Filed 1–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0399]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by February 25, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Rapid Response Surveys (OMB Control No. 0910–0457)—Extension

Under section 519 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device related deaths, serious injuries, and malfunctions, and user facilities to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health, or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the

Commissioner of Food and Drugs (the Commissioner) to implement general powers (including conducting research) to effectively carry out the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical device usage that are not foreseen or apparent during the premarket notification and review process. FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch Reporting Systems using FDA Forms 3500 and 3500A (OMB Control No. 0910–0281).

FDA received a 1-year OMB approval on February 5, 2001, to implement Emergency Health Surveys (since that time, renamed ''Rapid Response Surveys''), via a series of surveys, thus implementing section 705(b) of the act and the Commissioner's authority as specified in section 903(d)(2) of the act. To date, FDA has initiated one Rapid Response Survey (66 FR 49391, September 27, 2001), with two more in development. FDA is now seeking OMB clearance to continue collecting this information. Participation in these surveys has been, and will continue to be, voluntary. This request covers Rapid Response Surveys for general type medical facilities and specialized medical facilities (those known for cardiac surgery, obstetric/gynecological services, pediatric services, etc.), and health professionals, but more typically risk managers working in medical facilities.

FDA currently uses the information gathered from these surveys to quickly obtain vital information from the appropriate clinical sources so that FDA may take appropriate public health or regulatory action. FDA projects 10 rapid response surveys per year with a sample of between 50 and 200 respondents per survey.

In the **Federal Register** of September 27, 2001 (66 FR 49391), the agency requested comments on the proposed collection of information. No comments were received.

FDA originally estimated the burden of this collection to be 2 hours per survey. However, FDA is revising the estimated burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	10 (maximum)	2,000	.5	1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the maximum sample size per questionnaire that FDA could analyze in a timely manner. The annual frequency per response was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while another respondent may be contacted several times—depending on the medical device under evaluation. Based on the questions developed for the one survey that has been conducted, and for the two under development, it is estimated, given the expected type of issues that will be addressed by the surveys, that at a maximum it will take 30 minutes for a respondent to gather the requested information and fill in the answers.

Dated: January 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1928 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1234]

Determination of Regulatory Review Period for Purposes of Patent Extension; SONATA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SONATA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all

of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SONATA (zaleplon). SONATA is indicated for the short-term treatment of insomnia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SONATA (U.S. Patent No. 4,626,538) from American Cyanamid Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 13, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SONATA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SONATA is 3,027 days. Of this time, 2,435 days occurred during the testing phase of the regulatory review period, while 592 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 2, 1991. The applicant claims May 16, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 2, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 30, 1997. The applicant claims January 13, 1998, as the date the new drug application (NDA) for SONATA (NDA 20–859) was initially submitted. However, FDA records indicate that NDA 20–859 was submitted on December 30, 1997.

3. *The date the application was approved*: August 13, 1999. FDA has verified the applicant's claim that NDA 20–859 was approved on August 13, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,835 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by March 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 24, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above). Three copies of any information are to be submitted, except that individuals may submit one copy. Comments and petitions are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1925 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0363]

Determination of Regulatory Review Period for Purposes of Patent Extension; MIFEPREX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MIFEPREX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MIFEPREX (mifepristone). MIFEPREX is indicated for the medical termination of intrauterine pregnancy through 49 days pregnancy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MIFEPREX (U.S. Patent No. 4,386,085) from the Population Council, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MIFEPREX represented the first permitted commercial marketing or use of the product. Shortly thereafter,

the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MIFEPREX is 2,249 days. Of this time, 593 days occurred during the testing phase of the regulatory review period, while 1,656 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: The applicant claims August 3, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 4, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: March 18, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for MIFEPREX (NDA 20–687) was initially submitted on March 18, 1996.

3. *The date the application was approved*: September 28, 2000. FDA has verified the applicant's claim that NDA 20–687 was approved on September 28, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by March 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 24, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 14, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1926 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1346]

Determination of Regulatory Review Period for Purposes of Patent Extension; KEPPRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for KEPPRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product KEPPRA (Levetiracetam). KEPPRA is indicated as adjunctive therapy in the treatment of partial onset seizures in adults with epilepsy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for KEPPRA (U.S. Patent No. 4,943,639) from UCB Societe Anonyme, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 3, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of KEPPRA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for KEPPRA is 2,010 days. Of this time, 1,707 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: June 1, 1994. The applicant claims May 3, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 1, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: February 1, 1999. FDA has

verified the applicant's claim that the new drug application (NDA) for KEPPRA (NDA 21–035) was initially submitted on February 1, 1999.

3. *The date the application was approved*: November 30, 1999. FDA has verified the applicant's claim that NDA 21–035 was approved on November 30, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,155 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by March 26, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 24, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1927 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 19, 2002, from 8 a.m. to 5:30 p.m. and on February 20, 2002, from 8 a.m. to 4 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 19, 2002, the committee will hear presentations on the proposed approach for selection of delta in noninferiority (equivalence) clinical trials. The impact of this approach on studies of anti-infective drug products will be considered, with a focus on acute exacerbation of chronic bronchitis and hospital-acquired-pneumonia. On February 20, 2002, the committee will discuss approaches to the development of antimicrobial agents for the treatment of resistant pathogens.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 11, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 16, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1814 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 27, 2002, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss: (1) Trial design considerations and appropriate patient populations for studies of investigational agents for adjuvant therapy of melanoma given the availability of an approved agent for this indication; and (2) the appropriate study design and control for the proposed phase 3 trial of investigational new drug (IND) 2885, MELACINE (melanoma vaccine), Corixa Corp., for adjuvant treatment of melanoma.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 20, 2002. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., and 1:15 p.m. and 1:45 p.m. Time allotted for each

presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 20, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by February 20, 2002, to address issues specific to the topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 18, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1924 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Grantee Reporting Requirements for the Rural Health Network Development Grant Program (OMB No. 0915–0218)—Revision

This is a request for revision of the reporting requirements for the Rural Health Network Development Grant Program authorized by section 330A of the Public Health Service Act as amended by the Health Centers Consolidation Act of 1996 (Pub. L. 104–229).

The purpose of the program is to assist in the development of integrated networks of health care providers in rural communities. Grantee networks work to strengthen the health care delivery system in their service areas thereby improving access to, restraining the cost of, and improving the quality of essential health care services for rural residents. Grantees submit annual reports that provide information on progress toward goals and objectives of the network, specific network activities, and certain financial data related to the grant budget.

The information is used to evaluate progress on the grants, to identify grantees in need of technical assistance, and to identify best practices in the development of rural health networks. The information is also used to evaluate the impact of networks on access of care and quality of care. To minimize the burden on grantees, the reports will be submitted electronically. The estimated burden is as follows:

HRSA form	Number of responses	Responses per respondent	Total reponses	Hours per responses	Total burden hours
Tracking	45	1	45	1.5	67.5

Written comments and recommendations concerning the proposed information collection should be sent within 60 days of this notice to: Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: January 18, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1850 Filed 1–24–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Healthy Schools, Healthy Communities User/Visit Surveys—NEW

The Bureau of Primary Health Care of HRSA is planning to conduct User/Visit Surveys of the Healthy Schools, Healthy Communities (HSHC) Program. The purpose of these surveys is to obtain nationally representative data about the patients of HSHC health centers and the services provided to them. The study consists of two parts. One is the User Survey, which involves interviewing HSHC patients or their parents about the patients' health and health care. The second is the Visit Survey, in which patient visit data will be collected from medical records in order to find out what health services are being used by

patients. The data collected will provide policymakers with a better understanding of the services students are receiving at HSHC health centers and how well these centers are meeting the needs of students. The surveys will provide new information about health care received in HSHC settings.

Data from the surveys will provide quantitative information on the population served by the HSHC program, specifically: (a) Sociodemographic characteristics, (b) health care access and utilization, (c) health status and morbidity, (d) health care experiences and risk behaviors, (e) content of medical encounters, (f) preventive care and (g) patient satisfaction. These surveys will provide data useful to the program and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993.

The estimated burden on respondents is as follows:

Respondents	Number of respondents	Hours per respondent	Total Hour burden
Adolescent Users	500	.5	250
Guardians (Proxies) of Users	500	.5	250
Medical Records	1000	.25	250
Total	1000	.....	750

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 18, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1851 Filed 1–24–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 2002.

The National Advisory Committee on Rural Health will convene its fortieth meeting at the time and place specified below:

Name: National Advisory Committee on Rural Health.

Date and Time: March 3, 2002; 2 p.m.–5 p.m., March 4, 2002; 8:30 a.m.–5 p.m., March 5, 2002; 8:30 a.m.–3 p.m.

Place: Grand Hyatt Capitol Hill, 100 H Street, NW, Washington, DC 20001–4520.

The meeting is open to the public.

Purpose: The National Advisory Committee on Rural Health provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health care services in rural areas.

Agenda: Sunday afternoon, March 3, 2002, at 2 p.m. the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. The first session will open with a discussion of the Meeting Agenda and Goals by the Office of Rural Health Policy (ORHP) Director, Dr. Marcia Brand. This will be followed by a discussion of the Committee's role in the Department, administrative business and the Committee's 2002 Agenda.

Monday morning at 8:30 a.m., the session will open with an update by ORHP. After the break, the Committee will discuss and approve the 2001 project, ''A Targeted Look at the Rural Safety Net.'' After lunch, there will be presentations on two topics relating to the Committee's 2002 workplan.

The final session will be convened on Tuesday, March 5. Beginning at 8:30 a.m. there will be a brief session with the National Rural Health Association's Policy Institute. This will be followed by a session discussing the Committee's strategic plan and future agenda and the selection of a Steering Committee. The strategic planning will continue after lunch. The meeting will conclude with a discussion of the June meeting. The meeting will be adjourned at 3:00 p.m.

Anyone requiring information regarding the subject Committee should contact Marcia K. Brand, Ph.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray, Office of Rural Health Policy (ORHP), (301) 443–0835. The National Advisory Committee meeting agenda will be posted on ORHP's Web site, *http://www.ruralhealth.hrsa.gov.*

Dated: January 18, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1852 Filed 1–24–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in February 2002.

A portion of the meeting will be open and will include a roll call, general announcements, and discussion about consumer affairs, the Administrator's priority areas for SAMHSA, emergency services and disaster relief, and products from the Homeless Programs Branch.

Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. & 10(d).

A summary of the meeting and a roster of Council members may be obtained from Ms. Eileen Pensinger, Executive Secretary, CMHS, Room 15–99, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–4823.

Committee Name: CMHS National Advisory Council.

Meeting Date: February 7–8, 2002.

Place The Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland.

Type:

Closed: February 7, 2002—8:30 a.m.–9:30 a.m.
Open: February 7, 2002—10 a.m.–4:30 p.m.
Open: February 8, 2002—9 a.m.–12:30 p.m.
Contact: Eileen S. Pensinger, M.Ed., Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 15–99, Rockville, Maryland 20857. Telephone: (301) 443–4823 and FAX (301) 443–5163.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: January 18, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–1929 Filed 1–24–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in February 2002. A portion of the meeting is open and includes discussion of the Center's policy issues and current administrative, legislative, and program developments. The Council will hear feature presentations by SAMHSA's Administrator Charles Curie, M.A., A.C.S.W., and CSAT Director H. Westley Clark, M.D., J.D., M.P.H., CAS, FASAM. Significant issues to be discussed with the Council include Trauma and Substance Abuse; Mental Health: Culture, Race, and Ethnicity—A Supplement to Mental Health: A Report of the Surgeon General; Parity; Guidance for Applicants (GFA) Update and Evaluation Review; the Health Insurance Portability and Accountability Act and its impact on substance abuse; an information exchange on the New Freedom Initiative; status reports on HIV/AIDS; OPIOID Accreditation; Buprenorhphine; CSAT's Faith and Community Partners Initiative; Healthcare Professional Impairment; and Health Disparities.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c), and (6) and 5 U.S.C. App. 2, section 10(d).

If special accommodations are needed for persons with disabilities, please notify the contact person listed below. Substantive program information, a summary of the meeting and roster of Council members may also be obtained from the contact person.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.
Meeting Date: February 21, 2002—9 a.m.–5:30 p.m. February 22, 2002—8:30 a.m.–1:00 p.m.
Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro, Bethesda, Maryland 20814.
Type:
Open: February 21, 2002—9 a.m.–5:30 p.m.
Closed: February 22, 2002—8:30 a.m.–9:30 a.m.
Open: February 22, 2002—9:30 a.m.–1 p.m.
Contact: Cynthia Graham, 5600 Fishers Lane, RW II, Ste 619, Rockville, MD 20857, Telephone: (301) 443–8923; FAX: (301) 480–6077, E-mail: cgraham@samhsa.gov.

Dated: January 18, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–1930 Filed 1–24–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register.**

The following persons will serve on the SAMHSA Performance Review Board, which oversees the evaluation of performance appraisals of SAMHSA's Senior Executive Service (SES) members:

Frank S. Sullivan, Ph.D., Chairperson
H. Westley Clark, M.D., J.D., M.P.H.
Ruth Sanchez-Way, Ph.D.
Randolph Wykoff, M.D., M.P.H., T.M.

For further information about the SAMHSA Performance Review Board, contact the Division of Human Resources Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 14 C–24, Rockville, Maryland 20857, telephone (301) 443–5030 (not a toll-free number).

Dated: October 29, 2001.

Joseph H. Autry III,

Acting Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–1854 Filed 1–24–02; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–04]

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 DATE: January 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, 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: January 18, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–1813 Filed 1–24–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance

Endangered Species

On December 27, 2001, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–051290) to Conservation International/IUCN Turtle Survival Alliance, Aiken, South Carolina, to import five river terrapin (*Batagur baska*) from Kadoorie Farms and Botanic Gardens, Tai Po, New Territories, Hong Kong. The 30-day comment period required by Section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of these terrapins existed, and that no reasonable alternative was available to the applicant for several reasons.

The terrapins were part of a seizure by the Agriculture, Fisheries and Conservation Department in Hong Kong, which took place on December 11, 2001. The seizure which included 12 different Asian species totaling 10,000 live turtles, were concealed in four 20-foot containers. The confiscated turtles were smuggled to Macau by air from Singapore, and then shipped to China. The shipment was destined for the illegal food trade. The river terrapin was the only species listed as Appendix I under the Convention on International Trade in Endangered Species (CITES) and classified as endangered under the U.S. Endangered Species Act (ESA). The balance of the shipment was comprised of three species that were listed as Appendix II under CITES, and the remaining eight species that were not CITES or ESA listed.

Because the exact origin of these specimens was not known, and based on information showing an increasing market demand for turtles in South China that poses a severe threat to wild turtle populations in Asian, returning these specimens to their natal country of origin and/or their possible release back into the wild was not an option. The terrapins were shipped in very poor conditions which also put their immediate health in question. The IUCN Turtle Survival Alliance is planning to establish viable assurance colonies of this species to allow the opportunity for later repatriation of the species to protected areas within the range states, once these areas become established.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: January 11, 2002.

Timothy J. Van Norman,

Chief, Branch of Permits (International), Division of Management Authority.

[FR Doc. 02–1877 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

PRT–051952

Applicant: Samuel M. Dollyhigh, Newport News, VA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–051994

Applicant: Thomas Henry Baird, Bowling Green, KY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–050691

Applicant: Underwater World Guam, Tumon, Guam.

The applicant requests a permit to import 0.0.2 captive held Hawksbill sea turtle (*Eretmochelys imbricata*) as well as 0.0.2 captive held green sea turtle (*Chelonia mydas*) currently at Underwater World Singapore, Sentosa, Singapore for the purpose of enhancement of the species through conservation education and support of on-going scientific research.

PRT–724540

Applicant: Archie Carr Center for Sea Turtle Research, University of Florida, Gainsville, FL.

The applicant requests re-issuance of a permit to import biological samples collected from wild, captive held, and/or captive hatched leatherback sea turtle (*Dermochelys coriacea*), hawksbill sea turtle (*Eretmochelys imbricata*), green sea turtle (*Chelonia mydas*), kemp's ridley sea turtle (Lepidochelys kempii), and olive ridley sea turtle (*L. olivacea*) for the purpose of scientific research. Samples are to be collected from live or salvaged specimens. This notification covers activities conducted by the applicant over a five year period.

PRT–051712

Applicant: Melanie Culver, Virginia Polytechnic Institute & State University, Blacksburg, VA.

The applicant requests a permit to import biological samples from wild specimens of Madagascar fish eagle (*Haliaeetus vociferoides*) from Ruth Tingay, University of Nottingham, United Kingdom, for scientific research.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: January 11, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–1878 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Moorpark Highlands Habitat Conservation Plan, Ventura County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Morrison-Fountainwood-Agoura (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Service proposes to issue a Permit to the applicant for a period of 10 years that would authorize take of the coastal California gnatcatcher (*Polioptila californica californica*) incidental to otherwise lawful activities at the northern terminus of Spring Road, Moorpark, California. Activities covered by the requested Permit and addressed by the proposed Plan include the construction and occupation of 570 residential units and appurtenant infrastructure on a 445-acre site north of the City of Moorpark, Ventura County, California.

The Service requests comment from the public on the application and Environmental Assessment which are available for review. The application includes the proposed Habitat Conservation Plan (HCP) and an accompanying Implementing Agreement (legal contract). The HCP describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of the coastal California gnatcatcher.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments must be received no later than March 26, 2002.

ADDRESSES: Written comments should be addressed to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Rick Farris, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of these documents by contacting the Ventura Fish and Wildlife Office at the above address and telephone number. Documents also will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office.

Background Information

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively.

The Applicant has proposed to construct 570 residential units and appurtenant infrastructure on a 445-acre site. The project site is located at the northern terminus of Spring Road, north of the city of Moorpark, Ventura County, California. Typical land uses in the area surrounding the project site include agriculture, residential development, commercial buildings, and undeveloped shrublands. Biologists surveyed the project site for special-status plants and wildlife in 1996, 1997, and periodically between 1998 and 2001. Based on these surveys, the Service concluded that the project may result in the take of two pairs of the threatened coastal California gnatcatcher.

The Applicant proposes to implement numerous measures to minimize and mitigate take of the coastal California gnatcatchers. These measures include: (1) Purchase of mitigation credits equivalent to the territories of two pairs at a mitigation bank; (2) placement into permanent open space 94 acres of the site as the Habitat Conservation Plan Conservation Area; (3) creation and implementation of a habitat enhancement program to preserve and improve habitat values within the conservation area; (5) establishment of a non-wasting endowment for funding of the habitat maintenance program; (6) controlling human access into the conservation area; (7) construction of the Spring Road extension to minimize impacts to habitat and the coastal California gnatcatcher; and (8) revegetation of disturbed areas with coastal sage scrub plant species. Other measures are defined in the Plan and implementing agreement.

The Environmental Assessment considers the environmental consequences of three alternatives in addition to the Proposed Project Alternative. The Proposed Project Alternative consists of the issuance of an incidental take permit and implementation of the Plan and its Implementing Agreement, which include measures to minimize and mitigate impacts of the project to the coastal California gnatcatcher. Under the No Action Project Alternative, the Permit would not be issued and no take of the coastal California gnatcatcher would occur. The Reduced Intensity Alternative would decrease the total number of dwelling units; however impacts to the coastal California gnatcatcher would be the same and the project would become economically infeasible. The No Development Alternative would still involve the construction of the Spring Road extension by the City of Moorpark and the loss of one pair of coastal California gnatcatchers; however, the second pair would not be taken because the residential development would not be built. Because the applicant would not be involved, it would suffer economic loss, and the City of Moorpark would have to apply for the Permit. In a single alternative, the EA also examines several variations on the proposed Spring Road alignment. All but the preferred alignment are deemed infeasible due to topography, circulation needs, fire department regulations, and impacts to the coastal California gnatcatcher.

This notice is provided pursuant to section 10(a) of the Act and regulations implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued to the Applicant for the incidental take of the coastal California gnatcatcher. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: January 16, 2002.

Miel R. Corbett,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–1849 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On August 7, 2001, a notice was published in the **Federal Register** (66 FR 41260) that an application had been filed with the Fish and Wildlife Service by Terri M. Williams, University of California, Santa Cruz, California, for a permit (PRT–045447) to take Southern sea otters (*Enhydra lutris nereis*) for the purpose of scientific research.

Notice is hereby given that on January 8, 2002, a permit (MA045447–0) was issued by the Fish and Wildlife Service, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: January 11, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–1879 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

[INT–DES–01–44]

Imperial Irrigation District Water Conservation and Transfer Project, Draft Habitat Conservation Plan, California

AGENCIES: Bureau of Reclamation and Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft environmental impact report/environmental impact statement (EIR/EIS).

SUMMARY: The Bureau of Reclamation (Reclamation) has issued a draft EIR/EIS on Imperial Irrigation District's (IID) proposed project that would conserve and transfer the right to use up to 300,000 acre-feet per year of Colorado River water, which IID is otherwise entitled to divert for use within IID's water service area in Imperial County, California. The conserved water would be transferred to San Diego County Water Authority (SDCWA), Coachella Valley Water District (CVWD) and/or The Metropolitan Water District (MWD). These transfers, which are to remain in effect for up to 75 years, would facilitate efforts to reduce California's diversion of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment. Approval of the Secretary of the Interior (Secretary) will be required to change the point of delivery for the transferred water. In addition, IID has applied for a permit with Fish and Wildlife Service (FWS) pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA). This Section 10 permit would authorize the incidental take of covered species associated with the proposed water conservation and transfer project, as well as IID's ongoing operation and maintenance activities. As a condition of applying for a Section 10 permit, IID has developed a Habitat Conservation Plan (HCP) in consultation with FWS and the California Department of Fish and Game, which is appended to the draft EIR/EIS. The HCP would provide measures to minimize and mitigate the effects of the proposed taking of listed and sensitive species and the habitats upon which they depend.

Both Reclamation's approval of the change in point of delivery of Colorado River water and FWS' approval of the HCP and issuance of a Section 10 permit are Federal actions that require compliance with the National Environmental Policy Act (NEPA) of 1969, as amended. This draft EIR/EIS has been prepared pursuant to NEPA and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, and is being issued by Reclamation as the lead agency. The FWS is a cooperating agency. Both agencies intend to use the EIR/EIS document to issue separate Records of Decision. This document also serves as IID's compliance with the California Environmental Quality Act (CEQA), and is therefore a combined draft EIR/EIS. Public hearings will be held to receive written or verbal comments on the draft EIR/EIS. Notice of hearings will appear at a future date.

DATES: A 90-day public review and comment period begins with the filing of the draft EIR/EIS with the Environmental Protection Agency. Written comments must be received no later than April 12, 2002 (see **ADDRESSES** below).

ADDRESSES: Send written comments to one of the following: Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; fax number (602) 216–4006; Mr. Elston Grubaugh, Manager, Resource Planning and Management Department, Imperial Irrigation District, PO Box 937, Imperial, CA 92251, fax number (760) 339–9009.

A read-only downloadable copy of the draft EIR/EIS document is available on the Internet at *http://www.is.ch2m.com/iidweb.* A copy of the draft EIR/EIS is also available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIR/EIS is also available for public inspection and review at the locations listed under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Questions regarding the draft EIS should be directed to Mr. Ellis at the address provided above, or telephone (602) 216–3854. For information related to the HCP, please contact Ms. Carol Roberts at the Carlsbad FWS office, telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION: The terms of IID's water conservation and transfer transactions are set forth in the ''Agreement for Transfer of Conserved Water'' (IID/SDCWA Transfer Agreement), executed by IID and SDCWA in 1998 (as amended), and a proposed Quantification Settlement Agreement (QSA) to be executed by IID, CVWD, and MWD. The QSA establishes a framework of conservation measures and water transfers within southern California for up to 75 years, and would facilitate California's efforts to reduce its diversions of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment, thus benefiting the entire Colorado River Basin. It would authorize the transfer of up to 200,000 acre-feet to SDCWA pursuant to the IID/SDCWA Transfer Agreement, and provide for the transfer of up to 100,000 acre-feet of water conserved by IID to CVWD and/or MWD.

The Secretary of the Interior (Secretary), pursuant to the Boulder Canyon Project Act of 1928 and *Arizona* v. *California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support

California's efforts. One of these actions is execution of an Implementation Agreement (IA) that would commit the Secretary to make Colorado River water deliveries to facilitate implementation of the QSA. The Secretary's execution of the IA is the subject of Reclamation's IA, Inadvertent Overrun and Payback Policy, and Related Federal Actions Draft EIS (INT–DES 01–44), which was recently distributed for public review and comment (67 FR 1988). Impacts to the Colorado River, that would result from the change in point of delivery of IID's conservation and transfer of up to 300,000 acre-feet of Colorado River water, are incorporated into an analysis of all changes in the point of delivery proposed in the IA and included in the QSA.

The draft EIR/EIS identifies and summarizes the impacts to the Colorado River associated with IID's proposed change in point of delivery of up to 300,000 acre-feet of Colorado River water, under either the IID/SDCWA Transfer Agreement or QSA. It also describes the anticipated impacts associated with the water conservation measures to be undertaken. IID's proposed methods of conserving the water to be transferred, and use of that water, are also described in the draft EIR/EIS.

IID has applied for a Section 10 permit under which FWS would authorize the incidental take of a number of federally listed species, as well as other sensitive species that are being considered for listing, within the IID water service area, the right-of-way of the All American Canal, and the Salton Sea. The draft EIR/EIS also includes a description of impacts that are anticipated to occur from IID's implementation of an HCP for affected species, once it is approved by FWS.

Copies of the draft EIR/EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006.
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628.
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225.
- San Bernardino County Library, 104 W. 4th St., San Bernardino, CA 92401.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- IID Offices, 1284 Broadway, El Centro, CA 92243.
- IID Offices, 81–600 Avenue 58, La Quinta, CA 92253.
- El Centro Public Library, 539 State Street, El Centro, CA 92243.
- Brawley Public Library, 400 Main Street, Brawley, CA 92227.

Written comments received by Reclamation or IID become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: January 8, 2002.

Terence Martin,

Acting Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–1888 Filed 1–24–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–436]

Apparel Inputs in ''Short Supply'' (2002): Effect of Providing Preferential Treatment to Apparel From Sub-Saharan African and Caribbean Basin Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on January 14, 2002, the Commission instituted investigation No. 332–436, *Apparel Inputs in ''Short Supply'' (2002): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African and Caribbean Basin Countries,* under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice in connection with requests filed in 2002 with respect to the ''short supply'' provisions of the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA). The Commission conducted a similar investigation in 2001 to provide advice with respect to requests filed that year. During 2001, the Commission conducted 10 ''short supply'' reviews under investigation No. 332–428, *Apparel Inputs in ''Short Supply'' (2001): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African and Caribbean Basin Countries.*

FOR FURTHER INFORMATION CONTACT: For general information, contact Jackie W. Jones (202–205–3466; *jones@usitc.gov*) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091; *wgearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may 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. General information about the Commission may 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) *http://dockets.usitc.gov/eol/public/.*

Background

Section 112(b)(5) of the AGOA and section 213(b)(2)(A)(v) of the Caribbean Basin Economic Recovery Act, as added by section 211(a) of the CBTPA, allow preferential treatment for apparel made in beneficiary countries from certain fabrics or yarns to the extent that apparel of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement. These sections also authorize the President, on request of an interested party, to proclaim preferential treatment for apparel made in beneficiary countries from additional fabrics or yarns, if the President determines that such fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and the President complies with certain procedural requirements, one of which is to obtain the advice of the Commission. The President is required to submit a report to the House Ways and Means and Senate Finance Committees that sets forth the action proposed to be proclaimed, the reasons for such action, and the advice obtained from the Commission and the appropriate advisory committee, within 60 days after a request is received from an interested party.

In Executive Order No. 13191, the President delegated to the Committee for the Implementation of Textile Agreements (CITA) the authority to determine whether particular fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. He authorized CITA and the USTR to submit the required report to the Congress, and delegated to USTR the authority to obtain advice from the Commission.

As requested by the USTR, the Commission will provide advice regarding the probable economic effect of providing preferential treatment for apparel made in AGOA and/or CBTPA beneficiary countries from fabrics or yarns, regardless of the source of the fabrics or yarns, which allegedly cannot be supplied by the domestic industry in commercial quantities in a timely manner (i.e., which allegedly are in ''short supply''). The advice will be provided as to the probable economic effect of such action on affected segments of the U.S. textile and apparel industries, workers in these industries, and consumers of affected goods.

The Commission will follow the same procedures as it did in conducting ''short supply'' reviews in 2001 under Investigation No. 332–428. Thus, during 2002, the Commission will provide advice for each ''short supply'' review under a single investigation number. The Commission will not publish notices in the **Federal Register** of receipt of individual requests for advice. Instead, the Commission will issue a news release each time it initiates an analysis, and the news release will identify the article(s) under consideration, indicate the deadline for submission of public comments on the proposed preferential treatment, and provide the name, telephone number, and Internet e-mail address of staff who will be able to provide additional information on the request. CITA publishes a summary of each request from interested parties in the **Federal Register**. To view these notices, see the Internet site of the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA), at *http://otexa.ita.doc.gov/fr.stm.*

The Commission has developed a special area on its Internet site (*http://www.usitc.gov/shortsup/shortsupintro.htm*) to provide the public with information on the status of each request for which the Commission initiated analysis. The Commission has also developed a group list of facsimile addresses of interested parties or individuals who wish to be automatically notified via facsimile about any requests for which the Commission initiated analysis. Interested parties may be added to this list by notifying Jackie W. Jones (202–205–3466; *jones@usitc.gov*).

The Commission will submit its reports to the USTR not later than the 42nd day after receiving a request for advice. The Commission will issue a public version of each report as soon thereafter as possible, with any confidential business information deleted.

Written Submissions: Because of time constraints, the Commission will not hold public hearings in connection with the advice provided under this investigation number. However, interested parties will be invited to submit written statements (original and 3 copies) concerning the matters to be addressed by the Commission in this investigation. The Commission is particularly interested in receiving input from the private sector on the likely effect of any proposed preferential treatment on affected segments of the U.S. textile and apparel industries, their workers, and consumers. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted in accordance with § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in the reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that could reveal the individual operations of the firms supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects: African, Apparel, Caribbean, Fabric, Imports, Tariffs, and Yarn.

By order of the Commission.

Issued: January 18, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1838 Filed 1–24–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–003]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 8, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–920 (Final) (Certain Welded Large Diameter Line Pipe from Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on February 19, 2002.)
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

By order of the Commission.

Issued: January 22, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1972 Filed 1–23–02; 11:57 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Alcoa, Inc.,* Civ. No. 4:99CV61 AS, was lodged with the United States District Court for the Northern District of Indiana, Hammond Division at Lafayette, on January 16, 2002. The action was brought by the United States against Alcoa, Inc. (''Alcoa'') under section 309(b) and (d) of the Clean Water Act (''the Act''), 33 U.S.C. 1319(b) and (d), for injunctive relief and assessment of civil penalties. The complaint alleges that Alcoa violated the Act and its National Pollutant Discharge Elimination System permit (''NPDES Permit'') issued pursuant to the Act, by failing to comply with numerical limitations governing specific pollutants established by Alcoa's NPDES Permit, including Five-Day Biochemical Oxygen Demand (''BOD5''), polychlorinated biphlenyls (''PCB''), Total Residual Chlorine, Fecal Coliform, Total Suspended Solids (''TSS''), Oil & Grease, and Total Aluminum, discharged by Alcoa to Elliott Ditch at its aluminum manufacturing facility located in Lafayette, Indiana.

Under the proposed consent decree, Alcoa will pay a civil penalty of $550,000; comply with all applicable NPDES Permit requirements by implementing five delineated corrective measures, other corrective measures as necessary to ensure continued compliance, additional corrective measures including enhanced monitoring, and contingent corrective measures if compliance with NPDES Permit requirements for TSS and PCB are not maintained for a 12 month period; perform a Supplemental Environmental Project (''SEP'') valued at $2 million; perform other injunctive relief in the form of instituting an Environmental Management System at its facility; and conduct an Elliott Ditch/Wea Creek Investigation to evaluate sources, fate and transport of PCBs in the water column, sediments and fish in these water bodies.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Clifford D. Johnson, Assistant U.S. Attorney, Office of the United States Attorney for the Northern District of Indiana, Robert A. Grant Federal Building, 204 South Main Street, Room M–01, South Bend, Indiana 46601, (219–236–8287); and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Alcoa, Inc.,* D.J. Ref. No. 90–5–1–1–06358.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Indiana, Robert A. Grant Federal Building, 204 South Main Street, Room M–01, South Bend, Indiana 46601, and at the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact: Joseph Williams (312–886–6631)). A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cents per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $10.75 for the consent decree including one appendix (43 pages) to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Alcoa, Inc.,* D.J. Ref. No. 90–5–1–1–06358.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1836 Filed 1–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on December 20, 2001, a proposed Complaint and Consent Decree in *United States* v. *Conoco Inc.,* Civil Action No. H–01–4430, was lodged with the United States District Court for the Southern District of Texas. Notice of this proposed settlement was first published in the **Federal Register** on January 2, 2002 (Volume 67, Number 1, page 107), opening a public comment period for thirty (30) days on the Consent Decree and instructing that comments be sent by regular first class mail to the U.S. Department of Justice. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which were addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. This notice is to provide revised instructions for the submission of comments, to extend the public comment period, and to request that persons resubmit comments on this settlement that were previously addressed to the Washington, DC post office box.

In this action the United States sought civil penalties and injunctive relief against Conoco Inc. (''Conoco'') pursuant to section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991), alleged violations at Conoco's 4 refineries in Colorado, Montana, Oklahoma and Louisiana. Under the settlement, Conoco will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides (''NO_X'') and sulfur dioxide (''SO_2'') from refinery process units and adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Koch will pay a civil penalty of $1.5 million and spend $5.5 million on supplemental and beneficial environmental projects. The states of Colorado, Montana, Oklahoma and Louisiana will join in this settlement as signatories to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Persons who have already submitted comments pursuant to the January 2, 2002 notice

are requested to resubmit their comments in accordance with these revised instructions. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Gordon M. Speights Young, Assistant United States Attorney, Southern District of Texas, PO Box 61129, Houston, TX 77208; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Conoco Inc.,* D.J. Ref. 90–5–2–1–07295/1.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, and at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $36.50, to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Conoco Inc.,* D.J. Ref. 90–5–2–1–07295/1.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1837 Filed 1–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Re-Published Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.), was lodged with the United States District Court for the Eastern District of New York on December 13, 2001, pertaining to the payment of a civil penalty, compliance and other injunctive relief, and implementation of a supplemental environmental project in connection with the Mobil Oil Corporation's (''Mobil'') violations of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, at the Port Mobil facility in Staten Island, New York City, New York. Notice of this proposed consent decree was published in the **Federal Register** on January 2, 2002 (67 FR 109). This notice is being re-published, and the public comment period extended, because of continuing serious disruptions of mail delivery at the Department of Justice in Washington, DC that have resulted from measures taken in response to the receipt of anthrax-contaminated mail in various facilities. Persons who submitted comments to the address given in the January 2, 2002 notice should assume they have not been received and should resubmit them to the address given below.

Under the proposed consent decree, Mobil will pay a civil penalty of $8.2 million, will agree to comply with RCRA at the Port Mobil facility and implement corrective action as directed by the U.S. Environmental Protection Agency, will agree to refrain from making certain legal arguments under specified circumstances, and will agree to implement a supplemental environmental project—purchasing land for preservation in the Staten Island or New York City harbor area—at a cost of at least $3 million. the Consent Decree includes a release of claims alleged in the complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Commenters may request an opportunity for a public meeting in the affected area, in accordance with RCRA section 7003(d), 42 U.S.C. 6973(d). Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, should refer to *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.) and to DOJ Reference No. 90–7–1–794, and should be submitted in one of the following ways: (1) By mail c/o the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201; or (2) by facsimile to (202) 353–0296; or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW, 13th Floor, Washington, DC 20005. Any comments that were submitted by mail to the Assistant Attorney General at the Department of Justice address in Washington, DC 20530, should be re-submitted in one of the three ways listed above, in order to ensure that they are considered.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201, (718) 254–7000; and (2) the United States Environmental Protection Agency (Region 2), 290 Broadway, New York, New York 10007 (contact Stuart Keith, Office of Regional Counsel). A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood (202) 616–6584 (phone confirmation number (202) 514–1547). There is a charge for the copy. When you request a copy, please mail a check payable to ''U.S. Treasury'' in the amount of $6.00 (24 pages at 25 cents per page copying costs) to: Consent Decree Library, PO Box 7611, Washington, DC 20044. The check should refer to *United States* v. *Mobil Oil Corporation*, No. CV–96–1432 (E.D.N.Y.) and to DOJ Reference No. 90–7–1–794.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02–1835 Filed 1–24–02; 8:45 am]

BILLING CODE 4410–15–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 the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause as hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration 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 Determination Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

None

Volume III:

None

Volume IV:

None

Volume VI:

None

Volume VII:

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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 value-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 16th day of January 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–1726 Filed 1–24–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–2001]

TUV America, Inc., Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of TUV America, Inc., for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on January 25, 2002, and will be valid until January 25, 2007, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of TUV America, Inc. (TUVAM), as a Nationally Recognized Testing Laboratory (NRTL). The scope of this recognition includes testing and certification of the equipment or materials (i.e., products), and includes the sites, described later in this notice. The recognition also includes TUVAM's use of certain supplemental programs, also described later herein. The applicant's NRTL

activities will be handled by its TUV Product Services division. OSHA will detail TUVAM's scope of recognition on an informational web page for the NRTL, as further explained below.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

TUVAM applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required preliminary notice in the **Federal Register** on November 23, 2001 (66 FR 58756) to announce the application. The notice included a preliminary finding that TUVAM could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by December 24, 2001. OSHA received one comment in response to the notice, which was supportive of the recognition (see Exhibit 4–1).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL2–2001, the permanent record of public information on the TUVAM recognition.

The current addresses of the facilities (sites) that OSHA recognizes for TUVAM are:

TUV Product Services (TUVAM), 5 Cherry Hill Drive, Danvers, Massachusetts 01923

TUV Product Services (TUVAM), 10040 Mesa Rim Road, San Diego, California 92121

TUV Product Services (TUVAM), 1775 Old Highway 8 NW, Suite 104, New Brighton (Minneapolis), Minnesota 55112

Background on the Applicant and the Application

According to the application, TUV America, Inc., is a ''privately held Massachusetts'' corporation. At time of application, the applicant was TUV Product Services, Inc., a wholly-owned subsidiary of TUVAM and also a ''privately held Massachusetts'' corporation, according to the application. However, TUVAM informed OSHA recently that TUV Product Services, Inc. (TPS), no longer exists as a separate legal entity but is now a division within TUVAM. As stated above, this division would handle TUVAM's NRTL activities. As a result, OSHA primarily evaluated the testing and certification capabilities of this division and former separate entity.

The application states that TUV Product Services, Inc., was incorporated in 1990, and that it has ''10 years of experience with [testing] medical, telecommunications, computing, industrial machinery and controls, software, consumer electronics, sporting, and appliance products.'' The applicant submitted information that traces its origins to German steam boiler inspection associations founded in the 1870's ''to help regulate and supervise the safety of steam installations in the interest of public safety.'' TUV Product Services GmbH (TUVPSG), which is organizationally part of TUVAM's parent company, included similar information in its application for recognition. OSHA already processed TUVPSG's application and granted it recognition on July 20, 2001 (*see* **Federal Register** notice: 66 FR 38032).

Although TUVAM and TUVPSG are affiliated, they have separate operations and are legally distinct, and their recognition is separate. However, by their own arrangement, both organizations will utilize the same registered certification mark for purposes of their NRTL certifications. OSHA imposed a condition on TUVPSG regarding use of this mark and imposes a related condition on TUVAM, as described later in this notice.

The application showed that TUVAM was owned by TUV Suddeutschland and TUV Nord, both based in Germany. However, as mentioned in the March 16 notice for TUVPSG, TUV Suddeutschland has since become sole owner of TUVAM. Also, TUV Suddeutschland provides testing and other technical services in a number of areas throughout the world. The on-site review report (*see* Exhibit 3) indicates that TUVAM ''receives administrative and technical direction'' from TUVPSG. Moreover, the report indicates that TUVAM owns, and its TPS division operates, laboratories at additional U.S. locations, i.e., sites not listed above. The recognition only covers the three sites listed above, of which the Danvers site is currently TUVAM's headquarters.

TPS and therefore TUVAM submitted an application for recognition, dated February 1, 1999 (*see* Exhibit 2). In response to a request from OSHA for clarification and additional information, TUVAM supplemented its application in a submission dated November 9, 1999 (*see* Exhibit 2–1). In addition, the applicant provided additional documents on April 28 and May 1, 2000. It also supplemented its application on May 9, 2001 (*see* Exhibit 2–2), clarifying the test standards it requests for recognition and the supplemental programs it wishes to use.

The applicant originally requested recognition for 18 test standards. However, the NRTL Program staff determined that 3 of these test standards are not ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing NRTL applications. Therefore, OSHA recognizes TUVAM for the 15 test standards listed below (*see* List of Test Standards).

Some documents in the November 9 submission, and virtually all of its documents in the original application, have been designated as ''confidential'' by the applicant. We follow provisions of 29 CFR part 70 in determining whether we can or must disclose application information. This part generally deals with procedures to process a request for disclosure under the Freedom of Information Act (FOIA). Under Subpart B of this Part 70, information designated as confidential by a business submitter may be afforded protection under Exemption 4 of the FOIA. This exemption protects commercial or financial information, the disclosure of which would cause substantial competitive harm to the submitter.

As part of our normal process for handling applications, OSHA requested that the applicant provide reasons for designating application documents as confidential, and specifically whether disclosure would cause it substantial competitive harm. The applicant

provided the necessary justification in its response dated November 9, 1999 (*see* Exhibit 2–1). Generally, the applicant maintains the 4 levels of operational documentation mentioned in international quality standards. It generally considers its level 3 and 4 documents to be confidential or privileged, and so stated in revising the designations in its November 9 response. These documents are detailed internal procedures that explain more specifically how the applicant does or will operate.

OSHA has evaluated the applicant's designations and determined that disclosure of certain documents in the original application, and all or a portion of the documents in the November 9, April 28, and May 1 supplements to the application described above, could potentially give to prospective or current competitors knowledge that could cause the applicant substantial competitive harm. Therefore, under the provisions of 29 CFR part 70, those documents could be withheld from disclosure under Exemption 4 of the Freedom of Information Act (FOIA). Accordingly, we are not making them available for public review and have not included those documents in the public docket for the application, which we further describe later in this notice. OSHA has previously withheld from disclosure similar such documents in response to FOIA requests received concerning documents submitted by other NRTLs.

Staff of the NRTL Program performed an on-site review (assessment) of the Danvers, Massachusetts, facility on October 23–26, 2000. The staff performed the reviews of the sites at San Diego and New Brighton on December 4–8, 2000. In the on-site review report (*see* Exhibit 3), the program staff recommended a ''positive finding,'' signifying that the applicant appears to meet the requirements for recognition in 29 CFR 1910.7.

Regarding the merits of the application, the applicant presented detailed documentation that describes how it currently performs its testing and certification activities. The policies, procedures, work instructions, methods, and other practices described in this documentation will be used in its operations as an NRTL. Where appropriate, it has supplemented or modified the policies and procedures to conform to OSHA's requirements for an NRTL under 29 CFR 1910.7.

TUVAM currently performs product testing and certification activities, primarily for purposes of showing conformity to European based testing standards, such as EN and IEC standards, as indicated in the review report. It provided forms it uses when performing tests required under EN 60950. One of the test standards for which it requests recognition is UL 1950, which is equivalent to EN60950 but includes the US deviations. TUVAM has also performed testing to US-based test standards, such as UL 1950. As part of its current certification activities, it conducts initial and follow-up inspections at manufacturers' facilities, one facet of the activities that NRTLs recognized by OSHA must perform. It also authorizes the use of certification marks, another aspect of the work that NRTLs must perform. For purposes of its certifications under OSHA's NRTL Program, TUVAM will utilize a US certification mark. At the time of preparation of this notice, the registration of this mark is still pending. As already mentioned, both TUVAM and TUVPSG will utilize the same registered certification mark for purposes of their NRTL certifications.

The four recognition requirements of 29 CFR 1910.7 are presented below, along with an explanation illustrating how TUVAM has met or plans to meet each of these requirements.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The application and on-site review report indicate that TUVAM has adequate testing equipment and adequate facilities to perform the tests required under the test standards for which it seeks recognition. Security measures are in place to restrict or control access to their facility, and procedures exist for handling test samples. The application and report also indicate that testing and processing procedures are in place, and the application describes the program for the development of new testing procedures. The applicant submitted a listing and examples of specific test methods that it currently uses and will utilize for its NRTL testing activities.

It utilizes outside calibration sources and does not intend to perform internal calibrations of equipment used for its NRTL testing activities. The application indicates that TUVAM maintains records on testing equipment, which include information on repair, routine maintenance, and calibrations. The application and on-site review report address personnel qualifications and training, and identify the applicant's staff involved with product testing, along with a summary of their education and experience. Also, the report indicates that TUVAM personnel have adequate technical knowledge for the work they perform. Moreover, the review report describes the applicant's quality assurance program, which is explained in more detail in its Integrated Management System (IMS) manual. Finally, the applicant performs internal system and internal technical audits of its operations on a regular basis.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The applicant has procedures and related documentation for initially qualifying a manufacturer and for performing the required follow-up inspections at a manufacturer's facility. In its procedures, TUVAM identifies criteria it will use to determine the frequency for performing these follow-up factory inspections. It has adopted the criteria detailed in OSHA policies for NRTLs, which specify that NRTLs perform no fewer than four (4) inspections per year at certain facilities and no fewer than two (2) inspections per year under certain conditions. The factory inspections would be one part of the activities that the applicant will utilize in controlling its certification mark. In its application, TUVAM included evidence of its application for registration of a TUV certification mark with the U.S. Patent and Trademark Office (USPTO). As previously mentioned, this mark is still pending approval by the USPTO.

The applicant has procedures for control and issuance of product certifications. According to the review report, TPS ''has been involved in a certification program for over ten years.'' As indicated in the report, the TPS Certification Body has been recently established under the TPS division but will operate in a manner consistent with the applicant's current certification practices, under which a Technical Certifier issues the formal

product certification. As stated in the report, only those certifiers that are ''[TPS] employees and reside at one of the recognized sites will be authorized to certify'' a product for purposes of TUVAM's NRTL operations. The applicant maintains a detailed database of the product certifications, which will serve as its listing record. The application contains policies and terms and conditions to address control of a certification mark, and the procedures for such control are integral to more detailed procedures that the applicant uses for processing its certification certificates. For purposes of OSHA's NRTL Program, tight control by the NRTL of its certification mark is essential and procedures for such control must ensure that the NRTL's registered mark is applied to those products that the NRTL has certified. Such control must be proactive and not just reactive. TUVAM's control of a U.S. registered certification mark under the type of certification process required in OSHA's NRTL Program regulations will be a new activity for the applicant, and we include a condition related to this control.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

As previously stated, TUV Suddeutschland is currently the sole owner of TUVAM. In addition, the information reviewed by OSHA has not indicated that TUVAM has the kinds of relationships described in OSHA policy that would cause the applicant to fail to meet the independence requirement. This information shows that TUVAM does not own or control and is not owned or controlled by the kind of entities of concern to OSHA. In addition, OSHA's review of information on business activities and subsidiaries of TUVAM's parent company has not revealed any apparent conflicts of interest that could adversely influence the applicant's testing and certification activities. TUVAM has policies to protect against conflicts of interest by its employees.

Credible Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The applicant utilizes standardized formats for recording and reporting testing data and inspection data. It has procedures for evaluating and reporting the findings for testing and inspection activities to check conformance to all requirements of a test standard. The applicant provided examples of its test and inspection reporting forms.

Regarding the handling of complaints and disputes, the applicant's complaint and error management procedure provides the framework to handle complaints it receives from its clients or from the public or other interested parties. It maintains a detailed database that it uses as part of its quality assurance activities, which provides for recording and tracking complaint information. According to the review report, ''there have not been any complaints received concerning any of the certifications that have issued'' through the date of the review.

Supplemental Programs

TUV America, Inc., also seeks to use the supplemental programs listed below, subject to the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). That notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition always includes the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that TUVAM appears to meet the criteria for use of the following supplemental programs for which it has applied:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Additional Conditions

As already indicated, TUVAM and TUVPSG plan to utilize the same U.S. registered certification mark for purposes of their NRTL certifications. This is a new undertaking for the applicant and although it has procedures for controlling a certification mark, it still needs to further develop and refine the detailed procedures it will use to control this particular mark. As a result, OSHA will conditionally recognize TUVAM subject to an assessment of the detailed procedures and practices for controlling this mark once they are in place.

The U.S. registered mark is the only one that OSHA will recognize for TUVAM. In addition, only the sites listed in this notice will be able to authorize use of this mark for the TUVAM product certifications under the NRTL Program. Conversely, no other TUVAM laboratories or locations may authorize the use of this mark for product certifications under the NRTL Program. To ensure the applicant and the public understand this fact, OSHA will impose a condition to this effect. A similar condition was imposed in the July 20, 2001, recognition notice for TUVPSG, mentioned above.

As also noted, the applicant has recently adopted procedures concerning the criteria for the frequency at which it will conduct factory follow-up inspections. Here, too, it needs to refine these procedures to effectively and properly implement the criteria. OSHA will have to review TUVAM's approach in implementing the criteria for the twice-per-year inspections before it begins to conduct inspections at this frequency. As a result, OSHA will conditionally recognize TUVAM subject to an assessment of the details of this approach once it is in place.

Imposing these conditions is consistent with OSHA's past recognition of certain organizations as NRTLs that met the basic requirements but needed to further develop or refine their procedures (for example, *see* 63 FR 68306 12/10/1998; and 65 FR 26637, 05/08/2000). Given the applicant's current

breadth of activities in testing and certification, OSHA is confident that TUVAM will develop and implement procedures and practices to appropriately perform the activities in the areas noted above.

Therefore, OSHA will impose the three conditions noted above in this final notice. These conditions apply solely to TUVAM's operations as an NRTL and solely to those products that it certifies for purposes of enabling employers to meet OSHA product approval requirements. These three conditions, listed first under Conditions below, are in addition to all other conditions that OSHA normally imposes in its recognition of an organization as an NRTL.

Final Decision and Order

The NRTL Program staff has examined the application, the additional submissions, the on-site review report, and other pertinent documents. Based upon this examination and the program staff recommendation, OSHA finds that TUV America, Inc., has met the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory. The recognition applies to the sites listed above. In addition, it covers the test standards, listed below, and it is subject to the limitations and conditions, also listed below.

Limitations

OSHA hereby limits the recognition of TUVAM to testing and certification of products for demonstration of conformance to the test standards listed below. OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

UL 45 Portable Electric Tools
UL 50 Enclosures for Electrical Equipment
UL 67 Panelboards
UL 73 Motor-Operated Appliances
UL 508 Industrial Control Equipment
UL 751 Vending Machines
UL 813 Commercial Audio Equipment
UL 1004 Electric Motors
UL 1012 Power Units Other Than Class 2
UL 1244 Electrical and Electronic Measuring and Testing Equipment
UL 1950 Technology Equipment Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

The designations and titles of the above test standards were current at the time of the preparation of the preliminary notice.

The Agency's recognition of TUVAM, or any other NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. Conversely, OSHA's recognition of an NRTL for a test standard excludes the testing of any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

Many of the Underwriters Laboratories (UL) test standards listed above are also approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we use the designation of the standards developing organization (*e.g.,* UL 1004) for the standard, as opposed to the ANSI designation (*e.g.,* ANSI/UL 1004). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI Web site, *http://www.ansi.org,* and click ''NSSN'' to find out whether or not a test standard is currently ANSI-approved.

Conditions

TUV Product Services GmbH must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, TUVAM will notify the OSHA NRTL Program Director so that OSHA may review TUVAM's implementation of its procedures for controlling its US registered certification mark in conjunction with use of this mark by TUV Product Services GmbH of Germany;

Only TUV America, Inc., or TUV Product Services GmbH may authorize the US registered certification mark currently owned by TUVAM, provided each one is recognized as an NRTL by OSHA. TUVAM may authorize the use of this mark, for purposes of its product certifications under the NRTL Program, only at the TUVAM sites recognized by OSHA;

Prior to conducting inspections of manufacturing facilities based on a frequency of twice per year, OSHA must review and accept the detailed procedures that TUVAM will utilize to determine when to use this frequency for such inspections;

OSHA must be allowed access to TUVAM's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUVAM has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUVAM must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVAM agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

TUVAM will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVAM will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 17th day of January, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–1887 Filed 1–24–02; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–008)]

NASA Advisory Committees; Renewal of the Centennial of Flight Commission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice renewal of the charter of the Centennial of Flight Commission.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of the Centennial of Flight Commission (Commission) is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of the Commission remain unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Foster, Code I, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

SUPPLEMENTARY INFORMATION: Information regarding the Centennial of Flight Commission is available on the World Wide Web at *http://www.centennialofflight.gov.*

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–1914 Filed 1–24–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336 and 50–423]

Dominion Nuclear Connecticut, Inc.; Millstone Nuclear Power Station, Units 1, 2, and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Dominion Nuclear Connecticut, Inc. (the licensee) for the Millstone Nuclear Power Station, Unit 1, a permanently shutdown nuclear facility located in Waterford, Connecticut, and to Facility Operating License Nos. DPR–65 and NPF–49, issued to Dominion Nuclear Connecticut, Inc., for operation of the Millstone Nuclear Power Station, Units 2 and 3, located in Waterford, Connecticut. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the physical protection (security) related license condition to indicate that the physical security program plans listed may, rather than do, contain safeguards information; and change the name of the 'Millstone Nuclear Power Station' to the 'Millstone Power Station.'

The proposed action is in accordance with the licensee's application dated August 8, 2001.

The Need for the Proposed Action

Currently, License Condition 2.C.(4) for Units 1 and 2 and License Condition 2.E for Unit 3, identifies the plans which describe the NRC approved program for physical protection of Millstone Units 1, 2, and 3. They are the Millstone Nuclear Power Station Physical Security Plan, the Millstone Nuclear Power Station Suitability, Training, and Qualification Plan, and the Millstone Nuclear Power Station Safeguards Contingency Plan. License Conditions 2.C.(4) and 2.E also indicate that the plans contain safeguards information protected under 10 CFR 73.21. However, Revision 15 to the Millstone Nuclear Power Station Suitability, Training, and Qualification Plan removed safeguards information to allow declassification of the document. The proposed revision to the license conditions would allow declassification of the document. Additionally, the licensee also proposed the deletion of the word ''Nuclear'' from the title of the physical security program plans listed under the security related license condition and when it is used in the phrase ''Millstone Nuclear Power Station'' elsewhere in the operating license. This change is purely administrative and does not alter any regulatory requirements or commitments made by the licensee.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed amendment will not have an environmental impact. The proposed changes to the licenses are considered editorial or administrative in nature. The licensee does not propose any changes to structures, systems, components, site boundaries or operational practices.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station.

Agencies and Persons Consulted

On December 12, 2001, the staff consulted with the State of Connecticut official, Mr. Michael Firsick of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 8, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 18th day of January 2002.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1893 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–1113 (which should be mentioned in all correspondence concerning this draft guide), is ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light-Water Nuclear Power Reactors.'' This draft guide is being developed to provide guidance to licensees of operating power reactors on acceptable methods and assumptions for performing evaluations of fission product releases and radiological consequences of several postulated light-water reactor design basis accidents.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by April 30, 2002.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC homepage, http://www.nrc.gov. This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about the draft guide and the related documents, contact Mr. W.M. Blumberg at (301) 415–1083; e-mail *WMB1@NRC.GOV.*

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800)397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV*; or by fax to (301)415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 15th day of January, 2002.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff,Office of Nuclear Regulatory Research.

[FR Doc. 02–1892 Filed 1–24–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:00 A.M., Monday, February 4, 2002; 8:30 a.m., Tuesday, February 5, 2002.

PLACE: Phoenix, Arizona, at the Biltmore Hotel, 24th Street and Missouri, in the Canyon and Grand Rooms.

STATUS: February 4—10 a.m. (Closed); February 5—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, February 4—10 a.m. (Closed)

1. Financial Performance.
2. Preliminary Annual Performance Plan Target FY 2003.
3. Strategic Planning.
4. Personnel Matters and Compensation Issues.

Tuesday, February 5—8:30 a.m. (Open).

1. Minutes of the Previous Meeting, January 7–8, 2002.
2. Remarks of the Postmaster General and CEO.
3. Appointment of Members to Board Committees.
4. Report on the Western Area and Phoenix Performance Cluster.
5. Tentative Agenda for the March 4–5, 2002, 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. 02–2014 Filed 1–23–02; 2:01 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25372; 812–12702]

The Hartford Mutual Funds Inc.; Notice of Application

January 18, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(f)(1)(A) of the Act.

Summary of Application: Applicants request an order to permit certain registered open-end investment companies advised by HL Investment Advisors, LLC and Hartford Investment Financial Services, LLC (together, the ''Hartford Advisers'') not to reconstitute their boards of trustees to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act, following the acquisition of the assets of certain other registered open-end investment companies.

Applicants: The Hartford Mutual Funds, Inc., (''Mutual Funds''), Hartford Series Fund, Inc., (''Series Fund''), Hartford Advisers HLS Fund, Inc., (''Advisers HLS''), Hartford Money Market HLS Fund, Inc., (''Money Market HLS''), Hartford Bond HLS Fund, Inc., (''Bond HLS''), Hartford Index HLS Fund, Inc., (''Index HLS'') (collectively, the ''Hartford Funds''), and the Hartford Advisers.

Filing Dates: The application was filed on November 21, 2001, and amended on January 16, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 12, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 60 South Sixth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Janet M. Grossnickle, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Hartford Funds are open-end management investment companies registered under the Act. Mutual Funds, a Maryland corporation, consists of 23 series. Series Fund, a Maryland corporation, consists of 14 series. Advisers HLS, Money Market HLS, Bond HLS, and Index HLS are all Maryland corporations. The Hartford Advisers, indirect subsidiaries of the Hartford Life and Accident Insurance Company (''Hartford Life'') serve as investment advisers to the Hartford Funds. The Hartford Advisers are registered under the Investment Advisers Act of 1940 (the ''Advisers Act'').

2. Hartford-Fortis Series Fund, Inc. (''Hartford-Fortis Series Fund''), a Maryland corporation, offers 14 separate series. Fortis Series Fund, Inc. (''Fortis Series Fund''), a Minnesota corporation, offers 23 separate series. At the time of the Acquisition (as defined below), Fortis Advisers Inc. (''Fortis'') (now known as Hartford Administrative Services Company) served as investment adviser to the Hartford-Fortis Series Fund and the Fortis Series Fund. Fortis was registered under the Advisers Act.

3. Hartford Life purchased all of the outstanding stock of Fortis on April 2, 2001, (the ''Acquisition''), and shareholders of each of the Fortis Funds approved an investment management agreement with the Hartford Advisers at a shareholder meeting held on May 31, 2001. It is now proposed that certain series of the Hartford Funds would acquire the assets of six series of the Hartford-Fortis Series Fund, and seven series of Fortis Series Fund (the ''Reorganization'').[1] The series of the Hartford-Fortis Series Fund and the Fortis Series Fund proposed to be acquired by the Hartford Funds are referred to as the ''Fortis Funds.''

4. Applicants state that the Acquisition resulted in a change of control of Fortis and an assignment under the Act of the investment advisory agreements between the Fortis Funds and Fortis, resulting in their automatic termination in accordance with their terms, as required by section 15(a)(4) of the Act. The boards of directors (''Boards'') of the Fortis Funds, at a meeting held on March 23, 2001, approved interim advisory agreements which remained in effect from the date of the Acquisition until investment advisory agreements for each of the Fortis Funds were approved by their shareholders on May 31, 2001 in reliance on rule 15a–4 under the Act.

5. On August 9, 2001 and August 2, 2001, the Hartford Funds' Boards (including all of the directors who are not ''interested persons'' of the Hartford Advisers) and the Fortis Funds' Boards (all of whom are not ''interested persons'' of the Hartford Advisers or the Hartford Funds), respectively, unanimously approved the proposed Reorganization. Participation in the Reorganization will require approval by a majority of the outstanding shares of each of the Fortis Funds. The Fortis Funds' Boards have called a special meeting of the Hartford-Fortis Series Fund's shareholders to be held on January 31, 2002, and intend to call a special meeting of the Fortis Series Fund's shareholders to be held in April 2002, for the purpose of considering the Reorganization. If approved by shareholders, the Reorganization is scheduled to be effective on or about February 19, 2002, in the case of the Hartford-Fortis Series Fund, and in the case of Fortis Series Fund is proposed to be effective in April 2002.

6. In connection with the Acquisition and the Reorganization, applicants have determined to seek to comply with the ''safe harbor'' provisions of section 15(f) of the Act. Applicants state that following consummation of the Reorganization, more than twenty-five percent of the Boards of Directors of the Hartford Funds, which have identical membership, would be ''interested persons'' for purposes of section 15(f)(1)(A) of the Act.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions, set forth in section 15(f)(1)(A), provides that, for a period of three years after the sale, at least seventy-five percent of the board of directors of the investment company may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company. Applicants state that, without the requested exemption, following the Reorganization, Hartford Funds would have to reconstitute their Boards to meet the seventy-five percent non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by a registered company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the 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.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of December 31, 2001, Fortis Funds had approximately

[1] Applicants state that it is not anticipated that any of the remaining series of the Hartford-Fortis Series Fund or the Fortis Series Fund not party to the Reorganization will be reorganized into the Hartford Funds within the three years following the Acquisition.

$2,345,000,000 in aggregate net assets. Applicants also state that, as of December 31, 2001, the aggregate net assets of the Hartford Funds were approximately $33,077,000,000. Applicants thus assert that the Fortis Funds' assets would represent approximately 7.09% of the aggregate net assets of the Hartford Funds.

5. Applicants state that two of the seven directors who serve on the Boards of Hartford Funds are ''interested persons,'' within the meaning of section 2(a)(19) of the Act, of the Hartford Advisers. Applicants state that none of the directors owns any interest in or is otherwise an ''interested person'' of Fortis or the Fortis Funds.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Hartford Funds would have to alter the composition of their Boards, either by asking experienced directors to resign or by adding a new director. Applicants, further state that adding a new director could require a shareholder vote, not only of shareholders of the acquiring Hartford Funds but also the shareholders of the other series of the Hartford Funds not otherwise affected by the Reorganization. Applicants assert that adding an additional non-interested director to the Boards of Hartford Funds could entail a lengthy process and increase the ongoing costs of Hartford Funds.

7. For the reasons stated above, applicants submit that the requested relief is necessary and 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.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1898 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25371; 812–12656]

Wells Fargo Funds Management LLC and Wells Fargo Funds Trust; Notice of Application

January 18, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from section 12(d)(3) of the Act.

Summary of the Application: Applicants request an order to permit a registered open-end management investment company to: (a) Acquire securities of an entity involved in securities-related activities in connection with a merger with another non-affiliated registered open-end management investment company and; (b) continue to hold the securities for up to two years to effect their orderly liquidation following the merger.

Filing Dates: The application was filed on October 9, 2001, and amended on January 7, 2002. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 11, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 525 Market Street, 12th Floor, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, 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 SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Wells Fargo Funds Trust, a Delaware business trust, is registered under the Act as an open-end management investment company and consists of multiple series, including Wells Fargo Specialized Financial Services Fund (the ''Acquiring Fund''). Wells Fargo Funds Management, LLC (''WFFM''), a Delaware limited liability company, is an investment adviser registered under the Investment Advisers Act of 1940 and is an indirect wholly owned subsidiary of Wells Fargo & Company (''Wells Fargo''), a publicly-traded Delaware corporation, whose principal businesses are retail and commercial banking and providing financial services. Although a significant majority of Wells Fargo's annual revenues derive from its core banking business, Wells Fargo may also be deemed to be engaged in ''securities related activities,'' as defined by rule 12d3–1 under the Act.

2. SIFE Trust Fund (the ''Acquired Fund,'' and together with the Acquiring Fund, the ''Funds'') is registered under the Act as an open-end management investment company. The Acquired Fund has investment objectives and policies substantially similar to the Acquiring Fund and has been in continuous operation since July 2, 1962. SIFE, a California corporation, currently acts as investment adviser to the Acquired Fund. Pursuant to an Agreement and Plan of Reorganization, SIFE is expected to merge with and into a wholly-owned subsidiary of Wells Fargo on February 22, 2002. In addition, in February, 2002, the Acquired Fund will transfer all of its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund (the ''Reorganization''). Upon the effectiveness of the Reorganization, WFFM will act as investment adviser to the Acquiring Fund.

3. Between May, 1989, and September, 1999, the Acquired Fund made 14 separate purchases of Wells Fargo stock totaling 680,000 shares, in compliance with the Act and the rules thereunder. Each purchase was made on the open market at prices ranging from $4.57 per share to $44.34 per share, at a total cost of $19,774,452. All such purchases were made prior to the time that Wells Fargo and SIFE began negotiating the purchase of SIFE by Wells Fargo. The Acquired Fund currently holds 500,000 shares of Wells Fargo stock equal to approximately 3% of its total net assets and these shares represents an unrealized gain to the Acquired Fund of $8,844,244 (the ''Wells Fargo Position''). In connection with the Reorganization, the Acquired Fund will transfer the Wells Fargo Position to the Acquiring Fund (the ''Transfer''). The Reorganization is expected to qualify as a tax-free reorganization under the Internal Revenue Code, and accordingly, the tax basis of all securities holdings and other

assets of the Acquired Fund will be transferred to the Acquiring Fund.

4. Each Fund's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, approved the Reorganization and concluded that the Reorganization was in the best interest of the respective Fund. In approving the Reorganization, each Board considered the Wells Fargo Position. To effect the Reorganization, a shareholder meeting of the Acquired Fund's shareholders will be held on or about January 31, 2002. A proxy statement soliciting shareholder approval, which discussed the Wells Fargo Position, was mailed in November, 2001.

Applicants' Legal Analysis

1. Section 12(d)(3) of the Act, in relevant part, prohibits a registered investment company from purchasing or otherwise acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if specified conditions are met. Rule 12d3–1(c) provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person thereof.

2. Applicants state that because Wells Fargo is an affiliated person of WFFM, the Acquiring Fund's investment adviser, the Transfer and the Acquiring Fund's continued holding of the Wells Fargo Position would not meet the conditions of rule 12d3–1(c).[1] Applicants request relief from section 12(d)(3) to permit the Acquiring Fund to effect the Transfer and the continued holding for up to two years of the Wells Fargo Position following the Reorganization in order to permit the Acquiring Fund to effect its orderly liquidation.

3. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard.

4. Applicants state that the relief is warranted because none of the abuses that section 12(d)(3) was intended to prevent are present in the instant situation and the two-year disposition period will permit the Acquiring Fund to maximize the realization of gain on the orderly sale of the Wells Fargo Position while minimizing the tax effects of the disposition. Applicants also state that the Acquired Fund obtained the Wells Fargo Position in compliance with the Act and the rules thereunder.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will seek to liquidate the Wells Fargo Position as soon as possible, consistent with the maximization of shareholder return and the best interests of the Acquiring Fund, and in any case, within two years of the date of the Reorganization.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1900 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Investment Company Act Release No. 3542. (Sep. 21, 1962).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

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 meeting during the week of January 28, 2002: a closed meeting will be held on Tuesday, January 29, 2002, at 10 a.m.

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)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, January 22, 2002, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders of investigation.

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: January 22, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–1987 Filed 1–23–02; 11:57 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8056; 34–45321; FR–61]

Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Commission statement.

SUMMARY: The Commission today is issuing a statement regarding Management's Discussion and Analysis of Financial Condition and Results of Operations. The release sets forth certain views of the Commission regarding disclosure that should be considered by registrants. Disclosure matters addressed by the release are liquidity and capital resources including off-balance sheet arrangements; certain trading activities that include non-exchange traded contracts accounted for at fair value; and effects of transactions with related and certain other parties.

FOR FURTHER INFORMATION CONTACT: Questions about this statement should be referred to Jackson Day or Robert Bayless, Office of the Chief Accountant (202 942–4400) or Paula Dubberly, Division of Corporation Finance (202 942–2900), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 2001, the Commission received a petition from the accounting firms of Arthur Andersen LLP, Deloitte and Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP.[1] The petition, which was endorsed by the

[1] The petition is posted on the Commission's web page (*www.sec.gov*) under Regulatory Actions, Petitions for Rulemaking.

American Institute of Certified Public Accountants, requested that the Commission issue additional interpretive guidance regarding Item 303 of Regulation S–K, *Management's Discussion and Analysis of Financial Condition and Results of Operations*,[2] Item 303 of Regulation S–B, *Management's Discussion and Analysis or Plan of Operations*,[3] and Item 5 of Form 20–F, *Operating and Financial Review and Prospects*[4] (collectively, ''MD&A'' or ''the MD&A rules'').[5] The petition requested that additional guidance be provided to public companies preparing their annual reports for the fiscal year just ended.

The petition identified three areas of concern regarding disclosure in MD&A:

- Liquidity and capital resources, including off-balance sheet arrangements;
- Certain trading activities involving non-exchange traded contracts accounted for at fair value; and
- Relationships and transactions with persons or entities that derive benefits from their non-independent relationship with the registrant or the registrant s related parties.

Generally, we believe that the quality of information provided by public companies in the three areas identified in the petition should be improved. Because many companies are currently preparing disclosures for fiscal 2001 annual reports, the Commission believes it is appropriate to issue this statement so that public companies can consider the petition and this statement in preparing year-end and interim financial reports and other disclosures made after the issuance of this release.

While the Commission intends to consider rulemaking regarding the topics addressed in this statement and other topics covered by MD&A, the purpose of this statement is to suggest steps that issuers should consider in meeting their current disclosure obligations with respect to the topics described. This statement does not create new legal requirements, nor does it modify existing legal requirements.

II. Regulation S–K. Item 303. Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)

Paragraph (a) of Item 303 of Regulation S–K identifies a basic and overriding requirement of MD&A: to ''provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations.'' The Commission has explained this requirement on a number of occasions. In 1987, we said:

The Commission has long recognized the need for a narrative explanation of the financial statements, because numerical presentations and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. MD&A is intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company.[6]

And, as we said in 1989, ''[t]he MD&A requirements are intended to provide in one section of a filing, material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant's prospects for the future.''[7]

Disclosure is mandatory where there is a known trend or uncertainty that is reasonably likely to have a material effect on the registrant's financial condition or results of operations.[8] Accordingly, the development of MD&A disclosure should begin with management's identification and evaluation of what information, including the potential effects of known trends, commitments, events, and uncertainties, is important to providing investors and others an accurate understanding of the company's current and prospective financial position and operating results.[9]

Investors have become increasingly concerned about the sufficiency of disclosure regarding liquidity risk, market price risks, and effects of ''off-balance sheet'' transaction structures. Also, many readers of financial statements have cited a lack of transparent disclosure about transactions with unconsolidated entities and other parties where that information appeared necessary to understand how significant aspects of the business were conducted.

Accordingly, the Commission is reminding companies of the requirements of MD&A as they relate to (1) liquidity and capital resources, including off-balance sheet arrangements; (2) certain trading activities involving non-exchange traded contracts accounted for at fair value; and (3) relationships and transactions on terms that would not be available from clearly independent third parties on an arm's-length basis. This statement suggests steps that companies should consider in meeting their disclosure obligations.

We also want to remind registrants that disclosure must be both useful and understandable. That is, management should provide the most relevant information and provide it using language and formats that investors can be expected to understand. Registrants should be aware also that investors will often find information relating to a particular matter more meaningful if it is disclosed in a single location, rather than presented in a fragmented manner throughout the filing.

A. Disclosures Concerning Liquidity and Capital Resources, Including ''Off-Balance Sheet'' Arrangements

Paragraphs (a)(1) and (a)(2)(ii) of Item 303 of Regulation S–K set forth certain requirements for disclosures about ''Liquidity'' and ''Capital Resources.''

(1) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way.

* * * * *

(2)(ii) *Capital Resources.* Describe any known material trends, favorable or

[2] 17 CFR 229.303.

[3] 17 CFR 228.303.

[4] *See* 17 CFR 249.220f.

[5] The accounting profession has made previous petitions to improve MD&A disclosure. *See, e.g.*, Securities Act Release No. 6711 (April 17, 1987), Concept Release on Management's Discussion and Analysis of Financial Condition and Results of Operations, 52 FR 13715; and Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427.

[6] Securities Act Release No. 6711 (April 17, 1987), Concept Release on Management's Discussion and Analysis of Financial Condition and Results of Operations, 52 FR 13715.

[7] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, 22438 (footnote omitted).

[8] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, 22429 (''Required disclosure is based on currently known trends, events, and uncertainties that are reasonably expected to have material effects. * * * In contrast, optional forward-looking disclosure involves anticipating a future trend or event or anticipating a less predictable impact of a known event, trend or uncertainty.'').

[9] See Instructions to Item 303 (''The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.'').

unfavorable, in the registrant's capital resources. Indicate any expected material changes in the mix and relative cost of such resources. The discussion shall consider changes between equity, debt and any off-balance sheet financing arrangements.

A registrant's liquidity and capital resources are closely aligned. Disclosures about each are likely to be affected by many of the same facts and circumstances. And off-balance sheet financing arrangements often are integral to both.[10] Management should consider all of these items together, as well as individually, when drafting disclosures responsive to the MD&A rules.

1. Liquidity Disclosures

MD&A disclosures should not be overly general. For example, disclosure that the registrant has sufficient short-term funding to meet its liquidity needs for the next year provides little useful information. Instead, registrants should consider describing the sources of short-term funding and the circumstances that are reasonably likely to affect those sources of liquidity.

For example, a registrant that identifies its principal source of liquidity as operating cash flows may need also to disclose the extent of the risk that a decrease in demand for the company's products would reduce the availability of funds. That risk might arise, to further the example, where customer demand is reasonably likely to fluctuate in response to rapid technological changes. Similarly, if commercial paper is a principal source of liquidity, the registrant should consider the need to disclose how this facility could be adversely affected by a debt rating downgrade or deterioration in certain of the company's financial ratios or other measures of financial performance. The discussion should be limited to material risks, and, as with MD&A generally, should be sufficiently detailed and tailored to the company's individual circumstances, rather than ''boilerplate.''

If the registrant's liquidity is dependent on the use of off-balance sheet financing arrangements, such as securitization of receivables or obtaining access to assets through special purpose entities, the registrant should consider disclosure of the factors that are reasonably likely to affect its ability to continue using those off-balance sheet financing arrangements.[11] Registrants also should make informative disclosures about matters that could affect the extent of funds required within management's short- and long-term planning horizons.

Registrants are reminded that identification of circumstances that could materially affect liquidity is necessary if they are ''reasonably likely'' to occur. This disclosure threshold is lower than ''more likely than not.'' Market price changes, economic downturns, defaults on guarantees, or contractions of operations that have material consequences for the registrant's financial position or operating results can be reasonably likely to occur under some conditions. Material effects on liquidity as a result of any reasonably likely changes should be disclosed pursuant to Item 303(a).

In 1989, the Commission identified two assessments management must make where a trend, demand, commitment, event or uncertainty is known:

1. Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.

2. If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.[12]

The Commission further reminded registrants that each final determination resulting from the assessments made by management must be objectively reasonable, as viewed at the time the determination is made.[13]

To identify trends, demands, commitments, events and uncertainties that require disclosure, management should consider the following:

- Provisions in financial guarantees or commitments, debt or lease agreements or other arrangements that could trigger a requirement for an early payment, additional collateral support, changes in terms, acceleration of maturity, or the creation of an additional financial obligation, such as adverse changes in the registrant's credit rating, financial ratios, earnings, cash flows, or stock price, or changes in the value of underlying, linked or indexed assets;
- Circumstances that could impair the registrant's ability to continue to engage in transactions that have been integral to historical operations or are financially or operationally essential, or that could render that activity commercially impracticable, such as the inability to maintain a specified investment grade credit rating, level of earnings, earnings per share, financial ratios, or collateral;
- Factors specific to the registrant and its markets that the registrant expects to be given significant weight in the determination of the registrant's credit rating or will otherwise affect the registrant's ability to raise short-term and long-term financing;
- Guarantees of debt or other commitments to third parties; and
- Written options on non-financial assets (for example, real estate puts).

2. Off-Balance Sheet Arrangements

Registrants should consider the need to provide disclosures concerning transactions, arrangements and other relationships with unconsolidated entities or other persons that are reasonably likely to affect materially liquidity or the availability of or requirements for capital resources. Specific disclosure may be necessary regarding relationships with unconsolidated entities that are contractually limited to narrow activities that facilitate the registrant's transfer of or access to assets. These entities are often referred to as structured finance or special purpose entities. These entities may be in the form of corporations, partnerships or limited liability companies, or trusts.

Material sources of liquidity and financing, including off-balance sheet arrangements and transactions with unconsolidated, limited purpose entities, should be discussed pursuant to Item 303(a).[14] The extent of the registrant's reliance on off-balance sheet arrangements should be described fully and clearly where those entities provide financing, liquidity, or market or credit risk support for the registrant; engage in

[10] *See* Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, particularly Section III.C.

[11] ''The scope of the discussion should thus address liquidity in the broadest sense, encompassing internal as well as external sources, current conditions as well as future commitments and known trends, changes in circumstances and uncertainties.'' [Securities Act Release No. 6349 (September 28, 1981)].

[12] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, 22430.

[13] *Id.*

[14] Securities Act Release No. 6835 (May 18, 1989), Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, 54 FR 22427, at III.C.

leasing, hedging, research and development services with the registrant; or expose the registrant to liability that is not reflected on the face of the financial statements. Where contingencies inherent in the arrangements are reasonably likely to affect the continued availability of a material historical source of liquidity and finance, registrants must disclose those uncertainties and their effects.

Registrants should consider the need to include information about the off-balance sheet arrangements such as: their business purposes and activities; their economic substance; the key terms and conditions of any commitments; the initial and ongoing relationships with the registrant and its affiliates; and the registrant's potential risk exposures resulting from its contractual or other commitments involving the off-balance sheet arrangements.

For example, a registrant may be economically or legally required or reasonably likely to fund losses of an unconsolidated, limited purpose entity, provide it with additional funding, issue securities pursuant to a call option held by that entity, purchase the entity's capital stock or assets, or the registrant otherwise may be financially affected by the performance or non-performance of an entity or counterparty to a transaction or arrangement. In those circumstances, the registrant may need to include information about the arrangements and exposures resulting from contractual or other commitments to provide investors with a clear understanding of the registrant's business activities, financial arrangements, and financial statements. Other disclosures that registrants should consider to explain the effects and risks of off-balance sheet arrangements include:

- Total amount of assets and obligations of the off-balance sheet entity, with a description of the nature of its assets and obligations, and identification of the class and amount of any debt or equity securities issued by the registrant;
- The effects of the entity's termination if it has a finite life or it is reasonably likely that the registrant's arrangements with the entity may be discontinued in the foreseeable future;
- Amounts receivable or payable, and revenues, expenses and cash flows resulting from the arrangements;
- Extended payment terms of receivables, loans, and debt securities resulting from the arrangements, and any uncertainties as to realization, including repayment that is contingent upon the future operations or performance of any party;
- The amounts and key terms and conditions of purchase and sale agreements between the registrant and the counterparties in any such arrangements; and
- The amounts of any guarantees, lines of credit, standby letters of credit or commitments or take or pay contracts, throughput contracts or other similar types of arrangements, including tolling, capacity, or leasing arrangements, that could require the registrant to provide funding of any obligations under the arrangements, including guarantees of repayment of obligors of parties to the arrangements, make whole agreements, or value guarantees.

Although disclosure regarding similar arrangements can be aggregated, important distinctions in terms and effects should not be lost in that process. The relative significance to the registrant's financial position and results of the arrangements with unconsolidated, non-independent, limited purpose entities should be clear from the disclosures to the extent material. While legal opinions regarding ''true sale'' issues or other issues relating to whether a registrant has contingent, residual or other liability can play an important role in transactions involving such entities, they do not obviate the need for the registrant to consider whether disclosure is required. In addition, disclosure of these matters should be clear and individually tailored to describe the risks to the registrant, and should not consist merely of recitation of the transactions' legal terms or the relationships between the parties or similar boilerplate.

3. Disclosures About Contractual Obligations and Commercial Commitments

Accounting standards [15] require disclosure concerning a registrant's obligations and commitments to make future payments under contracts, such as debt and lease agreements, and under contingent commitments, such as debt guarantees. Disclosures responsive to these requirements usually are located in various parts of a registrant's filings. We believe investors would find it beneficial if aggregated information about contractual obligations and commercial commitments [16] were provided in a single location so that a total picture of obligations would be readily available. One aid to presenting the total picture of a registrant's liquidity and capital resources and the integral role of on- and off-balance sheet arrangements may be schedules of contractual obligations and commercial commitments as of the latest balance sheet date. Examples that could be adapted to the registrant's particular facts are presented below.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	4–5 years	After 5 years
Long-Term Debt					
Capital Lease Obligations					
Operating Leases					
Unconditional Purchase Obligations					
Other Long-Term Obligations					
Total Contractual Cash Obligations					

The preceding table could be accompanied by footnotes to describe provisions that create, increase or accelerate liabilities, or other pertinent data.

[15] *See, e.g.*, Statement of Financial Accounting Standards Nos. 5, *Accounting for Contingencies*, 13, *Accounting for Leases*, 47, *Disclosure of Long-Term Obligations*, and 129, *Disclosure of Information about Capital Structure*.''

[16] Commercial commitments are intended to include lines of credit, guarantees, and other potential cash outflows resulting from a contingent event that requires registrant performance pursuant to a funding commitment.

Other commercial commitments	Total amounts committed	Amount of commitment expiration per period			
		Less than 1 year	1–3 years	4–5 years	Over 5 years
Lines of Credit Standby Letters of Credit Guarantees Standby Repurchase Obligations Other Commercial Commitments Total Commercial Commitments					

B. Disclosures About Certain Trading Activities That Include Non-Exchange Traded Contracts Accounted for at Fair Value

The Commission is concerned that there may be a lack of transparency and clarity with respect to the disclosure of trading activities involving commodity contracts that are accounted for at fair value but for which a lack of market price quotations necessitates the use of fair value estimation techniques. These contracts may be indexed to measures of weather, commodities prices, or quoted prices of service capacity, such as energy storage and bandwidth capacity contracts. Companies engaged to a material extent in trading activities [17] involving these contracts should consider providing disclosures in MD&A that supplement those required in the financial statements by applicable accounting standards. Investor understanding and financial reporting transparency may depend on additional statistical and other information about these business activities and transactions. That information should include any contracts that are derivatives involving the same commodities that are part of those trading activities (for example, energy derivatives that are part of energy trading activities [18]).

The Commission reminds registrants that accounting standards require disclosures in financial statements of material energy trading and risk management activities.[19] Discussion in MD&A of material trends and uncertainties arising from those activities is also required. Information about these trading activities, contracts and modeling methodologies, assumptions, variables and inputs, along with explanations of the different outcomes reasonably likely under different circumstances or measurement methods, should be considered for inclusion in management's discussion of how the activities affect reported results for the latest annual period and subsequent interim period and how financial position is affected as of the latest balance sheet date. The Commission recently issued cautionary advice encouraging companies to include in their MD&A full explanations, in plain English, of their ''critical accounting policies,'' the judgments and uncertainties affecting the application of those policies, and the likelihood that materially different amounts would be reported under different conditions or using different assumptions.[20]

Consistent with that advice, registrants should consider the need to furnish information, quantified to the extent practicable, that does the following:

- Disaggregates realized and unrealized changes in fair value;
- Identifies changes in fair value attributable to changes in valuation techniques;
- Disaggregates estimated fair values at the latest balance sheet date based on whether fair values are determined directly from quoted market prices or are estimated; and
- Indicates the maturities of contracts at the latest balance sheet date (*e.g.,* within one year, within years one through three, within years four and five, and after five years).

An example of this disclosure in the form of a schedule is provided below.

Fair value of contracts outstanding at the beginning of the period—xxxxxx
Contracts realized or otherwise settled during the period—xxxxxx
Fair value of new contracts when entered into during the period—xxxxxx
Changes in fair values attributable to changes in valuation techniques and assumptions—xxxxxx
Other changes in fair values—xxxxxx
Fair value of contracts outstanding at the end of the period—xxxxxx

Source of fair value	Fair value of contracts at period-end				
	Maturity less than 1 year	Maturity 1–3 years	Maturity 4–5 years	Maturity in excess of 5 years	Total fair value
Prices actively quoted. Prices provided by other external sources. Prices based on models and other valuation methods.					

[17] Companies that may find the suggested disclosures particularly valuable are those engaged to a material extent in (a) energy trading activities as defined in Emerging Issues Task Force Issue 98–10 (EITF 98–10), *Accounting for Contracts Involved in Energy Trading and Risk Management Activities*, (b) weather trading activities as defined in Emerging Issues Task Force Issue No. 99–2, *Accounting for Weather Derivatives*, or (c) non-exchange traded commodity trading contracts that are marked to fair value through earnings and are part of analogous trading activities (for example, nonderivative trading contracts on pulp, bandwidth, newsprint, and so on).

[18] Emerging Issues Task Force No. 98–10 (September 23, 1999) identifies factors that distinguish energy trading activities from other activities that involve the purchase or sale of energy.

[19] Emerging Issues Task Force Issue 98–10 (September 23, 1999), *Accounting for Contracts Involved in Energy Trading and Risk Management Activities.*

[20] Financial Reporting Release No. 60, *Cautionary Advice Regarding Disclosure About Critical Accounting Policies (December 12, 2001) 66 FR 65013.*

In addition, issuers should consider the need to disclose the fair value of net claims against counterparties that are reported as assets at the most recent balance sheet date, based on the credit quality of the contract counterparty (*e.g.,* investment grade; noninvestment grade; and no external ratings).

Registrants should also consider their disclosure obligations regarding risk management in connection with the trading activities discussed above. Registrants should consider whether they should provide fuller disclosure regarding the management of risks related to, for example, changes in credit quality or market fluctuations of underlying, linked or indexed assets or liabilities, especially where such assets are illiquid or susceptible to material uncertainties in valuation.

C. Disclosures About Effects of Transactions With Related and Certain Other Parties

Statement of Financial Accounting Standards No. 57 (FAS 57), *Related Party Disclosures,* sets forth the requirements under GAAP concerning transactions with related parties.[21] As noted in that standard, ''[t]ransactions involving related parties cannot be presumed to be carried out on an arm's length basis, as the requisite conditions of competitive, free-market dealings may not exist.'' [22] Accordingly, where related party transactions are material, MD&A should include discussion of those transactions to the extent necessary for an understanding of the company's current and prospective financial position and operating results. In addition, Item 404 of Regulation S–K and Item 404 of Regulation S–B require disclosure of certain relationships and transactions with related parties.[23]

Registrants should consider whether investors would better understand financial statements in many circumstances if MD&A included descriptions of all material transactions involving related persons or entities, with clear discussion of arrangements that may involve transaction terms or other aspects that differ from those which would likely be negotiated with clearly independent parties.[24] Registrants should consider describing the elements of the transactions that are necessary for an understanding of the transactions' business purpose and economic substance, their effects on the financial statements, and the special risks or contingencies arising from these transactions. Discussion of the following may be necessary:

- The business purpose of the arrangement;
- Identification of the related parties transacting business with the registrant;
- How transaction prices were determined by the parties;
- If disclosures represent that transactions have been evaluated for fairness, a description of how the evaluation was made; and
- Any ongoing contractual or other commitments as a result of the arrangement.

Registrants should also consider the need for disclosure about parties that fall outside the definition of ''related parties,'' but with whom the registrant or its related parties have a relationship that enables the parties to negotiate terms of material transactions that may not be available from other, more clearly independent, parties on an arm's-length basis. For example, an entity may be established and operated by individuals that were former senior management of, or have some other current or former relationship with, a registrant. The purpose of the entity may be to own assets used by the registrant or provide financing or services to the registrant. Although former management or persons with other relationships may not meet the definition of a related party pursuant to FAS 57, the former management positions may result in negotiation of terms that are more or less favorable than those available on an arm's-length basis from clearly independent third parties that are material to the registrant's financial position or results of operations. In some cases, investors may be unable to understand the registrant's reported results of operations without a clear explanation of these arrangements and relationships.

Dated: January 22, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1899 Filed 1–24–02; 8:45 am]

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[21] Statement of Financial Accounting Standard No. 57, *Related Party Disclosures* (March 1982). See also 17 CFR 210.4–08(k)(1), which states, ''Related party transactions should be identified and the amounts stated on the face of the balance sheet, income statement, or statement of cash flows.''

[22] *Id.,* paragraph 3.

[23] 17 CFR 229.404 and 17 CFR 228.404, which require, with certain exceptions, disclosure of transactions or series of transactions in which the company was, or is to be, a party, the amount involved exceeds $60,000, and a director, executive officer, nominee for election as director, security holder of more than five percent of any class of the company's voting securities, or any member of the immediate family of any of such persons, had or will have a direct or indirect material interest. Required disclosures include the name of the person and the person's relationship with the registrant, the nature of the person's interest, the amount of the transaction(s), and, where practicable, the amount of the person's interest in the transaction(s). In addition, section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1, requires that each audit of financial statements pursuant to that Act include procedures designed to identify related party transactions that are material to the financial statements or that require disclosure. Statement on Auditing Standards No. 45, *Related Parties,* published by the Auditing Standards Board and effective for periods ended after September 30, 1983, provides guidance on auditing related party transactions.

[24] Audit committees may wish to include a review of such relationships and transactions in their discussions with management and auditors, including a review of their terms and internal corporate and Board actions involving the transactions, prior to their recommendation that the financial statements be included in the company's Form 10–K. *See generally,* Regulation S–K Item 306, 17 CFR 229.306, and Regulation S–B Item 306, 17 CFR 228.306.

SECURITIES AND EXCHANGE COMMISSION

Tel-One, Inc., File No. 500–1; Order of Suspension of Trading

January 23, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tel-One, Inc. (''Tel-One''), because of questions regarding the accuracy of assertions by Tel-One, and by others, in documents sent to and statements made to market makers of the stock of Tel-One, other broker-dealers, and investors concerning, among other things: (1) The company's claims about its prospects in the video teleconferencing industry; (2) the future price of Tel-One's stock; and (3) the involvement of persons in control of the operations and management of the company in efforts to tout, and inflate artificially the price of, Tel-One's stock.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, January 23, 2002, through 11:59 p.m. EST, on February 5, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–1986 Filed 1–23–02; 12:50 pm]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45312; File No. SR–Amex–2001–42]

Self-Regulatory Organizations; Order Granting Accelerated Approval To Proposed Rule Change by American Stock Exchange LLC To Increase Position And Exercise Limits For Nasdaq-100 Index Tracking Stock Options

January 18, 2002.

I. Introduction

On June 27, 2001, the American Stock Exchange LLC (the ''Amex'' or ''Exchnge'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to position and exercise limits for the Nasdaq-100 Index Trading Stock (''QQQ'') options. On December 26, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on January 10, 2002.[3] To date, no comment letters have been received. This order approves the proposal, as amended, on an accelerated basis.

II. Description of Proposal

The Exchange is proposing to increase position and exercise limits for QQQ options from 75,000 contracts to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 906. Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. Finally, the Exchange will add a commentary to reiterate its authority under paragraph (d)(2)(K) of Rule 462 to impose a higher margin requirement upon a member or member organization when the Exchange determines that a higher requirement is warranted.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[4] in that it is designed 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in liquid options classes.[5]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[6]

The Commission has carefully considered the Amex's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange, and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable depth and liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the Amex notes that the average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The Amex also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[7] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45236 (January 4, 2002), 67 FR 1378.

[4] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[5] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[6] *Id.*

[7] The Amex has noted that the QQQ is designed to closely track the performance of the Nasdaq-100 Index. According to the Amex, as of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion. In its filing, the Amex stated that the Commission should apply an analysis similar to what was used in connection with broad-based index options. The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalization's of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contrast, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

or capital that a member must maintain for a large position held by itself or by its customer. Further, the Amex, under its rules, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements are sufficient to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under Amex Rule 906(b), each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. This information should help Amex to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged position, as provided under its rules. In this regard, the Commission believes the Amex's adoption of Commentary .11 under Amex Rule 906 is appropriate and will reiterate its authority under Amex Rule 462 to require additional margin for under-hedged positions.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current Amex rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[9] to approve the proposal on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–AMEX–2001–42), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1903 Filed 1–24–02; 8:45 am]

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[8] Of course, the Commission expects that Amex will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ should any unanticipated adverse market effects develop due to the increased limits.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45305;File No. SR–Amex–2001–108]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Biotech-Pharmaceutical Notes

January 17, 2002.

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 December 20, 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 and II 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 and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade notes, the return on which is based upon the Biotech-Pharmaceutical Index. The Biotech-Pharmaceutical Index is based upon the blended performance of the Amex Biotechnology index (the ''Biotech Index'') and the Amex Pharmaceutical Index (the ''Pharmaceutical Index'') (each, an ''Underlying Index'' and together, the ''Underlying Indices''), discussed more fully below. Initially, the Underlying Indices will each have a weighting of 50% of the Biotech-Pharmaceutical Index, and the Biotech-Pharmaceutical Index will be rebalanced annually to reset the weighting of the Underlying Indices to 50% each.

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 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 III below. The Amex has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Biotech-Pharmaceutical Index (the ''Notes''). The Biotech-Pharmaceutical Index will be determined, calculated, and maintained solely by the Amex.[4]

The Notes will conform to the initial listing guidelines under Section 107[5] and continued listing guidelines under Sections 1001–1003[6] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. (''Merrill Lynch'') that provide for single payment at maturity. The Notes will have a term of not less than one nor more than ten years and will entitle the owner at maturity to receive an amount based upon the percentage change between the ''Starting Index Value'' and the ''Ending Index Value'' (the ''Redemption Amount''). The ''Starting Index Value'' is the value of the Biotech-Pharmaceutical Index on the date on which the issuer prices the Notes issue for the initial offering to the public. The ''Ending Index Value'' is the value of the Biotech-Pharmaceutical Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During a two-week period in the designated month each year, the investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Biotech-Pharmaceutical Index at such repurchase date. The Notes are not callable by the issuer.

The Notes are cash-settled in U.S. dollars. The holder of a Note does not have any right to receive any of the securities comprising the Underlying Indices or any other ownership right or interest in these securities. The Notes are designed for investors who want to participate or gain exposure to the U.S. biotechnology and pharmaceutical industries and who are willing to forgo market interest payments on the Notes during such term.

The Biotech-Pharmaceutical Index is based upon the combined performance of the Biotech Index and the Pharmaceutical Index. The Biotech Index is designed to measure the performance of a cross section of companies in the biotechnology industry that are primarily involved in the use of biological processes to develop products or provide services. The Biotech Index is an equal-dollar weighted index, designed to ensure that each of its component securities is represented in approximate equal dollar value. Equal-dollar weighting was established by designating the number of shares of each component security that represented approximately $10,000 in market value, based on closing prices on October 18, 1991.[7] The aggregate value of the stocks was reduced by a divisor[8] to establish a Biotech Index benchmark value of 200.00. To ensure that each component stock continues to represent approximate equal market value, adjustments are made quarterly after the close of trading on the third Friday of January, April, July and October. As of December 13, 2001, the market capitalization of the securities included in the Biotech Index ranged from a high of $59.3 billion to a low of $1.7 million. The average daily trading volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 8.9 million shares to a low of .531 million shares.[9] The Commission has previously approved the listing and trading of options on the Biotech Index.[10]

The Pharmaceutical Index is designed to represent a cross section of widely held, highly capitalized companies involved in various phases of the pharmaceutical industry. The Pharmaceutical Index is a market-value (capitalization) weighted index reflecting the total market value of fifteen stocks.[11] The Pharmaceutical Index was developed with a base value of 200.00 as of July 31, 1999. A 2-for-1 split of the Pharmaceutical Index occurred on March 23, 1999. The securities included in the Pharmaceutical Index are listed on the Amex, New York Stock Exchange, Inc. or traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation System (''Nasdaq'') and reported National Market System securities. As of December 13, 2001, the market capitalization of the securities included in the Pharmaceutical Index ranged from a high of $247.7 billion to a low of $3.9 billion. The average daily trading

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Subject to the criteria described in the prospectus supplement regarding the construction of the Biotech-Pharmaceutical Index, the Exchange has sole discretion regarding changes to the Biotech-Pharmaceutical Index.

[5] The initial listing standards for Industrial 15 Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[6] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Industrial 15 Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[7] For example, a stock that closed at $20 per share would be represented in the Biotech Index by 500 shares for a total market value of $10,000.

[8] The divisor for the Biotech Index was initially set to 750.1506 on October 18, 1991.

[9] As of December 13, 2001, the Biotech Index was composed of shares of the following companies: Affymetrix, Inc. (AFFX); Amgen Inc. (AMGN); Applera Corporation (CRA); Biogen, Inc. (BGEN); Cephalon, Inc. (CEPH); Chiron Corporation (CHIR); COR Therapeutics, Inc. (CORR); Genentech Inc. (DNA); Genzyme Corporation (GENZ); Gilead Sciences Inc. (GILD); Human Genome Sciences, Inc. (HGSI); IDEC Pharmaceuticals Corporation (IDPH); Immunex Corporation (IMNX); Medimmune Inc. (MEDI); Millennium Pharmaceuticals, Inc. (MLNM); Protein Design Labs, Inc. (PDLI) and Vertex Pharmaceuticals Incorporated (VRTX).

[10] *See* Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844 (October 5, 1992) (approving the listing and trading of long-term options (''LEAPS'') based on the Biotech Index and a reduced value Biotech Index) (''Biotech LEAPS Order'').

[11] As of December 13, 2001, the Pharmaceutical Index was composed of shares of the following companies: Abbott Laboratories (ABT); American Home Products Corporation (AHP); Amgen, Inc. (AMGN); AstraZeneca PLC (AZN); Bristol-Myers Squibb Company (BMY); Forest Laboratories Inc. (FRX); Glaxo Smith Kline Plc (GSK); IVAX Corporation (IVX); Johnson & Johnson (JNJ); King Pharmaceuticals, Inc. (KG); Lilly (Eli) & Company (LLY); Merck & Company, Inc. (MRK); Pfizer, Inc. (PFE); Pharmacia Corporation (PHA) and Schering-Plough Corporation (SGP).

volume for these same securities for the last six (6) months, as of the same date, ranged from a high of 10.6 million shares to a low of .458 million shares. The Commission has previously approved the listing and trading of options on the Pharmaceutical Index.[12]

At the outset, the Underlying Indices will each represent 50% of the Starting Index Value. Specifically, both the Biotech Index and Pharmaceutical Index will be assigned a multiplier on the date of issuance so that each Underlying Index represents an equal percentage of the value of the Biotech-Pharmaceutical Index on the date the Notes are priced for initial sale to the public. The multiplier indicates the percentage of the Underlying Index, given its current value, to be included in the calculation of the Biotech-Pharmaceutical Index. The Biotech-Pharmaceutical Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day the Notes are priced for initial sale to the public.

The value of the Biotech-Pharmaceutical Index at any time will equal: (1) The sum of the values of each Underlying Index multiplied by their respective multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.[13] Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by an issuer represented in the Underlying Indices, multiplied by the number of shares of stock in the respective Underlying Index on the ex-dividend date, divided by the index divisor applicable to such Underlying Index, multiplied by the multiplier applicable to such Underlying Index on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each respective Underlying Index in the Biotech-Pharmaceutical Index. Thus, the value of the dividends is allocated to each respective Underlying Index. The share multiplier of each Underlying Index will be adjusted to reflect a reinvestment of such current quarter dividends into each Underlying Index based on the closing market price of the Underlying Index on the last day in the immediate preceding calendar quarter.

As of the close of business on each anniversary date (anniversary of the day the Biotech-Pharmaceutical Index was initially calculated and set to 100) the Biotech-Pharmaceutical Index will be rebalanced so that each Underlying Index will represent approximately 50% of the value of the Biotech-Pharmaceutical Index. To effectuate this, the multiplier for each Underlying Index will be determined by the Amex and will indicate the percentage for each index, given the closing value of each index on the anniversary date, so that each index represents an equal percentage of the Biotech-Pharmaceutical Index value at the close of business on such anniversary date. For example, if the Biotech-Pharmaceutical Index value at the close of business on an anniversary date was 200, then each of the Underlying Indices would be allocated a portion of the value of the Biotech-Pharmaceutical Index equal to 100, and if the closing market price of one Underlying Index on the anniversary date was 160, the applicable share multiplier would be reset to 0.625. Conversely, if the Biotech-Pharmaceutical Index value was 80, then each of the Underlying Indices would be allocated a portion of the value of the Biotech-Pharmaceutical Index equal to 40 and if the closing market price of one Underlying Index on the anniversary date was 20, the applicable share multiplier would be reset to 2.

The Exchange will calculate the Biotech-Pharmaceutical Index and, similar to other stock index values published by the Exchange, the value of the Biotech-Pharmaceutical Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to equity indices, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[14] Second, the Notes will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. Furthermore, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.[16]

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[17] in general and furthers the objectives of Section 6(b)(5)[18] 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.

[12] *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221 (June 24, 1992) (approving the listing and trading of long-term options (''LEAPS'') based on the Pharmaceutical Index and a reduced value Pharmaceutical Index) (''Pharmaceutical LEAPS Order'').

[13] At the end of each day, the Biotech-Pharmaceutical Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (*i.e.,* 1.5%/365 days = 0.0041% daily). This reduction to the value of the Biotech-Pharmaceutical Index will reduce the total return to investors upon the exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

[14] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or accounted accepted.

[15] *See* Amex Rule 462 and Section 107B of the Company Guide.

[16] Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on January 8, 2002.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2001–108 and should be submitted by February 15, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[19] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[20] Accordingly, the Commission finds that the listing and trading of the Notes based on the Biotech-Pharmaceutical Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[21]

As described more fully above, at maturity, or upon redemption, the holder of a Note will receive an amount based upon the percentage change in the value of the Biotech-Pharmaceutical Index, less the index adjustment factor. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate in the U.S. biotechnology and pharmaceutical industries. As described by the Amex, the value of the dividends is allocated to each respective Underlying Index.

The Notes are not leveraged, non-principal protected instruments. The Notes are debt instruments whose price will still be derived and based upon the value of the Biotech-Pharmaceutical Index. The Notes do not have a minimum principal amount that will be repaid at maturity and the payments on the Notes prior to or at maturity may be less than the original issue price of the Notes.[22] Thus, if the Biotech-Pharmaceutical Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced, based on the performance of the Underlying Indices, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Notes. The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Commission notes that the Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have at least $4 million in market value.[23] In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Indices comprising the Biotech-Pharmaceutical Index, will be publicly available.[24]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary

[19] *Id.*

[20] *See* Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001), (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000), (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities (''MITTS'')) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[21] 15 U.S.C. 78F(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] The Commission recognizes that during a two-week period in the designated month investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Biotech-Pharmaceutical Index at such repurchase date.

[23] *See* Company Guide Section 107A.

[24] The companies that comprise the Biotech-Pharmaceutical Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[25] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Indices of the Biotech-Pharmaceutical Index or raise manipulative concerns. As discussed more fully above, the Biotech-Pharmaceutical Index is based upon the return of the Underlying Indices. Each of the Underlying Indices will have a weighting of 50% of the weight of the Biotech-Pharmaceutical Index, initially, and immediately following each annual rebalancing of the Biotech-Pharmaceutical Index. In addition, the Biotech Index's equal-dollar weighting and the Pharmaceutical Index's market-value (capitalization) weighting methodologies are commonly applied index calculation methods. Moreover, Amex's listing and trading of other products on both of the Underlying Indices have been previously approved by the Commission.[26] In approving the listing and trading of these other products on the Underlying Indices, the Commission noted in its approval orders that the Amex has developed several composition and maintenance criteria for the Underlying Indices that the Commission believes will minimize the potential for manipulation of the Underlying Indices.[27] In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Biotech-Pharmaceutical Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Biotech-Pharmaceutical Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[28] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[29] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–2001–108), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

J. Lynn Taylor,

Assistant Secretary.

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[25] *See, e.g.,* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[26] *See* Biotech LEAPS Order, *supra* note 10; and Pharmaceutical LEAPS Order, *supra* note 12.

[27] Among other things, the Amex would be required to submit a rule filing with the Commission pursuant to Section 19(b) of the Act prior to expanding either of the Underlying Indices to greater than twenty stocks or reducing either of the Underlying Indices to less than ten stock. The Commission finds that this requirement will protect against the design of the Underlying Indices from being materially changed without Commission review and approval, and that it is unlikely that attempted manipulations of prices of the issues in the Underlying Indices would affect significantly the Underlying Indices' value. *See* Biotech LEAPS Order, *supra* note 10; and Pharmaceutical LEAPS Order, *supra* note 12.

[28] *See supra* note 20.

[29] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45309; File No. SR–CBOE–2001–44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Increasing Position and Exercise Limits on QQQ Options

January 18, 2002.

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 August 9, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On December 19, 2001, the CBOE filed Amendment No. 1 to the proposed rule change,[3] and on January 14, 2002, the CBOE filed Amendment No. 2 to the proposed rule change.[4]

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock℠ (''QQQ'') options. The Exchange represents that its reporting requirements for QQQ options will serve to identify options holdings and information concerning the hedging of these positions.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

[4] Amendment No. 2 removes language added to Rule 4.13(b) by the proposed rule change that increased the reporting requirement level specified in Rule 4.13 for QQQ options.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Commission has stated that position and exercise limits ''must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.'' [5]

The Exchange represents that the QQQs are by far the most actively-traded options product. Average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to April 30, 2001 were 70.5 million shares and 189,046 contracts, respectively. The current standard position and exercise limits for QQQ options were recently adjusted from 75,000 contracts to 150,000 contracts, due to a 2-for-1 split in the value of the underlying QQQ. In January 2002, however, the current limits are scheduled to revert to 75,000 contracts.

Based on the large trading volume in both the underlying QQQ and QQQ options, the Exchange believes that position and exercise limits of the QQQ option are too restrictive and may adversely affect the Exchange's ability to provide liquidity in this popular product. In addition, the CBOE believes that current base limits for the QQQ options may not be adequate in many instances for the hedging needs of certain institutions which engage in trading strategies differing from those covered under the equity hedge exemption policy in Interpretation .04 to Exchange Rule 4.11 (*e.g.,* delta hedges; OTC vs. listed hedges).

To accommodate the need for continued liquidity in this product, the Exchange proposes to increase position and exercise limits for QQQ options to 300,000 contracts. The Exchange will require both that member organizations report all QQQ options positions exceeding 200 contracts pursuant to existing Exchange Rule 4.13(a), and that they report information on the hedging of all positions in excess of 10,000 contracts on the same side of the market, pursuant to an amended Exchange Rule 4.13(b). The Exchange believes that increasing position limits for this product will lead to a more liquid and competitive market environment for QQQ options that will benefit customers interested in the product.

Reporting Requirements

Consistent with Exchange Rule 4.13(b), the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. Once the 10,000 contract reporting threshold is attained, member or member organizations must similarly report each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options.[6] Lastly, it is important to note that the 10,000 contract reporting requirement is above and beyond what is currently required in the OTC market. NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [7] in general and furthers the objectives of Section 6(b)(5) [8] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 –0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the office of the CBOE. All submissions should refer File No. SR–CBOE–2001–44 and should be submitted by February 15, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of section 6(b)(5) of the Act [9] in that it is

[5] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[6] *See* Exchange Rule 4.13(a).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency,

designed to promote just and equitable principles of trades, 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[10]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of the position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[11]

The Commission has carefully considered the CBOE's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specially, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable liquidity of both the underlying cash and options market for QQQ options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the CBOE notes that the average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to April 30, 2001 were 70.5 million shares and 189,046 contracts, respectively. CBOE has also noted that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[12] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margins and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the CBOE, under CBOE Rules 4.13 and 12.10, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange under CBOE Rule 4.13, which will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information, will help protect against potential manipulation. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. This information should help the CBOE to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.[13]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current CBOE rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Commission believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limits to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[14] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2001–

competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[10] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[11] *Id.*

[12] As noted by the CBOE, the QQQ is designed to closely track the performance of the Nasdaq-100 Index. As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

[13] Of course, the Commission expects that CBOE will take prompt action, including timely communicational with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

44) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1906 Filed 1–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45311; File No. SR–ISE–2001–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by International Securities Exchange LLC To Increase Position and Exercise Limits for Nasdaq-100 Index Tracking Stock Options

January 18, 2002.

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 October 8, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock (''QQQ'') options to 300,000 contracts on the same side of the market. The text of the proposed rule change is available at the Office of the Secretary, ISE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE 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 III below. The ISE 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 is proposing to increase position and exercise limits for options on the Nasdaq 100 Index Tracking Stock (''QQQ options'') up to 300,000 contracts on the same side of the market. As discussed below, the Exchange believes that the current limits for non-flex equity options are no longer appropriate for QQQ options given the liquidity of the options, the underlying security, and the securities that comprise the Nasdaq-100 Index.

QQQ options are popular hedging instruments in today's market and by far the most active listed option product. The average daily trading volume for QQQ options was 243,763 contracts during the first quarter of 2001, 330,786 contracts during the second quarter, and 316,425 contracts during the third quarter. As of October 2001, the average daily trading volume of QQQ options is 298,858 contracts.[4]

One of the primary purposes for imposing position and exercise limits is to minimize the opportunity for mini-manipulation, which is an attempt to influence the price movement of an underlying stock to benefit a previously established options position.[5] The Nasdaq 100 Index Tracking Stock represents ownership in a long-term unit investment trust that holds a portfolio of the equity securities that track and Nasdaq-100 Index. Thus, while QQQ options are not technically index options (for which the Commission has previously approved the elimination of position limits for options on certain enormously capitalized indexes),[6] the ISE believes that they are economically similar and are used by investors in the same manner and with the same investment objectives as index options.[7] The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on Nasdaq, each of which has an average daily trading volume of at least 100,000 shares and a market capitalization of at least $500 million.[8] The Exchange believes that it would be extremely difficult for an investor to influence the price of the Nasdaq-100 Index in order to benefit a previously established options position.

The reporting requirements in ISE Rule 415(b) will continue to apply to QQQ options.[9] Rule 415(b) requires Electronic Access Members to report end of day positions in all non-FLEX equity options in excess of 10,000 contracts on the same side of the market. The report must specify whether such position is hedged and provide documentation as to how such position is hedged, including a description of any collateral used to carry the position. This report is required at the time the account exceeds the 10,000 contract threshold and thereafter, for customer accounts, when

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

[4] The ISE notes that in comparison, the Commission approved the total elimination of position limits for options traded on the SPX, OEX and DJX, all of which are broadbased indexes traded solely on the Chicago Board of Options Exchange (''CBOE''). Year to date the average daily trading volume of options on these three indexes is 92,814 contracts, 43,544 contracts, and 35,365 contracts respectively. Thus, daily average volume in QQQ options is more than 3.2 times that of the SPX and nearly 8.5 times that of the DJX. *See* Securities Exchange Act Release No. 41011 (Feb. 1, 1999) (Order approving elimination of position and exercise limits for XMI and XII options on a two-year pilot basis); and Securities Exchange Act Release No. 40969 (Feb. 1, 1999) (Order approving the elimination of position and exercise limits for SPX, OEX, DJX on a two-year pilot basis).

[5] *See* Securities Exchange Act Release No. 39489 (Dec. 24, 1997), 63 FR 276 (Jan. 5, 1998)

[6] *See supra* note 4.

[7] The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalizations of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contrast, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23,96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

[8] According to information available on Bloomberg, L.P., an information company, the average daily trading volume for the Nasdaq 100 Index Tracking Stock was 66.8 million shares during the first quarter of this year, 69.8 million shares during second quarter, and 64.6 million during the third quarter.

[9] The general reporting requirement contained in ISE Rule 415(a) for customer accounts that maintain a position in excess of 200 contracts also will remain applicable for QQQ options.

the position increases by 2,500 contracts and for proprietary accounts, when the position increases by 5,000. Exchange market-makers are not required to report under ISE Rule 415(b) as market-makers account positions can be accessed through the Exchange's market surveillance systems.

Finally, the Exchange proposes to explicitly state in Supplementary Material to ISE Rule 412 that it may use its authority under ISE Rule 1204(b) to impose additional margin requirements upon an account that maintains under-hedged options positions.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [10] in general and furthers the objectives of section 6(b)(5) [11] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer File No. SR–ISE–2001–26 and should be submitted by February 15, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of section 6(b)(5) of the Act [12] in that it is designed 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[13]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[14]

The Commission has carefully considered the ISE's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying product that a lower position limit may protect against. In this regard, the ISE notes that the average daily trading volume for QQQ options was 243,763 contracts during the third quarter of 2001, 330,786 contracts during the second quarter, and 316,425 contracts during the third quarter. The ISE also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[15] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[13] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[14] *Id.*

[15] As noted by the ISE, the QQQ is designed to closely track the performance of the Nasdaq-100 Index. As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. In this regard, the Commission believes the ISE's adoption of Supplementary Material to ISE Rule 412, to state that the ISE has the authority to impose additional margin on options positions if it determines that this is warranted, is appropriate.

Finally, the Commission believes that the reporting requirements imposed by the Exchange under ISE Rule 415(b), which will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information, will help protect against potential manipulation. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the options position is hedged, and if so, a description of the hedge. The information should help the ISE to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules. The Commission believes that these financial requirements are sufficient to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements coupled with the special trading characteristics of the QQQ options and the underlying QQQs noted above, warrant approval of the Exchange's proposal.[16]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current Exchange rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Commission notes that limits of 75,000 contracts for the QQQ options could reduce depth and liquidity in the QQQ market. The Commission believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[17] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–ISE–2001–26) is hereby approved, as amended, on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1907 Filed 1–24–02; 8:45 am]

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[16] Of course, the Commission expects that ISE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45299; File No. SR–MBSCC–2001–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Implementing a Real-Time Trade Matching Service

January 17, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 19, 2001, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') and on September 26, 2001, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will implement a real-time trade matching service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In furtherance of MBSCC's mission to reduce the costs and risks associated with trading in the mortgage-backed securities market, MBSCC has enhanced its services to enable its participants to submit executed trade terms and to receive comparison results from MBSCC in a more timely manner. The cornerstone of this objective is the implementation of the Real-Time Trade Matching (''RTTM'') service that will replace MBSCC's current twice-daily match process with respect to trade input information. MBSCC anticipates that the RTTM service will provide more certainty, will reduce execution/market risk, and will eliminate the redundancy between the verbal checkout process (which is described below) and the current MBSCC matching process.[3]

MBSCC's objective in implementing the RTTM service is to match all trade input in real-time within minutes of trade execution while providing participants with the greatest flexibility and least amount of disruption in the

[2] The Commission has modified parts of these statements.

[3] One of the main objectives of the RTTM service is to significantly reduce the risks associated with a prolonged period of time between trade execution and achievement of legal and binding confirmation. The elapsed time between trade execution and verbal checkout, followed by a legal and binding confirmation, is a known and serious risk to the ultimate settlement of the trade for all trading organizations. Reducing the elapsed time between trade execution and achievement of a legal and binding confirmation increases certainty and reduces risk.

migration towards this goal. MBSCC will retire its batch trade matching process with respect to trade input information upon implementation of the RTTM service. All trade activity for all participants, regardless of the form of trade input, will be matched solely by the RTTM service upon its implementation. Therefore, participants that increase the frequency of submission and reconciliation throughout the business day will be able to realize the benefits of the RTTM service.

MBSCC's Current Matching Process

Currently, MBSCC participants submit details of executed trades daily to MBSCC by means of terminal or batch submissions. While participants may submit trade input to MBSCC anytime during published business hours, MBSCC performs its matching process of participant submitted data twice per day: at 10:30 a.m. (''AM Pass'') and at 11:30 p.m. (''PM Pass'').

Output reports/files detailing the results of the matching process are available to participants at 11:30 a.m. for the AM Pass and at 4:00 a.m., for the PM Pass. The primary outputs are the ''Purchase and Sale Report'' listing submitted trades that successfully compared and the ''Transaction Summary Report'' listing, among other things, submitted trades that did not compare. The Purchase and Sale Report serves as the sole and binding confirmation of trades and provides data for Rule 10b–10 compliance purposes as well.

Given that the majority of trades are submitted after the AM Pass, the timing limitations of a twice-daily matching/reporting process mean that participants generally are notified, at the earliest, that a trade has achieved ''binding confirmation'' status during the morning following submission to MBSCC. To overcome this time delay, participants engage in a process known as ''verbal checkout.'' Shortly after execution, participants contact each other and verbally confirm executed trade details. The verbal checkout process is important to participants to ascertain, with some degree of certainty, their intraday trading positions. While generally effective, the verbal checkout process is cumbersome, error-prone, and lacks the ''binding'' status afforded by the two-sided matching and confirmation through MBSCC.

The RTTM Service and the Requisite Rules Changes

In order to provide more certainty, to reduce execution/market risk, and to eliminate the redundancy between the verbal checkout process and MBSCC's trade input matching process, MBSCC will offer the RTTM service. As stated above, MBSCC currently processes transaction information in two batch processing passes. One segment of that processing, the matching of trade input information, will be processed by the RTTM service. The other segments of the daily processing, including the matching of clearance information, will continue to be done in either one or both of the two existing batch processing passes.

The RTTM service will provide trade input matching for dealer-to-dealer trades and inter-dealer broker trades. The RTTM service will support all of the trade types currently supported by MBSCC (settlement balance order destined, trade-for-trade, comparison only, and option) as well as the various trade functions used by participants, such as the ''Don't Know'' or ''DK'' function.

Participants will be able to submit transaction information for processing through the RTTM service using the batch file submission method that is used today, which is called ''File Transmission Service.'' In addition, participants will also be able to use a batch file transmission method that employs SWIFT formats, the RTTM terminal service, and interactive messaging. Regardless of the input method, MBSCC will make available to participants real-time updates on all transactions entered into the system.

The following rule changes are necessary to accommodate the introduction of the RTTM service:

i. *General provisions on the RTTM service:* MBSCC is proposing to add two provisions to its rules to provide generally for the RTTM service. One of these provisions (new Section 1 or Rule 3 of Article II) will provide taht MBSCC's comparison of trade input will occur in real time, and the other (new Section 1 of Rule 4 of Article II) will distinguish the RTTM processing from the current processing passes.

ii. *New reports provided by the RTTM service:* MBSCC's RTTM processing will produce output via the RTTM terminal service as well as via interactive messages. MBSCC is proposing to add a definition for the term ''Report'' to encompass any type of output in any form that is provided by MBSCC to its participants. As a result specifically of RTTM processing, there will be ''Reports'' that will indicate the transactions whose trade input has compared (''RTTM Compare Reports''),[4] and ''Reports'' that will indicate the transactions whose trade input has not compared (''RTTM Uncompare Reports'').

iii. *Changes to existing reports:* MBSCC will continue to provide the reports that are created as a result of its current two processing passes, with some modifications in one case. The Purchase and Sale Report details the results of the current batch trade processing, which includes the matching of trade input submissions, as well as the matching of clearance information. No changes are proposed to the information provided by the Purchase and Sale Report. Like the Purchase and Sale Report, the Transaction Summary Report is also provided as a result of the current twice-daily processing passes. Upon implementation of RTTM processing, the Transaction Summary Report will no longer provide details of unmatched trade terms. Unmatched trade terms will be available to participants via the RTTM Uncompare Reports (which as stated above, will be in the form of output provided by MBSCC via the RTTM terminal service as well as via interactive messages). MBSCC is proposing to modify its rules to delete references to the Transmission Summary Report as notification of unmatched trades and to provide for this notification to occur by means of the RTTM Uncompare Reports.

iv. *Sole and binding confirmation of trades:* The rules currently provide that the Purchase and Sale Report is the sole and binding confirmation of the trade. In addition, the Purchase and Sale Report currently fulfills Rule 10b–10 requirements for generation of trade confirms. As stated above, upon implementation of RTTM, the Purchase and Sale Report will continue to be purchased twice daily displaying matched trades. Participants will, however, have received notice of trade input matching prior to the production of the Purchase and Sale report by means of the RTTM Compare Reports. To enable participants to rely upon the results of the RTTM processing, MBSCC is proposing to amend its rules to confer sole and binding trade confirmation status on the RTTM Compare Reports. Since the Purchase and Sale Report covers the matching of clearing information (which is not covered by the RTTM processing and thus would not be reported in the RTTM Compare Reports), it will remain the sole and binding confirmation with respect to that information. The Purchase and Sale Report will remain the Rule 10b–10 complaint confirmation.

[4] These reports will also indicate cancellations of previously compared trades.

v. *Trade input submission by inter-dealer brokers (''IDBs''):* Certain RTTM trade input formats require that an IDB submit two separate transactions linked together by a common reference number per trade. Under the current trade submission format, IDBs submit two transactions, one identifying one dealer (buyer) and one identifying the other dealer (seller), on give-up trades. The rule on IDB trade input (current Section 1 of Rule 3of Article II) speaks generally in terms of trade input and does not specify the number of submissions required. The only rule change that is proposed in this respect is a reference to MBSCC's procedures, which will describe in detail the trade input submission requirements.

vi. *Retirement of maximum match mode:* MBSCC's rules provide that each dealer must select a match mode to govern the comparison of each such dealer's MBSCC-eligible transactions involving an IDB. The rules currently provide for three match modes: theexact match mode, the net position match mode, and the maximum match mode.[5] Upon implementation of the RTTM service, only the exact and net position match modes will be available. MBSCC is proposing to retire the maximum match mode due to lack of participant demand for this feature. The proposed rule changes delete all references to the maximum match mode.

vii. *Review of reports by participants:* MBSCC's rules currently contain a provision that requires participants and limited purpose participants to review the reports that they receive from MBSCC. MBSCC desires to expand the provision to cover any type of communication provided to participants by MBSCC and to require participants to inform MBSCC promptly, and in no event later than ten calendar days upon receipt of the communication, if there is any error, omission, or other problem with respect to the communication. MBSCC believes that the ten-day timeframe will provide participants with a sufficient amount of time within which to detect problems in a communication from MBSCC.

viii. *New definitions:* MBSCC is proposing to add definitions for the following new terms: ''Real Time'' and ''RTTM Processing'' to encompass the new real-time processing concepts that will be introduced in the rules; ''RTTM Compare Report'' and ''RTTM Uncompare Report'' to specify the reports that will be available under the RTTM service; and ''Report'' to encompass all of the different types of output that can be provided by MBSCC to participants. The proposed amendments to existing definitions are incidental to the changes described above.

ix. *Amendment to MBSCC's Schedule of Charges for IDBs:* MBSCC is proposing to amend its Schedule of Charges to give IDBs a service-fee based incentive to move to interactive messaging. MBSCC believes that it is important to offer the incentive to its IDB participants because their early participation is critical to a successful implementation of the RTTM service. From a dealer perspective, lack of participation by one or more of the IDBs severely dilutes the benefits the dealer will gain from RTTM usage because a large percentage of the dealers' matching activity is against IDBs. The perception of reduced benefit leads to delays in dealer participation and a protracted rollout process. Therefore, MBSCC is proposing to waive, for a period of one year commencing with putting the RTTM service into production, all trade recording ''Give-Up Trade Create'' fees for IDBs that participate in MBSCC's testing (or ''beta'') phase of the RTTM service and subsequently move to production (IDBs must be interactive in order to participate in the testing phase, which is scheduled to take place during the first quarter of 2002).

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder, because they will reduce execution/market risk and eliminate the redundancy between the verbal checkout process and MBSCC's trade input matching process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(a) By order approve 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to file No. SR–MBSCC 2001–02 and should be submitted by February 15, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[5] The ''exact match mode'' means that trade input that matches in all other respects will be compared only if the par amount of the eligible securities reported to have been sold or purchased by the dealer for a particular transaction is identical to the par amount of a particular transaction reported by the broker. The ''net position match mode'' means that trade input that matches in all other respects will be compared only if the aggregate par amount of one or more transactions in eligible securities reported to have been sold or purchased by the dealer equals the aggregate par amount for one or more transactions reported by the broker. The ''maximum match mode'' means that trade input that matches in all other respects will be compared to the extent that the par amount of eligible securities reported to have been sold or purchased by the dealer does not exceed the aggregate par amount for one ore more transactions reported by the broker with transactions reported by the broker in any excess par amount remaining uncompared.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45313; File No. SR–PCX–2002–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Pacific Exchange, Inc. To Increase Position and Exercise Limits for Nasdaq-100 Index Tracking Stock Options

January 18, 2002.

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 January 17, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock (''QQQ'') options to 300,000 contracts on the same side of the market.[3] The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 III below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PCX also proposed a non-substantive amendment to Rule 6.9(a) clarifying that options on securities such as unit investment trusts must follow equity position and exercise limit rules.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to increase position and exercise limits for QQQ options up to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 6.6. Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. The PCX believes that increasing position and exercise limits from 75,000 to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks.[4] In addition, Exchange staff will be able to re-focus efforts and resources to other notable areas.

Manipulation

Position limits restrict the number of options contracts that an investor, or a group of investors acting in concert, may own or control. Similarly, exercise limits prohibit the exercise of more than specified a number of contracts on a particular instrument within five (5) business days. The Commission, by imposing these limits on exchange-traded options, has sought to: (1) Minimize the potential for mini-manipulations,[5] as well as other forms of market manipulations; (2) impose a ceiling on the position that an investor with inside corporate or market information can establish; and (3) reduce the possibility of disruption in the options and underlying cash markets.[6] The PCX believes that the structure of the QQQ option and the tremendous liquidity of both the underlying cash and options market for QQQs should allay regulatory concerns of potential manipulation. The PCX further believes that QQQ options are not readily susceptible to manipulation based largely on the liquidity and activity of the underlying QQQ as well as the securities comprising the QQQ. Therefore, the Exchange submits that increasing position and exercise limits to 300,000 contracts may generate greater order flow for the PCX and provide members with greater flexibility in fulfilling their obligations to customers and the market.

Although the QQQ option is not itself an index option product, it nonetheless is designed to closely track the price and yield performance of the Nasdaq-100 index.[7] Therefore, the PCX believes that in evaluating this proposal to increase position and exercise limits for QQQ options, the Commission should apply an analysis similar to what was used in connection with broadbased index options.[8]

The PCX believes in connection with QQQ options that the restrictive

[4] Although the current position limit is 75,000 contracts due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000.

[5] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established options position.

[6] *See* Becker and Burns, Regulation of Exchange-Traded Options in *The Handbook of Derivatives and Synthetics* (1994), Probus Publishing Company, and Regulating the Options Market, *Institutional Investor Forum* (November 1991).

[7] QQQ represents ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least $500 million and an average daily trading volume of at 100,000 shares. QQQ is intended to provide investment results that generally correspond to the Nasdaq-100 Index with an initial market value approximated at 1/40th the value of the underlying Nasdaq-100 Index. A description and analysis of the Nasdaq-100 Index is set forth by the Commission in Securities Exchange Act Release No. 33428 (January 4, 1994), 59 FR 1576 (January 11, 1994) (order approving trading of Nasdaq-100 options by the CBOE). As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was approximately $1.875 trillion, while the QQQ had net assets of $23.96 billion and 559.1 million shares outstanding. By far the largest economic sector represented is technology amounting to 68.91%. The top QQQ holding is Microsoft, accounting, for 11.97% while the top ten holdings constitute 43.22%.

[8] *See* Securities Exchange Act Release Nos. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (order approving the elimination of position and exercise limits for XMI and XII options on a two-year pilot basis) and 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (order approving the elimination of position and exercise limits for SPX, OEX, DJX and related FLEX options on a two-year pilot basis).

The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalization's of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26, 2001) 66 FR 55722 (November 2, 2001) (permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contrast, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

position and exercise limits no longer serve their stated purpose. The Commission has stated that:

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

The Exchange believes that both the size and breadth of the market for QQQs dispels concerns regarding market manipulation and disruption. The average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The QQQ option is by far the most actively-traded option product in the U.S., and therefore, the most liquid. The underlying QQQ is the most actively-traded equity security in the U.S. with greater trading volume than both Microsoft and Intel.[10] Accordingly, the Exchange believes that the liquidity of the QQQ option and the underlying cash market for QQQs greatly reduces the potential for manipulations in both the options and underlying cash market.

To date, there has not been a single disciplinary action involving manipulation or potential manipulation in the QQQ or the QQQ option on the Exchange. The PCX further believes that its extensive experience conducting surveillance of derivative products and program trading activity is sufficient to identify improper activity. Routine oversight inspections of the PCX's regulatory programs by the Commission should uncover any inconsistencies or shortcomings in the manner in which derivative and options surveillance is conducted. These procedures entail a daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both the options and underlying cash markets.

Competition

The Commission has stated that ''limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.'' [11] Based on the large trading volume apparent in both the underlying QQQ and QQQ options, the Exchange believes that current position and exercise limits of the QQQ option are too restrictive and may adversely affect the PCX's ability to compete with the OTC market. The Exchange believes that investors who trade listed options on the QQQ at the Exchange may be placed at a serious disadvantage in comparison to certain Nasdaq-100 index derivative products traded in the OTC market where some index-based derivatives are not currently subject to position and exercise limits.[12] Member firms also continue to express their concern that position limits on popular, actively-traded products, such as QQQ options, are an impediment to business development on the Exchange. Accordingly, a portion of this business is believed to have moved to the OTC market where some index-based derivative products are not subject to position limit requirements. In addition, the PCX believes that current base limits for the QQQ option may not be adequate in many instances for the hedging needs of certain institutions, which engage in trading strategies differing from those covered under the current index hedge exemption policy (*e.g.,* delta hedges; OTC vs listed hedges).[13]

Financial Requirements

The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under PCX Rules 2.16 and 6.8 to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

Reporting Requirements

Consistent with PCX Rule 6.6, the PCX will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data includes, but is not limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers are exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. Once the 10,000 contract reporting threshold is attained, the PCX will require members and member organizations to similarly report each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. The Exchange believes that the reporting level of 10,000 contracts on the same side of the market for members other than Exchange market-makers is consistent with the designation of the QQQ as an equity option, and therefore, the existing regulatory regime. Pursuant to PCX Rule 6.6, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options. Lastly, the Phlx believes that the 10,000 contract reporting requirements is above and beyond what is currently required in the OTC market. According to the Exchange, NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Basis

The Exchange believes that the proposed rule change is consistent with

[9] Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[10] For the period of January 1, 2001 to November 30, 2001, Microsoft and Intel had average daily trading volumes of 39.38 and 53.98 million shares, respectively, compared to the QQQ with an average daily trading volume of 71.21 million shares.

[11] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[12] The Commission notes, however, that as an equity product, options on the QQQ are subject to position limits in the OTC market. *See* NASD Rule 2860.

[13] The current limit for QQQ options is 150,000 contracts due to the 50% reduction in the underlying value of the QQQ that occurred on March 20, 2000. At this limit, the QQQ options equate to 15,000,000 QQQ shares or an aggregate value of $59.47 billion as of November 30, 2001. At the time of approval of QQQ options, position and exercise limits were set at 25,000 (250,000 QQQ shares) equating to an aggregate value of $2,500,000 as of March 9, 1999 (commencement of trading). When QQQs commenced trading, the volume was 10.4 million shares with an opening price of $100.00 per share. The average daily trading volumes for the QQQ during 1999, 2000 and year-to-day 2001 were 13.9 million, 30.9 million and 71.21 million shares respectively, while for the same periods the average daily trading contract volume for the QQQ option were 9,206, 91,656, and 148,181. As of November 30, 2001, the price of a single QQQ was $39.65.

Section 6(b) of the Act [14] in general and furthers the objectives of Section 6(b)(5) [15] 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, to remove impediments to and perfect and mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer File No. SR–PCS–2002–03 and should be submitted by February 15, 2002.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

IV. Commissions Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act [16] in that it is designed 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognize that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[17]

The Commission has carefully considered the PCX's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the PCX notes that the average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The PCX also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[18] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the PCX, under Rules 2.16 and 6.8, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under PCX Rule 6.6, each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in position limits, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things,

[16] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[17] *Id.*

[18] The PCX has noted that the QQQ is designed to closely track the performance of the Nasdaq-100 Index. According to the PCX, as of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

whether or not the options position is hedged, and if so, a description of the hedge. This information should help the PCX to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increasing position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options noted above, warrant approval of the Exchanges proposal.[19]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that under the current PCX rules, the position and exercise limits applicable to QQQ options is 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits from 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contracts on January 18, 2002. The Commission also believes it is appropriate to approve the clarifying language proposed for Exchange Rule 6.9(a) noted above. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[20] to approve the proposal on an accelerated basis.

[19] Of course, the Commission expects that PCX will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[20] 15 U.S.C. 78f(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–PCX–2002–03) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

J. Lynn Taylor,

Assistant Secretary.

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[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45310; File No. SR–Phlx–2002–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Philadelphia Stock Exchange, Inc. to Increase Position And Exercise Limits for Nadsaq-100 Index Tracking Stock Options

January 18, 2002.

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 January 15, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to increase position and exercise limits for Nasdaq-100 Index Tracking Stock[4] (''QQQ'') options to 300,000 contracts on the same side of the market. The Phlx represents that its reporting requirements for QQQ options will serve to identify options holdings and information concerning the hedging of these positions.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III 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 Exchange is proposing to increase position and exercise limits for QQQ options up to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 1003(a). Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. The Phlx believes that increasing position and exercise limits from 75,000 to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks.[5] In addition, Exchange staff will be able to re-focus efforts and resources to other notable areas.

Potential Manipulation

Position limits restrict the number of options contracts that an investor, or a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

[4] The Phlx represents that Nasdaq-100, Nasdaq-100 Index (''Index''), Nasdaq, The Nasdaq Stock Market, Nasdaq-100 Shares, Nasdaq-100 Trust, Nasdaq-100 Index Tracking Stock, and QQQ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes of the Phlx (''Licensee'') pursuant to a License Agreement with Nasdaq. The Index determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust, or the beneficial owners of Nasdaq-100 Shares. The Phlx represents that Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

[5] Although the current position limit is 75,000 contracts, due to a 50% reduction in the value of the underlying QQQ on March 20, 2002, the limit was adjusted to 150,000.

group of investors acting in correct, may own or control. Similarly, exercise limits prohibit the exercise of more than specified a number of contracts on a particular instrument within five (5) business days. The Commission, by imposing these limits on exchange-traded options, has sought to: (1) Minimize the potential for mini-manipulations,[6] as well as other forms of market manipulations; (2) impose a ceiling on the position that an investor with inside corporate or market information can establish; and (3) reduce the possibility of disruption in the options and underlying cash markets.[7] The Phlx believes that the structure of the QQQ option and the tremendous liquidity of both the underlying cash and options market for QQQs should allay regulatory concerns of potential manipulation. The Phlx further believes that QQQ options are not readily susceptible to manipulation based largely on the liquidty and activity of the underlying QQQ as well as the securities comprising the QQQ. Therefore, the Exchange submits that increasing position and exercise limits to 300,000 contracts may generate greater order flow for the Phlx and provide members with greater flexibility in fulfilling their obligations to customers and the market.

Although the QQQ option is not itself an index option product, it nonetheless is designed to closely track the price and yield performance of the Nasdaq-100 index.[8] Therefore, the Phlx believes that in evaluating this proposal to increase position and exercise limits for QQQ options, the Commission should apply an analysis similar to what was used in connection with broadbased index options.[9]

The Phlx believes in connection with QQQ options that the restrictive position and exercise limits no longer serve their stated purpose. The Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[10]

The Exchange believes that both the size and breadth of the market for QQQs dispels concerns regarding market manipulation and disruption. The average daily trading volumes for the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The QQQ option is by far the most actively-traded option product in the U.S., and therefore, the most liquid. The underlying QQQ is the most actively-traded equity security in the U.S. with greater trading volume than both Microsoft and Intel.[11] Accordingly, the Exchange believes that the liquidity of the QQQ option and the underlying cash market for QQQs greatly reduces the potential for manipulation in both the options and underlying cash market.

To date, the Exchange has not experienced significant disciplinary issues in the QQQ or the QQQ option on the Exchange. The Exchange represents that it conducts appropriate surveillance of options products, such as the QQQ options, to identify improper activity.

Competition

The Commission has stated that ''limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.''[12] Based on the large trading volume apparent in both the underlying QQQ and QQQ options, the Exchange believes that current position and exercise limits of the QQQ option are too restrictive and may adversely affect the Exchange's ability to compete with the OTC market. The Exchange believes that investors who trade listed options on the QQQ at the Phlx may be placed at a serious disadvantage in comparison to certain Nasdaq-100 index derivative products traded in the OTC market where some index-based derivatives are not currently subject to position and exercise limits.[13] Members firms also continue to express their concern that position limits on popular, actively-traded products, such as QQQ options, are an impediment to business development on the Exchange. Accordingly, a portion of this business is believed to have moved to the OTC market where some index-based derivative products are not subject to position limit requirements. In addition, the Phlx believes that current base limits for the QQQ option may not be adequate in many instances for the hedging needs of certain institutions, which engage in trading strategies

[6] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established options position.

[7] *See* Becker and Burns, Regulation of Exchange-Traded Options in *The Handbook of Derivatives and Symthetics* (1994), Probus Publishing Company, and Regulating the Options Market, *Institutional Investor Forum* (November 1991).

[8] QQQ represents ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least $500 million and an average daily trading volume of at 100,000 shares. QQQ is intended to provide investment results that generally correspond to the Nasdaq-100 Index with an initial market value approximated at ¼0th the value of the underlying Nasdaq-100 Index. A description and analysis of the Nasdaq-100 Index is set forth by the Commission in Securities Exchange Act Release No. 33428 (January 4, 1994), 59 FR 1576 (January 11, 1994)(order approving trading of Nasdaq-100 options by the CBOE). As of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was approximately $1.875 trillion, while the QQQ had net assets of $23.96 billion and 559.1 million shares outstanding. By far the largest economic sector represented in technology amounting to 68.91%. The top QQQ holdings Microsoft, accounting, for 11.97% while the top ten holdings constitute 43.22%.

[9] *See* Securities Exchange Act Release Nos. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999)(order approving the elimination of position and exercise limits for XMI and XII options on a two-year pilot basis) and 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999)(order approving the elimination of position and exercise limits for SPX, OEX, DJX and related FLEX options on a two-year pilot basis). The Phlx does not currently list any broad based index products.

The Commission notes that the elimination of position and exercise limits for certain broad-based index options was based on many factors including the enormous capitalization's of the indexes. For example, the market capitalization of the SPX, OEX and DJX as of October 2001 was $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively. *See* Securities Exchange Act Release No. 44994 (October 26 2001), 66 FR 55722 (November 2, 2001)(permanently approving the pilot to eliminate position and exercise limits for OEX, SPX and DJX Index options). In contract, the market capitalization of the NASDAQ 100 as of November 2001 was 1.875 trillion. The Commission further notes that options on QQQs physically settle in the underlying QQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlyingQQQs, which had net assets of $23.96 billion as of November 30, 2001. In contrast, index options are cash settled based on the underlying value of the index.

[10] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[11] For the period of January 1, 2001 to November 30, 2001, Microsoft and Intel had average daily trading volumes of 39.38 and 53.98 billion shares, respectively, compared to the QQQ with an average daily trading volume of 71.21 million shares.

[12] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[13] The Commission notes, however, that as an equity product, options on the QQQ are subject to position limits in the OTC market. *See* NASD Rule 2860.

differing from those covered under the current index hedge exemption policy (*e.g.,* delta hedges; OTC vs. listed hedges).[14]

Financial Requirements

The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under Phlx Rule 722(d) and 722(i)(8) to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

Reporting Requirements

Consistent with Phlx Rule 1003(b), the Phlx will continue to require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer report certain information. This data includes, but is not limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers are exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. This Phlx proposes to require members organizations, once the 10,000 contract reporting threshold is attained, to report similarly each increase of 2,500 contracts on the same side of the market for customer accounts and each increase of 5,000 contracts on the same side of the market for proprietary accounts. The Exchange believes that the reporting level of 10,000 contracts on the same side of the market for members other than Exchange market-makers is consistent with the designation of the QQQ as an equity option, and therefore, the existing regulatory regime. Pursuant to Phlx Rule 1003(a), the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for QQQ options. Lastly, the Phlx believes that the 10,000 contract reporting requirement is above and beyond what is currently required in the OTC market. According to the Exchange, NASD member firms are only required to report options positions in excess of 200 contracts and are not required to report any related hedging information.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[15] in general and furthers the objectives of Section 6(b)(5)[16] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer File No. SR–Phlx–2002–06 and should be submitted by February 15, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[17] in that it is designed 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.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[18]

The Commission has carefully considered the Phlx's proposal to increase position and exercise limits for QQQ options. At the outset, the Commission notes that it still believes

[14] The current limit for QQQ options is 150,.000 contracts due to the 50% reduction in the underlying value of the QQQ that occurred on March 20, 2000. At this limit, the QQQ options equate to 15,000,000 QQQ shares or an aggregate value of $59.47 billion as of November 30, 2001.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[18] *Id.*

the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the QQQ options and the underlying cash market in QQQs, the Commission believes it is permissible to significantly raise position limits for QQQ options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits form 75,000 contracts to 300,000 contracts for QQQ options for several reasons.

First, the Commission believes that the structure of the QQQ options and the considerable depth and liquidity of both the underlying cash and options market for QQQ options lessens the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the Phlx notes that the average daily trading volumes of the QQQs and QQQ options from January 1, 2001 to November 30, 2001 were 71.21 million shares and 148,181 contracts, respectively. The Phlx also notes that the QQQ option is the most actively-traded option in the U.S. markets, and the underlying QQQ is the most actively-traded equity security in the U.S. markets.[19] These factors provide support for higher limits for the QQQ options and differentiate them from other equity options.

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the Phlx, under Phlx Rule 722(d) and 722(i)(8), may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in QQQ options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange will help protect against potential manipulation. Under Phlx Rule 1003(b), each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the QQQ option, for its own account or for the account of a customer is required to report certain information. The Exchange also requires members to report subsequent incremental increases in positions, thus assuring that positions are regularly monitored by the Exchange. In particular, information that must be reported includes, among other things, whether or not the option position is hedged, and if so, a description of the hedge. This information should help the Phlx to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the QQQ options and the underlying QQQ noted above, warrant approval of the Exchange's proposal.[20]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register.** The Commission notes that under the current Phlx rules, the position and exercise limits applicable to QQQ options are 75,000 contracts. However, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000 contracts. The position and exercise limits are scheduled to revert back to 75,000 contracts after the January options expiration occurring on January 18, 2002. The Exchange has represented to the Commission that a limits of 75,000 contracts for the QQQ options could substantially reduce depth and liquidity in the QQQ market. The Exchange has further represented that increasing position and exercise limits form 75,000 contracts to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks. The Commission, therefore, believes for the reasons noted above that it is appropriate to approve this proposed rule change increasing the position and exercise limit to 300,000 contract son January 18, 2002. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[21] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Phlx–2002–06), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1904 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–M

[19] The Phlx has noted that the QQQ is designed to closely track the performance of the Nasdaq-100 Index. According to the Phlx, as of November 30, 2001, the market capitalization of the securities underlying the Nasdaq-100 Index was $1.875 trillion.

[20] Of course, the Commission expects that Phlx will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the underlying QQQ, should any unanticipated adverse market effects develop due to the increased limits.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45304; File No. SR–Phlx–2001–112]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Reducing Exchange Fees for Trading Floor Members Participating in the Wireless Phone System

January 17, 2002.

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 December 17, 2001, the Philadelphia Stock Exchange, Inc., (''Phlx'' 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 Phlx. 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 Phlx proposes to amend its schedule of dues, fees and charges to decrease from $200 to $100 the fee per month for each phone used by Phlx members on the equity and options floors of the Exchange participating in the Exchange's Ericsson Wireless Phone

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

System (''system''). [3] The proposed amended fee will be implemented beginning January 1, 2002. [4]

II. Self-regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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 decrease from $200 to $100 the fee per month for each phone used by members on the equity and options floors participating in the system. Each member user of the wireless phones has to agree to pay a monthly fee per phone (which will be reduced to $100 commencing January 1, 2002) for a period of twelve months, or, if an agreement has been already signed, for the remainder of the twelve month period. At the end of the twelve-month period, a new agreement will be presented to the user. Phlx Rule 50 will govern payment of the monthly fees.

The Exchange believes that the proposed decrease in the monthly wireless phone fee is reasonable and equitable to all members on the equity and options floors of the Exchange that use the wireless phone system. This fee will help to offset the expense incurred in using and maintaining the system.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) [5] of the Act in general, and furthers the objectives of section 6(b)(4) [6] in particular, in that it is an equitable allocation of reasonable fees among the Exchange's members, because the members who pay the reduced monthly fee incur the benefit of using the phones on the Exchange's wireless phone system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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 Phlx 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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A) [7] of the Act and Rule 19b–4(f)(2) [8] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concering the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–112 and should be submitted by February 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1908 Filed 1–24–02; 8:45 am]

BILLING CODE 8010–01–M

[3] A $200 fee per month for each phone used on the system has been in effect since 1999. *See* Securities Exchange Act Release No. 41449 (May 25, 1999), 64 FR 29725 (June 2, 1999) (SR–Phlx–99–10). Users of the system are also assessed a one-time fee to purchase a handset, headset, battery, and accessories. While the system is available for use on both the equity and options floors, at this time it is used only on the options floor.

[4] This fee will continue to be ineligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed 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).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9O14]

State of Florida

Charlotte and Lee Counties and the contiguous counties of Collier, De Soto, Glades, Hendry, Highlands, and Sarasota in the State of Florida constitute an economic injury disaster loan area as a result of a Red Tide condition and subsequent closure of the Gasparilla Sound beginning August 22, 2001 and continuing. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on October 17, 2002, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The number assigned for economic injury for the State of Florida is 9O1400.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: January 17, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–1894 Filed 1–24–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3390]

State of Texas

Travis County and the contiguous Counties of Bastrop, Blanco, Burnet, Caldwell, Hays, and Williamson in the State of Texas constitute a disaster area as a result of damages caused by severe storms, flooding, and tornadoes that occurred November 15 through 18, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 18, 2002, and for economic injury until the close of business on October 17, 2002, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.500
Homeowners Without Credit Available Elsewhere	3.250
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-profit Organizations Without CreditAvailable Elsewhere	4.000
Others (Including Non-profit Organizations) With CreditAvailable Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ...	4.000

The numbers assigned to this disaster are 339011 for physical damage and 9O1500 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 17, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–1895 Filed 1–24–02; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Environmental Assessment or Environmental Impact Statement—Proposed Commercial and Recreational Developments on the Muscle Shoals and Wilson Dam Reservations, Colbert and Lauderdale Counties, AL

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508), section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800), and TVA's procedures implementing the National Environmental Policy Act. TVA will prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) on alternatives for commercial and recreational development requested by local governments in the jurisdictions surrounding TVA property in the Shoals area of northwestern Alabama (Colbert County, city of Florence, Lauderdale County, city of Muscle Shoals, city of Sheffield, and city of Tuscumbia). The local governments have requested that TVA make available 263 hectares (650 acres) of federal property on the Muscle Shoals Reservation and 6 ha (15 acres) of federal property on the Wilson Dam Reservation for their use in constructing a hotel, conference center, and golf course development. The project would be funded by the Retirement System of Alabama (RSA), a state agency, and the local governments.

DATES: Comments on the scope of the environmental review must be received on or before February 25, 2002.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail *hmdraper@tva.gov.*

SUPPLEMENTARY INFORMATION: TVA acquired control of the Muscle Shoals and Wilson Dam reservation properties, consisting of about 1229 hectares (3036 acres), from the U.S. War Department in 1933. During the past few years, TVA has received a variety of proposals for development and use of the two reservation properties by nonfederal entities. Local governments have been interested in promoting regional economic development and have provided TVA with several concepts for evaluation. In 1996, TVA prepared a land plan to identify portions of the two reservations that could be made available to non-federal entities for development. The land plan contemplated that TVA would reserve the majority of the property for the agency's own use, but would make available limited property for regional development. TVA subsequently made available a site for construction of a chamber of commerce headquarters for the region on the Wilson Dam Reservation, and a site for commercial development at the junction of two major streets on the Muscle Shoals Reservation.

In 2001, responding to a local government request to invest in the Shoals region. RSA proposed to partially fund construction of a first class hotel, conference center, and 36-hole golf course, as part of an Alabama tourism development effort called the Robert Trent Jones Golf Trail. The hotel, conference center, and golf course would be constructed on TVA land. In addition, an existing city park, known as Florence Veterans Park and now used for a campground and for dispersed day uses, would be converted to a zoo, water theme park, marina, and other improvements. Under the terms of the easement to the City of Florence for the Florence Veterans Park, TVA approval also would be needed for the Veterans Park improvements. Finally, a ''river heritage trail'' would be developed on the north side of the Tennessee River. Because TVA has received a unified request from the local governments and the request supports regional development goals, TVA has decided to evaluate the Shoals proposal in more detail. Although detailed concept plans have not yet been presented to TVA, the agency is providing early notice of the proposal to facilitate the identification of issues to be addressed and the development of alternatives to be assessed in the environmental review. The alternatives to be analyzed have not been developed at this time, but at a minimum involve no action, full or partial development of the 665 acres specifically requested by the local governments, and other potential sites. The property proposed for the golf course is now available to the public for dispersed recreational use, including foot and bicycle trails and a picnic area. The property proposed for the hotel and

conference center is now open space on the north side of Wilson Dam.

Based on the results of the previous public interaction for projects on the Muscle Shoals and Wilson Reservations, TVA anticipates that the EA or EIS will include discussion of the potential effects of alternatives on the following resources: visual resources, cultural resources, threatened and endangered species, terrestrial ecology, wetlands, recreation, water quality, aquatic ecology, and socioeconomics.

TVA is interested in receiving additional comments on the issues to be addressed. Written comments on the scope of the environmental review should be received on or before February 25, 2002.

TVA will begin by developing an EA for the proposed project. In the event that information gathered or analyses conducted in preparing this EA indicate that the proposal could have a significant impact on the environment, the agency will prepare an EIS. If TVA decides to prepare an EIS, the scoping process now underway for the EA will be used for the EIS and will not be repeated.

TVA will hold public meetings to provide more information and to receive comments on the Shoals proposals the week of February 11, 2002. Times, locations, and places will be announced in local newspapers, and may be obtained by contacting the persons listed above.

Dated: January 17, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 02–1840 Filed 1–24–02; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Correction to notice of request for written submissions from the public.

SUMMARY: The Office of the United States Trade Representative published a document in the **Federal Register** on December 26, 2001, concerning request for submissions on foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act. The document contained incorrect address details for submission and reviews of those comments and an incorrect title for one of the contacts for further information.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property (202) 395–6864; Kira Alvarez, Director for Intellectual Property (202) 395–6864; Stephen Kho or Victoria Espinel, Assistant General Counsels (202) 395–7305, Office of the United States Trade Representative.

Correction

In the **Federal Register** of December 26, 2001, in 66 FR 66492, correct the address to read:

ADDRESSES: FR0012@USTR.GOV.

In the **Federal Register** of December 26, 2001, in 66 FR 66492, correct the contact details to read: Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property.

In the **Federal Register** of December 26, 2001, in 66 FR 66493, correct the contact details to read:

All comments should be sent to Sybia Harrison Special Assistant to the Section 301 committee, at the following email address: FR0012@USTR.GOV. Please note, only electronic submissions will be accepted.

In the **Federal Register** of December 26, 2001, in 66 FR 66493, correct the contact details for the Public Inspection of Submissions to read:

An appointment to review the file may be made by calling Sybia Harrison, (202) 395–9411.

Joseph Papovich,

Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 02–1890 Filed 1–24–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–11351]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0539, 2115–0504, 2115–0576, 2115–0581, and 2115–0626

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise Requirements for Lightering of Oil and Hazardous Material Cargoes, Tank Vessel Examination Letters, Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers, Instructional Material for Lifesaving, Fire Protection and Emergency Equipment, Vapor Control Systems for Facilities and Tank Vessels, and Alternate Compliance Program. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before March 26, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–11351] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(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 and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of

Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2002–11351], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Requirements for Lightering of Oil and Hazardous Material Cargoes.

OMB Control Number: 2115–0539.

Summary: The information for this report allows the Coast Guard to provide timely response to an emergency and minimize the environmental damage from an oil or hazardous material spill. The information also allows the Coast Guard to control the location and procedures for lightering activities.

Need: 46 U.S.C. 3715 authorizes the Coast Guard to establish lightering rules. 33 CFR 156.200 to 156.330 prescribes the Coast Guard rules for lightering, including pre-arrival notice, reporting of incidents and operating conditions.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 228 hours a year.

2. *Title*: Tank Vessel Examination Letters, Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 2115–0504.

Summary: This information is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under 46 U.S.C. The affected public includes some owners and operators of large merchant vessels and all foreign-flag tankers calling at U.S. ports.

Need: 46 U.S.C. 3301, 3305, 3306, 3702, 3703, 3711, and 3714 authorizes the Coast Guard to establish marine safety regulations to protect life, property, and the environment. 46 CFR prescribe these Coast Guard rules. The requirements for reporting Boiler/Pressure Valve Repairs, maintaining Cargo Gear Records, maintaining Shipping Papers, issuance of Certificates of Compliance (CG–3585) and Tank Vessel Examination Letters (CG–840S–1/CG–840S–2, as appropriate) provide the marine inspector with available information as to the condition of a vessel and its equipment. It also contains information on the vessel owner and lists the type and amount of cargo that has been or is being transported. These requirements all relate to the promotion of safety of life at sea and protection of the marine environment.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 17,555 hours a year.

3. *Title:* Instructional Material for Lifesaving, Fire Protection and Emergency Equipment.

OMB Control Number: 2115–0576.

Summary: This information is needed to ensure that vessel crews have instructional material for lifesaving, firefighting and emergency equipment. The material is used during training sessions and during emergencies. It is needed because crew members must have complete information on the proper operation of equipment.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to establish regulations concerning lifesaving, fire protection and other equipment. 46 CFR Subchapters Q and W prescribes regulations that include the instructional materials needed to ensure a vessel's crew has the necessary information on the proper use of lifesaving, fire protection and emergency equipment.

Respondents: Manufacturers of Equipment.

Frequency: On occasion.

Burden Estimate: The estimated burden is 22,516 hours a year.

4. *Title:* Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 2115–0581.

Summary: The information is needed to ensure compliance with U.S. rules for the design of facility and tank vessel vapor control systems (VCS). The information is also needed to determine the qualifications of a certifying entity.

Need: 33 U.S.C. 1225 and 46 U.S.C. 3703 authorize the Coast Guard to establish rules to promote the safety of life and property of facilities and vessels. 33 CFR part 154.800 prescribes the Coast Guard rules for VCS and certifying entities.

Respondents: Owners, operators of facilities and tank vessels, and certifying entities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,073 hours a year.

5. *Title:* Alternate Compliance Program.

OMB Control Number: 2115–0626.

Summary: This information is used by the Coast Guard to assess vessels participating in the voluntary Alternate Compliance Program (ACP) prior to issuance of a Certificate of Inspection.

Need: 46 U.S.C. 3306, 3316, and 3703 authorize the Coast Guard to establish vessel inspection regulations and inspection alternatives. 46 CFR part 8 prescribes the Coast Guard regulations for recognizing classification societies and enrollment of U.S.-flag vessels in ACP.

Respondents: Recognized classification societies.

Frequency: On occasion.

Burden Estimate: The estimated burden is 150 hours a year.

Dated: January 17, 2002.

D.F. Shuell,

Acting Director of Information Technology.

[FR Doc. 02–1870 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Two Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on two currently approved public information collections which received emergency clearances and now will be submitted to OMB for extensions of those clearances.

DATES: Comments must be received on or before March 26, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden,

the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0673, Criminal History Records Checks, 14 CFR 107&108. Public Law 106–528 provided for fingerprinting of all individuals on and after December 23, 2000, unescorted access and those individuals who perform certain screening functions at Category X airports. The rule requires that the airport operators and aircraft operators fingerprint those covered individuals at all categories of airports who, previous to November 14, 2001, were not subject to a criminal history records check. The current estimated annual reporting burden is 123,471 hours.

2. 2120–0674, Special Federal Aviation Regulation (SFAR) 92, Flightcrew Compartment Access and Door Designs. SFAR 92 (to part 119) temporarily authorizes variances for certain air carriers from existing design standards for the flightcrew compartment doors and allows for return to service of modified airplanes without prior approved data. This allows certain air carriers to modify their flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. The modifications are conditional on submitting a detailed description of the changes within 90 days, and within 180 days providing a schedule for accomplishing changes to comply with all applicable airworthiness requirements. Current estimated annual reporting burden is 6480 hours.

Issued in Washington, DC, on January 18, 2002.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 02–1869 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; San Antonio International Airport, San Antonio, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of San Antonio for San Antonio International Airport, San Antonio, Texas, under the provisions of Title 49, U.S.C., Chapter 475 (hereinafter referred to as ''Title 49'') and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps is January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5607.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for San Antonio International Airport, San Antonio, Texas are in compliance with applicable requirements of Part 150, effective January 16, 2002.

Under Title 49, an airport operator may submit to the FAA noise exposure maps, which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The city of San Antonio submitted to the FAA on January 7, 2002, noise exposure maps, descriptions and other documentation, which were produced during the update to the part 150 Study. It was requested that the FAA review this material as the noise exposure maps, as described in Title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of San Antonio. The specific maps under consideration are *Noise Exposure Map: 1998 and Noise Exposure Map: 2004* in the submission. The FAA has determined that these maps for San Antonio International Airport are in compliance with applicable requirements. This determination is effective on January 16, 2002. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Title 49, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposures contours onto the map depicting properties on the surface rests exclusively with the airport operator, which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

City of San Antonio, Aviation Department, 9800 Airport Boulevard, San Antonio, Texas 78216

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, January 16, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–1867 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Record of Decision, Piedmont Triad International Airport, Greensboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability—Record of Decision (ROD).

The Federal Aviation Administration (FAA) has published a Final Environmental Impact Statement (FEIS) for proposed airport development at Piedmont Triad International Airport, Greensboro, North Carolina. The proposed development consists of constructing and operating a new Runway 5L/23R, an overnight air cargo sorting and distribution facility and associated development. Further, the FAA has prepared a Record of Decision that clearly communicates FAA's consideration of all reasonable alternatives, communicates FAA's findings and rationale for selecting the chosen alternative, and identifies any mitigation measures to be implemented as a part of the selected alternative. The ROD was signed by the Regional Administrator, Southern Region, on December 31, 2001, announcing FAA's decision of the Preferred Alternative, W1–A1. The ROD is being made available to interested parties at the following locations:

Greensboro Public Library, 219 N. Church Street, Greensboro, NC

Guilford County, Branch Library, 619 Dolly Madison Road, Greensboro, NC

High Point Public Library, 901 North Main Street, High Point, NC

Forsyth County Library, 660 West Fifth Street, Winston-Salem, NC

Piedmont Triad International Airport, 6415 Airport Parkway, Greensboro, NC

Federal Aviation Administration, 1701 Columbia Avenue, Suite C–260, College Park, GA

In addition, the ROD can be viewed at the Piedmont Triad Airport Authority's web page *www.gsoair.org.*

For additional information contact Mr. Scott L. Seritt, Manager, FAA Southern Region, Atlanta Airports District Office, 1701 Columbia Avenue, Suite C–260, College Park, Georgia.

Issued in College Park, Georgia, January 9, 2001.

Scott L. Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 02–1868 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9707; Notice 2]

Decision That Nonconforming Model Years 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 PassengerCars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming model years (''MY'') 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of January 25, 2002.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (''FMVSS'') shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, MD, (''J.K.'') (Registered Importer 90–006) petitioned NHTSA to decide whether MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on June 12, 2001 (66 FR 31749) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Mercedes Benz USA, Inc., (''Mercedes''), the manufacturer of MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars. In this comment, Mercedes stated that, for the vehicles in question, the symbols found on the European version of the cruise control lever on the steering column have to be changed to words to satisfy FMVSS 101 Controls and Displays. Mercedes also noted that, under FMVSS 206 Door Locks and door retention components, the inside door locks for the European versions of the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars are not identical to the versions originally manufactured for importation into and sale in the United States. The European versions of the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars have cylindrical interior door lock push buttons that submerge into the door panel when in the ''lock'' position, but the U.S. versions have mushroom shaped push buttons.

NHTSA accorded J.K. an opportunity to respond to Mercedes' comments. J.K. stated that for FMVSS 101 and FMVSS 206, it would replace the cruise control lever and the door lock push buttons, respectively, with the correct U.S. part numbers in the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars that are the subject of its petition.

In view of Mercedes' comments and J.K.''s response, NHTSA has decided to grant import eligibility to the MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–370 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to MY 1999, 2000, and 2001 Mercedes Benz CL500 and CL600 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 22, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety, Compliance.

[FR Doc. 02–1861 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2002–11270, Notice No. 02–01]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

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

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA and the Department of Transportation's Office of Inspector General (OIG) are investigating the unauthorized marking of high-pressure compressed gas cylinders by Bev Con International (Bev Con), 6400 and 6420 Highway 51 South, Brighton, Tennessee. Bev Con is also known as or has done business as Bev-con, BCI Inc., BCI Industries and BCI Industries, Inc. All companies are located at the Brighton, Tennessee address listed above. RSPA and the OIG have determined that Bev Con marked and certified an undetermined number of cylinders with invalid Retester Identification Numbers (RINs), apparently without conducting hydrostatic retests of the cylinders in accordance with the Hazardous Materials Regulations (HMR). The cylinders at issue are mostly used in the beverage service industry.

On December 13, 2001, a Federal Grand Jury in Tennessee handed down a 31-count indictment against Bev Con and two of its principals. The indictment includes charges for the unauthorized cylinder marking described in this safety advisory.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material.

FOR FURTHER INFORMATION CONTACT: Cheryl K. Johnson, Senior Inspector, Southern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 1701 Columbia Avenue, Suite 520, College Park, GA 30337. Telephone: (404) 305–6120, Fax: (404) 305–6125.

SUPPLEMENTARY INFORMATION: Through an investigation of Bev Con, RSPA and the OIG have determined that Bev Con marked and certified an undetermined number of cylinders with two expired RINs. In addition, it does not appear that Bev Con conducted proper hydrostatic testing of the cylinders, as required by the HMR. The HMR requires that a cylinder retester obtain a RIN from RSPA. Bev Con has never been issued a RIN by RSPA, and any cylinders marked by Bev Con as having been tested in accordance with the HMR are unauthorized for use in hazardous materials service until properly retested by a DOT-authorized retester.

The cylinders in question are stamped with one of the following two RINs: C173 or C137. The markings appear in the following pattern:

(1)

C1
M Y
37

(2)

C1
M Y
73

M is the month of retest (e.g., 10), and Y is the year of the retest (e.g., 01).

RIN C173 was issued to Cee Kay Supply, 4241 Folsum Avenue, St. Louis, Missouri, on October 28, 1987. Cee Kay Supply was granted renewal of that RIN on August 27, 1992. Authorization for RIN C173 expired on August 27, 1997, and any use of that RIN to mark DOT specification or exemption cylinders after that date is unauthorized.

RIN C137 was issued to Koch Carbonic Corporation, 433 Raymond Boulevard, Newark, New Jersey, on July 8, 1987. Koch Carbonic Corporation last renewed the RIN on October 8, 1992. Authorization for RIN C137 expired on October 8, 1997, and any use of that RIN to mark DOT specification or exemption cylinders after that date is unauthorized.

Anyone who has a cylinder that has been serviced by or purchased from Bev Con and that is marked with RIN C173 and stamped with a retest date after August 1997, or that is marked with RIN C137 and stamped with a retest date after October 1997, should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility. Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Cylinders described in this safety advisory that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Under no circumstance should a cylinder described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and retested by a DOT-authorized retest facility.

It is further recommended that persons finding or possessing a cylinder described in this safety advisory or with questions concerning other cylinders sold or serviced by Bev Con contact Ms. Johnson for additional information.

Issued in Washington, DC, on January 22, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–1863 Filed 1–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub–No. 9X)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in LaMoure and Barnes Counties, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR part 1152, subpart F-*Exempt Abandonments* to abandon approximately 32.9 miles of rail line from approximately milepost 27.4 in or near Lucca, ND, to the end of the line at approximately milepost 60.3 in or near Marion, ND, in LaMoure and Barnes Counties, ND. The line traverses United States Postal Service Zip Codes 58049, 58466 and 58461.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance(OFA) has been received, this exemption will be effective on February 26, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 4, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 14, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Troy W. Garris, Weiner Brodsky Sidman Kider PC, 1300 19th Street NW, 5th Floor, Washington, DC 20036–1609.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by February 1, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by January 25, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1635 Filed 1–24–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,000. See 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–262–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–262–82 (TD 8600), Definition of an S Corporation. (§ 1.136–1).

DATES: Written comments should be received on or before March 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Definition of an S Corporation.

OMB Number: 1545–0731.

Regulation Project Number: PS–262–82.

Abstract: This regulation provides the procedures and the statements to be filed by certain individuals for making the election under Internal Revenue Code section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed are used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,005.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,005.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1921 Filed 1–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105312–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–105312–98, Reporting of Gross Proceeds Payments to Attorneys.

DATES: Written comments should be received on or before March 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Gross Proceeds Payments to Attorneys.

OMB Number: 1545–1644.

Regulation Project Number: REG–105312–98.

Abstract: The information is required to implement section 1021 of the Taxpayer Relief Act of 1997. This information will be used by the IRS to verify compliance with section 6045 and to determine that the taxable amount of these payments has been computed correctly.

Current Actions: There is no change to this proposed regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

The burden is reflected in the burden of Form 1099–MISC.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 16, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1922 Filed 1–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–1214]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–1214 (TD 7430), Discharge of Liens (§ 301.7425–3(b)(2)).

DATES: Written comments should be received on or before March 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Discharge of Liens.

OMB Number: 1545–0854.

Regulation Project Number: LR–1214.

Abstract: The Internal Revenue Service needs this information in processing a request to sell property subject to a tax lien to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1923 Filed 1–24–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 17

Friday, January 25, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. FAA–2001–10999; Amdt. Nos. 107–14 and 108–19]

RIN 2120–AH53

Criminal History Records Checks

Correction

In rule document 01–30282 beginning on page 63474 in the issue of Thursday, December 6, 2001 make the following correction:

§ 107.209 [Corrected]

On page 63483, in the second column, §107.209, in the second column, in the second full paragraph, ''(1) *Continuing resopnsibilities.*'' should read, ''(l) *Continuing responsibilities''.*

[FR Doc. C1–30282 Filed 1–24–02; 8:45 am]

BILLING CODE 1505–01–D

Corrections

Federal Register

Vol. 67, No. 17

Friday, January 25, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. FAA–2001–10999; Amdt. Nos. 107–14 and 108–19]

RIN 2120–AH53

Criminal History Records Checks

Correction

In rule document 01–30282 beginning on page 63474 in the issue of Thursday, December 6, 2001 make the following correction:

§ 107.209 [Corrected]

On page 63483, in the second column, §107.209, in the second column, in the second full paragraph, ''(1) *Continuing resopnsibilities.*'' should read, ''(l) *Continuing responsibilities''.*

[FR Doc. C1–30282 Filed 1–24–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
January 25, 2002

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Capital; Leverage and Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Nonfinancial Equity Investments; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 02–01]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1097]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC47

Capital; Leverage and Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Nonfinancial Equity Investments

AGENCIES: Office of the Comptroller of the Currency (OCC), DOT; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The OCC, Board and FDIC (collectively, the agencies) are amending their capital guidelines to establish special minimum capital requirements for equity investments in nonfinancial companies. The new capital requirements, which will apply symmetrically to equity investments of banks and bank holding companies, impose a series of marginal capital charges on covered equity investments that increase with the level of a banking organization's overall exposure to equity investments relative to the organization's Tier 1 capital. The final rule is substantially similar to the proposal that the agencies published for comment in February 2001.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: *OCC*: Tommy Snow, Director, Capital Policy (202/874–5070); Karen Solomon, Director (202/874–5090), or Ron Shimabukuro, Counsel (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Michael G. Martinson, Associate Director (202/452–3640), James A. Embersit, Assistant Director (202/452–5249), or Mary Frances Monroe, Senior Supervisory Financial Analyst (202/452–5231), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452–3583), or Kieran J. Fallon, Senior Counsel (202/452–5270), Legal Division; Jean Nellie Liang, Assistant Director (202/452–2918), Division of Research & Statistics; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, D.C. 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

FDIC: Mark S. Schmidt, Associate Director, (202/898–6918), Stephen G. Pfeifer, Examination Specialist, Accounting Section (202/898–8904), Curtis Vaughn, Examination Specialist (202/898–6759), Division of Supervision; Michael B. Phillips, Counsel, (202/898–3581), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

A. Background

In March 2000, the Board invited public comment on a proposal to amend its consolidated capital adequacy guidelines for bank holding companies to establish special capital requirements for investments made, directly or indirectly, by bank holding companies in nonfinancial companies.[1] The Board's proposal, which was developed in consultation with the Secretary of the Treasury, applied to nonfinancial investments made directly or indirectly by a bank holding company under a variety of authorities, including investments made by financial holding companies under the merchant banking authority granted by the Gramm-Leach-Bliley Act (GLB Act) and investments made directly or indirectly by a bank holding company through a small business investment company (SBIC). The Board's initial capital proposal would have assessed, at the holding company level, a 50 percent capital charge on the carrying value of each covered investment.

In February 2001, the Board, OCC and FDIC jointly issued for comment a revised capital proposal (revised proposal).[2] The revised proposal attempted to balance the concerns raised by commenters on the Board's initial proposal with the belief of the agencies that banking organizations must maintain sufficient capital to offset the risks associated with equity investment activities. In developing the revised proposal, the agencies were guided by several important principles, including that:

- Equity investment activities in nonfinancial companies generally involve greater risks than traditional bank and financial activities;
- The risk of loss associated with a particular equity investment is likely to be the same regardless of the legal authority used to make the investment or whether the investment is held by a bank holding company or a bank; and
- The financial risks to an organization engaged in equity investment activities increase as the level of the organization's investments accounts for a larger portion of its capital, earnings and activities.

In light of these principles, the revised proposal provided for a progression of Tier 1 marginal capital charges that increases with the size of the aggregate equity investment portfolio of the banking organization relative to its Tier 1 capital. The proposed Tier 1 charge ranged from 8 percent for investments that aggregated up to 15 percent of the banking organization's Tier 1 capital, to 25 percent for investments representing 25 percent or more of the banking organization's Tier 1 capital.

The agencies proposed to apply these higher capital charges symmetrically to nonfinancial equity investments held by banks and bank holding companies. In particular, the agencies proposed to apply these charges to investments held directly or indirectly under the merchant banking authority of section 4(k)(4)(H) of the BHC Act; held directly or indirectly by bank holding companies in less than 5 percent of the shares of a nonfinancial company under section 4(c)(6) or 4(c)(7) of the BHC Act; made by bank holding companies or banks in nonfinancial companies through SBICs; held directly or indirectly by bank holding companies or banks in nonfinancial companies under the portfolio investment provisions of Regulation K; and held by banks in nonfinancial companies under section 24 of the Federal Deposit Insurance Act (FDI Act).

The agencies proposed that the higher capital charges would not apply to SBIC investments of a bank or bank holding company to the extent such investments, in the aggregate, did not exceed 15 percent of the banking organization's Tier 1 capital. All SBIC investments, including any amount exempted from the higher proposed charges, would be included in the calculation of a banking organization's aggregate equity investment portfolio for purposes of determining the marginal capital charge applicable to non-SBIC

[1] *See* 65 FR 16480, March 28, 2000.

[2] *See* 66 FR 10212, Feb. 14, 2001.

investments and SBIC investments that, in the aggregate, exceed 15 percent of Tier 1 capital. The agencies also proposed to exempt from coverage investments made by state banks under the special grandfather rights established by section 24(f) of the FDI Act.

The agencies requested comment on all aspects of the revised proposal and on a number of specific topics identified in the proposal. For example, the agencies requested comment on whether it would be necessary or appropriate to grandfather individual equity investments that were made before banking organizations received notice that the capital requirements for such investments might change.

B. Overview of Comments

The agencies collectively received approximately 60 comments on the revised proposal, including many comments that were submitted to more than one of the agencies. Commenters included trade associations for the banking, securities and insurance industries, state banking departments and individual banks and bank holding companies. Some commenters supported the lower marginal capital charge structure and level of deductions adopted by the revised proposal. For example, some commenters stated that the marginal approach embodied in the revised proposal was appropriate, logical, and consistent with the agencies' responsibilities to ensure the safety and soundness of banking organizations. One large banking organization with a significant amount of equity investments also stated that the revised proposal would not have a significantly negative impact on its ability to make equity investments. Many commenters also supported the agencies' willingness to take steps to meaningfully address some of the issues raised by commenters concerning the initial proposal.

A number of commenters, however, stated their belief that no special capital charge was necessary for equity investments. Some of these commenters argued that banking organizations are adept at managing the risks of these investment activities and that additional regulatory capital is not necessary to adequately support these activities. Some commenters also expressed concern that the higher capital charges imposed by the revised proposal would place banking organizations at a competitive disadvantage to independent securities firms and foreign banks in the market for making equity investments. In addition, several commenters asserted that the higher proposed charges would discourage independent securities firms that make equity investments as part of their business from affiliating with a bank. Commenters argued that these effects would frustrate Congress' desire, as expressed in the GLB Act, to permit a ''two-way street'' between securities firms and banking organizations.

Some commenters also asserted that the agencies should delay adoption of a final rule and address the issue of the appropriate capital treatment for equity investments in connection with the broader revisions to the capital rules currently being considered by the Basel Committee on Banking Supervision (Basel Committee). A number of commenters also reiterated their position that banking organizations should be permitted to use their internal capital models to determine the amount of regulatory capital necessary to support the particular investment portfolio of the organization, subject to supervisory review of these models during the examination process. A few commenters suggested that a smaller, uniform capital charge or risk-weight (e.g. a 10 percent Tier 1 capital deduction or a 250 percent risk-weight) would be adequate to offset the risk of all equity investments held by banking organizations, regardless of the size of the organization's overall equity investment portfolio.

A number of commenters also contended that, if a higher capital charge was imposed, the capital charge should apply only to investments made by financial holding companies under the GLB Act's merchant banking authority, and not to any investment made by a banking organization under one or more of the legal authorities that were in effect prior to the GLB Act. Commenters asserted that banking organizations have a history of profitably making investments under these pre-existing authorities and that there is no evidence to support an increase in the regulatory capital charge for such investments. A few commenters also contended that the proposed higher capital charges should not apply to equity investments made by a company engaged in a nonfinancial activity so long as the company was ''predominantly'' engaged in financial activities.

Commenters strongly supported several specific aspects of the revised proposal. For example, many commenters supported the decision by the agencies to exempt from the new capital charge SBIC investments that, in the aggregate, represented less than 15 percent of the banking organization's Tier 1 capital.[3] Many of these commenters, however, also argued that any SBIC investments that were exempted from the higher proposed charges also should be excluded for purposes of determining the aggregate size of the banking organization's equity portfolio and, thus, the appropriate marginal charge to be applied to non-exempt investments. Commenters also supported the agencies' proposal to exclude from coverage investments made by insurance company subsidiaries of financial holding companies under section 4(k)(4)(I) of the BHC Act; investments made by state banks under the grandfather rights established by section 24(f) of the FDI Act (12 U.S.C. 1831a(f)); and investments in debt instruments that do not serve as the functional equivalent of equity.

In addition, in response to the agencies' request for comments on the subject, many commenters asserted that any higher capital charges established for nonfinancial equity investments should not apply to investments made before March 13, 2000. These commenters noted that such investments were made before the industry was aware that a higher capital charge might be established for equity investments and argued that applying the higher charges to these pre-existing investments would be inequitable and could cause some investments to become unprofitable. Many of these commenters also argued that any grandfathered investments should not be included in the banking organization's aggregate equity portfolio for purposes of determining the marginal charge applicable to non-exempt investments made on or after March 13, 2000.

Commenters also argued that the higher proposed capital charges should not be applied in determining a banking organization's Tier 1 leverage ratio, because the leverage ratio generally does not account for the relative risks of a banking organization's assets. Finally, some commenters requested that the agencies clarify whether or how the proposed higher charges would apply to particular types of equity investments, including equity investments held in the trading account or for hedging purposes; investments that are acquired in satisfaction of a debt previously contracted (DPC); and investments made by a financial holding company under section 4(k)(1)(B) of the BHC Act in a

[3] One large banking organization, however, opposed providing an exemption for SBIC investments on the grounds that these investments entail the same risks as other types of nonfinancial equity investments.

company that is engaged in activities that the Board has determined are ''complementary'' to a financial activity.

C. Explanation of the Final Rule

The agencies have carefully reviewed the revised proposal in light of all of the comments received. Following this review, the agencies have adopted a final rule that is substantially similar to the revised proposal that was issued for comment. As described further below, the agencies also have made several changes to the rule to address matters raised by commenters and to further clarify the scope and application of the rule. These changes include a grandfather provision designed to apply the rule's capital charges only to investments made on or after March 13, 2000.

As an initial matter, the agencies believe it is important and appropriate to adopt a final rule at this time that establishes a regulatory minimum capital requirement for equity investments made by banking organizations in nonfinancial companies that is higher than the regulatory minimum capital charge that applies more broadly to banking assets. Data demonstrate that equity investments in nonfinancial companies generally involve greater risks than traditional banking and financial activities. An analysis of the annual returns for the period 1946 through 1998 for publicly traded small capitalization stocks in the United States indicates that a banking organization would have to hold capital well in excess of the current regulatory minimum capital levels to maintain the margin of safety required to retain the lowest investment grade rating on a bond issued to finance a portfolio of small capitalization stocks. Furthermore, as discussed in the revised proposal, data from a study of venture capital investment firms over the past 25 years, information and analysis from two national rating agencies, and a survey of the internal capital allocation policies of several banking organizations and securities firms engaged in equity investment activities all indicate that equity investments require higher capital support than traditional banking activities. The performance of the U.S. equity markets over the past few quarters further evidences the volatility and risk of equity investments.

The level and significance of equity investment activities at banking organizations also has increased substantially in the years since adoption of the original capital rules that govern banks and bank holding companies generally. For example, the size of SBICs owned by banking organizations more than doubled in the period from 1995 to 1999, and aggregate equity investments held by banking organizations during that period more than quadrupled. In addition, as of June 30, 2001, financial holding companies held more than $8.5 billion in investments under the new GLB Act authority to make merchant banking investments—authority that only became effective on March 13, 2000. Although the growth of these activities recently has slowed, equity investment activities have become, and are likely to continue to be, a significant business line for many banking organizations.

In light of the increased significance of the equity investment activities of banking organizations and the risks associated with these investments, the agencies believe it is important to revise their capital rules to reflect more accurately the risks equity investments may pose to the safety and soundness of banking organizations. For these same reasons, the agencies do not believe it would be prudent or appropriate to delay adoption of a final rule, as some commenters suggested. The agencies are aware of, and are participating actively in, the ongoing comprehensive review and revision of the Basel Capital Accord, which is expected to include provisions addressing equity investment activities. The agencies believe this rule is consistent with the efforts of the Basel Committee to develop a minimum regulatory capital requirement for equities that is more risk-sensitive than the current 100-percent risk-weighting. The agencies note, moreover, that any revised Accord is not expected to become effective until 2005 at the earliest. The agencies view this final rule as an interim step or ''bridge'' to the revised Accord. The agencies fully expect to revisit the capital charge applicable to equity investments once the Basle Capital Accord is revised, and will at that time decide whether and what, if any, revisions to the agencies' capital guidelines should be adopted in light of the final revised Accord.

The agencies also continue to believe that internal capital models that take account of the different risks and capital needs of the credit and equity activities of a particular banking organization ultimately represent an effective method for determining the capital adequacy of an organization. The agencies do not believe that it would be appropriate at this time, however, to rely on internal capital models, as a replacement for regulatory minimum capital requirements, to address the higher risks associated with the equity investment activities of banking organizations. The stage of development and sophistication of internal models for assessing equity risk exposures varies widely across institutions. While modeling techniques for equity investments are being developed and refined at major U.S. banking organizations, few institutions have adequately robust modeling capabilities for equity investments at the present time.

The agencies note that the Basel Committee is actively considering the circumstances under which it would be appropriate for a banking organization to calculate its capital requirements under an internal models-based approach. As part of this effort, the agencies are working as part of the Basel Committee to develop the criteria under which a banking organization could use internal measurement systems or internal models to estimate the organization's risk exposure to equity investments for risk-based capital purposes.[4] The agencies will continue to work with banking organizations that seek to develop robust and effective internal models and with other domestic and international regulatory agencies to develop a regulatory framework that permits banking organizations to use models that meet appropriate quantitative and qualitative standards in assessing the organization's capital adequacy.

The Board notes that, once the final rule becomes effective on April 1, 2002, the aggregate investment review thresholds that currently apply to the merchant banking investments of financial holding companies will expire automatically.[5] These thresholds currently require a financial holding company to obtain the Board's approval prior to making additional merchant banking investments if the aggregate carrying value of the holding company's existing merchant banking investments exceeds the lesser of 30 percent of Tier 1 capital, or 20 percent of Tier 1 capital after excluding investments in private equity funds. As the Board previously noted, these review thresholds were adopted as an interim measure pending adoption of a final rule addressing the appropriate regulatory capital treatment of merchant banking investments.

1. Equity Investments Covered by Final Rule

The final rule, like the revised proposal, applies symmetrically to equity investments made by bank

[4] *See* Basel Committee on Banking Supervision, Working Paper on Risk Sensitive Approaches for Equity Exposures in the Banking Book for IRB Banks (August 2001) (''Equity Risk Working Paper'').

[5] *See* 12 CFR 225.174(c); 12 CFR 1500.5(c).

holding companies and banks. Bank holding companies and banks generally make equity investments in reliance on, and the capital charge applies only to investments held under, the following authorities—

- The merchant banking authority of section 4(k)(4)(H) of the BHC Act (12 U.S.C. 1843(k)(4)(H)) and subpart J of the Board's Regulation Y (12 CFR 225.170 *et seq.*);
- The authority to acquire up to 5 percent of the voting shares of any company under section 4(c)(6) or 4(c)(7) of the BHC Act (12 U.S.C. 1843(c)(6) and (c)(7));
- The authority to invest in SBICs under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b));
- The portfolio investment provisions of Regulation K (12 CFR 211.8(c)(3)), including the authority to make portfolio investments through Edge and Agreement corporations;[6] and
- The authority to make investments under section 24 of the FDI Act (other than under section 24(f)) (12 U.S.C. 1831a).

For purposes of the rule, an equity investment includes the purchase, acquisition or retention of any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity. The rule generally does not apply to investments in nonconvertible senior or subordinated debt. The agencies, however, may impose the rule's higher charges on any instrument if the agency, based on a case-by-case review of the investment in the supervisory process, determines that the instrument serves as the functional equivalent of equity or exposes the banking organization to essentially the same risks as an equity instrument. The agencies believe this reservation of supervisory authority is appropriate to ensure that the higher capital charges apply to instruments that function as equity, and ensure that banking organizations do not evade the requirements of the rule through financial engineering.

[6] Recently, the Board comprehensively revised Regulation K, which, among other things, governs the foreign activities of U.S. banking organizations. *See* 66 FR 54346, Oct. 26, 2001. As part of that action, the portfolio investment provisions previously located at 12 CFR 211.5(b)(1)(iii) were amended and moved to 12 CFR 211.8(c)(3).

The capital charge applies only to investments held directly or indirectly in nonfinancial companies under one or more of the authorities listed above. For purposes of the final capital rule, a nonfinancial company is defined to mean an entity that engages in any activity that has not been determined to be financial in nature or incidental to financial activities under section 4(k) of the BHC Act. For investments held directly or indirectly by a bank, the term ''nonfinancial company'' also does not include a company that engages only in activities that are permissible for the parent bank to conduct directly. The rule does not apply to investments made in companies that engage solely in banking and financial activities. Banking organizations have special expertise in managing the risks associated with banking and financial activities.

A few commenters asserted that the proposed higher capital charges should apply only to merchant banking investments made by financial holding companies under section 4(k)(4)(H) of the BHC Act, or should not apply to investments made under one or more of the other investment authorities listed above. The risk of loss associated with a particular equity investment is likely to be the same regardless of the legal authority used by a banking organization to make the investment, or whether the investment is held by a bank holding company or a bank. Supervisory experience, particularly over the past few quarters, has confirmed that significant valuation declines may occur with respect to equity investments held under a variety of legal authorities. It is for these reasons that banking organizations are increasingly making investment decisions and managing equity investment risks across legal entities as a single business line within the organization. It is for these same reasons that the final rule, like the revised proposal, applies symmetrically to nonfinancial equity investments held by banks and bank holding companies and applies to equity investments made under each of the principal legal authorities currently available to banking organizations for making such investments.

As noted above, the final rule applies to investments made by bank holding companies or banks in or through SBICs under section 302(b) of the Small Business Investment Act. In light of Congress' express desire to facilitate the funding of small businesses through SBICs, the statutory limits on the amount of capital a banking organization may invest in SBICs, and the existing regulatory framework governing the formation and operations of SBICs, the agencies proposed to exempt from the higher capital charges SBIC investments of banking organizations that, in the aggregate, did not exceed 15 percent of the Tier 1 capital of the banking organization.

Commenters strongly supported this treatment. Accordingly, the final rule continues to provide an exception for SBIC investments. As described further below (*see* Part C.4 below), the rule does not place any additional regulatory capital charge on SBIC investments held directly or indirectly by a bank to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the Tier 1 capital of the bank. For bank holding companies, no additional regulatory capital charge is imposed on SBIC investments held directly or indirectly by the holding company to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the aggregate of the holding company's pro rata interests in the Tier 1 capital of its subsidiary banks.

The rule also applies to investments held by state banks in a nonfinancial company under section 24 of the FDI Act. Section 24 permits a state bank to acquire equity in a nonfinancial company if the FDIC determines that the investment does not pose a significant risk to the deposit insurance fund. The FDIC is empowered to establish and has established higher capital requirements and other limitations on equity investments of state banks held under this authority, such as investments in companies engaged in real estate investment and development activities. The FDIC has to date in most cases required state banks that make these investments to limit the amount of the investment and to deduct these investments from the bank's capital, effectively imposing a 100 percent capital charge on these investments. Because of the FDIC's practice in establishing higher capital charges, the final rule will not have the effect of imposing additional capital requirements on investments held under section 24 of the FDI Act.[7]

The agencies proposed to exclude from coverage equity investments made

[7] The final rule permits the Board of Directors of the FDIC, acting directly in exceptional cases and after a review of the proposed activity, to allow a lower capital deduction for investments approved by the Board of Directors under section 24 of the FDI Act so long as the bank's investments under section 24 and SBIC investments represent, in the aggregate, less than 15 percent of the Tier 1 capital of the bank. The FDIC may also impose a higher capital charge on any investment made under section 24 where appropriate.

by state banks under the grandfather rights established by section 24(f) of the FDI Act and commenters strongly supported this exception. Section 24(f) permits a state bank to make investments only in shares of publicly traded companies and registered investment companies, and only if the investment was permitted under a state law enacted as of a certain date and the state bank engaged in the investment activity as of a certain date. The FDI Act also provides that the total amount of investments made by a state bank under section 24(f) may not exceed the capital of the bank, and expressly authorizes the FDIC to require the divestiture of any investment made under the section if the FDIC determines the investment will have an adverse effect on the safety and soundness of the bank. In light of the limited scope of these investments and the statutory restrictions applicable to them, the agencies have adopted an exemption for these investments in the final rule.

Some commenters asserted that the proposed higher charges should not apply to any investment made in a company that is predominantly engaged in banking or financial activities. These investments, by definition, involve some mixing of banking and commerce, and present special risks to the investing banking organization. In addition, the agencies believe that the adoption of a ''predominantly financial'' standard would create significant administrative and verification burdens for banking organizations and their supervisors, and could create opportunities for banking organizations to evade the higher capital charges established by the rule. In this regard, the agencies believe it would be difficult for banking organizations to establish and document adequately, and for the appropriate supervisor to monitor effectively, the mix of a company's financial and nonfinancial activities. On the other hand, the approach adopted by the final rule provides a clear standard for banking organizations and their supervisors to use in identifying investments covered by the rule while, at the same time, excluding from coverage investments in companies engaged solely in banking or financial activities that the banking organization could hold under their traditional authorities to engage in such activities.

In response to questions raised by commenters, the agencies wish to clarify that the rule does not apply to investments made in a community development corporation to promote the public welfare under 12 U.S.C. 24(Eleventh). In addition, the rule does not apply to equity securities that are acquired in satisfaction of a debt previously contracted (DPC) and that are held and divested in accordance with applicable law, or to unexercised warrants acquired by a bank as additional consideration for making a loan where the warrants are not held under one of the legal authorities covered by the rule.

The final rule also does not apply to equity investments made under section 4(k)(4)(I) of the BHC Act by an insurance underwriting affiliate of a financial holding company. Investments made by insurance underwriting affiliates of a financial holding company generally are already subject to higher capital charges under state insurance laws. The Board expects to monitor financial holding companies with insurance underwriting affiliates to ensure that they do not arbitrage any differences in the capital requirements applicable to equity investments made by insurance companies and other financial holding company affiliates. The Board also currently is considering the appropriate method for accounting for insurance companies and their investments under the Board's consolidated capital adequacy guidelines and will address any issues that arise in this area in a separate proposal.

The agencies proposed to exempt from the higher capital charges any equity instrument that was held in the trading account of the relevant banking organization in accordance with generally accepted accounting principles (GAAP) and as part of an underwriting, market making or dealing activity.

Several commenters asserted that the higher capital charges should not apply to any equity instrument that is held for hedging purposes, or to any equity instrument that is held in the trading account in accordance with GAAP. Some commenters also asked the agencies to clarify the scope of the proposed exemption for equity instruments held in the trading account.

The final rule does not apply the higher capital charges to equity securities acquired and held by a bank or bank holding company as a bona fide hedge of an equity derivative transaction lawfully entered into by the bank or bank holding company. Moreover, banking organizations have separate authority to underwrite, deal in, and make a market in equity securities through a securities broker or dealer that is subject to special capital and accounting requirements, and securities lawfully acquired under these statutory provisions are not covered by the rule.[8]

Because the trading account provision of the revised proposal was included for the purpose of exempting these types of holdings from the capital proposal, the agencies do not believe that, with the clarifications discussed above, a general exemption for investments held in the trading account is necessary. Moreover, a more general exception for equities held in the trading account, as advocated by some commenters, could allow banking organizations to evade the requirements of the rule by placing nonfinancial equity investments in their trading account. Accordingly, the final rule does not include a general exemption for investments that are held in the trading account.

A few commenters questioned whether the proposed charges would apply to investments made by financial holding companies in a company engaged in ''complementary'' activities. Section 4(k)(1)(B) of the BHC Act (12 U.S.C. 1843(k)(1)(B)) permits a financial holding company to acquire a company engaged in a nonfinancial activity if the Board finds that the activity is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally. A financial holding company must obtain the Board's prior approval to acquire a company under this authority.[9] The Board will review and consider the appropriate capital treatment of investments made by a financial holding company under section 4(k)(1)(B) in connection with its review of any notice filed by a financial holding company to acquire a company engaged in a complementary activity, or in connection with its determination that a particular activity is ''complementary'' to a financial activity.[10] Accordingly, the final rule does not apply to investments made by a financial holding company under the ''complementary'' investment authority of section 4(k)(1)(B) of the BHC Act.

The agencies believe that the legal authorities covered by the rule represent

[8] *See* 12 U.S.C. 24a, 335 and 1831w (financial subsidiaries of national, state member and state nonmember banks, respectively); 12 U.S.C. 1843(k)(4)(E) (financial holding companies); and 12 U.S.C. 1843(c)(8) and *J.P. Morgan & Co., Inc.,* 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industry Ass'n* v. *Board of Governors of the Federal Reserve System,* 900 F.2d 360 (D.C. Cir. 1990) (bank holding companies).

[9] *See* 12 CFR 225.89.

[10] *See* 65 FR 80384, Dec. 21, 2000 (requesting comment on a proposal to determine that certain data processing and data transmission activities are complementary to a financial activity and on the appropriate capital treatment for such investments).

the principal legal authorities available to banking organizations for making equity investments in nonfinancial companies. The agencies intend to monitor developments relating to nonfinancial equity investments of banking organizations and may expand the types of investments covered by the rule if necessary to ensure that banking organizations maintain adequate capital to support their equity investment activities.

2. Transition Rule for Investments Made Before March 13, 2000

As noted above, the agencies specifically requested comment on whether the higher proposed capital charges should apply to individual investments made by a bank or bank holding company prior to March 13, 2000. The agencies proposed that, if investments made prior to March 13, 2000, were grandfathered, the amount of such investments be included in determining the aggregate size of the banking organization's equity investment portfolio and, thus, the appropriate marginal capital charge that would apply to investments that were not grandfathered.

Commenters strongly supported grandfathering investments that were made prior to March 13, 2000. Commenters noted that these investments were made before the agencies publicly indicated that a higher regulatory capital charge might be imposed, and argued that applying the new charges retroactively to these investments would be unfair and could render certain existing investments unprofitable. Commenters also favored a permanent grandfather for individual investments made prior to March 13, 2000, rather than a phase-in period that would apply the new capital requirements to such investments over a period of years.

After reviewing the comments received, the agencies have determined to exempt from the new capital charges any individual investment that was made by a bank or bank holding company before March 13, 2000, or that was made after such date pursuant to a binding written commitment entered into by the banking organization prior to March 13, 2000.[11] These investments are modest in amount at most banking organizations and will be liquidated over time. As discussed further below (*see* Part C.4), the adjusted carrying value of any grandfathered investment must be included in determining the total amount of nonfinancial equity investments held by the banking organization in relation to its Tier 1 capital and, thus, the marginal capital charge that applies to the organization's covered equity investments.[12]

The final rule grants these grandfather rights only to investments that were made prior to March 13, 2000, or that were made on or after March 13, 2000 pursuant to a binding written commitment entered into prior to March 13, 2000.[13] For example, if a bank holding company acquired 100 shares of a nonfinancial company under section 4(c)(6) of the BHC Act prior to March 13, 2000, the adjusted carrying value of that investment would be exempt from the rule's higher capital charges. However, if the bank holding company purchased additional shares of the company after March 13, 2000, or made a capital contribution to the company after March 13, 2000, the adjusted carrying value of the additional investment would be subject to the marginal capital charges of the rule (assuming that the additional investment was not made pursuant to a binding written commitment entered into before March 13, 2000). Shares or other interests received by a banking organization through a stock split or stock dividend on an investment made prior to March 13, 2000, are not considered a new investment if the banking organization does not provide any consideration for the shares or interests received and the transaction does not materially increase the organization's proportional interest in the company. On the other hand, shares or interests acquired on or after March 13, 2000, through the exercise of options or warrants acquired before March 13, 2000, will be considered a new investment if the banking organization provides any consideration for the shares or interests received.

An investment qualifies for grandfather rights only if the banking organization has continuously held the investment since March 13, 2000. Thus, in the example discussed above, if the bank holding company sold and repurchased 40 shares of the nonfinancial company after March 13, 2000, those 40 shares would no longer qualify for grandfather rights under the rule. The grandfather status of an investment is not affected if the banking organization determines to hold that investment under a different legal authority than the authority originally used to acquire the investment. A financial holding company could, for example, decide to hold certain investments made through an SBIC or under section 4(c)(6) of the BHC Act prior to March 13, 2000, under the GLB Act's expanded merchant banking authority, and such decision would not affect the grandfathered treatment of the investment under the rule.

3. Marginal Capital Charge Structure

The agencies are adopting a final marginal capital charge structure that is substantially as outlined in the revised proposal. This structure applies a higher capital charge to equity investments as the aggregate amount of the organization's nonfinancial equity investments increases in relation to its capital. This approach reflects the fact that the financial risks to a banking organization from equity investment activities increases as the level of these activities account for a larger portion of the organization's capital, earnings, and activities. The charges, which are reflected in the following table, are applied by making a deduction from the banking organization's Tier 1 capital.

[11] A few commenters asserted that grandfather rights should be granted to all investments made prior to the effective date of the final rule. The agencies do not believe granting broader grandfather rights for equity investments would be appropriate in light of the risks these investments pose to banking organizations. Also, the Board in its initial capital proposal specifically gave notice that it expected banking organizations to maintain capital in sufficient amounts to allow the organizations to transition to higher regulatory capital levels for equity investments if required. Thus, the agencies expect that banking organizations will not face significant burdens in complying with the final rule which, as noted above, imposes capital charges that are lower than those initially proposed.

[12] In addition, all grandfathered investments that are not subject to a deduction under the rule will be risk-weighted at 100 percent and included in the banking organization's risk-weighted assets for purposes of calculating the organization's risk-based capital ratios.

[13] For purposes of the rule a binding written commitment means a legally binding written agreement that requires the banking organization to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a banking organization the right to acquire equity or make an investment, but do not require the banking organization to take such actions, are not considered a binding written commitment for purposes of the rule.

TABLE 1.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the banking organization (as a percentage of the Tier 1 capital of the banking organization)	Deduction from Tier 1 Capital (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

Each tier of charges applies, on a marginal basis, to the adjusted carrying value of the banking organization's nonfinancial equity investments that fall within the specified range of the organization's Tier 1 capital.[14] The total adjusted carrying value of a nonfinancial equity investment that is subject to a deduction under the rule is excluded from the banking organization's risk-weighted assets for purposes of computing the denominator of the organization's risk-based capital ratio.

The amount of the deduction is based on the adjusted carrying value of the banking organization's nonfinancial equity investments. The ''adjusted carrying value'' of an investment is the value at which the investment is recorded on the balance sheet of the banking organization, reduced by (i) net unrealized gains that are included in carrying value but that have not been included in Tier 1 capital and (ii) associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investment as reflected on the banking organization's balance sheet, less the sum of (i) unrealized gains on those investments included in the organization's other comprehensive income and not reflected in Tier 1 capital and (ii) any associated deferred tax liabilities.

Comments were mixed on using the adjusted carrying value of an investment for purposes of determining the amount of the required deduction. While some commenters favored this approach, others argued that it unfairly penalized well performing investments that are marked-up with the unrealized gains flowing into Tier 1 capital.

The agencies continue to believe that the adjusted carrying value of an investment provides an appropriate benchmark for applying the deduction because it reflects the full amount of an organization's capital exposure to equity investments. Adjusted carrying value reflects both the amount actually invested by the banking organization and any additional unrealized gains (or losses) on the investment that are reflected in the organization's Tier 1 capital. All of the adjusted carrying value of an investment is potentially subject to loss in the event of devaluation of the investment. Applying the charge to the adjusted carrying value of an investment also takes into account that some banking organizations use AFS accounting for GAAP reporting purposes, which is a prudent and appropriate accounting method in many situations and one that results in an effective 100 percent capital charge on unrealized gains.[15]

4. SBIC Investments

The final rule applies to equity investments made by bank holding companies and banks in nonfinancial companies through one or more SBICs that are consolidated with the banking organization, and to equity investments in one or more SBICs that are not consolidated with the banking organization. For the reasons discussed above, the final rule provides an accommodation for SBIC investments made by a bank holding company or bank provided such investments remain within traditional investment ranges. In particular, no additional capital charge is applied to SBIC investments held directly or indirectly by a bank to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the Tier 1 capital of the bank. In the case of a bank holding company, no additional capital charge is applied to SBIC investments held directly or indirectly by the bank holding company to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the aggregate of the holding company's pro rata interests in the Tier 1 capital of its subsidiary banks.[16] SBIC investments that are not subject to a deduction under the rule will be risk-weighted at 100 percent and included in the banking organization's risk-weighted assets for purposes of calculating the organization's risk-based capital ratios.

The final rule continues to provide that a banking organization, in calculating the aggregate adjusted carrying value of its nonfinancial equity investments for purposes of determining the appropriate marginal charge to be applied to an equity investment subject to the rule, must include all nonfinancial equity investments held by the organization in or through an SBIC as well as all grandfathered investments that are exempt from the rule's higher capital charges. A number of commenters opposed this treatment and argued that this treatment would effectively subject exempt SBIC investments and grandfathered investments to the rule's higher capital charges.

One of the principles that has guided the agencies during this rulemaking process is that the risks to a banking organization from equity investment activities increase as equity investments constitute a larger component of the

[14] For purposes of determining the amount of a banking organization's nonfinancial equity investments as a percentage of its Tier 1 capital, Tier 1 capital is calculated *before* any deduction for disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, disallowed purchased credit card relationships, disallowed credit enhancing interest-only strips (both purchased and retained), disallowed deferred tax assets, and nonfinancial equity investments.

The agencies recently adopted amendments to their capital guidelines to better address the regulatory capital treatment of recourse obligations, residual interests (including credit enhancing interest-only strips) and direct credit substitutes. *See* 66 FR 59614 (Nov. 29, 2001) (''Securitization Rule''). The amendments to the agencies' capital guidelines adopted by this final rule reflect the changes made to the capital guidelines by the Securitization Rule.

[15] The rule does not affect the treatment of unrealized gains and losses on AFS securities for purposes of calculating supplementary (Tier 2) capital. Under the agencies' risk-based capital rules, up to 45 percent of an organization's pretax net unrealized gains on AFS equity securities may be included in Tier 2 capital.

[16] The amount a bank holding company may invest in the stock of an SBIC under section 4(c)(5) of the BHC Act and section 302(b) of the Small Business Investment Act is based on the bank holding company's proportionate interest in the capital and surplus of its subsidiary banks. *See* 12 CFR 225.111. The Board believes a similar methodology is appropriate for determining the level of SBIC investments held directly or indirectly by a bank holding company that qualify for an exemption from the rule's higher capital charges.

organization's capital and operations. Although the agencies, for the reasons discussed above, have determined to provide an exemption for SBIC investments and investments made prior to March 13, 2000, the agencies believe it is appropriate to consider the risks associated with an organization's total equity investment portfolio in determining the marginal charge that would apply to SBIC investments that exceed traditional levels and to investments made on or after March 13, 2000. This approach balances Congress' desire to promote the funding of small businesses through SBICs and the desire of banking organizations to preserve the existing capital treatment of investments made prior to March 13, 2000, with the agencies' strong belief, based on available data, that regulatory capital levels higher than the current requirements are necessary to support the greater risks associated with equity investments and ensure the safety and soundness of banking organizations. The agencies also note that this approach does not impose a higher capital charge on exempted SBIC investments or grandfathered investments. These investments would continue to be subject to the same capital requirements that apply to such investments today. However, these investments could cause a higher marginal capital charge to be imposed on each additional dollar of non-exempt and non-grandfathered investments made by the banking organization to reflect the organization's higher concentration and exposure to equity investment activities.

If a banking organization has an investment in a SBIC that is consolidated with the banking organization for accounting purposes, but that is not wholly owned by the banking organization, the adjusted carrying value of the organization's nonfinancial equity investments held through the SBIC is equal to the organization's proportionate share of the adjusted carrying value of the SBIC's equity investments in nonfinancial companies. The remainder of the adjusted carrying value of the SBIC's investments, which represents the minority interest holders' proportionate share, is excluded from the banking organization's risk-weighted assets.[17]

Similar treatment applies to investments that a bank holding company holds through equity investment funds that are controlled by the holding company (such as, by acting as general partner of the fund) but that are not wholly owned by the holding company. In these circumstances, the capital charge applies only to the holding company's proportionate share of the fund's investments even if the fund is consolidated in the holding company's financial reporting statements.

In addition, if a less-than-wholly-owned SBIC or investment fund is consolidated into the banking organization's financial statements for accounting and reporting purposes, any minority interest resulting from the consolidation may not be included in the Tier 1 capital of the banking organization. The agencies believe this treatment is appropriate because the minority interest is not available to support the overall financial business of the banking organization and, therefore, should not be included in the banking organization's capital.

The agencies do not expect that any nonfinancial company acquired by a banking organization under one of the legal authorities covered by the rule would be consolidated into the banking organization's financial statements, either because the investment is temporary or limited to a non-controlling stake. However, if consolidation does occur, any resulting minority interest also must be excluded from Tier 1 capital because the minority interest is not available to support the general financial business of the banking organization.

5. Examples of Application of Rule's Marginal Charges

The following two examples illustrate how the rule's marginal charges apply.

Example 1: A financial holding company has $1 million in Tier 1 capital and has nonfinancial equity investments with an aggregate adjusted carrying value of $270,000. All of the financial holding company's nonfinancial equity investments are held under the GLB Act's merchant banking authority and all were made after March 13, 2000. The total amount of the financial holding company's required Tier 1 capital deduction would be $28,998, determined as follows: (i) 8 percent of the first $149,999 ($11,999); (ii) 12 percent of the amount between $150,000 and $249,999 ($11,999); and (iii) 25 percent of the amount from $250,000 to $270,000 ($5,000).[18] The average Tier 1 charge on the financial holding company's portfolio would be 10.74 percent.

Example 2: A bank has $1 million in Tier 1 capital and has nonfinancial equity investments with an aggregate adjusted carrying value of $375,000. Of this amount, $100,000 represents the adjusted carrying value of investments made prior to March 13, 2000, and an additional $175,000 represents the adjusted carrying value of investments made through the bank's wholly owned SBIC. The $100,000 in investments made prior to March 13, 2000, and $150,000 of the bank's SBIC investments would not be subject to the rule's marginal capital charges. These amounts are considered for purposes of determining the marginal charge that applies to the bank's covered investments (including the $25,000 of non-exempt SBIC investments). In this case, the total amount of the bank's Tier 1 capital deduction would be $31,250. This figure is 25 percent of $125,000, which is the amount of the bank's total nonfinancial equity portfolio subject to the rule's marginal capital charges. The average Tier 1 capital charge on the bank's entire nonfinancial equity portfolio would be 8.33 percent.

The $31,250 charge in Example 2 reflects the provisions of the rule that impose no additional capital charge on investments made prior to March 13, 2000, and on SBIC investments to the extent such investments do not exceed 15 percent of Tier 1 capital. While these grandfathered and SBIC investments are not subject to a Tier 1 capital deduction under the final rule, these investments would be given a 100 percent risk-weight and would remain subject to the normal Tier 1 and total capital charges applicable to the organization's risk-weighted assets under the agencies's risk-based capital guidelines.

6. Leverage Ratio

The revised proposal required banking organizations to apply the proposed capital deduction in calculating the organization's Tier 1 capital. Consequently, the proposal would affect both the organization's risk-based capital ratio and its ratio of Tier 1 capital to average total assets (Tier 1 leverage ratio). The agencies requested comment on whether the final rule should be adjusted to eliminate application of the deduction for purposes of calculating the Tier 1 leverage ratio and, if so, how this might be done. A small number of commenters addressed this issue, and generally opposed incorporating the higher capital charges for equity investments into the calculation of an organization's Tier 1 leverage ratio. Commenters asserted that the leverage ratio was

[17] If a banking organization has an investment in a SBIC that is not consolidated with the banking organization for accounting purposes, that organization may (but is not required to) reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the SBIC's investments that are in companies engaged only in banking or financial activities. A banking organization may adjust its interest in a non-consolidated SBIC in this manner only if the organization has current information that identifies the percentage of the SBIC's investments that are in companies engaged in a nonfinancial activity. This information must be available to examiners upon request.

[18] For purposes of these examples, all figures have been rounded to the nearest dollar.

intended to provide an absolute measure of the bank's capital to asset ratio without adjusting the bank's assets according to the relative risk associated with different classes of assets.

After carefully reviewing the comments on this issue, the agencies have decided to adopt the approach proposed, which applies the deduction to Tier 1 for both risk-based and leverage capital purposes.[19] In reaching this conclusion, the agencies have carefully considered a number of factors and alternatives. The agencies have long used a uniform definition of Tier 1 capital for both risk-based and leverage capital purposes based, in part, on the view that the nature and composition of ''core'' capital does not differ depending on whether it is being compared to risk-weighted or average total assets. In addition, although the leverage ratio generally is intended to provide an absolute measure of a banking organization's ratio of core capital to average total assets, the agencies also previously have determined that certain types of assets that involve special risks should be deducted from, and not considered part of, Tier 1 capital for both risk-based and leverage capital purposes.[20] As discussed above, equity investments involve significantly greater risks than those associated with traditional banking and financial activities and, accordingly, the agencies believe it is appropriate to require that these investments be deducted from core capital for leverage capital purposes in the manner provided in the rule.

The agencies note, moreover, that the most direct method of implementing the commenters' proposal would be to require banks to apply the rule's deductions only for risk-based capital purposes. Such an approach would result in many banking organizations having two separate Tier 1 capital amounts—one for risk-based purposes and one for leverage purposes. This dichotomy could create significant confusion in, and burden for, the industry, particularly because a number of regulatory and reporting requirements are based on an organization's ''Tier 1 capital'' and two such numbers might exist. The agencies also have considered potential alternative approaches that would implement the commenters' suggestion while, at the same time, retaining an uniform definition of Tier 1. These alternative approaches, however, also would significantly increase the complexity and burden of the rule.

The agencies also have reviewed information obtained through the supervisory and examination process for a sample of banking organizations with a significant amount of equity investments. This review indicates that applying the rule's Tier 1 deductions for leverage capital purposes likely will have a de minimis impact on the leverage ratio of banking organizations at this time. For these reasons, the final rule requires banking organizations to make the rule's Tier 1 deductions for both risk-based and leverage capital purposes.

The final rule provides that the total adjusted carrying value of a banking organization's nonfinancial equity investments that is subject to a deduction from Tier 1 capital will be excluded from the organization's average total consolidated assets for purposes of computing the denominator of the organization's Tier 1 leverage ratio. Any amount of equity investments that is not subject to a deduction under the rule (*e.g.* grandfathered investments and SBIC investments that, in the aggregate, do not exceed 15 percent of Tier 1 capital) must be included in the organization's average total consolidated assets.

7. Risk Management and the Supervisory Process

Although strong capital adequacy is critically important to ensure that equity investment activities do not pose an undue risk to a banking organization, capital strength must be supplemented by strong internal controls and management practices to ensure that equity investment activities are conducted in a safe and sound manner. Accordingly, all banking organizations are expected to develop, maintain and employ sound risk management policies, procedures and systems that are reasonably designed to manage the risks associated with the organization's equity investment activities. These policies, procedures and systems should include established limits on the types and amounts of equity investments that may be made by the banking organization; parameters governing portfolio diversification; sound policies governing the valuation and accounting of investments; periodic reviews of the performance of individual investments and the aggregate portfolio; and strong internal controls, including investment review and authorization procedures and recordkeeping requirements. The level and complexity of an organization's risk management policies, procedures and systems should be commensurate to the size, nature and complexity of the organization's equity investment activities and consistent with any guidance published by the agencies.[21]

The agencies note, moreover, that the capital requirements established by this final rule are viewed as the minimum capital levels required for a banking organization to adequately support its equity investment activities. The agencies' risk-based capital guidelines require banking organizations at all times to maintain capital that is commensurate with the level and nature of the risks to which they are exposed and the agencies fully expect that individual banking organizations will allocate higher economic capital levels, as appropriate, to support their equity investment activities in amounts commensurate with the risk in the individual investment portfolios of the organization.

Furthermore, the agencies may impose a higher capital charge on the nonfinancial equity investments of a banking organization if the facts and circumstances indicate that a higher capital level is appropriate in light of the risks associated with the organization's investment activities. The agencies believe that strong capital levels above the minimum requirements are particularly important when a banking organization has a high degree of concentration in nonfinancial equity investments. As proposed, the agencies will apply heightened supervision to the equity investment activities of banking organizations with significant concentrations in equity investments. In addition, capital levels above the minimums established by this rule may be appropriate in light of the nature, concentration or performance of a particular organization's equity investments, or the sufficiency of the organization's policies, procedures, and systems used to monitor and control the risks associated with the organization's equity investments.

[19] A few commenters also asserted that the agencies should, as a general matter, eliminate the Tier 1 leverage ratio for banking organizations. This suggestion is beyond the scope of this targeted rulemaking, and the agencies believe that the leverage ratio continues to be a useful tool in ensuring that banking organizations operate with adequate capital to support their activities.

[20] For example, the agencies' risk-based and leverage capital guidelines may require banking organizations to deduct all or a portion of the following assets from Tier 1 capital: goodwill; mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing interest-only strips; other identifiable intangible assets; and deferred tax assets.

[21] *See, e.g.* Federal Reserve SR Letter No. 00–9 (SPE), Supervisory Guidance on Equity Investment and Merchant Banking Activities (June 22, 2000).

8. Regulatory Requirements Based on Tier 1 Capital

A number of regulatory restrictions and reporting requirements are based on, or refer to, a bank's Tier 1 capital. For example, Tier 1 capital is one component used in determining the dollar amount of covered transactions that a bank may have with any one affiliate and all affiliates in the aggregate under section 23A of the Federal Reserve Act, and the amount of extensions of credit that a national bank may have outstanding to a single borrower under the National Bank Act.[22]

The final rule requires banking organizations, in calculating their Tier 1 capital, to deduct the appropriate percentage of their nonfinancial equity investments from the sum of their core capital elements. The organization's Tier 1 capital is the amount remaining after the deduction for nonfinancial equity investments, and after any other deductions and adjustments required by the agencies' capital guidelines. Accordingly, banking organizations must use their Tier 1 capital, calculated in the manner required by the agencies' capital guidelines as amended by this final rule, in determining their compliance with any regulatory restriction or reporting requirement that is based on Tier 1 capital.

D. Regulatory Flexibility Act Analysis

OCC: The OCC hereby certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the regulatory capital requirements will not have a significant economic impact on a substantial number of small entities. As described in detail elsewhere in the supplementary information, the final rule amends the OCC's risk-based capital guidelines to apply a series of marginal capital charges that increase as the size of a national bank's portfolio of certain nonfinancial equity investments increases in relation to its Tier 1 capital. For the following reasons, the OCC concludes that the new capital requirements are unlikely to have a significant economic impact on a substantial number of small banks.

First, the final rule applies to only two categories of national bank investments: investments made pursuant to the Board's Regulation K and investments made in or through, SBICs. The majority of national bank nonfinancial equity investments are in the form of investments made in, or through, SBICs. The OCC believes that SBIC investment activities are conducted primarily by large banks rather than by small banks within the Small Business Administration's definition of ''small entity'' (asset size of $100 million or less).

Moreover, several key features of the rule mitigate any effect that the increased capital requirements may have on small banks that do engage in nonfinancial equity investments covered by the rule. For example, in order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, nonfinancial equity investments made before March 13, 2000, are ''grandfathered.'' Commenters noted that because such investments were made before the industry was aware of the possibility of higher capital requirements, applying higher capital requirements to such investments could negatively impact the economics of the transactions. Moreover, the final rule does not apply the higher capital requirements to investments by national banks in community development corporations pursuant to 12 U.S.C. 24(Eleventh), to equity securities acquired in satisfaction of a debt previously contracted, or to certain unexercised warrants.

Finally, the new capital requirements apply only to levels of investment that equal or exceed 15 percent of the bank's Tier 1 capital. Most national banks will not be required to hold additional capital for the SBIC investments that they currently hold either because the investments are grandfathered or because the bank's level of investment is below 15 percent. As a result, the new capital charge should not deter prudent new investment in small companies, since most national banks could undertake new investments without tripping the 15 percent threshhold.

Board: In accordance with section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The rule amends the Board's consolidated risk-based and leverage capital adequacy guidelines for state member banks and bank holding companies to establish special minimum regulatory capital requirements for equity investments in nonfinancial companies. *See* 12 CFR Part 208, Appendix A and Appendix B (state member banks); 12 CFR Part 225, Appendix A and Appendix D (bank holding companies). As discussed more fully above, available data indicate that equity investments generally involve greater risks than the traditional banking and financial activities of banking organizations. Data also indicate that the level and significance of equity investment activities at banking organizations has increased significantly in recent years. The final rule modifies the Board's capital adequacy guidelines to better reflect the riskiness of equity investments and the potential risks such investments pose to the safety and soundness of insured depository institutions.

The Board specifically requested comment on the likely burden that the revised proposal would impose on bank holding companies and state member banks. One bank holding company that owns or controls a substantial quantity of equity investments stated that the revised proposal would not have a significantly adverse impact on its ability to make equity investments. Some commenters, on the other hand, argued that the higher capital charges imposed by the rule would place banking organizations at a competitive disadvantage to independent securities firms and foreign banks in the market for making equity investments, or would discourage securities firms from affiliating with banks. In addition, some commenters also asserted that the agencies should adopt one or more alternative approaches suggested by the commenters. These alternatives included establishing a uniform capital charge or risk-weight for all equity investments, relying on a banking organization's internal capital models to determine the appropriate amount of capital to support a banking organization's equity investment portfolio, and delaying adoption of a final rule pending completion of the ongoing revisions to the Basle Capital Accord.

For the reasons discussed in detail above, the Board believes that the capital charges imposed by the final rule are necessary and appropriate to ensure that state member banks and bank holding companies maintain capital commensurate with the risk associated with their equity investment activities and that these activities do not pose an undue risk to the safety and soundness of insured depository institutions. The Board also has reviewed the alternatives suggested by commenters and, for the reasons discussed above, believes it would not be prudent or appropriate at this time to adopt these approaches as an alternative to the marginal regulatory capital charge structure implemented by the final rule.

The Board notes, moreover, that the final rule includes several features that likely will reduce the potential effect of the rule on bank holding companies (including their bank and nonbank subsidiaries) and state member banks,

[22] *See* 12 CFR 250.242; 12 CFR 32.2(b).

including in particular small banking organizations and other small entities. As described fully above, the rule exempts from the higher capital charges SBIC investments held by banks and bank holding companies that remain within traditional limits, investments made by banking organizations prior to March 13, 2000, and investments made by state banks under the special grandfather rights granted by section 24(f) of the FDI Act. For covered investments, the rule applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. The highest marginal Tier 1 charge (25 percent) is well below the uniform charge initially proposed (50 percent).

In addition, once the final rule becomes effective on April 1, 2002, the aggregate investment review thresholds currently applicable to the merchant banking investments of financial holding companies will expire automatically. See 12 CFR 225.174(c); 12 CFR 1500.5(c). Thus, adoption of the final rule will relieve financial holding companies of all sizes from any burden associated with seeking formal Board approval to expand their merchant banking activities.

The Board's supervisory experience also indicates that a significant number of small banks and bank holding companies do not engage in the type of equity investment activities covered by the rule.[23] In addition, the Board's risk-based and leverage capital guidelines generally do not apply to bank holding companies that have less than $150 million in consolidated total assets and, accordingly, the amendments made by the final rule generally would not apply to such small bank holding companies. The Board also has reviewed information concerning a sample banking organizations that are actively engaged in equity investment activities and, based on this review, believes the final rule is not likely to have a significantly adverse impact on banking organizations or their ability to engage in equity investment activities.

FDIC: The final rule amends the FDIC's risk-based and leverage capital standards for state nonmember banks (12 CFR part 325). These amendments establish the regulatory capital requirements applicable to certain nonfinancial equity investments of state nonmember banks. The FDIC hereby certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the regulatory capital requirements will not have a significant economic impact on a substantial number of small entities because of the exclusion in this final rule for grandfathered equity investments by state banks under section 24(f) of the FDI Act and the grandfather provision that was added to this final rule for nonfinancial equity investments made before March 13, 2000.

Since March 13, 2000, the FDIC has received approximately 37 applications and notices under section 24 of the FDI Act for equity investment activities in nonfinancial companies. It is anticipated that most of these equity investment activities would be covered under this rule. However, the capital charges required in this final rule for nonfinancial equity investments would be less than the capital charges imposed by the FDIC for the great majority of the nonfinancial equity investment activities approved by the FDIC under section 24 since March 13, 2000. Also, these section 24 notices and applications have involved investments that generally were significantly below 15 percent of the respective banks' Tier 1 capital.

In order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, the final rule provides for a ''grandfather'' provision for nonfinancial equity investments made before March 13, 2000. These commenters noted such investments were made before the industry was aware that a higher capital charge might be established for nonfinancial equity investments.

In addition, the FDIC notes that the final rule includes several features that likely will reduce the potential effect of the rule on banking organizations and, especially, small banking organizations and other small entities. The final rule exempts from the higher capital charges SBIC investments held by banking organizations that remain within traditional limits, and equity investments made by state nonmember banks under the grandfather rights granted by Congress in section 24(f) of the FDI Act. For covered investments, the rule applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. The highest marginal Tier 1 charge (25 percent) under the final rule is well below the uniform capital charge initially proposed by the Board for bank holding companies (50 percent of Tier 1 capital).

In response to questions raised by commenters, the agencies have clarified in this preamble to the final rule that the rule does not apply to investments made in a community development corporation to promote welfare under 12 U.S.C. 24 (Eleventh). In addition, the rule does not apply to equity securities that are acquired in satisfaction of a DPC and that are held and divested in accordance with applicable law, or to unexercised warrants acquired by a bank as additional consideration for making a loan where the warrants are not held under one of the legal authorities covered by this final rule.

E. Paperwork Reduction Act

OCC: The OCC has determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Board: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3505; 5 CFR 1320 App. A.1), the Board has reviewed this final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information as defined in the Paperwork Reduction Act are contained in the final rule.

FDIC: The FDIC has determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

F. Executive Order 12866 Determination

OCC: The OCC has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866. The final rule amends the OCC's risk-based capital guidelines with respect to the regulatory capital treatment applicable to certain nonfinancial equity investments by national banks. While the general effect of this final rule is to raise the capital requirements for certain nonfinancial equity investments held by banking organizations, for the following reasons, the OCC does not believe that this final rule will have a significant economic impact on national banks.

This final rule applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. Specifically with respect to national banks, the final rule only applies to two categories of national bank investments: investments made pursuant to the Board's Regulation K and investments made in or through SBICs. The majority of

[23] For purposes of the Regulatory Flexibility Act, small entities are defined to include state member banks and bank holding companies that have $100 million or less in assets. See 13 CFR 121.201.

national bank nonfinancial equity investments are in the form of investments made in, or through SBICs. However, under the final rule SBIC investments held by a national bank in amounts that remain within traditional limits (15 percent of Tier 1 capital) are exempted from the higher capital requirements. The final rule also clarifies that the higher capital requirements do not apply to national bank investments in community development corporations pursuant to 12 U.S.C. 24 (Eleventh), to equity securities acquired in satisfaction of a debt previously contracted, or to certain unexercised warrants.

In addition, in order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, nonfinancial equity investments made before March 13, 2000, are ''grandfathered.'' Commenters noted that because such investments were made before the industry was aware of the possibility of higher capital requirements, applying higher capital requirements to such investments could negatively impact the economics of the transactions.

G. Unfunded Mandates Act of 1995

OCC: Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. While the general effect of this final rule is to raise the capital requirements for nonfinancial equity investments held by banking organizations, for the following reasons, the OCC does not believe that this final rule will result in expenditures of $100 million or more in any one year.

This final rules applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. Specifically with respect to national banks, the final rule only applies to two categories of national bank investments: investments made pursuant to the Board's Regulation K and investments made in or through SBICs. The majority of national bank nonfinancial equity investments are in the form of investments made in, or through SBICs. However, under the final rule SBIC investments held by a national bank in amounts that remain within traditional limits (15 percent of Tier 1 capital) are exempted from the higher capital requirements. The final rule also clarifies that the higher capital requirements do not apply to national bank investments in community development corporations pursuant to 12 U.S.C. 24 (Eleventh), to equity securities acquired in satisfaction of a debt previously contracted, or to certain unexercised warrants.

In addition, in order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, nonfinancial equity investments made before March 13, 2000, are ''grandfathered.'' Commenters noted that because such investments were made before the industry was aware of the possibility of higher capital requirements, applying higher capital requirements to such investments could negatively impact the economics of the transactions.

H. Use of ''Plain Language''

Section 722 of the GLB Act requires the agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. The agencies invited comment on whether the proposed rule was drafted in plain language and clearly presented. No commenters specifically addressed this issue. The agencies have used a variety of ''plain language'' techniques to ensure that the final rule is presented in a clear fashion, including using numerous topical headings in the rule, easy-to-read tables to set forth the marginal capital charge structure adopted by the rule, and textual examples to illustrate application of the rule. The agencies believe the final rule is written plainly and clearly.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and record keeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and record keeping requirements, State non-member banks.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the Office of the Comptroller of the Currency amends part 3 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. The first sentence in paragraph (a) of section 3.2 is amended to read as follows:

§ 3.2 Definitions.

* * * * *

(a) *Adjusted total assets* means the average total assets figure required to be computed for and stated in a bank's most recent quarterly *Consolidated Report of Condition and Income* (Call Report) minus end-of-quarter intangible assets, deferred tax assets, and credit-enhancing interest-only strips, that are deducted from Tier 1 capital, and minus nonfinancial equity investments for which a Tier 1 capital deduction is required pursuant to section 2(c)(5) of appendix A of this part 3. * * *

* * * * *

3. In appendix A to part 3:

A. In section 1, paragraphs (c)(17) through (c)(31) are redesignated as paragraphs (c)(20) through (c)(34); paragraphs (c)(12) through (c)(16) are redesignated as paragraphs (c)(14)

through (c)(18); and paragraphs (c)(1) through (c)(11) are redesignated as paragraphs (c)(2) through (c)(12).

B. In section 1, new paragraphs (c)(1), (c)(13) and (c)(19) are added.

C. In section 2, paragraph (a)(3) is amended;

D. In section 2, new paragraph (c)(1)(v) is added;

E. In section 2, paragraph (c)(5) is redesignated as paragraph (c)(6);

F. In sections 3 and 4, Tables A through D are redesignated as Tables B through E, respectively;

G. All references to ''Table A'' are revised to read ''Table B'';

H. All references to ''Table B'' are revised to read ''Table C'';

I. All references to ''Table C'' are revised to read ''Table D'';

J. All references to ''Table D'' are revised to read ''Table E''; and

K. In section 2, new paragraph (c)(5), including new Table A, is added. The additions and revisions read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(1) *Adjusted carrying value* means, for purposes of section 2(c)(5) of this appendix A, the aggregate value that investments are carried on the balance sheet of the bank reduced by any unrealized gains on the investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital and reduced by any associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank) less any unrealized gains on those investments that are included in other comprehensive income and that are not reflected in Tier 1 capital, and less any associated deferred tax liabilities. Unrealized losses on AFS nonfinancial equity investments must be deducted from Tier 1 capital in accordance with section 1(c)(8) of this appendix A. The treatment of small business investment companies that are consolidated for accounting purposes under generally accepted accounting principles is discussed in section 2(c)(5)(ii) of this appendix A. For investments in a nonfinancial company that is consolidated for accounting purposes, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the bank's Tier 1 capital in accordance with section 2(c)(2) of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) are excluded from the bank's risk-weighted assets.

* * * * *

(13) *Equity investment* means, for purposes of section 1(c)(19) and section 2(c)(5) of this appendix A, any equity instrument including warrants and call options that give the holder the right to purchase an equity instrument, any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity. An investment in any other instrument, including subordinated debt or other types of debt instruments, may be treated as an equity investment if the OCC determines that the instrument is the functional equivalent of equity or exposes the bank to essentially the same risks as an equity instrument.

* * * * *

(19) *Nonfinancial equity investment* means any equity investment held by a bank in a nonfinancial company through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)) or under the portfolio investment provisions of Regulation K (12 CFR 211.8(c)(3)). An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in a SBIC that is not consolidated with the bank is treated as a nonfinancial equity investment in the manner provided in section 2(c)(5)(ii)(C) of this appendix A. A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for a bank to conduct directly or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

* * * * *

Section 2. Components of Capital

* * * * *

(a) * * *

(3) Minority interests in the equity accounts of consolidated subsidiaries, except that minority interests in a small business investment company or investment fund that holds nonfinancial equity investments, and minority interests in a subsidiary that is engaged in nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(19) of this appendix A, are not included in Tier 1 capital or total capital.

* * * * *

(c) * * *

(1) * * *

(v) Nonfinancial equity investments as provided by section 2(c)(5) of this appendix A.

* * * * *

(5) *Nonfinancial equity investments—(i) General.* (A) A bank must deduct from its Tier 1 capital the appropriate percentage, as determined in accordance with Table A, of the adjusted carrying value of all nonfinancial equity investments held by the bank and its subsidiaries.

TABLE A.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by banks (as a percentage of the Tier 1 capital of the bank)[1]	Deduction from Tier 1 Capital (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8.0 percent.
Greater than or equal to 15 percent but less than 25 percent	12.0 percent.
Greater than or equal to 25 percent	25.0 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of the Tier 1 capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, disallowed purchased credit card relationships, disallowed credit-enhancing interest only strips (both purchased and retained), disallowed deferred tax assets, and nonfinancial equity investments.

(B) Deductions for nonfinancial equity investments must be applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments equal to, or in excess of, 15 percent of the bank's Tier 1 capital.

(C) The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under section 2(c)(5) of this appendix A is excluded from the bank's weighted risk assets for purposes of computing the denominator of the bank's risk-based capital ratio. For example, if 8 percent of the adjusted carrying value of a

nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator of the risk-based capital ratio.

(D) Banks engaged in equity investment activities, including those banks with a high concentration in nonfinancial equity investments (e.g., in excess of 50 percent of Tier 1 capital), will be monitored and may be subject to heightened supervision, as appropriate, by the OCC to ensure that such banks maintain capital levels that are appropriate in light of their equity investment activities, and the OCC may impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

(ii) *Small business investment company investments.* (A) Notwithstanding section 2(c)(5)(i) of this appendix A, no deduction is required for nonfinancial equity investments that are made by a bank or its subsidiary through a SBIC that is consolidated with the bank, or in a SBIC that is not consolidated with the bank, to the extent that such investments, in the aggregate, do not exceed 15 percent of the Tier 1 capital of the bank. Except as provided in paragraph (c)(5)(ii)(B) of this section, any nonfinancial equity investment that is held through or in a SBIC and not deducted from Tier 1 capital will be assigned to the 100 percent risk-weight category and included in the bank's consolidated risk-weighted assets.

(B) If a bank has an investment in a SBIC that is consolidated for accounting purposes but the SBIC is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments held through the SBIC is equal to the bank's proportionate share of the SBIC's adjusted carrying value of its equity investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.,* the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank.

(C) If a bank has an investment in a SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. The amount by which the adjusted carrying value of the bank's investment in the SBIC is reduced under this paragraph will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

(D) To the extent the adjusted carrying value of all nonfinancial equity investments that the bank holds through a consolidated SBIC or in a nonconsolidated SBIC equals or exceeds, in the aggregate, 15 percent of the Tier 1 capital of the bank, the appropriate percentage of such amounts, as set forth in Table A, must be deducted from the bank's Tier 1 capital. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held through a consolidated SBIC and in a nonconsolidated SBIC (including any nonfinancial equity investments for which no deduction is required) must be included in determining, for purposes of Table A the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

(iii) *Nonfinancial equity investments excluded.* (A) Notwithstanding section 2(c)(5)(i) and (ii) of this appendix A, no deduction from Tier 1 capital is required for the following:

(1) Nonfinancial equity investments (or portion of such investments) made by the bank prior to March 13, 2000, and continuously held by the bank since March 13, 2000.

(2) Nonfinancial equity investments made on or after March 13, 2000, pursuant to a legally binding written commitment that was entered into by the bank prior to March 13, 2000, and that required the bank to make the investment, if the bank has continuously held the investment since the date the investment was acquired.

(3) Nonfinancial equity investments received by the bank through a stock split or stock dividend on a nonfinancial equity investment made prior to March 13, 2000, provided that the bank provides no consideration for the shares or interests received, and the transaction does not materially increase the bank's proportional interest in the nonfinancial company.

(4) Nonfinancial equity investments received by the bank through the exercise on or after March 13, 2000, of an option, warrant, or other agreement that provides the bank with the right, but not the obligation, to acquire equity or make an investment in a nonfinancial company, if the option, warrant, or other agreement was acquired by the bank prior to March 13, 2000, and the bank provides no consideration for the nonfinancial equity investments.

(B) Any excluded nonfinancial equity investments described in section 2(c)(5)(iii)(A) of this appendix A must be included in determining the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital for purposes of Table A. In addition, any excluded nonfinancial equity investments will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

* * * * *

Dated: January 4, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1842(l), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In Appendix A to part 208, the following amendments are made:

a. In section II.A—

i. The undesignated paragraph following paragraph 1.(iii) is revised;

ii. One sentence is added at the end of paragraph 1.c.; and

iii. The first undesignated paragraph following paragraph 2.(v) is revised.

b. In section II.B—

i. A new paragraph (v) is added following paragraph (iv) Deferred tax assets;

ii. Paragraph 1.e.ii is revised;

iii. Paragraph 4.b is revised; and

iv. A new paragraph 5 is added at the end of section II.B.

c. In sections III. and IV., footnotes 21 through 48 are redesignated as footnotes 27 through 54, respectively.

d. Attachment II is revised.

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

Tier 1 capital is generally defined as the sum of core capital elements [5] less any amounts of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.B. of this appendix A.

* * * * *

c. * * * Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities are not included in the bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b.

* * * * *

2. * * *

The maximum amount of tier 2 capital that may be included in a bank's qualifying total capital is limited to 100 percent of tier 1

[5] [Reserved]

capital (net of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.B. of this appendix A).

* * * * *

B. * * *

(v) Nonfinancial equity investments-portions are deducted from the sum of core capital elements in accordance with section II.B.5 of this appendix.

* * * * *

1. * * *

e. * * *

ii. For purposes of calculating these limitations on mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os, tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

* * * * *

4. * * *

b. The reported amount of deferred-tax assets, net of any valuation allowance for deferred-tax assets, in excess of the lesser of these two amounts is to be deducted from a bank's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os, any disallowed deferred-tax assets, and any nonfinancial equity investments. There generally is no limit in tier 1 capital on the amount of deferred-tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences.

* * * * *

5. *Nonfinancial equity investments*—a. *General.* A bank must deduct from its core capital elements the sum of the appropriate percentages (as determined below) of the adjusted carrying value of all nonfinancial equity investments held by the bank or by its direct or indirect subsidiaries. For purposes of this section II.B.5, investments held by a bank include all investments held directly or indirectly by the bank or any of its subsidiaries.

b. *Scope of nonfinancial equity investments.* A nonfinancial equity investment means any equity investment held by the bank in a nonfinancial company: through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)); [21] or under the portfolio investment provisions of the Board's Regulation K (12 CFR 211.8(c)(3)). A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for the bank to conduct directly, or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

c. *Amount of deduction from core capital.* i. The bank must deduct from its core capital elements the sum of the appropriate percentages, as set forth in Table 1, of the adjusted carrying value of all nonfinancial equity investments held by the bank. The amount of the percentage deduction increases as the aggregate amount of nonfinancial equity investments held by the bank increases as a percentage of the bank's Tier 1 capital.

TABLE 1.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank (as a percentage of the Tier 1 capital of the bank) [1]	Deduction from Core Capital Elements (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of core capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

ii. These deductions are applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the parent bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the bank's Tier 1 capital.

iii. The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under this paragraph is excluded from the bank's risk-weighted assets for purposes of computing the denominator of the bank's risk-based capital ratio.[22]

iv. As noted in section I, this appendix establishes *minimum* risk-based capital ratios and banks are at all times expected to maintain capital commensurate with the level and nature of the risks to which they are exposed. The risk to a bank from nonfinancial equity investments increases with its concentration in such investments and strong capital levels above the minimum requirements are particularly important when a bank has a high degree of concentration in nonfinancial equity investments (*e.g.,* in excess of 50 percent of Tier 1 capital). The Federal Reserve intends to monitor banks and apply heightened supervision to equity investment activities as appropriate, including where the bank has a high degree of concentration in nonfinancial equity investments, to ensure that each bank maintains capital levels that are appropriate in light of its equity investment activities. The Federal Reserve also reserves authority to impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

d. *SBIC investments.* i. No deduction is required for nonfinancial equity investments that are held by a bank through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank to the extent that

[21] An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in an SBIC that is not consolidated with the bank is treated as a nonfinancial equity investment.

[22] For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator for the risk-based capital ratio.

all such investments, in the aggregate, do not exceed 15 percent of the bank's Tier 1 capital. Any nonfinancial equity investment that is held through or in an SBIC and that is not required to be deducted from Tier 1 capital under this section II.B.5.d. will be assigned a 100 percent risk-weight and included in the bank's consolidated risk-weighted assets.[23]

ii. To the extent the adjusted carrying value of all nonfinancial equity investments that a bank holds through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank exceeds, in the aggregate, 15 percent of the bank's Tier 1 capital, the appropriate percentage of such amounts (as set forth in Table 1) must be deducted from the bank's core capital elements. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held through a consolidated SBIC and in a non-consolidated SBIC (including any investments for which no deduction is required) must be included in determining, for purposes of Table 1, the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

e. *Transition provisions.* No deduction under this section II.B.5 is required to be made with respect to the adjusted carrying value of any nonfinancial equity investment (or portion of such an investment) that was made by the bank prior to March 13, 2000, or that was made by the bank after such date pursuant to a binding written commitment[24] entered into prior to March 13, 2000, provided that in either case the bank has continuously held the investment since the relevant investment date.[25] For purposes of this section II.B.5.e., a nonfinancial equity investment made prior to March 13, 2000, includes any shares or other interests received by the bank through a stock split or stock dividend on an investment made prior to March 13, 2000, provided the bank provides no consideration for the shares or interests received and the transaction does not materially increase the bank's proportional interest in the company. The exercise on or after March 13, 2000, of options or warrants acquired prior to March 13, 2000, is *not* considered to be an investment made prior to March 13, 2000, if the bank provides any consideration for the shares or interests received upon exercise of the options or warrants. Any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. must be included in determining the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital for purposes of Table 1. In addition, any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. will be assigned a 100-percent risk weight and included in the bank's consolidated risk-weighted assets.

f. *Adjusted carrying value.* i. For purposes of this section II.B.5., the ''adjusted carrying value'' of investments is the aggregate value at which the investments are carried on the balance sheet of the bank reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital and associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank) *less* any unrealized gains on those investments that are included in other comprehensive income and not reflected in Tier 1 capital, and associated deferred tax liabilities.[26]

ii. As discussed above with respect to consolidated SBICs, some equity investments may be in companies that are consolidated for accounting purposes. For investments in a nonfinancial company that is consolidated for accounting purposes under generally accepted accounting principles, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the bank's core capital in accordance with section II.B.1. of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) should be excluded from the bank's risk-weighted assets for regulatory capital purposes.

g. *Equity investments.* For purposes of this section II.B.5., an equity investment means any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity where the instrument or feature is held under one of the legal authorities listed in section II.B.5.b. of this appendix A. An investment in any other instrument (including subordinated debt) may be treated as an equity investment if, in the judgment of the Federal Reserve, the instrument is the functional equivalent of equity or exposes the state member bank to essentially the same risks as an equity instrument.

* * * * *

ATTACHMENT II—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR STATE MEMBER BANKS *

[Using the Year-End 1992 Standard]

Components	Minimum requirements
CORE CAPITAL (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
Common stockholders' equity	No limit.
Qualifying noncumulative perpetual preferred stock	No limit; banks should avoid undue reliance on preferred stock in tier 1.

[23] If a bank has an investment in an SBIC that is consolidated for accounting purposes but that is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments through the SBIC is equal to the bank's proportionate share of the adjusted carrying value of the SBIC's equity investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.,* the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank. If a bank has an investment in an SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. If a bank reduces the adjusted carrying value of its investment in a non-consolidated SBIC to reflect financial investments of the SBIC, the amount of the adjustment will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

[24] A ''binding written commitment'' means a legally binding written agreement that requires the bank to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a bank the right to acquire equity or make an investment, but do not require the bank to take such actions, are not considered a binding written commitment for purposes of this section II.*B*.5.

[25] For example, if a bank made an equity investment in 100 shares of a nonfinancial company prior to March 13, 2000, the adjusted carrying value of that investment would not be subject to a deduction under this section II.*B*.5. However, if the bank made any additional equity investment in the company after March 13, 2000, such as by purchasing additional shares of the company (including through the exercise of options or warrants acquired before or after March 13, 2000) or by making a capital contribution to the company and such investment was not made pursuant to a binding written commitment entered into before March 13, 2000, the adjusted carrying value of the additional investment would be subject to a deduction under this section II.*B*.5. In addition, if the bank sold and repurchased, after March 13, 2000, 40 shares of the company, the adjusted carrying value of those 40 shares would be subject to a deduction under this section II.*B*.5.

[26] Unrealized gains on AFS equity investments may be included in supplementary capital to the extent permitted under section II.A.2.e. of this appendix A. In addition, the unrealized losses on AFS equity investments are deducted from Tier 1 capital in accordance with section II.A.1.a. of this appendix A.

ATTACHMENT II—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR STATE MEMBER BANKS *—Continued

[Using the Year-End 1992 Standard]

Components	Minimum requirements
Minority interest in equity accounts of consolidated	Banks should avoid using minority interests to subsidiaries introduce elements not otherwise qualifying for tier 1 capital.
Less: Goodwill, other intangible assets, credit-enhancing interest-only strips and nonfinancial equity investments required to be deducted from capital [1]	
SUPPLEMENTARY CAPITAL (Tier 2)	Total of tier 2 is limited to 100% of tier 1.[2]
Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets.[2]
Perpetual preferred stock	No limit within tier 2.
Hybrid capital instruments and equity contract notes	No limit within tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of tier 1,[2] **amortized for capital purposes as they approach maturity.**
Revaluation reserves (equity and building)	Not included; banks encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
DEDUCTIONS (from sum of tier 1 and tier 2)	
Investments in unconsolidated subsidiaries	As a general rule, one-half of the aggregate investments will be deducted from tier 1 capital and one-half from tier 2 capital.[3]
Reciprocal holdings of banking organizations' capital securities	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority after a formal rulemaking.	On a case-by-case basis or as a matter of policy.
TOTAL CAPITAL (tier 1 + tier 2—deductions)	Must equal or exceed 8% of weighted-risk assets.

[1] Requirements for the deduction of other intangible assets, residual interests and nonfinancial equity investments are set forth in section II.B. of this appendix.
[2] Amounts in excess of limitations are permitted but do not qualify as capital.
[3] A proportionately greater amount may be deducted from tier 1 capital, if the risks associated with the subsidiary so warrant.
* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.

* * * * *

3. In Appendix B to part 208, in section II.b., footnotes 2 and 3 are revised and the fourth sentence of section II.b. is revised to read as follows:

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

* * * * *

II. * * *

b. * * * [2] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income (Call Reports), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, are in excess of 25 percent of Tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted Tier 1 capital; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitations set forth in section II.B.4 of appendix A of this part; and the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital.[3]

* * * * *

[2] Tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of Tier 1 capital; amounts of credit enhancing interest-only strips in excess of 25 percent of Tier 1 capital; other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations; and a percentage of the bank's nonfinancial equity investments. The Federal Reserve may exclude certain other investments in subsidiaries or associated companies as appropriate.

[3] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B in appendix A of this part.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(*l*), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In Appendix A to part 225, the following amendments are made:

a. In section II.*A*—

i. The undesignated paragraph following paragraph 1.(iv) is revised;

ii. One sentence is added at the end of paragraph 1.c; and

iii. The first undesignated paragraph following paragraph 2.(v) is revised.

b. In section II.*B*—

i. A new paragraph (v) is added following paragraph (iv) Deferred tax assets;

ii. Paragraph 1.e.ii is revised;

iii. Paragraph 4.b is revised; and

iv. A new paragraph 5 is added at the end of section II.B.

c. In sections III. and IV., footnotes 24 through 51 are redesignated as footnotes 31 through 58, respectively.

d. Attachment II is revised.

Appendix A to Part 225—Capital Adequacy Guidelines For Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

Tier 1 capital is generally defined as the sum of core capital elements [6] less any amounts of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.*B*. of this appendix A.

* * * * *

c. * * * Minority interests in small business investment companies, investment

[6] [Reserved]

funds that hold nonfinancial equity investments (as defined in section II.*B*.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities are not included in the banking organization's Tier 1 or total capital base if the banking organization's interest in the company or fund is held under one of the legal authorities listed in section II.*B*.5.b.

* * * * *

2. * * *

The maximum amount of tier 2 capital that may be included in an institution's qualifying total capital is limited to 100 percent of tier 1 capital (net of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.*B*. of this appendix A).

* * * * *

B. * * *

(v) Nonfinancial equity investments—portions are deducted from the sum of core capital elements in accordance with section II.*B*.5 of this appendix A.

* * * * *

1. * * *

e. * * *

ii. For purposes of calculating these limitations on mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os, tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

* * * * *

4. * * *

b. The reported amount of deferred-tax assets, net of any valuation allowance for deferred-tax assets, in excess of the lesser of these two amounts is to be deducted from a banking organization's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os, any disallowed deferred-tax assets, and any nonfinancial equity investments. There generally is no limit in tier 1 capital on the amount of deferred-tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences.

* * * * *

5. *Nonfinancial equity investments*—a. *General*. A bank holding company must deduct from its core capital elements the sum of the appropriate percentages (as determined below) of the adjusted carrying value of all nonfinancial equity investments held by the parent bank holding company or by its direct or indirect subsidiaries. For purposes of this section II.B.5, investments held by a bank holding company include all investments held directly or indirectly by the bank holding company or any of its subsidiaries.

b. *Scope of nonfinancial equity investments*. A nonfinancial equity investment means any equity investment held by the bank holding company: under the merchant banking authority of section 4(k)(4)(H) of the BHC Act and subpart J of the Board's Regulation Y (12 CFR 225.175 et seq.); under section 4(c)(6) or 4(c)(7) of BHC Act in a nonfinancial company or in a company that makes investments in nonfinancial companies; in a nonfinancial company through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958;[24] in a nonfinancial company under the portfolio investment provisions of the Board's Regulation K (12 CFR 211.8(c)(3)); or in a nonfinancial company under section 24 of the Federal Deposit Insurance Act (other than section 24(f)).[25] A nonfinancial company is an entity that engages in any activity that has not been determined to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

c. *Amount of deduction from core capital*. i. The bank holding company must deduct from its core capital elements the sum of the appropriate percentages, as set forth in Table 1, of the adjusted carrying value of all nonfinancial equity investments held by the bank holding company. The amount of the percentage deduction increases as the aggregate amount of nonfinancial equity investments held by the bank holding company increases as a percentage of the bank holding company's Tier 1 capital.

TABLE 1.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank holding company (as a percentage of the Tier 1 capital of the parent banking organization)[1]	Deduction from Core Capital Elements (as a percentage of the adjustedcarrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of core capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

ii. These deductions are applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the parent holding company's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank holding company equals 20 percent of the Tier 1 capital of the bank holding company, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the company's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the company's Tier 1 capital.

iii. The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under this paragraph is excluded from the bank holding company's risk-weighted assets for purposes of

[24] An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in an SBIC that is not consolidated with the parent banking organization is treated as a nonfinancial equity investment.

[25] *See* 12 U.S.C. 1843(c)(6), (c)(7) and (k)(4)(H); 15 U.S.C. 682(b); 12 CFR 211.5(b)(1)(iii); and 12 U.S.C. 1831a. In a case in which the Board of Directors of the FDIC, acting directly in exceptional cases and after a review of the proposed activity, has permitted a lesser capital deduction for an investment approved by the Board of Directors under section 24 of the Federal Deposit Insurance Act, such deduction shall also apply to the consolidated bank holding company capital calculation so long as the bank's investments under section 24 and SBIC investments represent, in the aggregate, less than 15 percent of the Tier 1 capital of the bank.

computing the denominator of the company's risk-based capital ratio.[26]

iv. As noted in section I, this appendix establishes *minimum* risk-based capital ratios and banking organizations are at all times expected to maintain capital commensurate with the level and nature of the risks to which they are exposed. The risk to a banking organization from nonfinancial equity investments increases with its concentration in such investments and strong capital levels above the minimum requirements are particularly important when a banking organization has a high degree of concentration in nonfinancial equity investments (*e.g.*, in excess of 50 percent of Tier 1 capital). The Federal Reserve intends to monitor banking organizations and apply heightened supervision to equity investment activities as appropriate, including where the banking organization has a high degree of concentration in nonfinancial equity investments, to ensure that each organization maintains capital levels that are appropriate in light of its equity investment activities. The Federal Reserve also reserves authority to impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the banking organization, or other information, indicate that a higher minimum capital requirement is appropriate.

d. *SBIC investments.* i. No deduction is required for nonfinancial equity investments that are held by a bank holding company through one or more SBICs that are consolidated with the bank holding company or in one or more SBICs that are not consolidated with the bank holding company to the extent that all such investments, in the aggregate, do not exceed 15 percent of the aggregate of the bank holding company's pro rata interests in the Tier 1 capital of its subsidiary banks. Any nonfinancial equity investment that is held through or in an SBIC and not required to be deducted from Tier 1 capital under this section II.B.5.d. will be assigned a 100 percent risk-weight and included in the parent holding company's consolidated risk-weighted assets.[27]

ii. To the extent the adjusted carrying value of all nonfinancial equity investments that a bank holding company holds through one or more SBICs that are consolidated with the bank holding company or in one or more SBICs that are not consolidated with the bank holding company exceeds, in the aggregate, 15 percent of the aggregate Tier 1 capital of the company's subsidiary banks, the appropriate percentage of such amounts (as set forth in Table 1) must be deducted from the bank holding company's core capital elements. In addition, the aggregate adjusted carrying value of *all* nonfinancial equity investments held through a consolidated SBIC and in a non-consolidated SBIC (including any investments for which no deduction is required) must be included in determining, for purposes of Table 1, the total amount of nonfinancial equity investments held by the bank holding company in relation to its Tier 1 capital.

e. *Transition provisions.* No deduction under this section II.*B*.5 is required to be made with respect to the adjusted carrying value of any nonfinancial equity investment (or portion of such an investment) that was made by the bank holding company prior to March 13, 2000, or that was made after such date pursuant to a binding written commitment[28] entered into by the bank holding company prior to March 13, 2000, provided that in either case the bank holding company has continuously held the investment since the relevant investment date.[29] For purposes of this section II.B.5.e., a nonfinancial equity investment made prior to March 13, 2000, includes any shares or other interests received by the bank holding company through a stock split or stock dividend on an investment made prior to March 13, 2000, provided the bank holding company provides no consideration for the shares or interests received and the transaction does not materially increase the bank'' holding company's proportional interest in the company. The exercise on or after March 13, 2000, of options or warrants acquired prior to March 13, 2000, is *not* considered to be an investment made prior to March 13, 2000, if the bank holding company provides any consideration for the shares or interests received upon exercise of the options or warrants. Any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. must be included in determining the total amount of nonfinancial equity investments held by the bank holding company in relation to its Tier 1 capital for purposes of Table 1. In addition, any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. will be assigned a 100-percent risk weight and included in the bank holding company's consolidated risk-weighted assets.

f. *Adjusted carrying value.* i. For purposes of this section II.*B*.5., the ''adjusted carrying value'' of investments is the aggregate value at which the investments are carried on the balance sheet of the consolidated bank holding company reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from the bank holding company's Tier 1 capital and associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank holding company) *less* any unrealized gains on those investments that are included in other comprehensive income and not reflected in Tier 1 capital, and associated deferred tax liabilities.[30]

ii. As discussed above with respect to consolidated SBICs, some equity investments may be in companies that are consolidated for accounting purposes. For investments in a nonfinancial company that is consolidated for accounting purposes under generally accepted accounting principles, the parent banking organization's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the consolidated bank holding company's core capital in accordance with section II.B.1 of this Appendix). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) should be excluded from the banking organization's

[26] For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator for the risk-based capital ratio.

[27] If a bank holding company has an investment in an SBIC that is consolidated for accounting purposes but that is not wholly owned by the bank holding company, the adjusted carrying value of the bank holding company's nonfinancial equity investments through the SBIC is equal to the holding company's proportionate share of the adjusted carrying value of the SBIC's equity investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.* the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank holding company. If a bank holding company has an investment in a SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank holding company may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. If a bank holding company reduces the adjusted carrying value of its investment in a non-consolidated SBIC to reflect financial investments of the SBIC, the amount of the adjustment will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

[28] A ''binding written commitment'' means a legally binding written agreement that requires the banking organization to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a banking organization the right to acquire equity or make an investment, but do not require the banking organization to take such actions, are not considered a binding written commitment for purposes of this section II.*B*.5.

[29] For example, if a bank holding company made an equity investment in 100 shares of a nonfinancial company prior to March 13, 2000, that investment would not be subject to a deduction under this section II.*B*.5. However, if the bank holding company made any additional equity investment in the company after March 13, 2000, such as by purchasing additional shares of the company (including through the exercise of options or warrants acquired before or after March 13, 2000) or by making a capital contribution to the company, and such investment was not made pursuant to a binding written commitment entered into before March 13, 2000, the adjusted carrying value of the additional investment would be subject to a deduction under this section II.*B*.5. In addition, if the bank holding company sold and repurchased shares of the company after March 13, 2000, the adjusted carrying value of the re-acquired shares would be subject to a deduction under this section II.*B*.5.

[30] Unrealized gains on AFS investments may be included in supplementary capital to the extent permitted under section II.A.2.e of this appendix A. In addition, the unrealized losses on AFS equity investments are deducted from Tier 1 capital in accordance with section II.A.1.a of this appendix A.

risk-weighted assets for regulatory capital purposes.

g. *Equity investments.* For purposes of this section II.*B*.5, an equity investment means any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity where the instrument or feature is held under one of the legal authorities listed in section II.*B*.5.b. of this appendix. An investment in any other instrument (including subordinated debt) may be treated as an equity investment if, in the judgment of the Federal Reserve, the instrument is the functional equivalent of equity or exposes the state member bank to essentially the same risks as an equity instrument.

* * * * *

ATTACHMENT II—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR BANK HOLDING COMPANIES*

[Using the Year-End 1992 Standard]

Components	Minimum requirements
CORE CAPITAL (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
Common stockholders' equity	No limit.
Qualifying noncumulative perpetual preferred stock	No limit; bank holding companies should avoid undue reliance on preferred stock in tier 1.
Qualifying cumulative perpetual preferred stock	Limited to 25% of the sum of common stock, qualifying perpetual stock, and minority interests.
Minority interest in equity accounts of consolidated subsidiaries	Organizations should avoid using minority interests to introduce elements not otherwise qualifying for tier 1 capital.
Less: Goodwill, other intangible assets, credit-enhancing interest-only strips and nonfinancial equity investments required to be deducted from capital [1]	
SUPPLEMENTARY CAPITAL (Tier 2)	Total of tier 2 is limited to 100% of tier 1. [2]
Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets. [2]
Perpetual preferred stock	No limit within tier 2.
Hybrid capital instruments and equity contract notes	No limit within tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of tier 1 [2]; amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building)	Not included; organizations encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
DEDUCTIONS (from sum of tier 1 and tier 2)	
Investments in unconsolidated subsidiaries	As a general rule, one-half of the aggregate investments will be deducted from tier 1 capital and one-half from tier 2 capital. [3]
Reciprocal holdings of banking organizations' capital securities	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after a formal rulemaking.
TOTAL CAPITAL (tier 1 + tier 2 − deductions)	Must equal or exceed 8% of weighted-risk assets.

[1] Requirements for the deduction of other intangible assets and residual interests are set forth in section II.B.1. of this appendix.
[2] Amounts in excess of limitations are permitted but do not qualify as capital.
[3] A proportionately greater amount may be deducted from tier 1 capital, if the risks associated with the subsidiary so warrant.
* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.

* * * * *

3. In Appendix D to part 225, in section II.b., footnotes 3 and 4 are revised and the fourth sentence of section II.b. is revised to read as follows.

Appendix D to Part 225-Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

b. * * * [3] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, are in excess of 25 percent of Tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from Tier 1 capital; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of appendix A of this part; and the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital. [4]

* * * * *

By order of the Board of Governors of the Federal Reserve System.

[3] Tier 1 capital for banking organizations includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of Tier 1 capital.) In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of Tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations; and a percentage of the organization's nonfinancial equity investments. The Federal Reserve may exclude certain other investments in subsidiaries or associated companies as appropriate.

[4] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B. of appendix A of this part.

Dated: January 7, 2002.

Jennifer J. Johnson,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In § 325.2, paragraphs (v) and (x) are revised to read as follows:

§ 325.2 Definitions.

* * * * *

(v) *Tier 1 capital* or *core capital* means the sum of common stockholders' equity, noncumulative perpetual preferred stock (including any related surplus), and minority interests in consolidated subsidiaries, minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)), minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f), minus deferred tax assets in excess of the limit set forth in § 325.5(g), minus identified losses (to the extent that Tier 1 capital would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the insured depository institution's books), minus investments in financial subsidiaries subject to 12 CFR part 362, subpart E, and minus the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital as set forth in section II.B.(6) of appendix A to this part.

* * * * *

(x) *Total assets* means the average of total assets required to be included in a banking institution's ''Reports of Condition and Income'' (Call Report) or, for savings associations, the consolidated total assets required to be included in the ''Thrift Financial Report,'' as these reports may from time to time be revised, as of the most recent report date (and after making any necessary subsidiary adjustments for state nonmember banks as described in §§ 325.5(c) and 325.5(d) of this part), minus intangible assets (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)), minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f), minus deferred tax assets in excess of the limit set forth in § 325.5(g), minus assets classified loss and any other assets that are deducted in determining Tier 1 capital, and minus the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital as set forth in section II.B.(6) of appendix A to this part. For banking institutions, the average of total assets is found in the Call Report schedule of quarterly averages. For savings associations, the consolidated total assets figure is found in Schedule CSC of the Thrift Financial Report.

* * * * *

3. Paragraphs (f)(3), (f)(4), and (g)(2)(i) of § 325.5 are revised to read as follows:

§ 325.5 Miscellaneous.

* * * * *

(f) * * *

(3) *Tier 1 capital limitations.* (i) The maximum allowable amount of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets in the aggregate will be limited to the lesser of:

(A) 100 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments; or

(B) The sum of the amounts of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets, determined in accordance with paragraph (f)(2) of this section.

(ii) The maximum allowable amount of credit-enhancing interest-only strips, whether purchased or retained, will be limited to the lesser of:

(A) 25 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments; or

(B) The sum of the face amounts of all credit-enhancing interest-only strips.

(4) *Tier 1 capital sublimit.* In addition to the aggregate limitation on mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets set forth in paragraph (f)(3) of this section, a sublimit will apply to purchased credit card relationships and nonmortgage servicing assets. The maximum allowable amount of the aggregate of purchased credit card relationships and nonmortgage servicing assets will be limited to the lesser of:

(i) 25 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments; or

(ii) The sum of the amounts of purchased credit card relationships and nonmortgage servicing assets determined in accordance with paragraph (f)(2) of this section.

(g) * * *

(2) *Tier 1 capital limitations.* (i) The maximum allowable amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, will be limited to the lesser of:

(A) The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on projected future taxable income for that year; or

(B) 10 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments.

* * * * *

4. In appendix A to part 325:

A. Revise section I.A.1 (*Core capital elements (Tier 1)*);.

B. Amend section II.B. by adding a new paragraph (6);

C. Amend section II. by redesignating footnotes 16 through 40 as footnotes 23 through 47, respectively; and

D. Revise Table I.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *

A. * * *

1. *Core capital elements (Tier 1) consists of:*

i. Common stockholders' equity capital (includes common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values);

ii. Noncumulative perpetual preferred stock,[2] including any related surplus; and

iii. Minority interests in the equity capital accounts of consolidated subsidiaries.

At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. Core (Tier 1) capital is defined as the sum of core capital elements minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)),[3] minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f)), minus any disallowed deferred tax assets, and minus any amount of nonfinancial equity investments required to be deducted pursuant to section II.B.(6) of this Appendix.

Although nonvoting common stock, noncumulative perpetual preferred stock, and minority interests in the equity capital accounts of consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests.

Although minority interests in consolidated subsidiaries are generally included in regulatory capital, exceptions to this general rule will be made if the minority interests fail to provide meaningful capital support to the consolidated bank. Such a situation could arise if the minority interests are entitled to a preferred claim on essentially low risk assets of the subsidiary. Similarly, although credit-enhancing interest-only strips and intangible assets in the form of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships are generally recognized for risk-based capital purposes, the deduction of part or all of the credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships may be required if the carrying amounts of these assets are excessive in relation to their market value or the level of the bank's capital accounts. Credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships and deferred tax assets that do not meet the conditions, limitations and restrictions described in § 325.5(f) and (g) of this part will not be recognized for risk-based capital purposes.

Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.(6)(ii) of this appendix A), and subsidiaries that are engaged in nonfinancial activities are not included in a bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.(6)(ii) of this appendix A.

* * * * *

II.B. * * *

(6) *Nonfinancial equity investments.* (i) General. A bank must deduct from its Tier 1 capital the sum of the appropriate percentage (as determined below) of the adjusted carrying value of all nonfinancial equity investments held by the bank or by its direct or indirect subsidiaries. For purposes of this section II.B.(6), investments held by a bank include all investments held directly or indirectly by the bank or any of its subsidiaries.

(ii) *Scope of nonfinancial equity investments.* A nonfinancial equity investment means any equity investment held by the bank in a nonfinancial company: through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b));[16] under the portfolio investment provisions of Regulation K issued by the Board of Governors of the Federal Reserve System (12 CFR 211.8(c)(3)); or under section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a), other than an investment held in accordance with section 24(f) of that Act.[17] A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for the bank to conduct directly, or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

(iii) *Amount of deduction from core capital.* (A) The bank must deduct from its Tier 1 capital the sum of the appropriate percentages, as set forth in the table following this paragraph, of the adjusted carrying value of all nonfinancial equity investments held by the bank. The amount of the percentage deduction increases as the aggregate amount of nonfinancial equity investments held by the bank increases as a percentage of the bank's Tier 1 capital.

DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank (as a percentage of the Tier 1 capital of the bank) [1]	Deduction from Tier 1 Capital (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of core capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

[2] Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to Tier 2 capital, regardless of whether the dividends are cumulative or noncumulative.

[3] An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

[16] An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in a SBIC that is not consolidated with the bank is treated as a nonfinancial equity investment.

[17] The Board of Directors of the FDIC, acting directly, may, in exceptional cases and after a review of the proposed activity, permit a lower capital deduction for investments approved by the Board of Directors under section 24 of the FDI Act so long as the bank's investments under section 24 and SBIC investments represent, in the aggregate, less than 15 percent of the Tier 1 capital of the bank. The FDIC reserves the authority to impose higher capital charges on any investment where appropriate.

(B) These deductions are applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the parent bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the bank's Tier 1 capital.

(C) The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under this paragraph is excluded from the bank's risk-weighted assets for purposes of computing the denominator of the bank's risk-based capital ratio and from total assets for purposes of calculating the denominator of the leverage ratio.[18]

(D) This Appendix establishes *minimum* risk-based capital ratios and banks are at all times expected to maintain capital commensurate with the level and nature of the risks to which they are exposed. The risk to a bank from nonfinancial equity investments increases with its concentration in such investments and strong capital levels above the minimum requirements are particularly important when a bank has a high degree of concentration in nonfinancial equity investments (*e.g.*, in excess of 50 percent of Tier 1 capital). The FDIC intends to monitor banks and apply heightened supervision to equity investment activities as appropriate, including where the bank has a high degree of concentration in nonfinancial equity investments, to ensure that each bank maintains capital levels that are appropriate in light of its equity investment activities. The FDIC also reserves authority to impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

(iv) *SBIC investments.* (A) No deduction is required for nonfinancial equity investments that are held by a bank through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank to the extent that all such investments, in the aggregate, do not exceed 15 percent of the bank's Tier 1 capital. Any nonfinancial equity investment that is held through an SBIC or in an SBIC and that is not required to be deducted from Tier 1 capital under this section II.B.(6)(iv) will be assigned a 100 percent risk-weight and included in the bank's consolidated risk-weighted assets.[19]

(B) To the extent the adjusted carrying value of all nonfinancial equity investments that a bank holds through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank exceeds, in the aggregate, 15 percent of the bank's Tier 1 capital, the appropriate percentage of such amounts (as set forth in the table in section II.B.(6)(iii)(A)) must be deducted from the bank's common stockholders' equity in determining the bank's Tier 1 capital. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held by a bank through a consolidated SBIC and in a non-consolidated SBIC (including any investments for which no deduction is required) must be included in determining, for purposes of the table in section II.B.(6)(iii)(A), the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

(v) *Transition provisions.* No deduction under this section II.B.(6) is required to be made with respect to the adjusted carrying value of any nonfinancial equity investment (or portion of such an investment) that was made by the bank prior to March 13, 2000, or that was made by the bank after such date pursuant to a binding written commitment[20] entered into prior to March 13, 2000, provided that in either case the bank has continuously held the investment since the relevant investment date.[21] For purposes of this section II.B.(6)(v) a nonfinancial equity investment made prior to March 13, 2000, includes any shares or other interests received by the bank through a stock split or stock dividend on an investment made prior to March 13, 2000, provided the bank provides no consideration for the shares or interests received and the transaction does not materially increase the bank's proportional interest in the company. The exercise on or after March 13, 2000, of options or warrants acquired prior to March 13, 2000, is *not* considered to be an investment made prior to March 13, 2000, if the bank provides any consideration for the shares or interests received upon exercise of the options or warrants. Any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.(6)(v) must be included in determining the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital for purposes of the table in section II.B.(6)(iii)(A). In addition, any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.(6)(v) will be assigned a 100-percent risk weight and included in the bank's consolidated risk-weighted assets.

(vi) *Adjusted carrying value.* (A) For purposes of this section II.B.(6), the ''adjusted carrying value'' of investments is the aggregate value at which the investments are carried on the balance sheet of the bank reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital and associated deferred tax liabilities. For example, for equity investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of those investments (as reflected on the consolidated balance sheet of the bank) less any unrealized gains on those investments that are included in other comprehensive income and not reflected in Tier 1 capital, and associated deferred tax liabilities.[22]

(B) As discussed above with respect to consolidated SBICs, some equity investments may be in companies that are consolidated for accounting purposes. For investments in a nonfinancial company that is consolidated for accounting purposes under generally accepted accounting principles, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from

[18] For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from both risk-weighted assets and total assets in calculating the respective denominators for the risk-based capital and leverage ratios.

[19] If a bank has an investment in a SBIC that is consolidated for accounting purposes but that is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments through the SBIC is equal to the bank's proportionate share of the adjusted carrying value of the SBIC's investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.*, the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank. If a bank has an investment in a SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. If a bank reduces the adjusted carrying value of its investment in a non-consolidated SBIC to reflect financial investments of the SBIC, the amount of the adjustment will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

[20] A ''binding written commitment'' means a legally binding written agreement that requires the bank to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a bank the right to acquire equity or make an investment, but do not require the bank to take such actions, are not considered a binding written commitment for purposes of this section II.B.(6)(v).

[21] For example, if a bank made an equity investment in 100 shares of a nonfinancial company prior to March 13, 2000, the adjusted carrying value of that investment would not be subject to a deduction under this section II.B.(6). However, if the bank made any additional equity investment in the company after March 13, 2000, such as by purchasing additional shares of the company (including through the exercise of options or warrants acquired before or after March 13, 2000) or by making a capital contribution to the company and such investment was not made pursuant to a binding written commitment entered into before March 13, 2000, the adjusted carrying value of the additional investment would be subject to a deduction under this section II.B.(6). In addition, if the bank sold and repurchased, after March 13, 2000, 40 shares of the company, the adjusted carrying value of those 40 shares would be subject to a deduction under this section II.B.(6).

[22] Unrealized gains on available-for-sale equity investments may be included in Tier 2 capital to the extent permitted under section I.A.(2)(f) of this appendix A. In addition, the net unrealized losses on available-for-sale equity investments are deducted from Tier 1 capital in accordance with section I.A.(1) of this appendix A.

the bank's core capital in accordance with section I.A.(1) of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) should be excluded from the bank's risk-weighted assets for regulatory capital purposes.

(vii) *Equity investments.* For purposes of this section II.B.(6), an equity investment means any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity where the instrument or feature is held under one of the legal authorities listed in section II.B.(6)(ii) of this appendix A. An investment in any other instrument (including subordinated debt) may be treated as an equity investment if, in the judgment of the FDIC, the instrument is the functional equivalent of equity or exposes the bank to essentially the same risks as an equity instrument.

* * * * *

TABLE I.—DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements
(1) CORE CAPITAL (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
(a) Common stockholders' equity	No limit.[1]
(b) Noncumulative perpetual preferred stock and any related surplus.	No limit.[1]
(c) Minority interest in equity accounts of consolidated	No limit.[1]
(d) Less: All intangible assets other than certain mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships.	([2]).
(e) Less: Certain credit-enhancing interest-only strips and nonfinancial equity investments required to be deducted from capital.	([3]).
(f) Less: Certain deferred tax assets	([4]).
(2) SUPPLEMENTARY CAPITAL (Tier 2)	Total of tier 2 is limited to 100% of tier 1.[5]
(a) Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets.[5]
(b) Unrealized gains on certain equity securities.[6]	Limited to 45% of pretax net unrealized gains.[6]
(c) Cumulative perpetual and long-term preferred stock (original maturity of 20 years or more) and any related surplus.	No limit within tier 2; long-term preferred is amortized for capital purposes as it approaches maturity.
(d) Auction rate and similar preferred stock (both cumulative and non-cumulative).	No limit within Tier 2.
(e) Hybrid capital instruments (including mandatory convertible debt securities).	No limit within Tier 2.
(f) Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of five years or more).	Term subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1[5] and amortized for capital purposes as they approach maturity.
(3) DEDUCTIONS (from sum of tier 1 and tier 2)	
(a) Investments in banking and finance subsidiaries that are not consolidated for regulatory capital purposes	
(b) Intentional, reciprocal cross-holdings of capital securities issued by banks	
(c) Other deductions (such as investment in other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after formal consideration of relevant issues.
(4) TOTAL CAPITAL	Must equal or exceed 8% of weighted-risk assets.

[1] No express limits are placed on the amounts of nonvoting common, noncumulative perpetual preferred stock, and minority interests that may be recognized as part of Tier 1 capital. However, voting common stockholders' equity capital generally will be expected to be the dominant form of Tier 1 capital and banks should avoid undue reliance on other Tier 1 capital elements.

[2] The amounts of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f). All deductions are for capital purposes only; deductions would not affect accounting treatment.

[3] The amounts of credit-enhancing interest-only strips that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f). The amounts of nonfinancial equity investments that must be deducted for purposes of calculating Tier 1 capital are set forth in section II.B.(6) of appendix A to part 325.

[4] Deferred tax assets are subject to the capital limitations set forth in § 325.5(g).

[5] Amounts in excess of limitations are permitted but do not qualify as capital.

[6] Unrealized gains on equity securities are subject to the capital limitations set forth in paragraph I.A(2)(f) of appendix A to part 325.

* * * * *

Dated at Washington, DC, this 10th day of December, 2001.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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Friday,
January 25, 2002

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Capital; Leverage and Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Nonfinancial Equity Investments; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 02–01]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1097]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC47

Capital; Leverage and Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Nonfinancial Equity Investments

AGENCIES: Office of the Comptroller of the Currency (OCC), DOT; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The OCC, Board and FDIC (collectively, the agencies) are amending their capital guidelines to establish special minimum capital requirements for equity investments in nonfinancial companies. The new capital requirements, which will apply symmetrically to equity investments of banks and bank holding companies, impose a series of marginal capital charges on covered equity investments that increase with the level of a banking organization's overall exposure to equity investments relative to the organization's Tier 1 capital. The final rule is substantially similar to the proposal that the agencies published for comment in February 2001.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: *OCC*: Tommy Snow, Director, Capital Policy (202/874–5070); Karen Solomon, Director (202/874–5090), or Ron Shimabukuro, Counsel (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Michael G. Martinson, Associate Director (202/452–3640), James A. Embersit, Assistant Director (202/452–5249), or Mary Frances Monroe, Senior Supervisory Financial Analyst (202/452–5231), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452–3583), or Kieran J. Fallon, Senior Counsel (202/452–5270), Legal Division; Jean Nellie Liang, Assistant Director (202/452–2918), Division of Research & Statistics; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, D.C. 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

FDIC: Mark S. Schmidt, Associate Director, (202/898–6918), Stephen G. Pfeifer, Examination Specialist, Accounting Section (202/898–8904), Curtis Vaughn, Examination Specialist (202/898–6759), Division of Supervision; Michael B. Phillips, Counsel, (202/898–3581), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

A. Background

In March 2000, the Board invited public comment on a proposal to amend its consolidated capital adequacy guidelines for bank holding companies to establish special capital requirements for investments made, directly or indirectly, by bank holding companies in nonfinancial companies.[1] The Board's proposal, which was developed in consultation with the Secretary of the Treasury, applied to nonfinancial investments made directly or indirectly by a bank holding company under a variety of authorities, including investments made by financial holding companies under the merchant banking authority granted by the Gramm-Leach-Bliley Act (GLB Act) and investments made directly or indirectly by a bank holding company through a small business investment company (SBIC). The Board's initial capital proposal would have assessed, at the holding company level, a 50 percent capital charge on the carrying value of each covered investment.

In February 2001, the Board, OCC and FDIC jointly issued for comment a revised capital proposal (revised proposal).[2] The revised proposal attempted to balance the concerns raised by commenters on the Board's initial proposal with the belief of the agencies that banking organizations must maintain sufficient capital to offset the risks associated with equity investment activities. In developing the revised proposal, the agencies were guided by several important principles, including that:

- Equity investment activities in nonfinancial companies generally involve greater risks than traditional bank and financial activities;
- The risk of loss associated with a particular equity investment is likely to be the same regardless of the legal authority used to make the investment or whether the investment is held by a bank holding company or a bank; and
- The financial risks to an organization engaged in equity investment activities increase as the level of the organization's investments accounts for a larger portion of its capital, earnings and activities.

In light of these principles, the revised proposal provided for a progression of Tier 1 marginal capital charges that increases with the size of the aggregate equity investment portfolio of the banking organization relative to its Tier 1 capital. The proposed Tier 1 charge ranged from 8 percent for investments that aggregated up to 15 percent of the banking organization's Tier 1 capital, to 25 percent for investments representing 25 percent or more of the banking organization's Tier 1 capital.

The agencies proposed to apply these higher capital charges symmetrically to nonfinancial equity investments held by banks and bank holding companies. In particular, the agencies proposed to apply these charges to investments held directly or indirectly under the merchant banking authority of section 4(k)(4)(H) of the BHC Act; held directly or indirectly by bank holding companies in less than 5 percent of the shares of a nonfinancial company under section 4(c)(6) or 4(c)(7) of the BHC Act; made by bank holding companies or banks in nonfinancial companies through SBICs; held directly or indirectly by bank holding companies or banks in nonfinancial companies under the portfolio investment provisions of Regulation K; and held by banks in nonfinancial companies under section 24 of the Federal Deposit Insurance Act (FDI Act).

The agencies proposed that the higher capital charges would not apply to SBIC investments of a bank or bank holding company to the extent such investments, in the aggregate, did not exceed 15 percent of the banking organization's Tier 1 capital. All SBIC investments, including any amount exempted from the higher proposed charges, would be included in the calculation of a banking organization's aggregate equity investment portfolio for purposes of determining the marginal capital charge applicable to non-SBIC

[1] *See* 65 FR 16480, March 28, 2000.

[2] *See* 66 FR 10212, Feb. 14, 2001.

investments and SBIC investments that, in the aggregate, exceed 15 percent of Tier 1 capital. The agencies also proposed to exempt from coverage investments made by state banks under the special grandfather rights established by section 24(f) of the FDI Act.

The agencies requested comment on all aspects of the revised proposal and on a number of specific topics identified in the proposal. For example, the agencies requested comment on whether it would be necessary or appropriate to grandfather individual equity investments that were made before banking organizations received notice that the capital requirements for such investments might change.

B. Overview of Comments

The agencies collectively received approximately 60 comments on the revised proposal, including many comments that were submitted to more than one of the agencies. Commenters included trade associations for the banking, securities and insurance industries, state banking departments and individual banks and bank holding companies. Some commenters supported the lower marginal capital charge structure and level of deductions adopted by the revised proposal. For example, some commenters stated that the marginal approach embodied in the revised proposal was appropriate, logical, and consistent with the agencies' responsibilities to ensure the safety and soundness of banking organizations. One large banking organization with a significant amount of equity investments also stated that the revised proposal would not have a significantly negative impact on its ability to make equity investments. Many commenters also supported the agencies' willingness to take steps to meaningfully address some of the issues raised by commenters concerning the initial proposal.

A number of commenters, however, stated their belief that no special capital charge was necessary for equity investments. Some of these commenters argued that banking organizations are adept at managing the risks of these investment activities and that additional regulatory capital is not necessary to adequately support these activities. Some commenters also expressed concern that the higher capital charges imposed by the revised proposal would place banking organizations at a competitive disadvantage to independent securities firms and foreign banks in the market for making equity investments. In addition, several commenters asserted that the higher proposed charges would discourage independent securities firms that make equity investments as part of their business from affiliating with a bank. Commenters argued that these effects would frustrate Congress' desire, as expressed in the GLB Act, to permit a ''two-way street'' between securities firms and banking organizations.

Some commenters also asserted that the agencies should delay adoption of a final rule and address the issue of the appropriate capital treatment for equity investments in connection with the broader revisions to the capital rules currently being considered by the Basel Committee on Banking Supervision (Basel Committee). A number of commenters also reiterated their position that banking organizations should be permitted to use their internal capital models to determine the amount of regulatory capital necessary to support the particular investment portfolio of the organization, subject to supervisory review of these models during the examination process. A few commenters suggested that a smaller, uniform capital charge or risk-weight (e.g. a 10 percent Tier 1 capital deduction or a 250 percent risk-weight) would be adequate to offset the risk of all equity investments held by banking organizations, regardless of the size of the organization's overall equity investment portfolio.

A number of commenters also contended that, if a higher capital charge was imposed, the capital charge should apply only to investments made by financial holding companies under the GLB Act's merchant banking authority, and not to any investment made by a banking organization under one or more of the legal authorities that were in effect prior to the GLB Act. Commenters asserted that banking organizations have a history of profitably making investments under these pre-existing authorities and that there is no evidence to support an increase in the regulatory capital charge for such investments. A few commenters also contended that the proposed higher capital charges should not apply to equity investments made by a company engaged in a nonfinancial activity so long as the company was ''predominantly'' engaged in financial activities.

Commenters strongly supported several specific aspects of the revised proposal. For example, many commenters supported the decision by the agencies to exempt from the new capital charge SBIC investments that, in the aggregate, represented less than 15 percent of the banking organization's Tier 1 capital.[3] Many of these commenters, however, also argued that any SBIC investments that were exempted from the higher proposed charges also should be excluded for purposes of determining the aggregate size of the banking organization's equity portfolio and, thus, the appropriate marginal charge to be applied to non-exempt investments. Commenters also supported the agencies' proposal to exclude from coverage investments made by insurance company subsidiaries of financial holding companies under section 4(k)(4)(I) of the BHC Act; investments made by state banks under the grandfather rights established by section 24(f) of the FDI Act (12 U.S.C. 1831a(f)); and investments in debt instruments that do not serve as the functional equivalent of equity.

In addition, in response to the agencies' request for comments on the subject, many commenters asserted that any higher capital charges established for nonfinancial equity investments should not apply to investments made before March 13, 2000. These commenters noted that such investments were made before the industry was aware that a higher capital charge might be established for equity investments and argued that applying the higher charges to these pre-existing investments would be inequitable and could cause some investments to become unprofitable. Many of these commenters also argued that any grandfathered investments should not be included in the banking organization's aggregate equity portfolio for purposes of determining the marginal charge applicable to non-exempt investments made on or after March 13, 2000.

Commenters also argued that the higher proposed capital charges should not be applied in determining a banking organization's Tier 1 leverage ratio, because the leverage ratio generally does not account for the relative risks of a banking organization's assets. Finally, some commenters requested that the agencies clarify whether or how the proposed higher charges would apply to particular types of equity investments, including equity investments held in the trading account or for hedging purposes; investments that are acquired in satisfaction of a debt previously contracted (DPC); and investments made by a financial holding company under section 4(k)(1)(B) of the BHC Act in a

[3] One large banking organization, however, opposed providing an exemption for SBIC investments on the grounds that these investments entail the same risks as other types of nonfinancial equity investments.

company that is engaged in activities that the Board has determined are ''complementary'' to a financial activity.

C. Explanation of the Final Rule

The agencies have carefully reviewed the revised proposal in light of all of the comments received. Following this review, the agencies have adopted a final rule that is substantially similar to the revised proposal that was issued for comment. As described further below, the agencies also have made several changes to the rule to address matters raised by commenters and to further clarify the scope and application of the rule. These changes include a grandfather provision designed to apply the rule's capital charges only to investments made on or after March 13, 2000.

As an initial matter, the agencies believe it is important and appropriate to adopt a final rule at this time that establishes a regulatory minimum capital requirement for equity investments made by banking organizations in nonfinancial companies that is higher than the regulatory minimum capital charge that applies more broadly to banking assets. Data demonstrate that equity investments in nonfinancial companies generally involve greater risks than traditional banking and financial activities. An analysis of the annual returns for the period 1946 through 1998 for publicly traded small capitalization stocks in the United States indicates that a banking organization would have to hold capital well in excess of the current regulatory minimum capital levels to maintain the margin of safety required to retain the lowest investment grade rating on a bond issued to finance a portfolio of small capitalization stocks. Furthermore, as discussed in the revised proposal, data from a study of venture capital investment firms over the past 25 years, information and analysis from two national rating agencies, and a survey of the internal capital allocation policies of several banking organizations and securities firms engaged in equity investment activities all indicate that equity investments require higher capital support than traditional banking activities. The performance of the U.S. equity markets over the past few quarters further evidences the volatility and risk of equity investments.

The level and significance of equity investment activities at banking organizations also has increased substantially in the years since adoption of the original capital rules that govern banks and bank holding companies generally. For example, the size of SBICs owned by banking organizations more than doubled in the period from 1995 to 1999, and aggregate equity investments held by banking organizations during that period more than quadrupled. In addition, as of June 30, 2001, financial holding companies held more than $8.5 billion in investments under the new GLB Act authority to make merchant banking investments—authority that only became effective on March 13, 2000. Although the growth of these activities recently has slowed, equity investment activities have become, and are likely to continue to be, a significant business line for many banking organizations.

In light of the increased significance of the equity investment activities of banking organizations and the risks associated with these investments, the agencies believe it is important to revise their capital rules to reflect more accurately the risks equity investments may pose to the safety and soundness of banking organizations. For these same reasons, the agencies do not believe it would be prudent or appropriate to delay adoption of a final rule, as some commenters suggested. The agencies are aware of, and are participating actively in, the ongoing comprehensive review and revision of the Basel Capital Accord, which is expected to include provisions addressing equity investment activities. The agencies believe this rule is consistent with the efforts of the Basel Committee to develop a minimum regulatory capital requirement for equities that is more risk-sensitive than the current 100-percent risk-weighting. The agencies note, moreover, that any revised Accord is not expected to become effective until 2005 at the earliest. The agencies view this final rule as an interim step or ''bridge'' to the revised Accord. The agencies fully expect to revisit the capital charge applicable to equity investments once the Basle Capital Accord is revised, and will at that time decide whether and what, if any, revisions to the agencies' capital guidelines should be adopted in light of the final revised Accord.

The agencies also continue to believe that internal capital models that take account of the different risks and capital needs of the credit and equity activities of a particular banking organization ultimately represent an effective method for determining the capital adequacy of an organization. The agencies do not believe that it would be appropriate at this time, however, to rely on internal capital models, as a replacement for regulatory minimum capital requirements, to address the higher risks associated with the equity investment activities of banking organizations. The stage of development and sophistication of internal models for assessing equity risk exposures varies widely across institutions. While modeling techniques for equity investments are being developed and refined at major U.S. banking organizations, few institutions have adequately robust modeling capabilities for equity investments at the present time.

The agencies note that the Basel Committee is actively considering the circumstances under which it would be appropriate for a banking organization to calculate its capital requirements under an internal models-based approach. As part of this effort, the agencies are working as part of the Basel Committee to develop the criteria under which a banking organization could use internal measurement systems or internal models to estimate the organization's risk exposure to equity investments for risk-based capital purposes.[4] The agencies will continue to work with banking organizations that seek to develop robust and effective internal models and with other domestic and international regulatory agencies to develop a regulatory framework that permits banking organizations to use models that meet appropriate quantitative and qualitative standards in assessing the organization's capital adequacy.

The Board notes that, once the final rule becomes effective on April 1, 2002, the aggregate investment review thresholds that currently apply to the merchant banking investments of financial holding companies will expire automatically.[5] These thresholds currently require a financial holding company to obtain the Board's approval prior to making additional merchant banking investments if the aggregate carrying value of the holding company's existing merchant banking investments exceeds the lesser of 30 percent of Tier 1 capital, or 20 percent of Tier 1 capital after excluding investments in private equity funds. As the Board previously noted, these review thresholds were adopted as an interim measure pending adoption of a final rule addressing the appropriate regulatory capital treatment of merchant banking investments.

1. Equity Investments Covered by Final Rule

The final rule, like the revised proposal, applies symmetrically to equity investments made by bank

[4] *See* Basel Committee on Banking Supervision, Working Paper on Risk Sensitive Approaches for Equity Exposures in the Banking Book for IRB Banks (August 2001) (''Equity Risk Working Paper'').

[5] *See* 12 CFR 225.174(c); 12 CFR 1500.5(c).

holding companies and banks. Bank holding companies and banks generally make equity investments in reliance on, and the capital charge applies only to investments held under, the following authorities—

- The merchant banking authority of section 4(k)(4)(H) of the BHC Act (12 U.S.C. 1843(k)(4)(H)) and subpart J of the Board's Regulation Y (12 CFR 225.170 *et seq.*);
- The authority to acquire up to 5 percent of the voting shares of any company under section 4(c)(6) or 4(c)(7) of the BHC Act (12 U.S.C. 1843(c)(6) and (c)(7));
- The authority to invest in SBICs under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b));
- The portfolio investment provisions of Regulation K (12 CFR 211.8(c)(3)), including the authority to make portfolio investments through Edge and Agreement corporations;[6] and
- The authority to make investments under section 24 of the FDI Act (other than under section 24(f)) (12 U.S.C. 1831a).

For purposes of the rule, an equity investment includes the purchase, acquisition or retention of any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity. The rule generally does not apply to investments in nonconvertible senior or subordinated debt. The agencies, however, may impose the rule's higher charges on any instrument if the agency, based on a case-by-case review of the investment in the supervisory process, determines that the instrument serves as the functional equivalent of equity or exposes the banking organization to essentially the same risks as an equity instrument. The agencies believe this reservation of supervisory authority is appropriate to ensure that the higher capital charges apply to instruments that function as equity, and ensure that banking organizations do not evade the requirements of the rule through financial engineering.

[6] Recently, the Board comprehensively revised Regulation K, which, among other things, governs the foreign activities of U.S. banking organizations. *See* 66 FR 54346, Oct. 26, 2001. As part of that action, the portfolio investment provisions previously located at 12 CFR 211.5(b)(1)(iii) were amended and moved to 12 CFR 211.8(c)(3).

The capital charge applies only to investments held directly or indirectly in nonfinancial companies under one or more of the authorities listed above. For purposes of the final capital rule, a nonfinancial company is defined to mean an entity that engages in any activity that has not been determined to be financial in nature or incidental to financial activities under section 4(k) of the BHC Act. For investments held directly or indirectly by a bank, the term ''nonfinancial company'' also does not include a company that engages only in activities that are permissible for the parent bank to conduct directly. The rule does not apply to investments made in companies that engage solely in banking and financial activities. Banking organizations have special expertise in managing the risks associated with banking and financial activities.

A few commenters asserted that the proposed higher capital charges should apply only to merchant banking investments made by financial holding companies under section 4(k)(4)(H) of the BHC Act, or should not apply to investments made under one or more of the other investment authorities listed above. The risk of loss associated with a particular equity investment is likely to be the same regardless of the legal authority used by a banking organization to make the investment, or whether the investment is held by a bank holding company or a bank. Supervisory experience, particularly over the past few quarters, has confirmed that significant valuation declines may occur with respect to equity investments held under a variety of legal authorities. It is for these reasons that banking organizations are increasingly making investment decisions and managing equity investment risks across legal entities as a single business line within the organization. It is for these same reasons that the final rule, like the revised proposal, applies symmetrically to nonfinancial equity investments held by banks and bank holding companies and applies to equity investments made under each of the principal legal authorities currently available to banking organizations for making such investments.

As noted above, the final rule applies to investments made by bank holding companies or banks in or through SBICs under section 302(b) of the Small Business Investment Act. In light of Congress' express desire to facilitate the funding of small businesses through SBICs, the statutory limits on the amount of capital a banking organization may invest in SBICs, and the existing regulatory framework governing the formation and operations of SBICs, the agencies proposed to exempt from the higher capital charges SBIC investments of banking organizations that, in the aggregate, did not exceed 15 percent of the Tier 1 capital of the banking organization.

Commenters strongly supported this treatment. Accordingly, the final rule continues to provide an exception for SBIC investments. As described further below (*see* Part C.4 below), the rule does not place any additional regulatory capital charge on SBIC investments held directly or indirectly by a bank to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the Tier 1 capital of the bank. For bank holding companies, no additional regulatory capital charge is imposed on SBIC investments held directly or indirectly by the holding company to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the aggregate of the holding company's pro rata interests in the Tier 1 capital of its subsidiary banks.

The rule also applies to investments held by state banks in a nonfinancial company under section 24 of the FDI Act. Section 24 permits a state bank to acquire equity in a nonfinancial company if the FDIC determines that the investment does not pose a significant risk to the deposit insurance fund. The FDIC is empowered to establish and has established higher capital requirements and other limitations on equity investments of state banks held under this authority, such as investments in companies engaged in real estate investment and development activities. The FDIC has to date in most cases required state banks that make these investments to limit the amount of the investment and to deduct these investments from the bank's capital, effectively imposing a 100 percent capital charge on these investments. Because of the FDIC's practice in establishing higher capital charges, the final rule will not have the effect of imposing additional capital requirements on investments held under section 24 of the FDI Act.[7]

The agencies proposed to exclude from coverage equity investments made

[7] The final rule permits the Board of Directors of the FDIC, acting directly in exceptional cases and after a review of the proposed activity, to allow a lower capital deduction for investments approved by the Board of Directors under section 24 of the FDI Act so long as the bank's investments under section 24 and SBIC investments represent, in the aggregate, less than 15 percent of the Tier 1 capital of the bank. The FDIC may also impose a higher capital charge on any investment made under section 24 where appropriate.

by state banks under the grandfather rights established by section 24(f) of the FDI Act and commenters strongly supported this exception. Section 24(f) permits a state bank to make investments only in shares of publicly traded companies and registered investment companies, and only if the investment was permitted under a state law enacted as of a certain date and the state bank engaged in the investment activity as of a certain date. The FDI Act also provides that the total amount of investments made by a state bank under section 24(f) may not exceed the capital of the bank, and expressly authorizes the FDIC to require the divestiture of any investment made under the section if the FDIC determines the investment will have an adverse effect on the safety and soundness of the bank. In light of the limited scope of these investments and the statutory restrictions applicable to them, the agencies have adopted an exemption for these investments in the final rule.

Some commenters asserted that the proposed higher charges should not apply to any investment made in a company that is predominantly engaged in banking or financial activities. These investments, by definition, involve some mixing of banking and commerce, and present special risks to the investing banking organization. In addition, the agencies believe that the adoption of a ''predominantly financial'' standard would create significant administrative and verification burdens for banking organizations and their supervisors, and could create opportunities for banking organizations to evade the higher capital charges established by the rule. In this regard, the agencies believe it would be difficult for banking organizations to establish and document adequately, and for the appropriate supervisor to monitor effectively, the mix of a company's financial and nonfinancial activities. On the other hand, the approach adopted by the final rule provides a clear standard for banking organizations and their supervisors to use in identifying investments covered by the rule while, at the same time, excluding from coverage investments in companies engaged solely in banking or financial activities that the banking organization could hold under their traditional authorities to engage in such activities.

In response to questions raised by commenters, the agencies wish to clarify that the rule does not apply to investments made in a community development corporation to promote the public welfare under 12 U.S.C. 24(Eleventh). In addition, the rule does not apply to equity securities that are acquired in satisfaction of a debt previously contracted (DPC) and that are held and divested in accordance with applicable law, or to unexercised warrants acquired by a bank as additional consideration for making a loan where the warrants are not held under one of the legal authorities covered by the rule.

The final rule also does not apply to equity investments made under section 4(k)(4)(I) of the BHC Act by an insurance underwriting affiliate of a financial holding company. Investments made by insurance underwriting affiliates of a financial holding company generally are already subject to higher capital charges under state insurance laws. The Board expects to monitor financial holding companies with insurance underwriting affiliates to ensure that they do not arbitrage any differences in the capital requirements applicable to equity investments made by insurance companies and other financial holding company affiliates. The Board also currently is considering the appropriate method for accounting for insurance companies and their investments under the Board's consolidated capital adequacy guidelines and will address any issues that arise in this area in a separate proposal.

The agencies proposed to exempt from the higher capital charges any equity instrument that was held in the trading account of the relevant banking organization in accordance with generally accepted accounting principles (GAAP) and as part of an underwriting, market making or dealing activity.

Several commenters asserted that the higher capital charges should not apply to any equity instrument that is held for hedging purposes, or to any equity instrument that is held in the trading account in accordance with GAAP. Some commenters also asked the agencies to clarify the scope of the proposed exemption for equity instruments held in the trading account.

The final rule does not apply the higher capital charges to equity securities acquired and held by a bank or bank holding company as a bona fide hedge of an equity derivative transaction lawfully entered into by the bank or bank holding company. Moreover, banking organizations have separate authority to underwrite, deal in, and make a market in equity securities through a securities broker or dealer that is subject to special capital and accounting requirements, and securities lawfully acquired under these statutory provisions are not covered by the rule.[8]

Because the trading account provision of the revised proposal was included for the purpose of exempting these types of holdings from the capital proposal, the agencies do not believe that, with the clarifications discussed above, a general exemption for investments held in the trading account is necessary. Moreover, a more general exception for equities held in the trading account, as advocated by some commenters, could allow banking organizations to evade the requirements of the rule by placing nonfinancial equity investments in their trading account. Accordingly, the final rule does not include a general exemption for investments that are held in the trading account.

A few commenters questioned whether the proposed charges would apply to investments made by financial holding companies in a company engaged in ''complementary'' activities. Section 4(k)(1)(B) of the BHC Act (12 U.S.C. 1843(k)(1)(B)) permits a financial holding company to acquire a company engaged in a nonfinancial activity if the Board finds that the activity is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally. A financial holding company must obtain the Board's prior approval to acquire a company under this authority.[9] The Board will review and consider the appropriate capital treatment of investments made by a financial holding company under section 4(k)(1)(B) in connection with its review of any notice filed by a financial holding company to acquire a company engaged in a complementary activity, or in connection with its determination that a particular activity is ''complementary'' to a financial activity.[10] Accordingly, the final rule does not apply to investments made by a financial holding company under the ''complementary'' investment authority of section 4(k)(1)(B) of the BHC Act.

The agencies believe that the legal authorities covered by the rule represent

[8] *See* 12 U.S.C. 24a, 335 and 1831w (financial subsidiaries of national, state member and state nonmember banks, respectively); 12 U.S.C. 1843(k)(4)(E) (financial holding companies); and 12 U.S.C. 1843(c)(8) and *J.P. Morgan & Co., Inc.,* 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industry Ass'n* v. *Board of Governors of the Federal Reserve System,* 900 F.2d 360 (D.C. Cir. 1990) (bank holding companies).

[9] *See* 12 CFR 225.89.

[10] *See* 65 FR 80384, Dec. 21, 2000 (requesting comment on a proposal to determine that certain data processing and data transmission activities are complementary to a financial activity and on the appropriate capital treatment for such investments).

the principal legal authorities available to banking organizations for making equity investments in nonfinancial companies. The agencies intend to monitor developments relating to nonfinancial equity investments of banking organizations and may expand the types of investments covered by the rule if necessary to ensure that banking organizations maintain adequate capital to support their equity investment activities.

2. Transition Rule for Investments Made Before March 13, 2000

As noted above, the agencies specifically requested comment on whether the higher proposed capital charges should apply to individual investments made by a bank or bank holding company prior to March 13, 2000. The agencies proposed that, if investments made prior to March 13, 2000, were grandfathered, the amount of such investments be included in determining the aggregate size of the banking organization's equity investment portfolio and, thus, the appropriate marginal capital charge that would apply to investments that were not grandfathered.

Commenters strongly supported grandfathering investments that were made prior to March 13, 2000. Commenters noted that these investments were made before the agencies publicly indicated that a higher regulatory capital charge might be imposed, and argued that applying the new charges retroactively to these investments would be unfair and could render certain existing investments unprofitable. Commenters also favored a permanent grandfather for individual investments made prior to March 13, 2000, rather than a phase-in period that would apply the new capital requirements to such investments over a period of years.

After reviewing the comments received, the agencies have determined to exempt from the new capital charges any individual investment that was made by a bank or bank holding company before March 13, 2000, or that was made after such date pursuant to a binding written commitment entered into by the banking organization prior to March 13, 2000.[11] These investments are modest in amount at most banking organizations and will be liquidated over time. As discussed further below (*see* Part C.4), the adjusted carrying value of any grandfathered investment must be included in determining the total amount of nonfinancial equity investments held by the banking organization in relation to its Tier 1 capital and, thus, the marginal capital charge that applies to the organization's covered equity investments.[12]

The final rule grants these grandfather rights only to investments that were made prior to March 13, 2000, or that were made on or after March 13, 2000 pursuant to a binding written commitment entered into prior to March 13, 2000.[13] For example, if a bank holding company acquired 100 shares of a nonfinancial company under section 4(c)(6) of the BHC Act prior to March 13, 2000, the adjusted carrying value of that investment would be exempt from the rule's higher capital charges. However, if the bank holding company purchased additional shares of the company after March 13, 2000, or made a capital contribution to the company after March 13, 2000, the adjusted carrying value of the additional investment would be subject to the marginal capital charges of the rule (assuming that the additional investment was not made pursuant to a binding written commitment entered into before March 13, 2000). Shares or other interests received by a banking organization through a stock split or stock dividend on an investment made prior to March 13, 2000, are not considered a new investment if the banking organization does not provide any consideration for the shares or interests received and the transaction does not materially increase the organization's proportional interest in the company. On the other hand, shares or interests acquired on or after March 13, 2000, through the exercise of options or warrants acquired before March 13, 2000, will be considered a new investment if the banking organization provides any consideration for the shares or interests received.

An investment qualifies for grandfather rights only if the banking organization has continuously held the investment since March 13, 2000. Thus, in the example discussed above, if the bank holding company sold and repurchased 40 shares of the nonfinancial company after March 13, 2000, those 40 shares would no longer qualify for grandfather rights under the rule. The grandfather status of an investment is not affected if the banking organization determines to hold that investment under a different legal authority than the authority originally used to acquire the investment. A financial holding company could, for example, decide to hold certain investments made through an SBIC or under section 4(c)(6) of the BHC Act prior to March 13, 2000, under the GLB Act's expanded merchant banking authority, and such decision would not affect the grandfathered treatment of the investment under the rule.

3. Marginal Capital Charge Structure

The agencies are adopting a final marginal capital charge structure that is substantially as outlined in the revised proposal. This structure applies a higher capital charge to equity investments as the aggregate amount of the organization's nonfinancial equity investments increases in relation to its capital. This approach reflects the fact that the financial risks to a banking organization from equity investment activities increases as the level of these activities account for a larger portion of the organization's capital, earnings, and activities. The charges, which are reflected in the following table, are applied by making a deduction from the banking organization's Tier 1 capital.

[11] A few commenters asserted that grandfather rights should be granted to all investments made prior to the effective date of the final rule. The agencies do not believe granting broader grandfather rights for equity investments would be appropriate in light of the risks these investments pose to banking organizations. Also, the Board in its initial capital proposal specifically gave notice that it expected banking organizations to maintain capital in sufficient amounts to allow the organizations to transition to higher regulatory capital levels for equity investments if required. Thus, the agencies expect that banking organizations will not face significant burdens in complying with the final rule which, as noted above, imposes capital charges that are lower than those initially proposed.

[12] In addition, all grandfathered investments that are not subject to a deduction under the rule will be risk-weighted at 100 percent and included in the banking organization's risk-weighted assets for purposes of calculating the organization's risk-based capital ratios.

[13] For purposes of the rule a binding written commitment means a legally binding written agreement that requires the banking organization to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a banking organization the right to acquire equity or make an investment, but do not require the banking organization to take such actions, are not considered a binding written commitment for purposes of the rule.

TABLE 1.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the banking organization (as a percentage of the Tier 1 capital of the banking organization)	Deduction from Tier 1 Capital (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

Each tier of charges applies, on a marginal basis, to the adjusted carrying value of the banking organization's nonfinancial equity investments that fall within the specified range of the organization's Tier 1 capital.[14] The total adjusted carrying value of a nonfinancial equity investment that is subject to a deduction under the rule is excluded from the banking organization's risk-weighted assets for purposes of computing the denominator of the organization's risk-based capital ratio.

The amount of the deduction is based on the adjusted carrying value of the banking organization's nonfinancial equity investments. The ''adjusted carrying value'' of an investment is the value at which the investment is recorded on the balance sheet of the banking organization, reduced by (i) net unrealized gains that are included in carrying value but that have not been included in Tier 1 capital and (ii) associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investment as reflected on the banking organization's balance sheet, less the sum of (i) unrealized gains on those investments included in the organization's other comprehensive income and not reflected in Tier 1 capital and (ii) any associated deferred tax liabilities.

Comments were mixed on using the adjusted carrying value of an investment for purposes of determining the amount of the required deduction. While some commenters favored this approach, others argued that it unfairly penalized well performing investments that are marked-up with the unrealized gains flowing into Tier 1 capital.

The agencies continue to believe that the adjusted carrying value of an investment provides an appropriate benchmark for applying the deduction because it reflects the full amount of an organization's capital exposure to equity investments. Adjusted carrying value reflects both the amount actually invested by the banking organization and any additional unrealized gains (or losses) on the investment that are reflected in the organization's Tier 1 capital. All of the adjusted carrying value of an investment is potentially subject to loss in the event of devaluation of the investment. Applying the charge to the adjusted carrying value of an investment also takes into account that some banking organizations use AFS accounting for GAAP reporting purposes, which is a prudent and appropriate accounting method in many situations and one that results in an effective 100 percent capital charge on unrealized gains.[15]

4. SBIC Investments

The final rule applies to equity investments made by bank holding companies and banks in nonfinancial companies through one or more SBICs that are consolidated with the banking organization, and to equity investments in one or more SBICs that are not consolidated with the banking organization. For the reasons discussed above, the final rule provides an accommodation for SBIC investments made by a bank holding company or bank provided such investments remain within traditional investment ranges. In particular, no additional capital charge is applied to SBIC investments held directly or indirectly by a bank to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the Tier 1 capital of the bank. In the case of a bank holding company, no additional capital charge is applied to SBIC investments held directly or indirectly by the bank holding company to the extent the aggregate adjusted carrying value of all such investments does not exceed 15 percent of the aggregate of the holding company's pro rata interests in the Tier 1 capital of its subsidiary banks.[16] SBIC investments that are not subject to a deduction under the rule will be risk-weighted at 100 percent and included in the banking organization's risk-weighted assets for purposes of calculating the organization's risk-based capital ratios.

The final rule continues to provide that a banking organization, in calculating the aggregate adjusted carrying value of its nonfinancial equity investments for purposes of determining the appropriate marginal charge to be applied to an equity investment subject to the rule, must include all nonfinancial equity investments held by the organization in or through an SBIC as well as all grandfathered investments that are exempt from the rule's higher capital charges. A number of commenters opposed this treatment and argued that this treatment would effectively subject exempt SBIC investments and grandfathered investments to the rule's higher capital charges.

One of the principles that has guided the agencies during this rulemaking process is that the risks to a banking organization from equity investment activities increase as equity investments constitute a larger component of the

[14] For purposes of determining the amount of a banking organization's nonfinancial equity investments as a percentage of its Tier 1 capital, Tier 1 capital is calculated *before* any deduction for disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, disallowed purchased credit card relationships, disallowed credit enhancing interest-only strips (both purchased and retained), disallowed deferred tax assets, and nonfinancial equity investments.

The agencies recently adopted amendments to their capital guidelines to better address the regulatory capital treatment of recourse obligations, residual interests (including credit enhancing interest-only strips) and direct credit substitutes. *See* 66 FR 59614 (Nov. 29, 2001) (''Securitization Rule''). The amendments to the agencies' capital guidelines adopted by this final rule reflect the changes made to the capital guidelines by the Securitization Rule.

[15] The rule does not affect the treatment of unrealized gains and losses on AFS securities for purposes of calculating supplementary (Tier 2) capital. Under the agencies' risk-based capital rules, up to 45 percent of an organization's pretax net unrealized gains on AFS equity securities may be included in Tier 2 capital.

[16] The amount a bank holding company may invest in the stock of an SBIC under section 4(c)(5) of the BHC Act and section 302(b) of the Small Business Investment Act is based on the bank holding company's proportionate interest in the capital and surplus of its subsidiary banks. *See* 12 CFR 225.111. The Board believes a similar methodology is appropriate for determining the level of SBIC investments held directly or indirectly by a bank holding company that qualify for an exemption from the rule's higher capital charges.

organization's capital and operations. Although the agencies, for the reasons discussed above, have determined to provide an exemption for SBIC investments and investments made prior to March 13, 2000, the agencies believe it is appropriate to consider the risks associated with an organization's total equity investment portfolio in determining the marginal charge that would apply to SBIC investments that exceed traditional levels and to investments made on or after March 13, 2000. This approach balances Congress' desire to promote the funding of small businesses through SBICs and the desire of banking organizations to preserve the existing capital treatment of investments made prior to March 13, 2000, with the agencies' strong belief, based on available data, that regulatory capital levels higher than the current requirements are necessary to support the greater risks associated with equity investments and ensure the safety and soundness of banking organizations. The agencies also note that this approach does not impose a higher capital charge on exempted SBIC investments or grandfathered investments. These investments would continue to be subject to the same capital requirements that apply to such investments today. However, these investments could cause a higher marginal capital charge to be imposed on each additional dollar of non-exempt and non-grandfathered investments made by the banking organization to reflect the organization's higher concentration and exposure to equity investment activities.

If a banking organization has an investment in a SBIC that is consolidated with the banking organization for accounting purposes, but that is not wholly owned by the banking organization, the adjusted carrying value of the organization's nonfinancial equity investments held through the SBIC is equal to the organization's proportionate share of the adjusted carrying value of the SBIC's equity investments in nonfinancial companies. The remainder of the adjusted carrying value of the SBIC's investments, which represents the minority interest holders' proportionate share, is excluded from the banking organization's risk-weighted assets.[17]

Similar treatment applies to investments that a bank holding company holds through equity investment funds that are controlled by the holding company (such as, by acting as general partner of the fund) but that are not wholly owned by the holding company. In these circumstances, the capital charge applies only to the holding company's proportionate share of the fund's investments even if the fund is consolidated in the holding company's financial reporting statements.

In addition, if a less-than-wholly-owned SBIC or investment fund is consolidated into the banking organization's financial statements for accounting and reporting purposes, any minority interest resulting from the consolidation may not be included in the Tier 1 capital of the banking organization. The agencies believe this treatment is appropriate because the minority interest is not available to support the overall financial business of the banking organization and, therefore, should not be included in the banking organization's capital.

The agencies do not expect that any nonfinancial company acquired by a banking organization under one of the legal authorities covered by the rule would be consolidated into the banking organization's financial statements, either because the investment is temporary or limited to a non-controlling stake. However, if consolidation does occur, any resulting minority interest also must be excluded from Tier 1 capital because the minority interest is not available to support the general financial business of the banking organization.

5. Examples of Application of Rule's Marginal Charges

The following two examples illustrate how the rule's marginal charges apply.

Example 1: A financial holding company has $1 million in Tier 1 capital and has nonfinancial equity investments with an aggregate adjusted carrying value of $270,000. All of the financial holding company's nonfinancial equity investments are held under the GLB Act's merchant banking authority and all were made after March 13, 2000. The total amount of the financial holding company's required Tier 1 capital deduction would be $28,998, determined as follows: (i) 8 percent of the first $149,999 ($11,999); (ii) 12 percent of the amount between $150,000 and $249,999 ($11,999); and (iii) 25 percent of the amount from $250,000 to $270,000 ($5,000).[18] The average Tier 1 charge on the financial holding company's portfolio would be 10.74 percent.

Example 2: A bank has $1 million in Tier 1 capital and has nonfinancial equity investments with an aggregate adjusted carrying value of $375,000. Of this amount, $100,000 represents the adjusted carrying value of investments made prior to March 13, 2000, and an additional $175,000 represents the adjusted carrying value of investments made through the bank's wholly owned SBIC. The $100,000 in investments made prior to March 13, 2000, and $150,000 of the bank's SBIC investments would not be subject to the rule's marginal capital charges. These amounts are considered for purposes of determining the marginal charge that applies to the bank's covered investments (including the $25,000 of non-exempt SBIC investments). In this case, the total amount of the bank's Tier 1 capital deduction would be $31,250. This figure is 25 percent of $125,000, which is the amount of the bank's total nonfinancial equity portfolio subject to the rule's marginal capital charges. The average Tier 1 capital charge on the bank's entire nonfinancial equity portfolio would be 8.33 percent.

The $31,250 charge in Example 2 reflects the provisions of the rule that impose no additional capital charge on investments made prior to March 13, 2000, and on SBIC investments to the extent such investments do not exceed 15 percent of Tier 1 capital. While these grandfathered and SBIC investments are not subject to a Tier 1 capital deduction under the final rule, these investments would be given a 100 percent risk-weight and would remain subject to the normal Tier 1 and total capital charges applicable to the organization's risk-weighted assets under the agencies's risk-based capital guidelines.

6. Leverage Ratio

The revised proposal required banking organizations to apply the proposed capital deduction in calculating the organization's Tier 1 capital. Consequently, the proposal would affect both the organization's risk-based capital ratio and its ratio of Tier 1 capital to average total assets (Tier 1 leverage ratio). The agencies requested comment on whether the final rule should be adjusted to eliminate application of the deduction for purposes of calculating the Tier 1 leverage ratio and, if so, how this might be done. A small number of commenters addressed this issue, and generally opposed incorporating the higher capital charges for equity investments into the calculation of an organization's Tier 1 leverage ratio. Commenters asserted that the leverage ratio was

[17] If a banking organization has an investment in a SBIC that is not consolidated with the banking organization for accounting purposes, that organization may (but is not required to) reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the SBIC's investments that are in companies engaged only in banking or financial activities. A banking organization may adjust its interest in a non-consolidated SBIC in this manner only if the organization has current information that identifies the percentage of the SBIC's investments that are in companies engaged in a nonfinancial activity. This information must be available to examiners upon request.

[18] For purposes of these examples, all figures have been rounded to the nearest dollar.

intended to provide an absolute measure of the bank's capital to asset ratio without adjusting the bank's assets according to the relative risk associated with different classes of assets.

After carefully reviewing the comments on this issue, the agencies have decided to adopt the approach proposed, which applies the deduction to Tier 1 for both risk-based and leverage capital purposes.[19] In reaching this conclusion, the agencies have carefully considered a number of factors and alternatives. The agencies have long used a uniform definition of Tier 1 capital for both risk-based and leverage capital purposes based, in part, on the view that the nature and composition of ''core'' capital does not differ depending on whether it is being compared to risk-weighted or average total assets. In addition, although the leverage ratio generally is intended to provide an absolute measure of a banking organization's ratio of core capital to average total assets, the agencies also previously have determined that certain types of assets that involve special risks should be deducted from, and not considered part of, Tier 1 capital for both risk-based and leverage capital purposes.[20] As discussed above, equity investments involve significantly greater risks than those associated with traditional banking and financial activities and, accordingly, the agencies believe it is appropriate to require that these investments be deducted from core capital for leverage capital purposes in the manner provided in the rule.

The agencies note, moreover, that the most direct method of implementing the commenters' proposal would be to require banks to apply the rule's deductions only for risk-based capital purposes. Such an approach would result in many banking organizations having two separate Tier 1 capital amounts—one for risk-based purposes and one for leverage purposes. This dichotomy could create significant confusion in, and burden for, the industry, particularly because a number of regulatory and reporting requirements are based on an organization's ''Tier 1 capital'' and two such numbers might exist. The agencies also have considered potential alternative approaches that would implement the commenters' suggestion while, at the same time, retaining an uniform definition of Tier 1. These alternative approaches, however, also would significantly increase the complexity and burden of the rule.

The agencies also have reviewed information obtained through the supervisory and examination process for a sample of banking organizations with a significant amount of equity investments. This review indicates that applying the rule's Tier 1 deductions for leverage capital purposes likely will have a de minimis impact on the leverage ratio of banking organizations at this time. For these reasons, the final rule requires banking organizations to make the rule's Tier 1 deductions for both risk-based and leverage capital purposes.

The final rule provides that the total adjusted carrying value of a banking organization's nonfinancial equity investments that is subject to a deduction from Tier 1 capital will be excluded from the organization's average total consolidated assets for purposes of computing the denominator of the organization's Tier 1 leverage ratio. Any amount of equity investments that is not subject to a deduction under the rule (*e.g.* grandfathered investments and SBIC investments that, in the aggregate, do not exceed 15 percent of Tier 1 capital) must be included in the organization's average total consolidated assets.

7. Risk Management and the Supervisory Process

Although strong capital adequacy is critically important to ensure that equity investment activities do not pose an undue risk to a banking organization, capital strength must be supplemented by strong internal controls and management practices to ensure that equity investment activities are conducted in a safe and sound manner. Accordingly, all banking organizations are expected to develop, maintain and employ sound risk management policies, procedures and systems that are reasonably designed to manage the risks associated with the organization's equity investment activities. These policies, procedures and systems should include established limits on the types and amounts of equity investments that may be made by the banking organization; parameters governing portfolio diversification; sound policies governing the valuation and accounting of investments; periodic reviews of the performance of individual investments and the aggregate portfolio; and strong internal controls, including investment review and authorization procedures and recordkeeping requirements. The level and complexity of an organization's risk management policies, procedures and systems should be commensurate to the size, nature and complexity of the organization's equity investment activities and consistent with any guidance published by the agencies.[21]

The agencies note, moreover, that the capital requirements established by this final rule are viewed as the minimum capital levels required for a banking organization to adequately support its equity investment activities. The agencies' risk-based capital guidelines require banking organizations at all times to maintain capital that is commensurate with the level and nature of the risks to which they are exposed and the agencies fully expect that individual banking organizations will allocate higher economic capital levels, as appropriate, to support their equity investment activities in amounts commensurate with the risk in the individual investment portfolios of the organization.

Furthermore, the agencies may impose a higher capital charge on the nonfinancial equity investments of a banking organization if the facts and circumstances indicate that a higher capital level is appropriate in light of the risks associated with the organization's investment activities. The agencies believe that strong capital levels above the minimum requirements are particularly important when a banking organization has a high degree of concentration in nonfinancial equity investments. As proposed, the agencies will apply heightened supervision to the equity investment activities of banking organizations with significant concentrations in equity investments. In addition, capital levels above the minimums established by this rule may be appropriate in light of the nature, concentration or performance of a particular organization's equity investments, or the sufficiency of the organization's policies, procedures, and systems used to monitor and control the risks associated with the organization's equity investments.

[19] A few commenters also asserted that the agencies should, as a general matter, eliminate the Tier 1 leverage ratio for banking organizations. This suggestion is beyond the scope of this targeted rulemaking, and the agencies believe that the leverage ratio continues to be a useful tool in ensuring that banking organizations operate with adequate capital to support their activities.

[20] For example, the agencies' risk-based and leverage capital guidelines may require banking organizations to deduct all or a portion of the following assets from Tier 1 capital: goodwill; mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing interest-only strips; other identifiable intangible assets; and deferred tax assets.

[21] *See, e.g.* Federal Reserve SR Letter No. 00–9 (SPE), Supervisory Guidance on Equity Investment and Merchant Banking Activities (June 22, 2000).

8. Regulatory Requirements Based on Tier 1 Capital

A number of regulatory restrictions and reporting requirements are based on, or refer to, a bank's Tier 1 capital. For example, Tier 1 capital is one component used in determining the dollar amount of covered transactions that a bank may have with any one affiliate and all affiliates in the aggregate under section 23A of the Federal Reserve Act, and the amount of extensions of credit that a national bank may have outstanding to a single borrower under the National Bank Act.[22]

The final rule requires banking organizations, in calculating their Tier 1 capital, to deduct the appropriate percentage of their nonfinancial equity investments from the sum of their core capital elements. The organization's Tier 1 capital is the amount remaining after the deduction for nonfinancial equity investments, and after any other deductions and adjustments required by the agencies' capital guidelines. Accordingly, banking organizations must use their Tier 1 capital, calculated in the manner required by the agencies' capital guidelines as amended by this final rule, in determining their compliance with any regulatory restriction or reporting requirement that is based on Tier 1 capital.

D. Regulatory Flexibility Act Analysis

OCC: The OCC hereby certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the regulatory capital requirements will not have a significant economic impact on a substantial number of small entities. As described in detail elsewhere in the supplementary information, the final rule amends the OCC's risk-based capital guidelines to apply a series of marginal capital charges that increase as the size of a national bank's portfolio of certain nonfinancial equity investments increases in relation to its Tier 1 capital. For the following reasons, the OCC concludes that the new capital requirements are unlikely to have a significant economic impact on a substantial number of small banks.

First, the final rule applies to only two categories of national bank investments: investments made pursuant to the Board's Regulation K and investments made in or through, SBICs. The majority of national bank nonfinancial equity investments are in the form of investments made in, or through, SBICs. The OCC believes that SBIC investment activities are conducted primarily by large banks rather than by small banks within the Small Business Administration's definition of ''small entity'' (asset size of $100 million or less).

Moreover, several key features of the rule mitigate any effect that the increased capital requirements may have on small banks that do engage in nonfinancial equity investments covered by the rule. For example, in order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, nonfinancial equity investments made before March 13, 2000, are ''grandfathered.'' Commenters noted that because such investments were made before the industry was aware of the possibility of higher capital requirements, applying higher capital requirements to such investments could negatively impact the economics of the transactions. Moreover, the final rule does not apply the higher capital requirements to investments by national banks in community development corporations pursuant to 12 U.S.C. 24(Eleventh), to equity securities acquired in satisfaction of a debt previously contracted, or to certain unexercised warrants.

Finally, the new capital requirements apply only to levels of investment that equal or exceed 15 percent of the bank's Tier 1 capital. Most national banks will not be required to hold additional capital for the SBIC investments that they currently hold either because the investments are grandfathered or because the bank's level of investment is below 15 percent. As a result, the new capital charge should not deter prudent new investment in small companies, since most national banks could undertake new investments without tripping the 15 percent threshhold.

Board: In accordance with section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The rule amends the Board's consolidated risk-based and leverage capital adequacy guidelines for state member banks and bank holding companies to establish special minimum regulatory capital requirements for equity investments in nonfinancial companies. *See* 12 CFR Part 208, Appendix A and Appendix B (state member banks); 12 CFR Part 225, Appendix A and Appendix D (bank holding companies). As discussed more fully above, available data indicate that equity investments generally involve greater risks than the traditional banking and financial activities of banking organizations. Data also indicate that the level and significance of equity investment activities at banking organizations has increased significantly in recent years. The final rule modifies the Board's capital adequacy guidelines to better reflect the riskiness of equity investments and the potential risks such investments pose to the safety and soundness of insured depository institutions.

The Board specifically requested comment on the likely burden that the revised proposal would impose on bank holding companies and state member banks. One bank holding company that owns or controls a substantial quantity of equity investments stated that the revised proposal would not have a significantly adverse impact on its ability to make equity investments. Some commenters, on the other hand, argued that the higher capital charges imposed by the rule would place banking organizations at a competitive disadvantage to independent securities firms and foreign banks in the market for making equity investments, or would discourage securities firms from affiliating with banks. In addition, some commenters also asserted that the agencies should adopt one or more alternative approaches suggested by the commenters. These alternatives included establishing a uniform capital charge or risk-weight for all equity investments, relying on a banking organization's internal capital models to determine the appropriate amount of capital to support a banking organization's equity investment portfolio, and delaying adoption of a final rule pending completion of the ongoing revisions to the Basle Capital Accord.

For the reasons discussed in detail above, the Board believes that the capital charges imposed by the final rule are necessary and appropriate to ensure that state member banks and bank holding companies maintain capital commensurate with the risk associated with their equity investment activities and that these activities do not pose an undue risk to the safety and soundness of insured depository institutions. The Board also has reviewed the alternatives suggested by commenters and, for the reasons discussed above, believes it would not be prudent or appropriate at this time to adopt these approaches as an alternative to the marginal regulatory capital charge structure implemented by the final rule.

The Board notes, moreover, that the final rule includes several features that likely will reduce the potential effect of the rule on bank holding companies (including their bank and nonbank subsidiaries) and state member banks,

[22] *See* 12 CFR 250.242; 12 CFR 32.2(b).

including in particular small banking organizations and other small entities. As described fully above, the rule exempts from the higher capital charges SBIC investments held by banks and bank holding companies that remain within traditional limits, investments made by banking organizations prior to March 13, 2000, and investments made by state banks under the special grandfather rights granted by section 24(f) of the FDI Act. For covered investments, the rule applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. The highest marginal Tier 1 charge (25 percent) is well below the uniform charge initially proposed (50 percent).

In addition, once the final rule becomes effective on April 1, 2002, the aggregate investment review thresholds currently applicable to the merchant banking investments of financial holding companies will expire automatically. See 12 CFR 225.174(c); 12 CFR 1500.5(c). Thus, adoption of the final rule will relieve financial holding companies of all sizes from any burden associated with seeking formal Board approval to expand their merchant banking activities.

The Board's supervisory experience also indicates that a significant number of small banks and bank holding companies do not engage in the type of equity investment activities covered by the rule.[23] In addition, the Board's risk-based and leverage capital guidelines generally do not apply to bank holding companies that have less than $150 million in consolidated total assets and, accordingly, the amendments made by the final rule generally would not apply to such small bank holding companies. The Board also has reviewed information concerning a sample banking organizations that are actively engaged in equity investment activities and, based on this review, believes the final rule is not likely to have a significantly adverse impact on banking organizations or their ability to engage in equity investment activities.

FDIC: The final rule amends the FDIC's risk-based and leverage capital standards for state nonmember banks (12 CFR part 325). These amendments establish the regulatory capital requirements applicable to certain nonfinancial equity investments of state nonmember banks. The FDIC hereby certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the regulatory capital requirements will not have a significant economic impact on a substantial number of small entities because of the exclusion in this final rule for grandfathered equity investments by state banks under section 24(f) of the FDI Act and the grandfather provision that was added to this final rule for nonfinancial equity investments made before March 13, 2000.

Since March 13, 2000, the FDIC has received approximately 37 applications and notices under section 24 of the FDI Act for equity investment activities in nonfinancial companies. It is anticipated that most of these equity investment activities would be covered under this rule. However, the capital charges required in this final rule for nonfinancial equity investments would be less than the capital charges imposed by the FDIC for the great majority of the nonfinancial equity investment activities approved by the FDIC under section 24 since March 13, 2000. Also, these section 24 notices and applications have involved investments that generally were significantly below 15 percent of the respective banks' Tier 1 capital.

In order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, the final rule provides for a ''grandfather'' provision for nonfinancial equity investments made before March 13, 2000. These commenters noted such investments were made before the industry was aware that a higher capital charge might be established for nonfinancial equity investments.

In addition, the FDIC notes that the final rule includes several features that likely will reduce the potential effect of the rule on banking organizations and, especially, small banking organizations and other small entities. The final rule exempts from the higher capital charges SBIC investments held by banking organizations that remain within traditional limits, and equity investments made by state nonmember banks under the grandfather rights granted by Congress in section 24(f) of the FDI Act. For covered investments, the rule applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. The highest marginal Tier 1 charge (25 percent) under the final rule is well below the uniform capital charge initially proposed by the Board for bank holding companies (50 percent of Tier 1 capital).

In response to questions raised by commenters, the agencies have clarified in this preamble to the final rule that the rule does not apply to investments made in a community development corporation to promote welfare under 12 U.S.C. 24 (Eleventh). In addition, the rule does not apply to equity securities that are acquired in satisfaction of a DPC and that are held and divested in accordance with applicable law, or to unexercised warrants acquired by a bank as additional consideration for making a loan where the warrants are not held under one of the legal authorities covered by this final rule.

E. Paperwork Reduction Act

OCC: The OCC has determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Board: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3505; 5 CFR 1320 App. A.1), the Board has reviewed this final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information as defined in the Paperwork Reduction Act are contained in the final rule.

FDIC: The FDIC has determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

F. Executive Order 12866 Determination

OCC: The OCC has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866. The final rule amends the OCC's risk-based capital guidelines with respect to the regulatory capital treatment applicable to certain nonfinancial equity investments by national banks. While the general effect of this final rule is to raise the capital requirements for certain nonfinancial equity investments held by banking organizations, for the following reasons, the OCC does not believe that this final rule will have a significant economic impact on national banks.

This final rule applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. Specifically with respect to national banks, the final rule only applies to two categories of national bank investments: investments made pursuant to the Board's Regulation K and investments made in or through SBICs. The majority of

[23] For purposes of the Regulatory Flexibility Act, small entities are defined to include state member banks and bank holding companies that have $100 million or less in assets. See 13 CFR 121.201.

national bank nonfinancial equity investments are in the form of investments made in, or through SBICs. However, under the final rule SBIC investments held by a national bank in amounts that remain within traditional limits (15 percent of Tier 1 capital) are exempted from the higher capital requirements. The final rule also clarifies that the higher capital requirements do not apply to national bank investments in community development corporations pursuant to 12 U.S.C. 24 (Eleventh), to equity securities acquired in satisfaction of a debt previously contracted, or to certain unexercised warrants.

In addition, in order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, nonfinancial equity investments made before March 13, 2000, are ''grandfathered.'' Commenters noted that because such investments were made before the industry was aware of the possibility of higher capital requirements, applying higher capital requirements to such investments could negatively impact the economics of the transactions.

G. Unfunded Mandates Act of 1995

OCC: Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. While the general effect of this final rule is to raise the capital requirements for nonfinancial equity investments held by banking organizations, for the following reasons, the OCC does not believe that this final rule will result in expenditures of $100 million or more in any one year.

This final rules applies a series of marginal capital charges that increase as the size of the banking organization's equity investment portfolio increases in relation to its Tier 1 capital. Specifically with respect to national banks, the final rule only applies to two categories of national bank investments: investments made pursuant to the Board's Regulation K and investments made in or through SBICs. The majority of national bank nonfinancial equity investments are in the form of investments made in, or through SBICs. However, under the final rule SBIC investments held by a national bank in amounts that remain within traditional limits (15 percent of Tier 1 capital) are exempted from the higher capital requirements. The final rule also clarifies that the higher capital requirements do not apply to national bank investments in community development corporations pursuant to 12 U.S.C. 24 (Eleventh), to equity securities acquired in satisfaction of a debt previously contracted, or to certain unexercised warrants.

In addition, in order to reduce regulatory burden on banking organizations and in response to comments on the revised proposal, nonfinancial equity investments made before March 13, 2000, are ''grandfathered.'' Commenters noted that because such investments were made before the industry was aware of the possibility of higher capital requirements, applying higher capital requirements to such investments could negatively impact the economics of the transactions.

H. Use of ''Plain Language''

Section 722 of the GLB Act requires the agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. The agencies invited comment on whether the proposed rule was drafted in plain language and clearly presented. No commenters specifically addressed this issue. The agencies have used a variety of ''plain language'' techniques to ensure that the final rule is presented in a clear fashion, including using numerous topical headings in the rule, easy-to-read tables to set forth the marginal capital charge structure adopted by the rule, and textual examples to illustrate application of the rule. The agencies believe the final rule is written plainly and clearly.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and record keeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and record keeping requirements, State non-member banks.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the Office of the Comptroller of the Currency amends part 3 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. The first sentence in paragraph (a) of section 3.2 is amended to read as follows:

§ 3.2 Definitions.

* * * * *

(a) *Adjusted total assets* means the average total assets figure required to be computed for and stated in a bank's most recent quarterly *Consolidated Report of Condition and Income* (Call Report) minus end-of-quarter intangible assets, deferred tax assets, and credit-enhancing interest-only strips, that are deducted from Tier 1 capital, and minus nonfinancial equity investments for which a Tier 1 capital deduction is required pursuant to section 2(c)(5) of appendix A of this part 3. * * *

* * * * *

3. In appendix A to part 3:

A. In section 1, paragraphs (c)(17) through (c)(31) are redesignated as paragraphs (c)(20) through (c)(34); paragraphs (c)(12) through (c)(16) are redesignated as paragraphs (c)(14)

through (c)(18); and paragraphs (c)(1) through (c)(11) are redesignated as paragraphs (c)(2) through (c)(12).

B. In section 1, new paragraphs (c)(1), (c)(13) and (c)(19) are added.

C. In section 2, paragraph (a)(3) is amended;

D. In section 2, new paragraph (c)(1)(v) is added;

E. In section 2, paragraph (c)(5) is redesignated as paragraph (c)(6);

F. In sections 3 and 4, Tables A through D are redesignated as Tables B through E, respectively;

G. All references to ''Table A'' are revised to read ''Table B'';

H. All references to ''Table B'' are revised to read ''Table C'';

I. All references to ''Table C'' are revised to read ''Table D'';

J. All references to ''Table D'' are revised to read ''Table E''; and

K. In section 2, new paragraph (c)(5), including new Table A, is added. The additions and revisions read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(1) *Adjusted carrying value* means, for purposes of section 2(c)(5) of this appendix A, the aggregate value that investments are carried on the balance sheet of the bank reduced by any unrealized gains on the investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital and reduced by any associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank) less any unrealized gains on those investments that are included in other comprehensive income and that are not reflected in Tier 1 capital, and less any associated deferred tax liabilities. Unrealized losses on AFS nonfinancial equity investments must be deducted from Tier 1 capital in accordance with section 1(c)(8) of this appendix A. The treatment of small business investment companies that are consolidated for accounting purposes under generally accepted accounting principles is discussed in section 2(c)(5)(ii) of this appendix A. For investments in a nonfinancial company that is consolidated for accounting purposes, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the bank's Tier 1 capital in accordance with section 2(c)(2) of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) are excluded from the bank's risk-weighted assets.

* * * * *

(13) *Equity investment* means, for purposes of section 1(c)(19) and section 2(c)(5) of this appendix A, any equity instrument including warrants and call options that give the holder the right to purchase an equity instrument, any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity. An investment in any other instrument, including subordinated debt or other types of debt instruments, may be treated as an equity investment if the OCC determines that the instrument is the functional equivalent of equity or exposes the bank to essentially the same risks as an equity instrument.

* * * * *

(19) *Nonfinancial equity investment* means any equity investment held by a bank in a nonfinancial company through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)) or under the portfolio investment provisions of Regulation K (12 CFR 211.8(c)(3)). An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in a SBIC that is not consolidated with the bank is treated as a nonfinancial equity investment in the manner provided in section 2(c)(5)(ii)(C) of this appendix A. A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for a bank to conduct directly or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

* * * * *

Section 2. Components of Capital

* * * * *

(a) * * *

(3) Minority interests in the equity accounts of consolidated subsidiaries, except that minority interests in a small business investment company or investment fund that holds nonfinancial equity investments, and minority interests in a subsidiary that is engaged in nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(19) of this appendix A, are not included in Tier 1 capital or total capital.

* * * * *

(c) * * *

(1) * * *

(v) Nonfinancial equity investments as provided by section 2(c)(5) of this appendix A.

* * * * *

(5) *Nonfinancial equity investments—(i) General.* (A) A bank must deduct from its Tier 1 capital the appropriate percentage, as determined in accordance with Table A, of the adjusted carrying value of all nonfinancial equity investments held by the bank and its subsidiaries.

TABLE A.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by banks (as a percentage of the Tier 1 capital of the bank)[1]	Deduction from Tier 1 Capital (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8.0 percent.
Greater than or equal to 15 percent but less than 25 percent	12.0 percent.
Greater than or equal to 25 percent	25.0 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of the Tier 1 capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, disallowed purchased credit card relationships, disallowed credit-enhancing interest only strips (both purchased and retained), disallowed deferred tax assets, and nonfinancial equity investments.

(B) Deductions for nonfinancial equity investments must be applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments equal to, or in excess of, 15 percent of the bank's Tier 1 capital.

(C) The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under section 2(c)(5) of this appendix A is excluded from the bank's weighted risk assets for purposes of computing the denominator of the bank's risk-based capital ratio. For example, if 8 percent of the adjusted carrying value of a

nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator of the risk-based capital ratio.

(D) Banks engaged in equity investment activities, including those banks with a high concentration in nonfinancial equity investments (e.g., in excess of 50 percent of Tier 1 capital), will be monitored and may be subject to heightened supervision, as appropriate, by the OCC to ensure that such banks maintain capital levels that are appropriate in light of their equity investment activities, and the OCC may impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

(ii) *Small business investment company investments.* (A) Notwithstanding section 2(c)(5)(i) of this appendix A, no deduction is required for nonfinancial equity investments that are made by a bank or its subsidiary through a SBIC that is consolidated with the bank, or in a SBIC that is not consolidated with the bank, to the extent that such investments, in the aggregate, do not exceed 15 percent of the Tier 1 capital of the bank. Except as provided in paragraph (c)(5)(ii)(B) of this section, any nonfinancial equity investment that is held through or in a SBIC and not deducted from Tier 1 capital will be assigned to the 100 percent risk-weight category and included in the bank's consolidated risk-weighted assets.

(B) If a bank has an investment in a SBIC that is consolidated for accounting purposes but the SBIC is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments held through the SBIC is equal to the bank's proportionate share of the SBIC's adjusted carrying value of its equity investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.,* the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank.

(C) If a bank has an investment in a SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. The amount by which the adjusted carrying value of the bank's investment in the SBIC is reduced under this paragraph will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

(D) To the extent the adjusted carrying value of all nonfinancial equity investments that the bank holds through a consolidated SBIC or in a nonconsolidated SBIC equals or exceeds, in the aggregate, 15 percent of the Tier 1 capital of the bank, the appropriate percentage of such amounts, as set forth in Table A, must be deducted from the bank's Tier 1 capital. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held through a consolidated SBIC and in a nonconsolidated SBIC (including any nonfinancial equity investments for which no deduction is required) must be included in determining, for purposes of Table A the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

(iii) *Nonfinancial equity investments excluded.* (A) Notwithstanding section 2(c)(5)(i) and (ii) of this appendix A, no deduction from Tier 1 capital is required for the following:

(1) Nonfinancial equity investments (or portion of such investments) made by the bank prior to March 13, 2000, and continuously held by the bank since March 13, 2000.

(2) Nonfinancial equity investments made on or after March 13, 2000, pursuant to a legally binding written commitment that was entered into by the bank prior to March 13, 2000, and that required the bank to make the investment, if the bank has continuously held the investment since the date the investment was acquired.

(3) Nonfinancial equity investments received by the bank through a stock split or stock dividend on a nonfinancial equity investment made prior to March 13, 2000, provided that the bank provides no consideration for the shares or interests received, and the transaction does not materially increase the bank's proportional interest in the nonfinancial company.

(4) Nonfinancial equity investments received by the bank through the exercise on or after March 13, 2000, of an option, warrant, or other agreement that provides the bank with the right, but not the obligation, to acquire equity or make an investment in a nonfinancial company, if the option, warrant, or other agreement was acquired by the bank prior to March 13, 2000, and the bank provides no consideration for the nonfinancial equity investments.

(B) Any excluded nonfinancial equity investments described in section 2(c)(5)(iii)(A) of this appendix A must be included in determining the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital for purposes of Table A. In addition, any excluded nonfinancial equity investments will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

* * * * *

Dated: January 4, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1842(l), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In Appendix A to part 208, the following amendments are made:

a. In section II.A—

i. The undesignated paragraph following paragraph 1.(iii) is revised;

ii. One sentence is added at the end of paragraph 1.c.; and

iii. The first undesignated paragraph following paragraph 2.(v) is revised.

b. In section II.B—

i. A new paragraph (v) is added following paragraph (iv) Deferred tax assets;

ii. Paragraph 1.e.ii is revised;

iii. Paragraph 4.b is revised; and

iv. A new paragraph 5 is added at the end of section II.B.

c. In sections III. and IV., footnotes 21 through 48 are redesignated as footnotes 27 through 54, respectively.

d. Attachment II is revised.

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

Tier 1 capital is generally defined as the sum of core capital elements [5] less any amounts of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.B. of this appendix A.

* * * * *

c. * * * Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities are not included in the bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b.

* * * * *

2. * * *

The maximum amount of tier 2 capital that may be included in a bank's qualifying total capital is limited to 100 percent of tier 1

[5] [Reserved]

capital (net of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.B. of this appendix A).

* * * * *

B. * * *

(v) Nonfinancial equity investments-portions are deducted from the sum of core capital elements in accordance with section II.B.5 of this appendix.

* * * * *

1. * * *

e. * * *

ii. For purposes of calculating these limitations on mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os, tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

* * * * *

4. * * *

b. The reported amount of deferred-tax assets, net of any valuation allowance for deferred-tax assets, in excess of the lesser of these two amounts is to be deducted from a bank's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os, any disallowed deferred-tax assets, and any nonfinancial equity investments. There generally is no limit in tier 1 capital on the amount of deferred-tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences.

* * * * *

5. *Nonfinancial equity investments*—a. *General.* A bank must deduct from its core capital elements the sum of the appropriate percentages (as determined below) of the adjusted carrying value of all nonfinancial equity investments held by the bank or by its direct or indirect subsidiaries. For purposes of this section II.B.5, investments held by a bank include all investments held directly or indirectly by the bank or any of its subsidiaries.

b. *Scope of nonfinancial equity investments.* A nonfinancial equity investment means any equity investment held by the bank in a nonfinancial company: through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)); [21] or under the portfolio investment provisions of the Board's Regulation K (12 CFR 211.8(c)(3)). A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for the bank to conduct directly, or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

c. *Amount of deduction from core capital.* i. The bank must deduct from its core capital elements the sum of the appropriate percentages, as set forth in Table 1, of the adjusted carrying value of all nonfinancial equity investments held by the bank. The amount of the percentage deduction increases as the aggregate amount of nonfinancial equity investments held by the bank increases as a percentage of the bank's Tier 1 capital.

TABLE 1.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank (as a percentage of the Tier 1 capital of the bank) [1]	Deduction from Core Capital Elements (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of core capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

ii. These deductions are applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the parent bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the bank's Tier 1 capital.

iii. The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under this paragraph is excluded from the bank's risk-weighted assets for purposes of computing the denominator of the bank's risk-based capital ratio.[22]

iv. As noted in section I, this appendix establishes *minimum* risk-based capital ratios and banks are at all times expected to maintain capital commensurate with the level and nature of the risks to which they are exposed. The risk to a bank from nonfinancial equity investments increases with its concentration in such investments and strong capital levels above the minimum requirements are particularly important when a bank has a high degree of concentration in nonfinancial equity investments (*e.g.,* in excess of 50 percent of Tier 1 capital). The Federal Reserve intends to monitor banks and apply heightened supervision to equity investment activities as appropriate, including where the bank has a high degree of concentration in nonfinancial equity investments, to ensure that each bank maintains capital levels that are appropriate in light of its equity investment activities. The Federal Reserve also reserves authority to impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

d. *SBIC investments.* i. No deduction is required for nonfinancial equity investments that are held by a bank through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank to the extent that

[21] An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in an SBIC that is not consolidated with the bank is treated as a nonfinancial equity investment.

[22] For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator for the risk-based capital ratio.

all such investments, in the aggregate, do not exceed 15 percent of the bank's Tier 1 capital. Any nonfinancial equity investment that is held through or in an SBIC and that is not required to be deducted from Tier 1 capital under this section II.B.5.d. will be assigned a 100 percent risk-weight and included in the bank's consolidated risk-weighted assets.[23]

ii. To the extent the adjusted carrying value of all nonfinancial equity investments that a bank holds through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank exceeds, in the aggregate, 15 percent of the bank's Tier 1 capital, the appropriate percentage of such amounts (as set forth in Table 1) must be deducted from the bank's core capital elements. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held through a consolidated SBIC and in a non-consolidated SBIC (including any investments for which no deduction is required) must be included in determining, for purposes of Table 1, the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

e. *Transition provisions.* No deduction under this section II.B.5 is required to be made with respect to the adjusted carrying value of any nonfinancial equity investment (or portion of such an investment) that was made by the bank prior to March 13, 2000, or that was made by the bank after such date pursuant to a binding written commitment[24] entered into prior to March 13, 2000, provided that in either case the bank has continuously held the investment since the relevant investment date.[25] For purposes of this section II.B.5.e., a nonfinancial equity investment made prior to March 13, 2000, includes any shares or other interests received by the bank through a stock split or stock dividend on an investment made prior to March 13, 2000, provided the bank provides no consideration for the shares or interests received and the transaction does not materially increase the bank's proportional interest in the company. The exercise on or after March 13, 2000, of options or warrants acquired prior to March 13, 2000, is *not* considered to be an investment made prior to March 13, 2000, if the bank provides any consideration for the shares or interests received upon exercise of the options or warrants. Any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. must be included in determining the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital for purposes of Table 1. In addition, any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. will be assigned a 100-percent risk weight and included in the bank's consolidated risk-weighted assets.

f. *Adjusted carrying value.* i. For purposes of this section II.B.5., the ''adjusted carrying value'' of investments is the aggregate value at which the investments are carried on the balance sheet of the bank reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital and associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank) *less* any unrealized gains on those investments that are included in other comprehensive income and not reflected in Tier 1 capital, and associated deferred tax liabilities.[26]

ii. As discussed above with respect to consolidated SBICs, some equity investments may be in companies that are consolidated for accounting purposes. For investments in a nonfinancial company that is consolidated for accounting purposes under generally accepted accounting principles, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the bank's core capital in accordance with section II.B.1. of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) should be excluded from the bank's risk-weighted assets for regulatory capital purposes.

g. *Equity investments.* For purposes of this section II.B.5., an equity investment means any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity where the instrument or feature is held under one of the legal authorities listed in section II.B.5.b. of this appendix A. An investment in any other instrument (including subordinated debt) may be treated as an equity investment if, in the judgment of the Federal Reserve, the instrument is the functional equivalent of equity or exposes the state member bank to essentially the same risks as an equity instrument.

* * * * *

ATTACHMENT II—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR STATE MEMBER BANKS *

[Using the Year-End 1992 Standard]

Components	Minimum requirements
CORE CAPITAL (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
Common stockholders' equity	No limit.
Qualifying noncumulative perpetual preferred stock	No limit; banks should avoid undue reliance on preferred stock in tier 1.

[23] If a bank has an investment in an SBIC that is consolidated for accounting purposes but that is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments through the SBIC is equal to the bank's proportionate share of the adjusted carrying value of the SBIC's equity investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.,* the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank. If a bank has an investment in an SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. If a bank reduces the adjusted carrying value of its investment in a non-consolidated SBIC to reflect financial investments of the SBIC, the amount of the adjustment will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

[24] A ''binding written commitment'' means a legally binding written agreement that requires the bank to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a bank the right to acquire equity or make an investment, but do not require the bank to take such actions, are not considered a binding written commitment for purposes of this section II.*B*.5.

[25] For example, if a bank made an equity investment in 100 shares of a nonfinancial company prior to March 13, 2000, the adjusted carrying value of that investment would not be subject to a deduction under this section II.*B*.5. However, if the bank made any additional equity investment in the company after March 13, 2000, such as by purchasing additional shares of the company (including through the exercise of options or warrants acquired before or after March 13, 2000) or by making a capital contribution to the company and such investment was not made pursuant to a binding written commitment entered into before March 13, 2000, the adjusted carrying value of the additional investment would be subject to a deduction under this section II.*B*.5. In addition, if the bank sold and repurchased, after March 13, 2000, 40 shares of the company, the adjusted carrying value of those 40 shares would be subject to a deduction under this section II.*B*.5.

[26] Unrealized gains on AFS equity investments may be included in supplementary capital to the extent permitted under section II.A.2.e. of this appendix A. In addition, the unrealized losses on AFS equity investments are deducted from Tier 1 capital in accordance with section II.A.1.a. of this appendix A.

ATTACHMENT II—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR STATE MEMBER BANKS *—Continued

[Using the Year-End 1992 Standard]

Components	Minimum requirements
Minority interest in equity accounts of consolidated	Banks should avoid using minority interests to subsidiaries introduce elements not otherwise qualifying for tier 1 capital.
Less: Goodwill, other intangible assets, credit-enhancing interest-only strips and nonfinancial equity investments required to be deducted from capital [1]	
SUPPLEMENTARY CAPITAL (Tier 2)	Total of tier 2 is limited to 100% of tier 1.[2]
Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets.[2]
Perpetual preferred stock	No limit within tier 2.
Hybrid capital instruments and equity contract notes	No limit within tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of tier 1,[2] **amortized for capital purposes as they approach maturity.**
Revaluation reserves (equity and building)	Not included; banks encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
DEDUCTIONS (from sum of tier 1 and tier 2)	
Investments in unconsolidated subsidiaries	As a general rule, one-half of the aggregate investments will be deducted from tier 1 capital and one-half from tier 2 capital.[3]
Reciprocal holdings of banking organizations' capital securities	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority after a formal rulemaking.	On a case-by-case basis or as a matter of policy.
TOTAL CAPITAL (tier 1 + tier 2—deductions)	Must equal or exceed 8% of weighted-risk assets.

[1] Requirements for the deduction of other intangible assets, residual interests and nonfinancial equity investments are set forth in section II.B. of this appendix.
[2] Amounts in excess of limitations are permitted but do not qualify as capital.
[3] A proportionately greater amount may be deducted from tier 1 capital, if the risks associated with the subsidiary so warrant.
* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.

* * * * *

3. In Appendix B to part 208, in section II.b., footnotes 2 and 3 are revised and the fourth sentence of section II.b. is revised to read as follows:

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

* * * * *

II. * * *

b. * * * [2] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income (Call Reports), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, are in excess of 25 percent of Tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted Tier 1 capital; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitations set forth in section II.B.4 of appendix A of this part; and the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital.[3]

* * * * *

[2] Tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of Tier 1 capital; amounts of credit enhancing interest-only strips in excess of 25 percent of Tier 1 capital; other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations; and a percentage of the bank's nonfinancial equity investments. The Federal Reserve may exclude certain other investments in subsidiaries or associated companies as appropriate.

[3] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B in appendix A of this part.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(*l*), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In Appendix A to part 225, the following amendments are made:

a. In section II.*A*—

i. The undesignated paragraph following paragraph 1.(iv) is revised;

ii. One sentence is added at the end of paragraph 1.c; and

iii. The first undesignated paragraph following paragraph 2.(v) is revised.

b. In section II.*B*—

i. A new paragraph (v) is added following paragraph (iv) Deferred tax assets;

ii. Paragraph 1.e.ii is revised;

iii. Paragraph 4.b is revised; and

iv. A new paragraph 5 is added at the end of section II.B.

c. In sections III. and IV., footnotes 24 through 51 are redesignated as footnotes 31 through 58, respectively.

d. Attachment II is revised.

Appendix A to Part 225—Capital Adequacy Guidelines For Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

A. * * *

1. * * *

Tier 1 capital is generally defined as the sum of core capital elements [6] less any amounts of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.*B*. of this appendix A.

* * * * *

c. * * * Minority interests in small business investment companies, investment

[6] [Reserved]

funds that hold nonfinancial equity investments (as defined in section II.*B*.5.b. of this appendix A), and subsidiaries engaged in nonfinancial activities are not included in the banking organization's Tier 1 or total capital base if the banking organization's interest in the company or fund is held under one of the legal authorities listed in section II.*B*.5.b.

* * * * *

2. * * *

The maximum amount of tier 2 capital that may be included in an institution's qualifying total capital is limited to 100 percent of tier 1 capital (net of goodwill, other intangible assets, interest-only strips receivables and nonfinancial equity investments that are required to be deducted in accordance with section II.*B*. of this appendix A).

* * * * *

B. * * *

(v) Nonfinancial equity investments—portions are deducted from the sum of core capital elements in accordance with section II.*B*.5 of this appendix A.

* * * * *

1. * * *

e. * * *

ii. For purposes of calculating these limitations on mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os, tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

* * * * *

4. * * *

b. The reported amount of deferred-tax assets, net of any valuation allowance for deferred-tax assets, in excess of the lesser of these two amounts is to be deducted from a banking organization's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, but prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os, any disallowed deferred-tax assets, and any nonfinancial equity investments. There generally is no limit in tier 1 capital on the amount of deferred-tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences.

* * * * *

5. *Nonfinancial equity investments*—a. *General*. A bank holding company must deduct from its core capital elements the sum of the appropriate percentages (as determined below) of the adjusted carrying value of all nonfinancial equity investments held by the parent bank holding company or by its direct or indirect subsidiaries. For purposes of this section II.B.5, investments held by a bank holding company include all investments held directly or indirectly by the bank holding company or any of its subsidiaries.

b. *Scope of nonfinancial equity investments*. A nonfinancial equity investment means any equity investment held by the bank holding company: under the merchant banking authority of section 4(k)(4)(H) of the BHC Act and subpart J of the Board's Regulation Y (12 CFR 225.175 et seq.); under section 4(c)(6) or 4(c)(7) of BHC Act in a nonfinancial company or in a company that makes investments in nonfinancial companies; in a nonfinancial company through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958;[24] in a nonfinancial company under the portfolio investment provisions of the Board's Regulation K (12 CFR 211.8(c)(3)); or in a nonfinancial company under section 24 of the Federal Deposit Insurance Act (other than section 24(f)).[25] A nonfinancial company is an entity that engages in any activity that has not been determined to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

c. *Amount of deduction from core capital*. i. The bank holding company must deduct from its core capital elements the sum of the appropriate percentages, as set forth in Table 1, of the adjusted carrying value of all nonfinancial equity investments held by the bank holding company. The amount of the percentage deduction increases as the aggregate amount of nonfinancial equity investments held by the bank holding company increases as a percentage of the bank holding company's Tier 1 capital.

TABLE 1.—DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank holding company (as a percentage of the Tier 1 capital of the parent banking organization)[1]	Deduction from Core Capital Elements (as a percentage of the adjustedcarrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of core capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit enhancing I/Os (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

ii. These deductions are applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the parent holding company's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank holding company equals 20 percent of the Tier 1 capital of the bank holding company, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the company's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the company's Tier 1 capital.

iii. The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under this paragraph is excluded from the bank holding company's risk-weighted assets for purposes of

[24] An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in an SBIC that is not consolidated with the parent banking organization is treated as a nonfinancial equity investment.

[25] *See* 12 U.S.C. 1843(c)(6), (c)(7) and (k)(4)(H); 15 U.S.C. 682(b); 12 CFR 211.5(b)(1)(iii); and 12 U.S.C. 1831a. In a case in which the Board of Directors of the FDIC, acting directly in exceptional cases and after a review of the proposed activity, has permitted a lesser capital deduction for an investment approved by the Board of Directors under section 24 of the Federal Deposit Insurance Act, such deduction shall also apply to the consolidated bank holding company capital calculation so long as the bank's investments under section 24 and SBIC investments represent, in the aggregate, less than 15 percent of the Tier 1 capital of the bank.

computing the denominator of the company's risk-based capital ratio.[26]

iv. As noted in section I, this appendix establishes *minimum* risk-based capital ratios and banking organizations are at all times expected to maintain capital commensurate with the level and nature of the risks to which they are exposed. The risk to a banking organization from nonfinancial equity investments increases with its concentration in such investments and strong capital levels above the minimum requirements are particularly important when a banking organization has a high degree of concentration in nonfinancial equity investments (*e.g.*, in excess of 50 percent of Tier 1 capital). The Federal Reserve intends to monitor banking organizations and apply heightened supervision to equity investment activities as appropriate, including where the banking organization has a high degree of concentration in nonfinancial equity investments, to ensure that each organization maintains capital levels that are appropriate in light of its equity investment activities. The Federal Reserve also reserves authority to impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the banking organization, or other information, indicate that a higher minimum capital requirement is appropriate.

d. *SBIC investments.* i. No deduction is required for nonfinancial equity investments that are held by a bank holding company through one or more SBICs that are consolidated with the bank holding company or in one or more SBICs that are not consolidated with the bank holding company to the extent that all such investments, in the aggregate, do not exceed 15 percent of the aggregate of the bank holding company's pro rata interests in the Tier 1 capital of its subsidiary banks. Any nonfinancial equity investment that is held through or in an SBIC and not required to be deducted from Tier 1 capital under this section II.B.5.d. will be assigned a 100 percent risk-weight and included in the parent holding company's consolidated risk-weighted assets.[27]

ii. To the extent the adjusted carrying value of all nonfinancial equity investments that a bank holding company holds through one or more SBICs that are consolidated with the bank holding company or in one or more SBICs that are not consolidated with the bank holding company exceeds, in the aggregate, 15 percent of the aggregate Tier 1 capital of the company's subsidiary banks, the appropriate percentage of such amounts (as set forth in Table 1) must be deducted from the bank holding company's core capital elements. In addition, the aggregate adjusted carrying value of *all* nonfinancial equity investments held through a consolidated SBIC and in a non-consolidated SBIC (including any investments for which no deduction is required) must be included in determining, for purposes of Table 1, the total amount of nonfinancial equity investments held by the bank holding company in relation to its Tier 1 capital.

e. *Transition provisions.* No deduction under this section II.*B*.5 is required to be made with respect to the adjusted carrying value of any nonfinancial equity investment (or portion of such an investment) that was made by the bank holding company prior to March 13, 2000, or that was made after such date pursuant to a binding written commitment[28] entered into by the bank holding company prior to March 13, 2000, provided that in either case the bank holding company has continuously held the investment since the relevant investment date.[29] For purposes of this section II.B.5.e., a nonfinancial equity investment made prior to March 13, 2000, includes any shares or other interests received by the bank holding company through a stock split or stock dividend on an investment made prior to March 13, 2000, provided the bank holding company provides no consideration for the shares or interests received and the transaction does not materially increase the bank'' holding company's proportional interest in the company. The exercise on or after March 13, 2000, of options or warrants acquired prior to March 13, 2000, is *not* considered to be an investment made prior to March 13, 2000, if the bank holding company provides any consideration for the shares or interests received upon exercise of the options or warrants. Any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. must be included in determining the total amount of nonfinancial equity investments held by the bank holding company in relation to its Tier 1 capital for purposes of Table 1. In addition, any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.5.e. will be assigned a 100-percent risk weight and included in the bank holding company's consolidated risk-weighted assets.

f. *Adjusted carrying value.* i. For purposes of this section II.*B*.5., the ''adjusted carrying value'' of investments is the aggregate value at which the investments are carried on the balance sheet of the consolidated bank holding company reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from the bank holding company's Tier 1 capital and associated deferred tax liabilities. For example, for investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of the investments (as reflected on the consolidated balance sheet of the bank holding company) *less* any unrealized gains on those investments that are included in other comprehensive income and not reflected in Tier 1 capital, and associated deferred tax liabilities.[30]

ii. As discussed above with respect to consolidated SBICs, some equity investments may be in companies that are consolidated for accounting purposes. For investments in a nonfinancial company that is consolidated for accounting purposes under generally accepted accounting principles, the parent banking organization's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the consolidated bank holding company's core capital in accordance with section II.B.1 of this Appendix). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) should be excluded from the banking organization's

[26] For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from risk-weighted assets in calculating the denominator for the risk-based capital ratio.

[27] If a bank holding company has an investment in an SBIC that is consolidated for accounting purposes but that is not wholly owned by the bank holding company, the adjusted carrying value of the bank holding company's nonfinancial equity investments through the SBIC is equal to the holding company's proportionate share of the adjusted carrying value of the SBIC's equity investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.* the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank holding company. If a bank holding company has an investment in a SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank holding company may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. If a bank holding company reduces the adjusted carrying value of its investment in a non-consolidated SBIC to reflect financial investments of the SBIC, the amount of the adjustment will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

[28] A ''binding written commitment'' means a legally binding written agreement that requires the banking organization to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a banking organization the right to acquire equity or make an investment, but do not require the banking organization to take such actions, are not considered a binding written commitment for purposes of this section II.*B*.5.

[29] For example, if a bank holding company made an equity investment in 100 shares of a nonfinancial company prior to March 13, 2000, that investment would not be subject to a deduction under this section II.*B*.5. However, if the bank holding company made any additional equity investment in the company after March 13, 2000, such as by purchasing additional shares of the company (including through the exercise of options or warrants acquired before or after March 13, 2000) or by making a capital contribution to the company, and such investment was not made pursuant to a binding written commitment entered into before March 13, 2000, the adjusted carrying value of the additional investment would be subject to a deduction under this section II.*B*.5. In addition, if the bank holding company sold and repurchased shares of the company after March 13, 2000, the adjusted carrying value of the re-acquired shares would be subject to a deduction under this section II.*B*.5.

[30] Unrealized gains on AFS investments may be included in supplementary capital to the extent permitted under section II.A.2.e of this appendix A. In addition, the unrealized losses on AFS equity investments are deducted from Tier 1 capital in accordance with section II.A.1.a of this appendix A.

risk-weighted assets for regulatory capital purposes.

g. *Equity investments.* For purposes of this section II.*B*.5, an equity investment means any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity where the instrument or feature is held under one of the legal authorities listed in section II.*B*.5.b. of this appendix. An investment in any other instrument (including subordinated debt) may be treated as an equity investment if, in the judgment of the Federal Reserve, the instrument is the functional equivalent of equity or exposes the state member bank to essentially the same risks as an equity instrument.

* * * * *

ATTACHMENT II—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR BANK HOLDING COMPANIES*

[Using the Year-End 1992 Standard]

Components	Minimum requirements
CORE CAPITAL (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
Common stockholders' equity	No limit.
Qualifying noncumulative perpetual preferred stock	No limit; bank holding companies should avoid undue reliance on preferred stock in tier 1.
Qualifying cumulative perpetual preferred stock	Limited to 25% of the sum of common stock, qualifying perpetual stock, and minority interests.
Minority interest in equity accounts of consolidated subsidiaries	Organizations should avoid using minority interests to introduce elements not otherwise qualifying for tier 1 capital.
Less: Goodwill, other intangible assets, credit-enhancing interest-only strips and nonfinancial equity investments required to be deducted from capital [1]	
SUPPLEMENTARY CAPITAL (Tier 2)	Total of tier 2 is limited to 100% of tier 1. [2]
Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets. [2]
Perpetual preferred stock	No limit within tier 2.
Hybrid capital instruments and equity contract notes	No limit within tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of tier 1 [2]; amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building)	Not included; organizations encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
DEDUCTIONS (from sum of tier 1 and tier 2)	
Investments in unconsolidated subsidiaries	As a general rule, one-half of the aggregate investments will be deducted from tier 1 capital and one-half from tier 2 capital. [3]
Reciprocal holdings of banking organizations' capital securities	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after a formal rulemaking.
TOTAL CAPITAL (tier 1 + tier 2 − deductions)	Must equal or exceed 8% of weighted-risk assets.

[1] Requirements for the deduction of other intangible assets and residual interests are set forth in section II.B.1. of this appendix.
[2] Amounts in excess of limitations are permitted but do not qualify as capital.
[3] A proportionately greater amount may be deducted from tier 1 capital, if the risks associated with the subsidiary so warrant.
* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.

* * * * *

3. In Appendix D to part 225, in section II.b., footnotes 3 and 4 are revised and the fourth sentence of section II.b. is revised to read as follows.

Appendix D to Part 225-Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

b. * * * [3] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, are in excess of 25 percent of Tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from Tier 1 capital; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of appendix A of this part; and the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital. [4]

* * * * *

By order of the Board of Governors of the Federal Reserve System.

[3] Tier 1 capital for banking organizations includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of Tier 1 capital.) In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of Tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations; and a percentage of the organization's nonfinancial equity investments. The Federal Reserve may exclude certain other investments in subsidiaries or associated companies as appropriate.

[4] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B. of appendix A of this part.

Dated: January 7, 2002.

Jennifer J. Johnson,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In § 325.2, paragraphs (v) and (x) are revised to read as follows:

§ 325.2 Definitions.

* * * * *

(v) *Tier 1 capital* or *core capital* means the sum of common stockholders' equity, noncumulative perpetual preferred stock (including any related surplus), and minority interests in consolidated subsidiaries, minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)), minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f), minus deferred tax assets in excess of the limit set forth in § 325.5(g), minus identified losses (to the extent that Tier 1 capital would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the insured depository institution's books), minus investments in financial subsidiaries subject to 12 CFR part 362, subpart E, and minus the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital as set forth in section II.B.(6) of appendix A to this part.

* * * * *

(x) *Total assets* means the average of total assets required to be included in a banking institution's ''Reports of Condition and Income'' (Call Report) or, for savings associations, the consolidated total assets required to be included in the ''Thrift Financial Report,'' as these reports may from time to time be revised, as of the most recent report date (and after making any necessary subsidiary adjustments for state nonmember banks as described in §§ 325.5(c) and 325.5(d) of this part), minus intangible assets (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)), minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f), minus deferred tax assets in excess of the limit set forth in § 325.5(g), minus assets classified loss and any other assets that are deducted in determining Tier 1 capital, and minus the amount of the total adjusted carrying value of nonfinancial equity investments that is subject to a deduction from Tier 1 capital as set forth in section II.B.(6) of appendix A to this part. For banking institutions, the average of total assets is found in the Call Report schedule of quarterly averages. For savings associations, the consolidated total assets figure is found in Schedule CSC of the Thrift Financial Report.

* * * * *

3. Paragraphs (f)(3), (f)(4), and (g)(2)(i) of § 325.5 are revised to read as follows:

§ 325.5 Miscellaneous.

* * * * *

(f) * * *

(3) *Tier 1 capital limitations.* (i) The maximum allowable amount of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets in the aggregate will be limited to the lesser of:

(A) 100 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments; or

(B) The sum of the amounts of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets, determined in accordance with paragraph (f)(2) of this section.

(ii) The maximum allowable amount of credit-enhancing interest-only strips, whether purchased or retained, will be limited to the lesser of:

(A) 25 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments; or

(B) The sum of the face amounts of all credit-enhancing interest-only strips.

(4) *Tier 1 capital sublimit.* In addition to the aggregate limitation on mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets set forth in paragraph (f)(3) of this section, a sublimit will apply to purchased credit card relationships and nonmortgage servicing assets. The maximum allowable amount of the aggregate of purchased credit card relationships and nonmortgage servicing assets will be limited to the lesser of:

(i) 25 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments; or

(ii) The sum of the amounts of purchased credit card relationships and nonmortgage servicing assets determined in accordance with paragraph (f)(2) of this section.

(g) * * *

(2) *Tier 1 capital limitations.* (i) The maximum allowable amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, will be limited to the lesser of:

(A) The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on projected future taxable income for that year; or

(B) 10 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips, any disallowed deferred tax assets, and any nonfinancial equity investments.

* * * * *

4. In appendix A to part 325:

A. Revise section I.A.1 (*Core capital elements (Tier 1)*);.

B. Amend section II.B. by adding a new paragraph (6);

C. Amend section II. by redesignating footnotes 16 through 40 as footnotes 23 through 47, respectively; and

D. Revise Table I.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *

A. * * *

1. *Core capital elements (Tier 1) consists of:*

i. Common stockholders' equity capital (includes common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values);

ii. Noncumulative perpetual preferred stock,[2] including any related surplus; and

iii. Minority interests in the equity capital accounts of consolidated subsidiaries.

At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. Core (Tier 1) capital is defined as the sum of core capital elements minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)),[3] minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f)), minus any disallowed deferred tax assets, and minus any amount of nonfinancial equity investments required to be deducted pursuant to section II.B.(6) of this Appendix.

Although nonvoting common stock, noncumulative perpetual preferred stock, and minority interests in the equity capital accounts of consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests.

Although minority interests in consolidated subsidiaries are generally included in regulatory capital, exceptions to this general rule will be made if the minority interests fail to provide meaningful capital support to the consolidated bank. Such a situation could arise if the minority interests are entitled to a preferred claim on essentially low risk assets of the subsidiary. Similarly, although credit-enhancing interest-only strips and intangible assets in the form of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships are generally recognized for risk-based capital purposes, the deduction of part or all of the credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships may be required if the carrying amounts of these assets are excessive in relation to their market value or the level of the bank's capital accounts. Credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships and deferred tax assets that do not meet the conditions, limitations and restrictions described in § 325.5(f) and (g) of this part will not be recognized for risk-based capital purposes.

Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.(6)(ii) of this appendix A), and subsidiaries that are engaged in nonfinancial activities are not included in a bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.(6)(ii) of this appendix A.

* * * * *

II.B. * * *

(6) *Nonfinancial equity investments.* (i) General. A bank must deduct from its Tier 1 capital the sum of the appropriate percentage (as determined below) of the adjusted carrying value of all nonfinancial equity investments held by the bank or by its direct or indirect subsidiaries. For purposes of this section II.B.(6), investments held by a bank include all investments held directly or indirectly by the bank or any of its subsidiaries.

(ii) *Scope of nonfinancial equity investments.* A nonfinancial equity investment means any equity investment held by the bank in a nonfinancial company: through a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b));[16] under the portfolio investment provisions of Regulation K issued by the Board of Governors of the Federal Reserve System (12 CFR 211.8(c)(3)); or under section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a), other than an investment held in accordance with section 24(f) of that Act.[17] A nonfinancial company is an entity that engages in any activity that has not been determined to be permissible for the bank to conduct directly, or to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)).

(iii) *Amount of deduction from core capital.* (A) The bank must deduct from its Tier 1 capital the sum of the appropriate percentages, as set forth in the table following this paragraph, of the adjusted carrying value of all nonfinancial equity investments held by the bank. The amount of the percentage deduction increases as the aggregate amount of nonfinancial equity investments held by the bank increases as a percentage of the bank's Tier 1 capital.

DEDUCTION FOR NONFINANCIAL EQUITY INVESTMENTS

Aggregate adjusted carrying value of all nonfinancial equity investments held directly or indirectly by the bank (as a percentage of the Tier 1 capital of the bank) [1]	Deduction from Tier 1 Capital (as a percentage of the adjusted carrying value of the investment)
Less than 15 percent	8 percent.
15 percent to 24.99 percent	12 percent.
25 percent and above	25 percent.

[1] For purposes of calculating the adjusted carrying value of nonfinancial equity investments as a percentage of Tier 1 capital, Tier 1 capital is defined as the sum of core capital elements net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships, but prior to the deduction for any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips (both purchased and retained), any disallowed deferred tax assets, and any nonfinancial equity investments.

[2] Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to Tier 2 capital, regardless of whether the dividends are cumulative or noncumulative.

[3] An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

[16] An equity investment made under section 302(b) of the Small Business Investment Act of 1958 in a SBIC that is not consolidated with the bank is treated as a nonfinancial equity investment.

[17] The Board of Directors of the FDIC, acting directly, may, in exceptional cases and after a review of the proposed activity, permit a lower capital deduction for investments approved by the Board of Directors under section 24 of the FDI Act so long as the bank's investments under section 24 and SBIC investments represent, in the aggregate, less than 15 percent of the Tier 1 capital of the bank. The FDIC reserves the authority to impose higher capital charges on any investment where appropriate.

(B) These deductions are applied on a marginal basis to the portions of the adjusted carrying value of nonfinancial equity investments that fall within the specified ranges of the parent bank's Tier 1 capital. For example, if the adjusted carrying value of all nonfinancial equity investments held by a bank equals 20 percent of the Tier 1 capital of the bank, then the amount of the deduction would be 8 percent of the adjusted carrying value of all investments up to 15 percent of the bank's Tier 1 capital, and 12 percent of the adjusted carrying value of all investments in excess of 15 percent of the bank's Tier 1 capital.

(C) The total adjusted carrying value of any nonfinancial equity investment that is subject to deduction under this paragraph is excluded from the bank's risk-weighted assets for purposes of computing the denominator of the bank's risk-based capital ratio and from total assets for purposes of calculating the denominator of the leverage ratio.[18]

(D) This Appendix establishes *minimum* risk-based capital ratios and banks are at all times expected to maintain capital commensurate with the level and nature of the risks to which they are exposed. The risk to a bank from nonfinancial equity investments increases with its concentration in such investments and strong capital levels above the minimum requirements are particularly important when a bank has a high degree of concentration in nonfinancial equity investments (*e.g.*, in excess of 50 percent of Tier 1 capital). The FDIC intends to monitor banks and apply heightened supervision to equity investment activities as appropriate, including where the bank has a high degree of concentration in nonfinancial equity investments, to ensure that each bank maintains capital levels that are appropriate in light of its equity investment activities. The FDIC also reserves authority to impose a higher capital charge in any case where the circumstances, such as the level of risk of the particular investment or portfolio of investments, the risk management systems of the bank, or other information, indicate that a higher minimum capital requirement is appropriate.

(iv) *SBIC investments.* (A) No deduction is required for nonfinancial equity investments that are held by a bank through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank to the extent that all such investments, in the aggregate, do not exceed 15 percent of the bank's Tier 1 capital. Any nonfinancial equity investment that is held through an SBIC or in an SBIC and that is not required to be deducted from Tier 1 capital under this section II.B.(6)(iv) will be assigned a 100 percent risk-weight and included in the bank's consolidated risk-weighted assets.[19]

(B) To the extent the adjusted carrying value of all nonfinancial equity investments that a bank holds through one or more SBICs that are consolidated with the bank or in one or more SBICs that are not consolidated with the bank exceeds, in the aggregate, 15 percent of the bank's Tier 1 capital, the appropriate percentage of such amounts (as set forth in the table in section II.B.(6)(iii)(A)) must be deducted from the bank's common stockholders' equity in determining the bank's Tier 1 capital. In addition, the aggregate adjusted carrying value of all nonfinancial equity investments held by a bank through a consolidated SBIC and in a non-consolidated SBIC (including any investments for which no deduction is required) must be included in determining, for purposes of the table in section II.B.(6)(iii)(A), the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital.

(v) *Transition provisions.* No deduction under this section II.B.(6) is required to be made with respect to the adjusted carrying value of any nonfinancial equity investment (or portion of such an investment) that was made by the bank prior to March 13, 2000, or that was made by the bank after such date pursuant to a binding written commitment[20] entered into prior to March 13, 2000, provided that in either case the bank has continuously held the investment since the relevant investment date.[21] For purposes of this section II.B.(6)(v) a nonfinancial equity investment made prior to March 13, 2000, includes any shares or other interests received by the bank through a stock split or stock dividend on an investment made prior to March 13, 2000, provided the bank provides no consideration for the shares or interests received and the transaction does not materially increase the bank's proportional interest in the company. The exercise on or after March 13, 2000, of options or warrants acquired prior to March 13, 2000, is *not* considered to be an investment made prior to March 13, 2000, if the bank provides any consideration for the shares or interests received upon exercise of the options or warrants. Any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.(6)(v) must be included in determining the total amount of nonfinancial equity investments held by the bank in relation to its Tier 1 capital for purposes of the table in section II.B.(6)(iii)(A). In addition, any nonfinancial equity investment (or portion thereof) that is not required to be deducted from Tier 1 capital under this section II.B.(6)(v) will be assigned a 100-percent risk weight and included in the bank's consolidated risk-weighted assets.

(vi) *Adjusted carrying value.* (A) For purposes of this section II.B.(6), the ''adjusted carrying value'' of investments is the aggregate value at which the investments are carried on the balance sheet of the bank reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from the bank's Tier 1 capital and associated deferred tax liabilities. For example, for equity investments held as available-for-sale (AFS), the adjusted carrying value of the investments would be the aggregate carrying value of those investments (as reflected on the consolidated balance sheet of the bank) less any unrealized gains on those investments that are included in other comprehensive income and not reflected in Tier 1 capital, and associated deferred tax liabilities.[22]

(B) As discussed above with respect to consolidated SBICs, some equity investments may be in companies that are consolidated for accounting purposes. For investments in a nonfinancial company that is consolidated for accounting purposes under generally accepted accounting principles, the bank's adjusted carrying value of the investment is determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from

[18] For example, if 8 percent of the adjusted carrying value of a nonfinancial equity investment is deducted from Tier 1 capital, the entire adjusted carrying value of the investment will be excluded from both risk-weighted assets and total assets in calculating the respective denominators for the risk-based capital and leverage ratios.

[19] If a bank has an investment in a SBIC that is consolidated for accounting purposes but that is not wholly owned by the bank, the adjusted carrying value of the bank's nonfinancial equity investments through the SBIC is equal to the bank's proportionate share of the adjusted carrying value of the SBIC's investments in nonfinancial companies. The remainder of the SBIC's adjusted carrying value (*i.e.*, the minority interest holders' proportionate share) is excluded from the risk-weighted assets of the bank. If a bank has an investment in a SBIC that is not consolidated for accounting purposes and has current information that identifies the percentage of the SBIC's assets that are equity investments in nonfinancial companies, the bank may reduce the adjusted carrying value of its investment in the SBIC proportionately to reflect the percentage of the adjusted carrying value of the SBIC's assets that are not equity investments in nonfinancial companies. If a bank reduces the adjusted carrying value of its investment in a non-consolidated SBIC to reflect financial investments of the SBIC, the amount of the adjustment will be risk weighted at 100 percent and included in the bank's risk-weighted assets.

[20] A ''binding written commitment'' means a legally binding written agreement that requires the bank to acquire shares or other equity of the company, or make a capital contribution to the company, under terms and conditions set forth in the agreement. Options, warrants, and other agreements that give a bank the right to acquire equity or make an investment, but do not require the bank to take such actions, are not considered a binding written commitment for purposes of this section II.B.(6)(v).

[21] For example, if a bank made an equity investment in 100 shares of a nonfinancial company prior to March 13, 2000, the adjusted carrying value of that investment would not be subject to a deduction under this section II.B.(6). However, if the bank made any additional equity investment in the company after March 13, 2000, such as by purchasing additional shares of the company (including through the exercise of options or warrants acquired before or after March 13, 2000) or by making a capital contribution to the company and such investment was not made pursuant to a binding written commitment entered into before March 13, 2000, the adjusted carrying value of the additional investment would be subject to a deduction under this section II.B.(6). In addition, if the bank sold and repurchased, after March 13, 2000, 40 shares of the company, the adjusted carrying value of those 40 shares would be subject to a deduction under this section II.B.(6).

[22] Unrealized gains on available-for-sale equity investments may be included in Tier 2 capital to the extent permitted under section I.A.(2)(f) of this appendix A. In addition, the net unrealized losses on available-for-sale equity investments are deducted from Tier 1 capital in accordance with section I.A.(1) of this appendix A.

the bank's core capital in accordance with section I.A.(1) of this appendix A). Even though the assets of the nonfinancial company are consolidated for accounting purposes, these assets (as well as the credit equivalent amounts of the company's off-balance sheet items) should be excluded from the bank's risk-weighted assets for regulatory capital purposes.

(vii) *Equity investments.* For purposes of this section II.B.(6), an equity investment means any equity instrument (including common stock, preferred stock, partnership interests, interests in limited liability companies, trust certificates and warrants and call options that give the holder the right to purchase an equity instrument), any equity feature of a debt instrument (such as a warrant or call option), and any debt instrument that is convertible into equity where the instrument or feature is held under one of the legal authorities listed in section II.B.(6)(ii) of this appendix A. An investment in any other instrument (including subordinated debt) may be treated as an equity investment if, in the judgment of the FDIC, the instrument is the functional equivalent of equity or exposes the bank to essentially the same risks as an equity instrument.

* * * * *

TABLE I.—DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements
(1) CORE CAPITAL (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
(a) Common stockholders' equity	No limit.[1]
(b) Noncumulative perpetual preferred stock and any related surplus.	No limit.[1]
(c) Minority interest in equity accounts of consolidated	No limit.[1]
(d) Less: All intangible assets other than certain mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships.	([2]).
(e) Less: Certain credit-enhancing interest-only strips and nonfinancial equity investments required to be deducted from capital.	([3]).
(f) Less: Certain deferred tax assets	([4]).
(2) SUPPLEMENTARY CAPITAL (Tier 2)	Total of tier 2 is limited to 100% of tier 1.[5]
(a) Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets.[5]
(b) Unrealized gains on certain equity securities.[6]	Limited to 45% of pretax net unrealized gains.[6]
(c) Cumulative perpetual and long-term preferred stock (original maturity of 20 years or more) and any related surplus.	No limit within tier 2; long-term preferred is amortized for capital purposes as it approaches maturity.
(d) Auction rate and similar preferred stock (both cumulative and non-cumulative).	No limit within Tier 2.
(e) Hybrid capital instruments (including mandatory convertible debt securities).	No limit within Tier 2.
(f) Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of five years or more).	Term subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1[5] and amortized for capital purposes as they approach maturity.
(3) DEDUCTIONS (from sum of tier 1 and tier 2)	
(a) Investments in banking and finance subsidiaries that are not consolidated for regulatory capital purposes	
(b) Intentional, reciprocal cross-holdings of capital securities issued by banks	
(c) Other deductions (such as investment in other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after formal consideration of relevant issues.
(4) TOTAL CAPITAL	Must equal or exceed 8% of weighted-risk assets.

[1] No express limits are placed on the amounts of nonvoting common, noncumulative perpetual preferred stock, and minority interests that may be recognized as part of Tier 1 capital. However, voting common stockholders' equity capital generally will be expected to be the dominant form of Tier 1 capital and banks should avoid undue reliance on other Tier 1 capital elements.

[2] The amounts of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f). All deductions are for capital purposes only; deductions would not affect accounting treatment.

[3] The amounts of credit-enhancing interest-only strips that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f). The amounts of nonfinancial equity investments that must be deducted for purposes of calculating Tier 1 capital are set forth in section II.B.(6) of appendix A to part 325.

[4] Deferred tax assets are subject to the capital limitations set forth in § 325.5(g).

[5] Amounts in excess of limitations are permitted but do not qualify as capital.

[6] Unrealized gains on equity securities are subject to the capital limitations set forth in paragraph I.A(2)(f) of appendix A to part 325.

* * * * *

Dated at Washington, DC, this 10th day of December, 2001.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–794 Filed 1–24–02; 8:45 am]

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

Federal Register

Friday,
January 25, 2002

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 107 and 108

Criminal History Records Checks; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. FAA–2001–10999;Amdt. Nos. 107–14 and 108–19]

RIN 2120–AH53

Criminal History Records Checks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule with request for comments; reopening of comment period.

SUMMARY: On December 6, 2001, the FAA published a final rule with request for comments regarding criminal history records checks and invited comments. The comment period closed on January 17, 2002; however, the FAA is reopening the comment period in response to a request from the AFL–CIO.

DATES: Comments must be received on or before March 11, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the docket number FAA–2001–10999 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to *http://dms.dot.gov.*

You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone 202–267–3413.

SUPPLEMENTARY INFORMATION:

Comments Invited

The final rule was adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb. 26, 1979), however provides that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons were, and are, invited to participate in this rulemaking by submitting written data, views, or arguments. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the docket number or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. The final rule may be amended in light of the comments received.

See **ADDRESSES** above for information on how to submit comments.

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search).*

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su__ docs/aces/aces140html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Be sure to identify the amendment number or docket number of this final rule.

Reopening of Comment Period

On December 6, 2001, the FAA published a final rule with request for comments entitled ''Criminal History Records Checks'' (66 FR 63474). The FAA requested that comments be submitted by January 7, 2002. The comment period was extended to January 17, 2002, by request of the Air Transport Association (ATA) and the Regional Airline Association (RAA) (67 FR 655; Jan. 7, 2002).

By letter dated January 15, 2002, the AFL–CIO Transportation Trades Department (TTD) requested an additional 45 days to submit comments. TTD stated that the FAA had allowed an unusually short comment period, which prevented TTD from providing substantive input on the rule.

The FAA determines that reopening the comment period is in the public interest. Accordingly, the comment period for the final rule ''Criminal Records Checks'' is reopened until March 11, 2002.

Issued in Washington, DC, on January 22, 2002.

Robin C. Burke,

Deputy Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 02–2016 Filed 1–23–02; 2:02 pm]

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Federal Register

Friday,
January 25, 2002

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 107 and 108

Criminal History Records Checks; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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Issued in Washington, DC, on January 22, 2002.

Robin C. Burke,

Deputy Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 02–2016 Filed 1–23–02; 2:02 pm]

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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.

H.R. 2884/P.L. 107–134

Victims of Terrorism Tax Relief Act of 2001 (Jan. 23, 2002; 115 Stat. 2427)

H.R. 3447/P.L. 107–135

Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 (Jan. 23, 2002; 115 Stat. 2446)

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