Federal Register

5–19–00 **Friday**
Vol. 65 No. 98 **May 19, 2000**
Pages 31783–32006

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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 23, 2000 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
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Friday, May 19, 2000

Presidential Documents

Title 3—

The President

Proclamation 7308 of May 15, 2000

National Defense Transportation Day and National Transportation Week, 2000

By the President of the United States of America

A Proclamation

Throughout the past century, America's national transportation system has played a crucial role in strengthening our economy, protecting our safety, and improving the quality of life for all Americans. Interconnecting networks of railroads, ports, and waterways have transported millions of passengers and billions of dollars' worth of freight. Our national highway system connected cities to rural communities and people to jobs. The Wright Brothers' invention of the airplane gave birth to a world-class aviation system that revolutionized travel, created new industries, and brought the nations of the world closer. The quality and versatility of all these modes of transportation gave our Nation a powerful defense tool as well, enabling us to move troops and materiel swiftly and efficiently in times of conflict and crisis. Now, as we begin a new century, our national transportation system must embrace exciting new possibilities and new challenges.

One of the most important of those challenges is safety. Advances in technology offer us great hope for progress in reducing accidents and fatalities. For example, the Federal Aviation Administration is working in partnership with the airline industry, pilots, technicians, and air traffic controllers to use improved forecasting and new communications technology to detect severe weather sooner, to let pilots and passengers know promptly about anticipated delays, and to centralize air traffic decisionmaking during severe storms in order to reduce delays. Automobile manufacturers are also using new technologies and design innovations—from stronger metals to new safety lights to advanced brake technology—to prevent accidents and save lives.

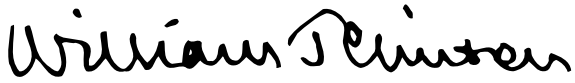
Another of our great transportation challenges is to develop alternative fuels and clean energy sources that will not harm our environment. Earlier this year, I signed an Executive Order to ensure the Federal Government's leadership in reducing petroleum consumption and promoting the use of alternative fuel vehicles (AFVs). By developing and using AFVs, we can reduce greenhouse gases and other pollutants, enhance our Nation's energy self-sufficiency by reducing the demand for imported oil, and create new products and jobs.

If we make wise and informed choices today and in the years to come, we can make our communities more livable, give our citizens greater choice and mobility, protect our environment, and help create a truly global community. The 20th century was indeed a golden age for transportation; the 21st century can be an even brighter one.

In recognition of the importance of our Nation's transportation system to our national security and economic health, and in honor of the many dedicated men and women who have ensured its continued excellence through the years, the United States Congress, by joint resolution approved May 16, 1957 (36 U.S.C. 120), has designated the third Friday in May of each year as ''National Defense Transportation Day'' and, by joint resolution approved May 14, 1962 (36 U.S.C. 133), declared that the week during which that Friday falls be designated ''National Transportation Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Friday, May 19, 2000, as National Defense Transportation Day and May 14 through May 20, 2000, as National Transportation Week. I urge all Americans to observe these occasions with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–12807
Filed 5–18–00; 8:45 am]
Billing code 3195–01–P

Federal Register
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Presidential Documents

Title 3—

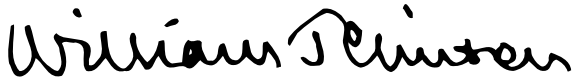
The President

Executive Order 13156 of May 17, 2000

Amendment to Executive Order 12871 Regarding the National Partnership Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide for a uniform policy for the Federal Government relating to labor-management partnerships, it is hereby ordered that Executive Order 12871, as amended by Executive Order 12983, is further amended as follows:

Section 1. Section 1(a)(10) of the order is amended by striking ''two'' and inserting ''three.''



THE WHITE HOUSE,
May 17, 2000.

[FR Doc. 00–12840
Filed 5–18–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 65, No. 98
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FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 111

[Notice 2000–10]

Administrative Fines

AGENCY: Federal Election Commission.

ACTION: Final Rule; transmittal of regulations to Congress.

SUMMARY: The Treasury and General Government Appropriations Act, 2000, amended the Federal Election Campaign Act of 1971 (hereinafter ''the Act'' or ''FECA'') to permit the Federal Election Commission to impose civil money penalties for violations of the reporting requirements of the FECA that occur between January 1, 2000, and December 31, 2001. The amendments are intended to expedite and streamline the Commission's enforcement procedures. The Commission is promulgating amendments to its compliance procedure regulations to implement the new program. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: July 14, 2000. The Commission transmitted the final rules and the Explanation and Justification to Congress pursuant to 2 U.S.C. 438(d) on May 12, 2000. The Commission anticipates that 30 legislative days will elapse by the effective date.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Mai T. Dinh, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is issuing final rules to establish the administrative fines program that Congress authorized in amendments to section 309(a)(4) of the FECA, 2 U.S.C. 437g(a)(4). These amendments were enacted as part of the Treasury and General Government Appropriations Act, 2000, Public Law 106–58, 106th Cong., Section 640, 113 Stat. 430, 476–77 (1999). Under 2 U.S.C. 434, treasurers of political committees are required to file reports periodically to the Commission by a certain deadline. Prior to enactment of the amendment to the FECA, the Commission handled failures to file the reports in a timely manner under the enforcement procedures in 11 CFR part 111. The purpose of the administrative fines program is to institute streamlined procedures, while preserving the respondents' due process rights, to process violations of the reporting requirements of 2 U.S.C. 434(a) and assess a civil money penalty based on the schedules of penalties for such violations. The final rules include new subpart B of 11 CFR part 111, and technical amendments to 11 CFR 104.5, 111.8, 111.20, and 111.24 to implement the administrative fines program.

Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on May 12, 2000.

Explanation and Justification

The Commission initiated this rulemaking by issuing a Notice of Proposed Rulemaking (NPRM) on March 29, 2000, in which it sought comments to the proposed rule. 65 FR 16534 (March 29, 2000). The comment period ended on April 28, 2000. The Commission received one comment in response to the NPRM from Akin, Gump, Strauss, Hauer & Feld. The comment included a request for a public hearing. Because Congress intended for this new program to apply to violations that occur in 2000 and 2001, the final rules need to be issued in a timely manner so that the program will be applicable to the reports that are due in 2000. Holding a public hearing would postpone publication of the final rules and delay the effective date, possibly until February or March, 2001. This late effective date would allow the Commission to apply the administrative fines procedure to only one major reporting period—the 2001 Mid-Year Report. This would not give the Commission a sufficient basis to determine whether to recommend that Congress make the program permanent. Also, the Commission received only one request for a public hearing and that requester did submit extensive comments. Therefore, the Commission will not hold a public hearing on this final rule.

General Comments

The commenter's overriding concern was that the proposed procedures do not afford adequate procedural due process and therefore, violate the Fifth Amendment's Due Process Clause of the U.S. Constitution. The commenter argued that the procedures do not meet the balancing test in *Mathews* v. *Eldridge,* 424 U.S. 319 (1976), by failing to recognize the respondents' private interests, by minimizing the potential risk of erroneous result, and by placing undue emphasis on administrative expediency. The commenter claimed that the potential risk of erroneous result is high because the civil money penalty calculation includes three factors that could be misapplied and because the advent of mandatory electronic filing could flood the Commission's computers and lead to a breakdown that would unfairly penalize the respondents.

The Commission disagrees with this assessment. The Commission does recognize that the respondents have a property interest at stake. Except for political committees with low levels of financial activity during the reporting period, the civil money penalty will not exceed fifteen percent of the level of activity in the report for respondents who have no previous violations. For committees whose financial activity is less than $25,000 and who do not have a previous violation, the civil money penalty will not exceed $1000 or the level of activity, whichever is less. Thus, the cost of additional procedures such as a hearing for the respondent as well as the Commission will exceed the benefit of having them. Also, the *Mathews* balancing test considers whether additional procedures will provide greater protection against deprivation of a property interest or error. Within the administrative fines program, additional procedures in most cases will not afford the respondents greater protection against either. As

stated in the NPRM, the factual and legal issues involved in violations of the reporting requirements of 2 U.S.C. 434(a) are relatively straightforward. The Commission will carefully review the facts and its records before it will even proceed with a reason to believe finding. For the most part, the factual disputes surrounding this type of violation are whether the respondent filed the report and when the report was filed. If the respondent disagrees with the facts in the notification of the reason to believe finding, he or she can send proof of the filing and the date of the filing. The Commission expects that the reviewing officer will be able to resolve these types of factual disputes based on the written submissions.

The Commission also disagrees with the commenter's assertion that the procedures set forth in the NPRM pose a large potential risk of erroneous result. The civil money penalty calculation is a simple arithmetic formula whereby an error can be readily corrected by the Commission or the reviewing officer when it is brought to their attention. It is premature to predict the impact of mandatory electronic filing on administrative fines. It will have no real effect on the administrative fines program during the year 2000 because mandatory electronic filing is not scheduled to begin until January, 2001. Given that most committees will file only two reports during 2001 (2000 Year End and 2001 Mid-Year reports) before the administrative fines program sunsets on December 31, 2001, the impact is likely to be minimal, if any. The Commission's electronic filing system has been designed to accommodate filings by all committees that will be mandated to file electronically in 2001. As a result, there is no expectation that the system will have an adverse impact on the ability of committees to file their reports in a timely manner. In fact, committees may find that electronic filing is easier, faster, and more convenient than paper filing. Nevertheless, any failure of the Commission's system that prevents committees from filing their reports when due would be recognized by the Commission as a circumstance beyond the control of the filer and would be taken into account when considering reason to believe findings or the final determination.

The Commission recognizes that the need to avoid administrative burdens is one of the stated purposes for the amendment to the FECA. Congressman William Thomas, Chairman of the Committee of House Administration, stated the following on the floor of the House of Representatives on September 15, 1999:

> Allowing the FEC to impose administrative fines for reporting violations without the lengthy procedural steps required in a normal enforcement case will free critical FEC resources for more important disclosure and enforcement efforts. The rights of those under these regulations are protected by preserving the option of appeal to a U.S. District Court for those who believe the FEC erred.

The Commission, however, disagrees with the commenter that the proposed rule sacrifices the respondents' rights and procedural due process in the interest of administrative efficiency. The Commission applied the *Mathews* balancing test in developing the administrative fines procedures, taking into consideration the private interests involved and the nature of the violation. The Commission believes that the procedures in the final rules more than adequately meet the *Mathews* test in providing the respondents with procedural due process.

Section 104.5 Filing Dates

Paragraph (i) is being added to section 104.5 to encourage political committees to keep proof that they filed their reports and the dates on which the reports were filed. Retaining this evidence will allow a respondent to demonstrate timely filing if the respondent disagrees with the Commission on whether the report was filed and if so, the date of the filing. No substantive comments were made concerning this proposed section.

Section 111.8 Internally Generated Matters; Referrals

Paragraph (d) is being added to section 111.8 to permit the Commission to process complaint-generated matters that allege violations of the reporting requirements of 2 U.S.C. 434(a) under the administrative fines program. The Commission received no substantive comment on this section.

Section 111.20 Public Disclosure of Commission Action

New paragraph (c) in section 111.20 is being added to provide for the public disclosure of the enforcement file once the matter is completely resolved. The Commission did not receive any substantive comments to this section.

Section 111.24 Civil Penalties

Revised paragraph (a) of section 111.24 allows for the imposition of civil money penalties so as to make section 111.24 consistent with 11 CFR part 111, subpart B. The Commission did not receive any substantive comments on this section.

Section 111.30 When Will Subpart B Apply?

The amendment to FECA authorizes the administrative fines procedures for violations of the reporting requirements of 2 U.S.C. 434(a) that occur between January 1, 2000 and December 31, 2001. Therefore, this section provides that subpart B only applies to violations that occur during that time frame and subpart B sunsets as of January 1, 2002. The Commission did not receive any substantive comments on this section.

Section 111.31 Does This Subpart Replace Subpart A of This Part for Violations of the Reporting Requirements of 2 U.S.C. 434(a)?

Under the amendment to FECA, the Commission has discretion to apply either the administrative fines procedures or the current enforcement procedures set forth in §§ 111.9 through 111.19 to violations of the reporting requirements of 2 U.S.C. 434(a). The amendment, however, still requires the Commission to find reason to believe that a violation has occurred prior to making a final determination. Thus, §§ 111.1 through 111.8, which include the Commission's reason to believe procedures, will apply to violations processed through the administrative fines procedures. Please note that under 2 U.S.C. 437g(b), the Commission will continue to publish the names of political committees that fail to file their reports when due in the calendar quarter preceding an election including pre-election reports if the committees do not respond within four business days of being notified by the Commission of their failure to file. Sections 111.20 through 111.24, which pertain to public disclosure, confidentiality, *ex parte* communications, representation by counsel, and civil penalties, will also apply to violations processed under subpart B. In addition, while the Commission anticipates that it will process most of these violations under the administrative fines procedures, § 111.31 makes clear that the Commission has the discretion to use the enforcement procedures in §§ 111.9 through 111.19 to handle these violations in circumstances the Commission deems appropriate.

Proposed § 111.31(b) is being modified to include complaint-generated matters that allege violations of the reporting requirements of 2 U.S.C. 434(a) along with violations of other provisions of the FECA in the administrative fines program. The alleged violations of the reporting

requirements will be processed through subpart B while the other alleged violations will be handled through the enforcement process of subpart A. The Commission made this modification to maintain consistency in its prosecution of alleged violations of the reporting requirement of 2 U.S.C. 434(a). The Commission did not receive any substantive comments on this section.

Section 111.32 How Will the Commission Notify Respondents of a Reason To Believe Finding and a Proposed Civil Money Penalty?

The Commission will follow its current procedures in finding reason to believe and in notifying the respondents of its finding. If the Commission, by an affirmative vote of at least four of its members, finds reason to believe that a violation has occurred, the Chairman or the Vice-Chairman will notify the respondent of the finding. The notification will include the legal and factual basis for the finding as well as the proposed civil money penalty in accordance with the schedules of penalties and an explanation of the respondent's right to challenge the finding and/or the proposed civil money penalty.

As stated in the NPRM, the Commission will also continue to follow its current procedure of notifying the political committees of their duty to file their reports and the dates on which the reports are due prior to the filing deadline. Thus, political committees will continue to be on notice of their legal obligation to file their reports in a timely manner.

The commenter urged that the Commission include a regulation stating when a report filed electronically is considered ''filed.'' The Commission agrees that the regulations should include such a provision but has decided that this topic is better addressed in the Commission's rulemaking regarding mandatory electronic filing.

Section 111.33 What Are the Respondent's Choices Upon Receiving the Reason To Believe Finding and the Proposed Civil Money Penalty?

Upon receipt of the notification of the reason to believe finding and the proposed civil money penalty, the respondents will have two options. They may pay the civil money penalties pursuant to § 111.34. The Commission will process the payment and then close the matter. Respondents may also challenge the reason to believe finding and/or the proposed civil money penalty by following the procedures set forth in § 111.35. The Commission did not receive any substantive comments on this section.

Section 111.34 If the Respondent Decides To Pay the Civil Money Penalty and Not To Challenge the Reason To Believe Finding, What Should the Respondent Do?

A respondent who does not wish to challenge the reason to believe finding and the proposed civil money penalty must submit a check or money order equal to the amount of the proposed civil money penalty to the Commission within 40 days of the reason to believe determination. Once the Commission receives payment, it will send the respondent a final determination that the respondent has violated 2 U.S.C. 434(a) and acknowledgment of the respondent's payment of the civil money penalty. The matter would then be closed and the file would be placed on the public record pursuant to 11 CFR 111.20 and new 11 CFR 111.42. The Commission did not receive any substantive comments on this section.

Section 111.35 If the Respondent Decides To Challenge the Alleged Violation or Proposed Civil Money Penalty, What Should the Respondent Do?

Proposed § 111.35 in the NPRM set forth the requirements that respondents must meet to challenge a reason to believe finding and/or proposed civil money penalty. The requirements included filing a notice of intent to challenge within twenty days of the date of the Commission finding reason to believe and filing a written response with supporting documentation within forty days of that date. This proposed section also provided for circumstances the Commission will consider in determining whether to levy a civil money penalty and defenses that the Commission will not accept.

The commenter had several criticisms of this aspect of the administrative fines procedures. First, the commenter objected to the requirement of the notice of intent to challenge the reason to believe finding and/or proposed civil money penalty, stating that the requirement is ''contrary to the plain language of the statute, which forbids the Commission from making an adverse determination 'until the person has been given notice and an opportunity to be heard before the Commission' '' (citation omitted). While the Commission disagrees with the commenter's legal analysis on this issue, the Commission agrees that a notice of intent to challenge is not necessary. Consequently, that step has been eliminated from the final rules.

The commenter also objected to the use of the date of the Commission's reason to believe determination to trigger the time that the respondent has to file a notice of intent and the written response. The commenter suggested that the time to file the notice of intent and the written response should not begin until receipt of the notification of the Commission's reason to believe finding.

In determining when the time to appeal begins to toll, some federal agencies chose the date on which the decision was made, not the date of receipt, often providing thirty days from the date of the initial decision. *See e.g.,* Coast Guards Regulations on Suspension, Revocation, and Appeals, 33 CFR 158.190 (2000); Department of the Interior Regulations on Public Lands, 43 CFR 4.356 (2000). The Commission also notes that several agencies that begin to toll the time for appeal upon service of an initial adverse decision provide thirty days for a party to file the appeal. *See* Federal Retirement Thrift Investment Board Privacy Act Regulations, 5 CFR 1630.13 (2000); National Indian Gaming Commission Regulations on Appeals, 25 CFR parts 524 and 539 (2000); Postal Service Regulations on Suspension and Revocation of Appeal, 39 CFR 501.12 (2000). Seen in this context, the Commission believes that forty days is an ample and fair amount of time for respondents to file a written response. The Commission has extended the traditional thirty day appeal period an additional ten days to take into account the time it takes for Commission staff to prepare the mailing as well as for the Postal Service to deliver the notification, with a few additional days as a margin for error.

The commenter strongly disagrees with the list of defenses in proposed § 111.35 that the Commission will and will not consider, suggesting that the Commission has failed to balance the respondent's rights with ''administrative expediency'' for the Commission. The commenter recommends that the Commission eliminate proposed § 111.35(c)(1)(iii) and (c)(4) because the Commission has no rationale for limiting defenses to ''48-hour extraordinary circumstance'' and errors on the part of the Commission. In addition, the commenter believes that the Commission should allow ''good faith'' defenses.

The Commission has sound policy reasons for limiting the respondents' defenses beyond streamlining the administrative process. A key cornerstone of campaign finance law is the full and timely disclosure of the political committee's financial activity.

Such disclosure is essential to providing the public with accurate and complete information regarding the financing of federal candidates and political campaigns. Thus, violations of the reporting requirements of 2 U.S.C. 434(a) are strict liability offenses. Political committees are aware or should be aware of their legal duty to file the required reports in a timely manner, and the Commission makes ongoing efforts to remind committees of their duty. Committees are given ample time from the end of the reporting period to the filing deadline to prepare and file their reports. Absent extraordinary circumstances beyond the committees' control, the Commission sees no reason why committees cannot file their reports by the deadline. The rationale behind the ''48-hour extraordinary circumstances'' exception is that the Commission recognizes there may be instances such as natural disasters where a committee's office is located in the disaster area and the committee cannot timely file a report because of lack of electricity or flooding or destruction of committee records. The Commission, however, expects the committee to file its report as soon as it can reasonably do so.

The commenter argues that under proposed § 111.35(c)(4)(iv) respondents may be held liable for the failure of the Commission's computers. Any failure of the Commission's system that prevents committees from filing their reports when due would be recognized as an extraordinary circumstance beyond the respondents' control. Therefore, § 111.35(c)(4)(iv) has been revised to exclude Commission computer failures from the list of circumstances that the Commission will not consider as extraordinary circumstances.

The commenter states that, under the Due Process Clause of the U.S. Constitution, the Commission bears the burden of proving the factual allegations, not the respondent. In its notification to the respondent of its reason to believe finding, the Commission does include the factual and legal basis for its finding based on the information available to it. Only the respondents can answer the Commission's allegations, devise their defenses, and provide the documents that would support their defenses. Supporting documentation will permit the reviewing officer to evaluate the respondents' factual allegations and defenses. Administrative procedures under other federal agencies also require respondents to provide the factual and legal basis for seeking relief or appealing a decision of the agency. *See e.g.*, 18 CFR 1312.12(d) (2000) (Tennessee Valley Authority's regulations requiring the petition for relief from an assessment of a civil penalty to ''set forth in full the legal and factual basis for the requested relief.''); 25 CFR 577.3 (2000) (The National Indian Gaming Commission's hearing regulations state that ''* * * the respondent shall file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefor and that includes, when available, supporting evidence in the form of affidavits.''). Therefore, requiring a respondent to include reasons for challenging the reason to believe finding and/or proposed civil money penalty and the factual basis for those reasons does not violate a respondent's rights under the Due Process Clause.

Section 111.36 Who Will Review the Respondent's Written Response?

Proposed § 111.36 in the NPRM provided for an impartial reviewing officer to review the reason to believe finding, the proposed civil money penalty, the Commission's documentation, and the respondent's written response and to make a recommendation to the Commission. The reviewing officer may request that the respondent and/or the Commission staff submit supplemental information. Paragraph (b) is being revised to clarify the consequence of failure by the respondent to file the supplemental information. Such failure will entitle the reviewing officer to draw an adverse inference.

The commenter expressed concern that the procedures described in proposed § 111.36 fail to meet the statutory requirements of Administrative Procedure Act (APA), 5 U.S.C. 551, *et. seq.,* and the Due Process Clause of the U.S. Constitution. The commenter states that the proposed rule does not include provisions that incorporate 5 U.S.C. 555(b) and (c), which entitle a party to appear in person, to be represented by counsel, and to have access to documents that are the basis of the reviewing officer's recommendation to the Commission. The commenter argues that oral hearings will fulfill the requirements of 5 U.S.C. 555(b) and the *Mathews* balancing test to determine whether an agency's procedures afford respondents adequate procedural due process. The commenter contends that oral hearings would give greater meaning to the respondents' right to an ''opportunity to be heard''; would settle disputes without need for litigation, thereby conserving resources; and would develop a full administrative record for the purposes of judicial review. The Commission disagrees with some of these contentions and believes that these objectives can be achieved in all cases without need for an oral hearing.

With regard to the respondents' right to be represented by counsel, new § 111.31 explicitly incorporates § 111.23, which allows for respondents to be represented by counsel in any matter before the Commission. The commenter cited to 5 U.S.C. 555(c) as the basis for requiring the Commission to give respondents access to documents used by the reviewing officer in formulating his or her recommendation. The Commission disagrees with this reading of this section of the APA. Section 555(c) states that a ''person compelled to submit data or evidence is entitled to retain or * * * procure a copy or transcript thereof.'' Thus, respondents are entitled to keep a copy of their written submissions or ask the Commission to send them a copy of their written submissions. It does not grant the respondents the right to obtain or review other documents that the reviewing officer relied upon to make his or her recommendation. The Commission, however, recognizes that a respondent should be given copies of any additional documents that the reviewing officer examines after the respondent has filed a challenge to the reason to believe finding and/or proposed civil money penalty. For example, Commission staff might possibly provide additional materials regarding receipt of an electronically filed report. Therefore, paragraph (d) is being added to revised § 111.36 to provide for that procedure. Revised § 111.36 also adds new paragraph (f) to require the reviewing officer to send the respondent a copy of the recommendation to the Commission and allows the respondent to file with the Commission Secretary a written response to the recommendation within ten days of the transmittal of the recommendation. However, the respondent will not be able to make any new arguments, that is, the respondent may not make arguments that the respondent did not make in its original written response or that are not in direct response to the arguments made by the reviewing officer in his or her recommendation to the Commission.

The commenter interprets the second sentence of 5 U.S.C. 555(b) as creating an independent right to appear in person with counsel whenever there is an agency proceeding. The Commission disagrees with this interpretation. In reading 5 U.S.C. 555(b) as a whole, it is apparent that the entitlement described in the second sentence is triggered only

if the person is compelled to appear in person in an agency proceeding. Thus, if a person is compelled to appear in person, the person may chose to appear by himself or herself, to appear with counsel, or send counsel or a duly qualified representative in his or her stead. The right to appear under 5 U.S.C. 555(b) ''is not blindly absolute, without regard to the status or nature of the proceedings and concern for the orderly conduct of public business.'' *DeVyver* v. *Warden*, 388 F.Supp. 1213, 1222 (M.D. Pa. 1974) (citing *Easton Utilities Commission* v. *Atomic Energy Commission*, 424 F.2d 847, 852 (D.C. Cir. 1970)).

Moreover, 5 U.S.C. 555(b) does not afford the respondents a right to a hearing. The Supreme Court has held that even where a statute requires an ''opportunity for hearing,'' it ''cannot impute to Congress the design requiring, nor does due process demand, a hearing when it appears conclusively from the applicant's 'pleadings' that the applicant cannot succeed.'' *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 621 (1973) (involving the Federal Drug Administration's procedure for withdrawing approval of a new drug application). Similarly, lower courts have held that agencies may make a decision solely on the written submission, much like summary judgment, where there are no disputed issues of material fact that cannot be resolved by the written submissions. *State of Pennsylvania* v. *Riley*, 84 F.3d 125, 130 (3rd Cir. 1996) (citing *Moreau* v. *F.E.R.C.*, 982 F.2d 556, 568 (D.C. Cir.1993); *Altenheim German Home* v. *Turnock*, 902 F.2d 582, 584 (7th Cir. 1990); *California* v. *Bennett*, 843 F.2d, 333, 340 (9th Cir. 1988); *Bell Telephone Co. of Pennsylvania* v. *FCC*, 503 F.2d 1250, 1267–68 (3rd Cir. 1974); *Puerto Rico Aqueduct & Sewer Auth.* v. *E.P.A.*, 35 F.3d 600, 606 (1st Cir. 1994); *Louisiana Ass'n of Indep. Producers and Royalty Owners* v. *FERC*, 958 F.2d 1101, 1113–15 (D.C. Cir. 1992); *City of St. Louis* v. *Department of Transp.*, 936 F.2d 1528, 1534 n. 1 (8th Cir. 1991)).

The court in *Puerto Rico Aqueduct & Sewer* recognized the need for administrative summary judgment. It stated that:

> The choice between summary judgment and full adjudication—in virtually any context—reflects a balancing of the value of efficiency against the values of accuracy and fairness. Seen in that light, summary judgment often makes especially good sense in an administrative forum, for, given the volume of matters coursing through an agency's hallways, efficiency is perhaps more central to an agency than to a court. . . . Administrative summary judgment is not only widely accepted, but also intrinsically valid. An agency's choice of such a procedural device is deserving of deference under ''the very basic tenet of administrative law that agencies should be free to fashion their own rules of procedure.'' *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 544, 98 S.Ct. 1197, 1212, 55 L.Ed.2d 460 (1978).

35 F. 3d at 606.

The balancing of accuracy and fairness with the need for efficiency in an agency contains two of the three prongs of the *Mathews* test. Unlike other types of violations that may involve complex factual and legal issues requiring extensive fact finding and analysis and witness testimony, the legal and factual issues pertaining to violations of the reporting requirements of 2 U.S.C. 434(a), are elementary and readily ascertainable by review of written submissions. Because of this, a hearing will not significantly increase accuracy and fairness but will drain the Commission's resources and hinder its efficiency. Therefore, the Commission does not believe that a hearing is legally required especially in light of the additional procedures that are being added to the final rules. *See supra.*

Paragraph (c) is being added to revised § 111.36 to strongly encourage respondents to submit documents to the reviewing officer under §§ 111.35 and 111.36 that are sworn to in the form of affidavits or declarations. More weight and credibility are generally given to statements and documents that are given under oath or are subject to the penalty of perjury.

The commenter had several additional comments with regard to the reviewing officer. First, the commenter stated that the reviewing officer could not be viewed as impartial if he or she is within the Reports Analysis Division (RAD) or the Office of General Counsel (OGC) and suggested an independent position be created to ensure objectivity and to shield the reviewing officer from the supervision of the General Counsel or the Assistant Staff Director of RAD. The Commission agrees that ''[i]mpartiality does not require total independence from the government agency or the presence of an administrative law judge * * * [but] only decisionmaker independence * * * from the individual action to be decided.'' P. Verkuil, *A Study of Informal Adjudication,* 43 U. Chi. L. Rev. 739, 750 n.45 (1976) (citing *Goldberg* v. *Kelly,* 397 U.S. 254, 271 (1970)). The Commission recognizes the need to separate its prosecutorial functions from its role as the decider of facts. Consequently, at this time, the Commission anticipates that the reviewing officer most likely will not be an employee within OGC or RAD.

The commenter also suggested that the civil money penalties in the schedules of penalties in § 111.43 should be considered the maximum civil money penalty and that the reviewing officer should have the authority to reduce the civil money penalty after considering mitigating factors and the totality of the circumstances to create ''more flexibility in applying the new rules.'' The Commission disagrees. Allowing the reviewing officer to reduce the civil money penalty would vest in the reviewing officer the authority to make final decisions, contrary to the FECA and long standing practice. *See* 2 U.S.C. 437c(c). Final agency decisions must be made by an affirmative vote of four members of the Commission. Also, if the reviewing officer is granted the discretion to reduce the civil money penalties, different civil money penalty amounts may be levied against political committees that commit identical violations, resulting in lack of uniformity and certainty and giving rise to the perception of unfairness.

Finally with respect to the reviewing officer, the commenter advocated that this person should be subject to the Commission's ethics regulation. Further, the person ''should not be a member of the enforcement staff who previously served as counsel in a matter where the current respondent was either a witness or a respondent'' because it will create a conflict of interest and an appearance of impropriety. As an employee of the Commission and the federal government, the reviewing officer will be subject to the Commission's Standards of Conduct set forth at 11 CFR part 7, and the Standards of Ethical Conduct for Employees of the Executive Branch. The conflict of interest standard in 11 CFR 7.2(c) is designed to address instances where the employee's private interests are inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities. Nothing in the rules bars an employee from serving in different capacities at different times such as employees in the Office of General Counsel subsequently filling positions in Commissioners' offices.

Section 111.37 What Will the Commission Do Once It Receives the Respondent's Written Response and the Reviewing Officer's Recommendation?

The Commission will make a final determination, by an affirmative vote of at least four of its members, as to whether the respondent has violated the reporting requirements of 2 U.S.C. 434(a) and the amount of the civil

money penalty, if any. The Commission will then authorize the reviewing officer to notify the respondent of its decision. The Commission did not receive any substantive comments on this section.

Section 111.38 Can the Respondent Appeal the Commission's Final Determination?

This section follows the amendment to the FECA by specifying that respondents may appeal a final adverse determination by the Commission to a federal district court where the respondents reside or conduct business by filing a written petition within thirty days of receipt of the Commission's final determination. Respondents, however, may not raise any issue that they did not timely raise in the administrative proceeding. The Commission received no substantive comments on this section.

Section 111.39 When Must the Respondent Transmit Payment of the Civil Money Penalty?

Unless the respondent appeals the Commission's final determination, the respondent must send a check or money order to the Commission within thirty days of receipt of the final determination. Once there is a final determination of the civil money penalty amount, the civil money penalty will be a debt owed to the United States. If the respondent does not submit full payment, the Commission may forward the debt to the U.S. Department of the Treasury for collection under the Debt Collection Improvement Act of 1996 within 180 days of the date after the final determination. 31 U.S.C. 3711(g); 31 U.S.C. 3716(c)(6). In the alternative, the Commission may initiate a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A). The Commission did not receive any substantive comments on this section.

Section 111.40 What Happens If the Respondent Does Not Pay the Civil Money Penalty Pursuant to 11 CFR 111.34 and Does Not Submit a Written Response to the Reason To Believe Finding Pursuant to 11 CFR 111.35?

The Commission will make a final determination and assess a civil money penalty, if any. The respondents will be notified by letter of the final determination. The respondent must pay any assessed civil money penalty within thirty days of receipt of the final determination. Unpaid civil money penalties are debts owed to the United States and may be transferred to the U.S. Department of the Treasury for collection. 31 U.S.C. 3711(g); 31 U.S.C. 3716(c)(6). In the alternative, the Commission may initiate a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A). There were no substantive comments on this section.

Section 111.41 To Whom Should the Civil Money Penalty Payment Be Made Payable?

Respondents must pay the civil money penalties by check or money order and make the check or money order payable to the Federal Election Commission. The Commission did not receive any substantive comments on this section.

Section 111.42 Will the Enforcement File Be Made Available to the Public?

Once the enforcement matter is closed, the file will be made available to the public subject to the provisions of 11 CFR 4.4(a)(3). A matter is considered closed when neither the Commission nor the respondent files a civil action in federal court or when there is a final disposition of the civil action pursuant to 11 CFR 111.20(c). The Commission received no substantive comments on this section.

Section 111.43 What Are the Schedules of Penalties?

Proposed § 111.43 contained two schedules of penalties—one for election sensitive reports and one for all other reports. The Commission took into account the level of activity in the report, the number of days late, the election sensitivity of the reports, and the existence of previous violations in developing the schedules. Two of these factors—the level of activity and the existence of previous violations—are mandated by the FECA. The Commission included the number of days as a factor because fairness demands that a report that is only a few days late should not be treated in the same manner as one that is many days late or not filed. Similarly, several state agencies responsible for overseeing state campaign finance laws levy fines on a per day basis for violations of their reporting requirements. *See e.g.,* Fla. Stat. Ann. § 106.04(8) (West 2000); Haw. Rev. Stat. § 11–193(a)(5) (1999); N.M. Stat. Ann. § 1–19–35A (Michie 1999). Because of the need to disseminate campaign finance information prior to an election for it to have a meaningful impact, the Commission concluded that it is especially important for reports due prior to an election to be filed in a timely manner and before the election. Thus, the Commission developed a different schedule of penalties for election sensitive reports that imposes a higher civil money penalty for these reports than other types of reports. In addition, the schedule of penalties for election sensitive reports uses an earlier cut-off date in considering a report not to be filed than the date used for reports that are not election sensitive.

The commenter made several comments and suggestions regarding the schedules of penalties. First, the commenter urged the Commission to calculate the level of activity based on contributions and expenditures less overhead and administrative costs, rather than receipts and disbursements, arguing that a calculation based on receipts and disbursements does not further the goals of FECA and discriminates against political action committees. This argument implicitly assumes that disclosure of some types of receipts and disbursements is of lesser importance than disclosure of other types. The Commission disagrees with this assumption. The amendment to the FECA clearly states that the Commission must take into account the ''amount of the violation involved,'' which is not limited to contributions and expenditures. Under section 434 of the Act, political committees are required to disclose all receipts and disbursements in their reports, not just contributions and expenditures. Moreover, Congress could have drafted the amendment to include just contributions and expenditures, as it did for mandatory electronic filing in Section 639 within the same amendment, but it did not. This difference in terms used in these two sections is strong evidence that Congress intended these two provisions to reach different types of financial activity. Thus, the Commission concludes that the ''amount of the violation involved'' is equal to receipts and disbursements.

The commenter suggested that the final rules should state that committees with no receipts or disbursements will not be subject to the administrative fines, and urged the Commission to allow committees to send an affidavit attesting to the fact that they did not have any receipts or disbursements in lieu of filing a report. The Commission cannot do so because it does not have the authority to waive reporting requirements in this situation. While the Commission theoretically could make a final determination that a committee with no receipts and disbursements is in violation of 2 U.S.C. 434(a), the Commission could not assess a civil money penalty against the committee because the schedules of penalties only provides for civil money penalties if the level of activity is $1.00 or more. However, committees with no financial activity should file their reports; otherwise, the Commission will calculate an estimated level of activity

based on the average level of activity over the current or previous two-year election cycle. Unless the committees file their reports disclosing no financial activity, the Commission will assess civil money penalties based on these estimated levels of activity or $5500 if the Commission cannot calculate the estimated levels of activity.

The commenter advocates the creation of a ''safe harbor'' for committees that do not have any contributions or expenditures in the given reporting period because these committees have not engaged in any political activity in that period. As discussed above, one of the mandated factors in determining the civil money penalty is the amount of the violation, which is not limited to just contributions and expenditures. Committees are required to file reports even if the committees did not have any contributions or expenditures. To create such a ''safe harbor'' would be to implicitly allow committees to ignore their affirmative and legal duty to file the required reports.

The commenter characterized the schedules of penalties in the NPRM as lacking a rational basis and as discriminating against small committees. The commenter suggested that the Commission break down the level of activity by $5,000 increments. The basis for the schedules of penalties is discussed above. The Commission believes the breakdowns in the schedules of penalties using the levels of activity fairly and equitably assess civil money penalties that reflect the nature and scope of the violation. The Commission notes, however, that the commenter was correct in stating that small committees that fall within the first range, $1–$24,999.99, could potentially pay a civil money penalty that exceeds their total financial activity for a given reporting period. Therefore, the two schedules in § 111.43 are being amended to include a provision stating that respondents with no previous violations will not be assessed a civil money penalty that exceeds the levels of activity in the report.

The preamble to the NPRM included an alternative method for calculating the schedule of penalties for the election sensitive reports. Instead of a fifty percent increase in the base amounts, the NPRM sought comment on adding a flat amount of $1000 to the base amounts for all levels of activity. No comments directly addressing this issue were received. However, the commenter expressed concern that the schedules of penalties discriminated against committees with low levels of financial activity. The Commission has determined that a flat $1000 addition to the base amounts would impose on committees with low levels of financial activity a significantly higher civil money penalty relative to their level of activity than committees with higher levels of financial activity. Consequently, the Commission has decided to adopt a schedule of penalties that increases the base amounts by fifty percent for election sensitive reports instead of adding a flat $1000 to the base amounts.

The commenter suggested that the civil money penalties in the schedules of penalties may be too high in some instances. The Commission agrees that the civil money penalties it initially proposed for non-filers were too high. Therefore, the civil money penalties for non-filers are being reduced in the schedules of penalties in § 111.43 (a) and (b). With respect to both election sensitive reports and non-election sensitive reports, the resulting civil money penalties for non-filers are higher than the civil money penalties for reports filed 30 days late, but are not as high as the civil money penalties proposed in the NPRM.

Finally, paragraphs (d) and (e) are being revised to clarify that election sensitive reports include reports due before special elections.

Examples of Civil Money Penalties

Example 1: The respondent files an October quarterly report 20 days late. The level of activity on the report is $105,000. The civil money penalty is calculated as follows. The base amount is $900. The per day amount is $125 multiplied by 20 days, which equals $2500. The civil money penalty is the sum of these two amounts, which is $3400.

Example 2: The respondent in the above example has one prior violation in the current two-year election cycle. The premium for the one prior violation is 25% of the civil money penalty calculated in example 1, which equals $850. The civil money penalty is the sum of this premium and the civil money penalty from example 1, which is $4250.

Example 3: The respondent files a July quarterly report on September 1. The report contains $500 in receipts and disbursements. The respondent is a non-filer because the report was more than thirty days late. The civil money penalty is $500 because it is the lesser of the level of activity in the report and $900, which is the civil money penalty for a non-filer whose level of activity is less than $25,000.

Example 4: The respondent in the example 3 had one prior violation in the current two-year election cycle. Because this is not the respondent's first violation, the civil money penalty is not capped by the respondent's level of activity. The civil money penalty is the $900 assessed against non-filers whose level of activity is less than $25,000 plus a 25% premium equaling $225 for the one prior violation. Therefore, the civil money penalty for this respondent is $1125.

Section 111.44 What Is the Schedule of Penalties for 48-Hour Notices?

Committees are required to report within 48 hours of receipt of those contributions of $1000 or more that are received after the 20th day but more than 48 hours before an election. 2 U.S.C. 434(a)(6). The Commission developed a different schedule of penalties for failure to file these notices on time because of the nature and timing of these notices and the need to have them filed on time. The schedule proposed in the NPRM did not distinguish between notices that are filed late and those that are not filed at all, and would have imposed a civil money penalty equal to fifteen percent of the amount of the contribution(s) not reported on time plus $100. In the final rules that follow, this schedule of penalties is also being reduced because the resulting civil money penalties may be too high. The amount in the final schedule of penalties is being reduced to 10% of the amount of the contribution(s) not timely reported plus $100.

Section 111.45 What Actions Will Be Taken To Collect Unpaid Civil Money Penalties?

The Commission may take any and all appropriate actions authorized and required by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 *et. seq.*). This section adopts the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office, 4 CFR parts 101–105, to provide procedures for the collection of the debt. This section also adopts by cross-reference the regulations issued by U.S. Department of the Treasury at 31 CFR 285.2, 285.4, and 285.7. Changes are being made to this section in the final rules for clarification purposes. The Commission did not receive any substantive comments on this section.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the final rule will impose penalties which are scaled to take into account the size of the financial activity of the political committees. Thus, committees with less financial activity will be subject to lower fines than committees with more

financial activity. Also, the Commission anticipates that there will not be a large number of small committees that would be subject to the process in the proposed rules. Therefore, the final rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

For reasons set out in the preamble, subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

2. 11 CFR 104.5 is amended by adding new paragraph (i) to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(i) Committees should retain proof of mailing or other means of transmittal of the reports to the Commission.

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

3. The authority for part 111 continues to read as follows:

Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8).

4. 11 CFR 111.8 is amended by adding new paragraph (d) to read as follows:

§ 111.8 Internally generated matters; referrals (2 U.S.C. 437g(a)(2)).

* * * * *

(d) Notwithstanding §§ 111.9 through 111.19, for violations of 2 U.S.C. 434(a), the Commission, when appropriate, may review internally generated matters under subpart B of this part.

5. 11 CFR 111.20 is amended by adding new paragraph (c) to read as follows:

§ 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

* * * * *

(c) For any compliance matter in which a civil action is commenced, the Commission will make public the non-exempt 2 U.S.C. 437g investigatory materials in the enforcement and litigation files no later than thirty (30) days from the date on which the Commission sends the complainant and the respondent(s) the required notification of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

6. 11 CFR 111.24(a) is revised to read as follows:

§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

(a) Except as provided in 11 CFR part 111, subpart B and in paragraph (b) of this section, a civil penalty negotiated by the Commission or imposed by a court for a violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.) shall not exceed the greater of $5,500 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of $11,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

* * * * *

7. Part 111 is amended by designating 11 CFR 111.1 through 111.24 as subpart A—Enforcement—and by adding new subpart B to read as follows:

Subpart B—Administrative Fines

Sec.

§ 111.30 When will subpart B apply?

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers on or after July 14, 2000, and on or before December 31, 2001.

§ 111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 2 U.S.C. 434(a)?

(a) No; §§ 111.1 through 111.8 and 111.20 through 111.24 shall apply to all compliance matters. This subpart will apply, rather than §§ 111.9 through 111.19, when the Commission, on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, and when appropriate, determines that the compliance matter should be subject to this subpart. If the Commission determines that the violation should not be subject to this subpart, then the violation will be subject to all sections of subpart A of this part.

(b) Subpart B will apply to compliance matters resulting from a complaint filed pursuant to 11 CFR 111.4 through 111.7 if the complaint alleges a violation of 2 U.S.C. 434(a). If the complaint alleges violations of any other provision of any statute or regulation over which the Commission has jurisdiction, subpart A will apply to the alleged violations of these other provisions.

§ 111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?

If the Commission determines, by an affirmative vote of at least four (4) of its members, that it has reason to believe that a respondent has violated 2 U.S.C. 434(a), the Chairman or Vice-Chairman shall notify such respondent of the Commission's finding. The written notification shall set forth the following:

(a) The alleged factual and legal basis supporting the finding including the type of report that was due, the filing deadline, the actual date filed (if filed), and the number of days the report was late (if filed);

(b) The applicable schedule of penalties;

(c) The number of times the respondent has been assessed a civil

money penalty under this subpart during the current two-year election cycle and the prior two-year election cycle;

(d) The amount of the proposed civil money penalty based on the schedules of penalties set forth in 11 CFR 111.43 or 111.44; and

(e) An explanation of the respondent's right to challenge both the reason to believe finding and the proposed civil money penalty.

§ 111.33 What are the respondent's choices upon receiving the reason to believe finding and the proposed civil money penalty?

The respondent must either send payment in the amount of the proposed civil money penalty pursuant to 11 CFR 111.34 or submit a written response pursuant to 11 CFR 111.35.

§ 111.34 If the respondent decides to pay the civil money penalty and not to challenge the reason to believe finding, what should the respondent do?

(a) The respondent shall transmit payment in the amount of the civil money penalty to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) Upon receipt of the respondent's payment, the Commission shall send the respondent a final determination that the respondent has violated the statute or regulations and the amount of the civil money penalty and an acknowledgment of the respondent's payment.

§ 111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?

(a) Within forty (40) days of the Commission's reason to believe finding, the respondent shall submit to the Commission a written response.

(b) The written response shall contain the following:

(1) Reason(s) why the respondent is challenging the reason to believe finding and/or civil money penalty which may consist of:

(i) The existence of factual errors; and/or

(ii) The improper calculation of the civil money penalty; and/or

(iii) The existence of extraordinary circumstances that were beyond the control of the respondent and that were for a duration of at least 48 hours and that prevented the respondent from filing the report in a timely manner;

(2) The factual basis supporting the reason(s); and

(3) Supporting documentation.

(4) Examples of circumstances that will not be considered extraordinary include, but are not limited to, the following:

(i) Negligence;

(ii) Problems with vendors or contractors;

(iii) Illness of staff;

(iv) Computer failures (except failures of the Commission's computers); and

(v) Other similar circumstances.

§ 111.36 Who will review the respondent's written response?

(a) A reviewing officer shall review the respondent's written response. The reviewing officer shall be a person who has not been involved in the reason to believe finding.

(b) The reviewing officer shall review the reason to believe finding with supporting documentation and the respondent's written response with supporting documentation. The reviewing officer may request supplemental information from the respondent and/or the Commission staff. The respondent shall submit the supplemental information to the reviewing officer within a time specified by the reviewing officer. The reviewing officer will be entitled to draw an adverse inference from the failure by the respondent to submit the supplemental information.

(c) All documents required to be submitted by the respondents pursuant to this section and § 111.35 should be submitted in the form of affidavits or declarations.

(d) If the Commission staff, after the respondent files a written response pursuant to § 111.35, forwards any additional documents pertaining to the matter to the reviewing officer for his or her examination, the reviewing officer shall also furnish a copy of the document(s) to the respondents.

(e) Upon completion of the review, the reviewing officer shall forward a written recommendation to the Commission along with all documents required under this section and 11 CFR 111.32 and 111.35.

(f) The reviewing office shall also forward a copy of the recommendation to the respondent. The respondent may file with the Commission Secretary a written response to the recommendation within ten (10) days of transmittal of the recommendation. This response may not raise any arguments not raised in the respondent's original written response or not directly responsive to the reviewing officer's recommendation.

§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?

(a) If the Commission, after having found reason to believe and after reviewing the respondent's written response and the reviewing officer's recommendation, determines by an affirmative vote of at least four (4) of its members, that the respondent has violated 2 U.S.C. 434(a) and the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its members, that no violation has occurred, or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(c) The Commission will modify the proposed civil money penalty only if the respondent is able to demonstrate that the amount of the proposed civil money penalty was calculated on an incorrect basis.

(d) The Commission may determine, by an affirmative vote of at least four of its members, that a violation of 2 U.S.C. 434(a) has occurred but waive the penalty because the respondent has convincingly demonstrated the existence of extraordinary circumstances that were beyond the respondent's control and that were for a duration of at least 48 hours. The Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

§ 111.38 Can the respondent appeal the Commission's final determination?

Yes; within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37, the respondent may submit a written petition to the district court of the United States for the district in which the respondent resides, or transacts business, requesting that the final determination be modified or set aside. The respondent's failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondent's right to present such argument in a petition to the district court under 2 U.S.C. 437g.

§ 111.39 When must the respondent pay the civil money penalty?

(a) If the respondent does not submit a written petition to the district court of the United States, the respondent must remit payment of the civil money penalty within thirty (30) days of receipt

of the Commission's final determination under 11 CFR 111.37.

(b) If the respondent submits a written petition to the district court of the United States and, upon the final disposition of the civil action, is required to pay a civil money penalty, the respondent shall remit payment of the civil money penalty to the Commission within thirty (30) days of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

(c) Failure to pay the civil money penalty may result in the commencement of collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A), or any other legal action deemed necessary by the Commission.

§ 111.40 What happens if the respondent does not pay the civil money penalty pursuant to 11 CFR 111.34 and does not submit a written response to the reason to believe finding pursuant to 11 CFR 111.35?

(a) If the Commission, after the respondent has failed to pay the civil money penalty and has failed to submit a written response, determines by an affirmative vote of at least four (4) of its members that the respondent has violated 2 U.S.C. 434(a) and determines the amount of the civil money penalty, the respondent shall be notified by letter of its final determination.

(b) The respondent shall transmit payment of the civil money penalty to the Commission within thirty (30) days of receipt of the Commission's final determination.

(c) Failure to pay the civil money penalty may result in the commencement of collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A), or any other legal action deemed necessary by the Commission.

§ 111.41 To whom should the civil money penalty payment be made payable?

Payment of civil money penalties shall be made in the form of a check or money order made payable to the Federal Election Commission.

§ 111.42 Will the enforcement file be made available to the public?

(a) Yes; the Commission shall make the enforcement file available to the public.

(b) If neither the Commission nor the respondent commences a civil action, the Commission shall make the enforcement file available to the public pursuant to 11 CFR 4.4(a)(3).

(c) If a civil action is commenced, the Commission shall make the enforcement file available pursuant to 11 CFR 111.20(c).

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–24,999.99[a]	[$100 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$900 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$200 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1800 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$300 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2700 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$400 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3500 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$600 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4500 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$800 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5500 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1000 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6500 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$1500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8000 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$2000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9000 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$2500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9500 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,000 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$3500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,500 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$4000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,000 × [1 + (.25 × Number of previous violations)].

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$850,000–949,999.99	[$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,500 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$5000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties.

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–24,999.99 [a]	[$150 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1000 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$300 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2000 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$450 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3000 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$600 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4000 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$900 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5000 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1200 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6000 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1500 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7500 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$2250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9000 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,000 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$3750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,000 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$5250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,000 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$6000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,000 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$6750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,000 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$7500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,000 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $5,500.

(d) *Definitions.* For this section only, the following definitions will apply:

Election Sensitive Reports means third quarter reports due on October 15th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); monthly reports due October 20th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); and pre-election reports for primary, general, and special elections under 11 CFR 104.5.

Estimated level of activity means total receipts and disbursements reported in the current two-year election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity means total receipts and disbursements reported in the prior two-

year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

Level of activity means the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity.

Number of previous violations mean all prior final civil money penalties assessed under this subpart during the current two-year election cycle and the prior two-year election cycle.

(e) For purposes of the schedules of penalties in paragraphs (a) and (b) of this section,

(1) Reports that are not election sensitive reports are considered to be filed late if they are filed after their due dates but within thirty (30) days of their due dates. These reports are considered to be not filed if they are filed after thirty (30) days of their due dates or not filed at all.

(2) Election sensitive reports are considered to be filed late if they are filed after their due dates but prior to four (4) days before the primary election for pre-primary reports, prior to four (4) days before the special election for pre-special election reports, or prior to four (4) days before the general election for all other election sensitive reports. These reports are considered to be not filed if they are not filed prior to four (4) days before the primary election for pre-primary reports, prior to four (4) days before the special election for pre-special election reports or prior to four (4) days before the general election for all other election sensitive reports.

§ 111.44 What is the schedule of penalties for 48-hour notices that are not filed or are filed late?

(a) If the respondent fails to file timely a notice regarding contribution(s) received after the 20th day but more than 48 hours before the election as required under 2 U.S.C. 434(a)(6), the civil money penalty will be calculated as follows:

(1) Civil money penalty = $100 + (.10 × amount of the contribution(s) not timely reported).

(2) The civil money penalty calculated in paragraph (a)(1) of this section shall be increased by twenty-five percent (25%) for each prior violation.

(b) For purposes of this section, prior violation means a civil money penalty that has been assessed against the respondent under this subpart in the current two-year election cycle or the prior two-year election cycle.

§ 111.45 What actions will be taken to collect unpaid civil money penalties?

The Commission may take any and all appropriate collection actions authorized and required by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 et. seq.). The U.S. Department of the Treasury regulations at 31 CFR 285.2, 285.4, and 285.7 and the Federal Claims Collection Standards issued jointly by the Department of Justice and the Government Accounting Office at 4 CFR parts 101 through 105 also apply.

Dated: May 12, 2000.

Darryl R. Wold,

Chairman, Federal Election Committee.

[FR Doc. 00–12484 Filed 5–18–00; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2000–7110; Amendment No. 91–262]

RIN 2120–AG94

Special Visual Flight Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action amends the language regarding aircraft operating in accordance with Special Visual Flight Rules (SVFR). Specially, this action will permit a general aviation pilot at a satellite airport where weather reporting is not available, to depart in meteorological conditions less than basic Visual Flight Rules (VFR) weather minimums provided that the pilot determines that he has the requisite flight visibility. The FAA is taking this action to reduce the number of unnecessary flight delays being faced by general aviation aircraft while providing an equivalent level of safety.

EFFECTIVE DATE: The rule is effective on May 23, 2000.

FOR FURTHER INFORMATION CONTACT: Avis P. Person, Airspace and Rules Division (ATA–400), Air Traffic Airspace Management Program, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone number (202) 267–8783.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 24, 2000 (65 FR 16114). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 23, 2000. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Washington, DC, on May 12, 2000.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 00–12561 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30042; Amdt. No. 1991]

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: P.O. 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 Aviatiion 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 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. 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 May 12, 2000.

L. Nicholas Lacey,

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).

2. Part 97 is amended to read as follows:

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

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 June 15, 2000*

Patterson, LA, Harry P. Williams Memorial, ILS RWY 24, Orig
Patterson, LA, Harry P. Williams Memorial, LOC/DME RWY 24, Amdt 3, CANCELLED
Chicago, IL, Chicago O'Hare Intl, RNAV RWY 14L, Orig
Chicago, IL, Chicago O'Hare Intl, RNAV RWY 14R, Orig
Ardmore, OK, Ardmore Muni, VOR–B, Amdt 1
Ardmore, OK, Ardmore Muni, NDB RWY 31, Amdt 5
Ardmore, OK, Ardmore Muni, ILS RWY 31, Amdt 4
Ardmore, OK, Ardmore Muni, RNAV RWY 31, Orig
Ardmore, OK, Ardmore Muni, GPS RWY 31, Orig, CANCELLED
Rutland, VT, Rutland State, LOC/DME RWY 19, Orig

** * * Effective July 13, 2000*

Churchville, MD, Harford County, VOR/DME–A, Amdt 1

** * * Effective August 10, 2000*

Tanana, AK, Ralph M. Calhoun Meml, VOR/DME RWY 6, Amdt 1
Tanana, AK, Ralph M. Calhoun Meml, VOR–A, Amdt 7
Miami, FL, Miami Intl, LOC RWY 30, Amdt 6
Miami, FL, Miami Intl, NDB OR GPS RWY 27L, Amdt 19
Miami, FL, Miami Intl, ILS RWY 9L, Amdt 29

Miami, FL, Miami Intl, ILS RWY 9R, Amdt 9
Miami, FL, Miami Intl, ILS RWY 12, Amdt 4
Miami, FL, Miami Intl, ILS RWY 27L, Amdt 23
Miami, FL, Miami Intl, ILS RWY 27R, Amdt 14
Orlando, FL, Orlando Intl, VOR/DME RNAV RWY 36L, Orig, CANCELLED
Titusville, FL, Space Coast Regional, GPS RWY 9, Orig-B
Chicago, IL, Chicago Midway, ILS RWY 13C, Amdt 40
Winston Salem, NC, Smith Reynolds, VOR/DME RWY 15, Amdt 1B
Winston Salem, NC, Smith Reynolds, NDB RWY 33, Amdt 25B
Winston Salem, NC, Smith Reynolds, GPS RWY 15, Orig-B
Winston Salem, NC, Smith Reynolds, GPS RWY 33, Orig-B
New Philadelphia, OH, Harry Clever Field, VOR–A, Amdt 1
New Philadelphia, OH, Harry Clever Field, GPS RWY 14, Amdt 1
Portland, OR, Portland Intl, NDB OR GPS RWY 28L, Amdt 4
Portland, OR, Portland Intl, NDB RWY 28R, Amdt 11
Portland, OR, Portland Intl, ILS RWY 10R, Amdt 31
Myrtle Beach, SC, Myrtle Beach Intl, ILS RWY 17, Amdt 1
Myrtle Beach, SC, Myrthe Beach Intl, ILS RWY 35, Amdt 1
Myrtle Beach, SC, Myrtle Beach Intl, GPS RWY 35, Orig, CANCELLED
Myrtle Beach, SC, Myrtle Beach Intl, RNAV RWY 35, Orig
Myrtle Beach, SC, Myrtle Beach Intl, RNAV RWY 17, Orig
Madison, SD, Madison Muni, GPS RWY 33, Orig-B

** * * Effective October 5, 2000*

Cordova, AK, Merle K. (Mudhole) Smith, GPS RWY 27, Orig-A
Arcata-Eureka, CA, Arcata, VOR RWY 14, Amdt 7A
Montrose, CO, Montrose Regional, GPS RWY 13, Orig-B
Oxford, CT, Waterbury-Oxford, NDB RWY 18, Amdt 5A
Oxford, CT, Waterbury-Oxford, GPS RWY 18, Orig-A
Springfield, IL, Capital, NDB OR GPS RWY 4, Amdt 18A
Springfield, IL, Capital, NDB RWY 22, Orig-A
Sterling Rockfalls, IL, Whiteside Co Arpt-Jos H Bittorf Fld, LOC BC RWY 7, Amdt 5A
Sterling Rockfalls, IL, Whiteside Co Arpt-Jos H Bittorf Fld, NDB OR GPS RWY 7, Amdt 5A
Grand Rapids, MI, Gerald R. Ford Intl, VOR RWY 17, Orig-C
Cleveland, OH, Cuyahoga County, LOC BC RWY 5, Amdt 10B
Cleveland, OH, Cuyahoga County, NDB OR GPS RWY 23, Amdt 8B
Columbus, OH, Rickenbacker Intl, NDB OR GPS RWY 5R, Orig-A
Delarare, OH, Delaware Muni, VOR RWY 28, Orig-A
Delaware, OH, Delaware Muni, GPS RWY 10, Orig-A
Delaware, OH, Delaware Muni, GPS RWY 28, Orig-A
Mansfield, OH, Mansfield Lahm Muni, VOR OR GPS RWY 32, Amdt 6B
Wilmington, OH, Airborne Airpark, VOR/DME OR GPS RWY 22R, Amdt 4C
Pawtucket, RI, North Central State, GPS RWY 23, Orig-A
Pawtucket, RI, North Central State, LOC RWY 5, Amdt 5A
Spearfish, SD, Black Hills-Clyde Ice Field, GPS RWY 12, Orig-D

The FAA published an amendment in Docket No. 29995, Amdt. No. 1986 to Part 97 of the Federal Aviation Regulations (65 FR 20896; dated Wednesday, April 19, 2000), under § 97.23 effective June 15, 2000. That amendment, which appeared on page 20898, first column, lines 21 and 22, is corrected to read as follows:

Lancaster, PA, Lancaster, VOR/DME OR GPS RWY 8, Amdt 4

[FR Doc. 00–12559 Filed 5–18–00; 8:45 am]
BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AF03

Addition of Medical Criteria for Evaluating Down Syndrome in Adults

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are adding a new listing to evaluate non-mosaic Down syndrome in adults. Our current regulations only include a listing for evaluating Down syndrome in children; we evaluate claims filed by adults with Down syndrome under other listings. We are establishing a separate adult listing for this disorder to acknowledge its lifelong impact and severity. We expect that these final rules will simplify and expedite our adjudication of claims filed by adults with non-mosaic Down syndrome.

DATES: These rules are effective June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Michelle Hungerman, Social Insurance Specialist, Office of Disability, Social Security Administration, 3–A–9 Operations Building, 6401 Security Boulevard, Baltimore, Maryland, 21235–6401, (410) 965–2289, TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

We pay disability benefits under title II of the Social Security Act (the Act) to disabled individuals who are insured under the Act. We also pay child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured individuals. In addition, we make Supplemental Security Income (SSI) payments under title XVI of the Act to persons who are disabled and who have limited income and resources. For adults under both the title II and title XVI programs, and for persons claiming child's insurance benefits based on disability under title II, ''disability'' means that an impairment(s) results in an inability to engage in any substantial gainful activity. Disability must be the result of any medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

Although the listings are contained only in part 404, we incorporate them by reference in the SSI program by § 416.925 of our regulations. The listings are divided into part A and part B. We apply the criteria in part A when we evaluate impairments in adults, that is, persons age 18 or over. The listings in part A describe, for each of several major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity.

As a result of medical advances in disability evaluation and treatment, and program experience, we are required to periodically review and update the listings. In the Notice of Proposed Rulemaking (NPRM) we published in the **Federal Register** (64 FR 55215) on October 12, 1999, we indicated that we would review these rules on July 2, 2001. However, based on our experience adjudicating claims filed by adults with non-mosaic Down syndrome, we believe that these rules will continue to be valid for our program purposes after that date. Therefore, these rules will be in effect for 8 years after the effective date, unless we extend them, or revise and issue them again.

Explanation of Final Rules

Aside from the change in the date on which these rules will no longer be effective, which we discussed above, we have made no changes from the proposed rules. We are adding a new listing to evaluate claims filed by adults who have non-mosaic Down syndrome. Since 1990, we have evaluated claims filed on behalf of children who have

non-mosaic Down syndrome under listing 110.06, but we have not had a Down syndrome listing for adults. Instead, we evaluate most of these claims under listing 12.05-Mental Retardation—which requires measurement of intellectual functioning. Almost all adults with Down syndrome also have moderate to severe musculoskeletal abnormalities, and many have other impairments, including cardiac, gastrointestinal, oral/facial and skeletal abnormalities. We also evaluate the physical impairments that such individuals may have under the appropriate body system listings.

For children, current listing 110.06 represents what we have known for some time: that when we obtain appropriate evidence, virtually all individuals who have non-mosaic Down syndrome will be found disabled under our rules. Therefore, listing 110.06 is met by showing that the individual has Down syndrome (excluding mosaic Down syndrome) that has been established by clinical findings, including the characteristic physical features, and laboratory evidence, including chromosomal analysis.

When listing 110.06 is met, disability is established from birth. In recognition of the fact that non-mosaic Down syndrome rarely, if ever, improves to the point that an individual would not meet our definition of disability, we are adding a corresponding listing in part A. We expect that this listing will simplify and expedite our adjudication of cases filed by adults with non-mosaic Down syndrome. We also expect that these rules will simplify and expedite the process of performing disability redeterminations at age 18 for individuals who are eligible for SSI as children on the basis of non-mosaic Down syndrome. Although it is the only listing in section 10.00, we are numbering the new listing as listing 10.06, to correspond to listing 110.06 in part B.

As in the childhood listing, final listing 10.06 provides that an individual age 18 or older who has non-mosaic Down syndrome established by clinical and laboratory findings, including chromosomal analysis, is considered disabled from birth. The new sections 10.00A and 10.00B in the preface to the listing provide rules for documenting non-mosaic Down syndrome. These rules are similar to those in the corresponding sections of the part B listing, 110.00A and 110.00B. Final 10.00A includes a provision similar to one in current 110.00A.2, which states that an individual with Down syndrome is considered disabled from birth. We included this provision in the final rules for adults to establish that the 12-month duration requirement has been met.

As we have done in part B of our listings, we are excluding mosaic Down syndrome from the listing. Mosaic Down syndrome is a rare form of the condition that is manifested in a wide range of impairment severity. The condition can be profound and disabling, but it can also be so slight as to go undetected. Therefore, it would not be appropriate to conclude that mosaic Down syndrome is always disabling. However, we will still find individuals with mosaic Down syndrome disabled if their impairments meet or are medically equivalent in severity to the requirements of other listings. An individual whose mosaic Down syndrome is ''severe'' but whose impairment(s) do not meet or medically equal the requirements of a listing may also be found disabled at the fifth step of the sequential evaluation process, based on an assessment of his or her residual functional capacity and consideration of his or her age, education, and work experience.

Finally, we are adding a new section 10.00C. This paragraph provides guidance for evaluating other chromosomal abnormalities.

Other Changes

Section 10.00 of part A of the listings was reserved for future use. We are now adding a new preface (10.00A, 10.00B, and 10.00C) and new listing 10.06 in this section. For this reason, and because Down syndrome often has physical as well as mental effects, we are adding the heading ''Multiple body systems'' for this section. We are also making minor editorial changes to the introductory text and table of contents to part A of appendix 1, to reflect the provisions of the final rules.

Public Comments

In the NPRM, we provided the public with a 60-day comment period. In response to the NPRM, we received comments from 20 commenters. Most of the comments came from individuals, many of whom have family members with Down syndrome. These commenters supported the proposed rules, without any suggested changes. Several comments came from interested organizations, including the National Down Syndrome Congress, the National Down Syndrome Society, the Arc of the United States, and the Joseph P. Kennedy, Jr., Foundation. Other comments came from the State agencies that make disability determinations for us.

All of the commenters supported the addition of an adult listing for evaluating non-mosaic Down syndrome. The summaries of the significant comments we received and our responses to them follow. We have tried to summarize the commenters' views accurately, and have responded to all of the significant issues raised that are within the scope of the proposed rules.

Comment: Commenters from a State agency that makes disability determinations for us agreed that including a separate listing for evaluating non-mosaic Down syndrome in adults was a good idea that would help simplify the adjudication of these cases. Two commenters from a State agency asked us to consider additional revisions to the listings to include other genetic disorders. One of these commenters specifically suggested we add a listing for evaluating Lowe's syndrome.

Response: We have not adopted the comment. Lowe's syndrome is a genetic disorder that primarily affects the eyes, brain, and kidneys. As with most genetic disorders, the physical stigmas and the degree of mental retardation associated with Lowe's syndrome vary widely. Therefore, we cannot conclude that the impairment is always of listing-level severity. Section 10.00C of these final rules provides that genetic disorders other than non-mosaic Down syndrome should be evaluated under the listings for the affected body system. We believe that this section will allow us to evaluate appropriately the effects of other genetic disorders, including Lowe's syndrome.

Comment: One commenter indicated that laboratory testing for Down syndrome is generally done at birth or soon thereafter. This commenter stated that, since the listing would apply to individuals who are at least 18 years old, the result of any laboratory testing might be difficult to obtain due to the passage of time. The commenter questioned what type of medical evidence could be used to establish the diagnosis under the provisions of section 10.00B of these final rules. The commenter also asked if SSA would pay for chromosomal analysis if needed.

Response: Section 10.00B of the final rules provides that, in lieu of a copy of the actual laboratory report, medical evidence that is persuasive that a positive diagnosis has been confirmed by an appropriate laboratory testing, at some time prior to evaluation, is acceptable documentation of the existence of non-mosaic Down syndrome. Under this provision, the file must contain an acceptable reference to the fact that testing was conducted and the results of that testing. The referenced results must be consistent

with other evidence in file, *e.g.,* the description of the usual abnormal physical findings, the individual's educational history, or the results of psychological testing, if performed. Generally, this information will give us sufficient evidence to establish the diagnosis. However, in the unusual case in which it becomes necessary, SSA can purchase the appropriate blood test.

Comment: Another commenter from a State agency that makes disability determinations for us agreed that this listing will assist in the adjudication of adult cases, age-18 redetermination cases, and continuing disability review (CDR) cases. This commenter asked whether we could revise the listing to indicate that medical improvement is not expected and that the cases adjudicated under listing 10.06 be diaried for 7 years.

Response: After we find that an individual is disabled, we must evaluate his or her continued eligibility for benefits from time to time. SSA issues guidelines on how to schedule these reviews through internal operating instructions in our Program Operations Manual System (POMS). We will consider the guidelines recommended by the commenter when we issue POMS instructions on how to schedule CDR diaries for adults found disabled based on non-mosaic Down syndrome.

Comment: One commenter representing an interested organization expressed support for adding a new listing to provide for the evaluation of Down syndrome for adults. This commenter urged SSA to provide training to all adjudicators when these rules become final.

Response: We agree with the commenter's recommendation. In accordance with our usual practice, we will conduct training for all adjudicators after the final rules are published.

For the reasons given in our responses to the comments on the proposed rules, we have not made further changes to the text of the proposed rules. Other than the one change discussed above, we are publishing the proposed regulations as final regulations.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, the final rules were not subject to OMB review. We have also determined that these final rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998 (63 FR 31885).

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they only affect individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: May 3, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending part 404, subpart P, of chapter III of title 20 of the Code of Federal Regulations to read as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 continues to read as follow:

Authority: Secs. 202, 205(a), (b) and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b) and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub.L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—[Amended]

2. Appendix 1 to subpart P of part 404 is amended as follows:

a. Item 11 of the introductory text before Part A of appendix 1 is revised.

b. The Table of Contents for part A of appendix 1 is amended by adding section 10.00.

c. Section 10.00 is added to Part A of appendix 1.

The added and revised text reads as follows:

Appendix 1 To Subpart P of Part 404—Listing of Impairments

* * * * *

11. Multiple Body Systems (10.00): June 19, 2008, and (10.00): July 2, 2001.

* * * * *

Part A

* * * * *

10.00 Multiple Body Systems

* * * * *

10.00 MULTIPLE BODY SYSTEMS

A. Down syndrome (except for mosaic Down syndrome (see 10.00C)) established by clinical findings, including the characteristic physical features, and laboratory evidence is considered to meet the requirement of listing 10.06, commencing at birth.

B. Documentation must include confirmation of a positive diagnosis by a clinical description of the usual abnormal physical findings associated with the condition and definitive laboratory tests, including chromosomal analysis. Medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing, at some time prior to evaluation, is acceptable in lieu of a copy of the actual laboratory report.

C. Other chromosomal abnormalities, *e.g.,* mosaic Down syndrome, fragile X syndrome, phenylketonuria, and fetal alcohol syndrome, produce a pattern of multiple impairments but manifest in a wide range of impairment severity. Therefore, the effects of these impairments should be evaluated under the affected body system.

10.01 Category of Impairments, Multiple Body Systems

10.06 *Down syndrome (excluding mosaic Down syndrome)* established by clinical and laboratory findings, as described in 10.00B. Consider the individual disabled from birth.

* * * * *

[FR Doc. 00–12593 Filed 5–18–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 771

49 CFR Parts 619 and 622

Federal Transit Administration

Policy Guidance Concerning Application of Title VI of the Civil Rights Act of 1964 to Metropolitan and Statewide Planning

AGENCIES: Federal Highway Administration (FHWA), and Federal Transit Administration (FTA), DOT.

ACTION: Notice of policy.

SUMMARY: This document publishes guidance regarding the implementation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) concerning nondiscrimination in federally assisted programs, in metropolitan and statewide planning. This guidance was previously issued on October 7, 1999, as a memorandum to FTA Regional Administrators and FHWA Division Administrators, and is printed in its entirety.

FOR FURTHER INFORMATION CONTACT: For application to metropolitan planning, Mr. Sheldon M. Edner, FHWA, (202) 366–4066 or Mr. Charles Goodman, FTA, (202) 366–1944. For application to statewide planning, Mr. Dee Spann, FHWA, (202) 366–4086 or Mr. Paul Verchinski, FTA, (202) 366–1626. All are located at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at http://www.access.gpo.gov/nara.

(Authority: 23 U.S.C. 315; 49 CFR 1.48 and 1.51)

Issued on: May 9, 2000.

Nuria I. Fernandez,

Acting Administrator.

Kenneth R. Wykle,

Federal Highway Administrator.

The guidance memorandum reads as follows:

Date: October 7, 1999.
Subject: *ACTION:* Implementing Title VI Requirements in Metropolitan and Statewide Planning
From: Gordon J. Linton, Administrator, FTA
Kenneth R. Wykle, Administrator, FHWA
To: FTA Regional Administrators
FHWA Division Administrators

Background

The purpose of this memorandum is to issue clarification to you in implementing Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d–1) and related regulations, The President's Executive Order on Environmental Justice, the U.S. DOT Order, and the FHWA Order.

Title VI states that ''No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Title VI bars intentional discrimination as well as disparate impact discrimination (*i.e.*, a neutral policy or practice that has a disparate impact on protected groups).

The Environmental Justice (EJ) Orders further amplify Title VI by providing that ''each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.''

Increasingly, concerns for compliance with provisions of Title VI and the EJ Orders have been raised by citizens and advocacy groups with regard to broad patterns of transportation investment and impact considered in metropolitan and statewide planning. While Title VI and EJ concerns have most often been raised during project development, it is important to recognize that the law also applies equally to the processes and products of planning. The appropriate time for FTA and FHWA to ensure compliance with Title VI in the planning process is during the planning certification reviews conducted for Transportation Management Areas (TMAs) and through the statewide planning finding rendered at approval of the Statewide Transportation Improvement Program (STIP).

This memorandum serves as clarification pending issuance of revised planning and environmental regulations.

Requested Action

We request that during certification reviews you raise questions that serve to substantiate metropolitan planning organization (MPO) self-certification of Title VI compliance. Suggested questions are attached. Also attached are a series of actions that could be taken to support Title VI compliance and EJ goals, improve planning performance, and minimize the potential for subsequent corrective action and complaint.

Statewide planning is also subject to the same Title VI legislative requirements as the metropolitan planning process. The FHWA division offices, jointly with FTA regional offices, should review and document Title VI compliance when making the TEA–21 required finding that STIP development and the overall planning process is consistent with the planning requirements.

In part, the purpose of asking the questions attached to this memorandum is to review the basis upon which the annual self-certification of compliance with Title VI is made. The metropolitan planning certification reviews in TMAs and STIP findings offer an opportunity to FHWA and FTA staff to verify the procedures and analytical foundation upon which the self-certification is made. If it becomes evident that the self-certification was not adequately supported, a corrective action is to be included in their certification report to rectify the deficiency.

The FHWA's and FTA's Division and Regional Administrators should involve their respective civil rights staffs in the EJ and Title VI portions of the metropolitan planning certification reviews in TMAs and statewide planning findings.

Forthcoming Planning Regulations

As you know, FHWA and FTA are preparing to revise the planning (23 CFR 450 and 49 CFR 619) and environmental (23 CFR 771 and 49 CFR 622) regulations. In these rulemakings and subsequent documents, we will propose clarifications and appropriate procedural and analytical approaches for more completely complying with the provisions of Title VI and the Executive Order on Environmental Justice. Specifically, the proposals will focus on

public involvement strategies for minority and low-income groups and assessment of the distribution of benefits and adverse environmental impacts at both the plan and project level.

If you have questions on metropolitan applications of this memorandum, please contact Sheldon M. Edner, Team Leader, Metropolitan Planning and Policies, FHWA, (202) 366–4066; or Charlie Goodman, Division Chief, Metropolitan Planning, FTA (202) 366–1944. On statewide applications, please contact Dee Spann, Team Leader, Statewide Planning, FHWA; (202) 366–4086; or Paul Verchinski, Chief, Statewide Planning, FTA, (202) 366–1626.

Assessing Title VI Capability—Review Questions

September 1999

Discussion of these important issues will be held as part of planning certification reviews, and the discussion will be held as part of statewide planning findings that are made as part of Statewide Transportation Improvement Program (STIP) approval. These questions are offered as an aid to reviewing and verifying compliance with Title VI requirements:

1. Overall Strategies and Goals

• What strategies and efforts has the planning process developed for ensuring, demonstrating, and substantiating compliance with Title VI? What measures have been used to verify that the multi-modal system access and mobility performance improvements included in the plan and Transportation Improvement Program (TIP) or STIP, and the underlying planning process, comply with Title VI?

• Has the planning process developed a demographic profile of the metropolitan planning area or State that includes identification of the locations of socio-economic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions?

• Does the planning process seek to identify the needs of low-income and minority populations? Does the planning process seek to utilize demographic information to examine the distributions across these groups of the benefits and burdens of the transportation investments included in the plan and TIP (or STIP)? What methods are used to identify imbalances?

2. Service Equity

• Does the planning process have an analytical process in place for assessing the regional benefits and burdens of transportation system investments for different socio-economic groups? Does it have a data collection process to support the analysis effort? Does this analytical process seek to assess the benefit and impact distributions of the investments included in the plan and TIP (or STIP)?

• How does the planning process respond to the analyses produced? Imbalances identified?

3. Public Involvement

• Does the public involvement process have an identified strategy for engaging minority and low-income populations in transportation decisionmaking? What strategies, if any, have been implemented to reduce participation barriers for such populations? Has their effectiveness been evaluated?

• Has public involvement in the planning process been routinely evaluated as required by regulation? Have efforts been undertaken to improve performance, especially with regard to low-income and minority populations? Have organizations representing low-income and minority populations been consulted as part of this evaluation? Have their concerns been considered?

• What efforts have been made to engage low-income and minority populations in the certification review public outreach effort? Does the public outreach effort utilize media (such as print, television, radio, etc.) targeted to low-income or minority populations? What issues were raised, how are their concerns documented, and how do they reflect on the performance of the planning process in relation to Title VI requirements?

• What mechanisms are in place to ensure that issues and concerns raised by low-income and minority populations are appropriately considered in the decisionmaking process? Is there evidence that these concerns have been appropriately considered? Has the metropolitan planning organization (MPO) or State DOT made funds available to local organizations that represent low-income and minority populations to enable their participation in planning processes?

Guidance:

Assessing Title VI Capability—FTA/FHWA Actions

Environmental Justice in State Planning and Research (SPR) and Unified Planning Work Programs (UPWPs)

At a minimum, FHWA and FTA should review with States, MPOs, and transit operators how Title VI is addressed as part of their public involvement and plan development processes. Since there is likely to be the need for some upgrading of activity in this area, a work element to assess and develop improved strategies for reaching minority and low-income groups through public involvement efforts and to begin developing or enhancing analytical capability for assessing impact distributions should be considered in upcoming SPRs and UPWPs.

Review Public Involvement Efforts During Certification Reviews for Title VI Consistency

In many areas, room for improvement exists in public involvement processes regarding engagement of minority and low-income individuals. It is appropriate to review the extent to which MPOs and States have made proactive efforts to engage these groups through their public involvement programs. Further, FHWA and FTA should review the record of complaints or concerns raised regarding Title VI in the planning process under review. During the on-site element of the metropolitan certification review, the public involvement process, now required by statute, should make a special effort to engage and involve representatives of minority and low-income groups to hear their views regarding changes to and performance of the planning process.

Options for FHWA/FTA Metropolitan Certification Review Actions

(1) FHWA and FTA should seek to determine what, if any, processes are in place to assess the distribution of impacts on different socio-economic groups for the investments identified in the transportation plan and TIP. If the planning process has no such capability in place, there needs to be further investigation as to how the MPO is able to annually self-certify its compliance with the provisions of Title VI.

(2) If no documented process exists for assessing the distributional effects of the transportation investments in the region, the planning certification report should include a corrective action directing the development of a process for accomplishing this end. This will

serve to put the process on notice regarding existing requirements and prepare it for future regulatory requirements. If a minimal effort is in place, FHWA and FTA should encourage the planning process participants to become familiar with the provisions of the Executive Order on Environmental Justice and identify needed improvements based on the Order.

(3) If no formal evaluation of the public involvement process has been conducted per the requirement for periodic assessment (see 23 CFR 450.316(b)), a corrective action to conduct an evaluation should be included in the certification report. The formal evaluation should, at a minimum, assess the effectiveness of efforts to engage minority and low-income populations through the local public involvement process. If the MPO or State has conducted a public involvement evaluation, FHWA and FTA should determine whether the involvement of minorities and low-income individuals has been addressed and what strengths and deficiencies were identified. Recommended improvements or corrective actions for the certification report or STIP findings can be tied to the results of the MPO's or State's public involvement evaluation.

[FR Doc. 00–12590 Filed 5–18–00; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8885]

RIN 1545–AW55

The Solely for Voting Stock Requirement in Certain Corporate Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations relating to the solely for voting stock requirement in certain corporate reorganizations under section 368(a)(1)(C). The final regulations provide that a prior acquisition of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a ''C'' reorganization of the target corporation and the acquiring corporation from being satisfied. They affect persons engaging in certain transactions occurring after December 31, 1999.

DATES: *Effective Date:* These regulations are effective May 19, 2000.

Applicability Date: These regulations apply to transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter.

FOR FURTHER INFORMATION CONTACT: Marnie Rapaport, (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1999, the IRS and Treasury issued a notice of proposed rulemaking in the **Federal Register** (64 FR 31770) setting forth rules relating to the solely for voting stock requirement in reorganizations under section 368(a)(1)(C). The proposed regulations provided that prior ownership of stock of a target corporation by an acquiring corporation will not by itself prevent the solely for voting stock requirement of a ''C'' reorganization from being satisfied. The regulations propose to reverse the IRS's previous position that the acquisition of assets of a partially controlled subsidiary does not qualify as a tax-free ''C'' reorganization. See Rev. Rul. 54–396 (1954–2 C.B. 147). This position subsequently was sustained in litigation in *Bausch & Lomb Optical Co.* v. *Commissioner*, 267 F.2d 75 (2d Cir.), *cert. denied*, 361 U.S. 835 (1959) (the *Bausch & Lomb* doctrine). A public hearing regarding these proposed regulations was held on October 5, 1999. Written comments to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The Applicability Date

The proposed regulations apply to transactions occurring after the date that a Treasury decision adopting the regulations is published in the **Federal Register**, except that they do not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date that the regulations are published as final regulations in the **Federal Register**, and at all times thereafter.

A commentator requested that taxpayers be allowed to apply the proposed regulations to transactions occurring before the proposed regulations are published as final regulations.

The IRS and Treasury Department determined that the increased flexibility that results from the proposed regulations should be available to taxpayers in structuring transactions before their publication as final regulations. Accordingly, the IRS and the Treasury Department issued Notice 2000–1 (2000–2 I.R.B. 288), which changes the proposed effective date of the proposed regulations to apply to any transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement binding on that date. Notice 2000–1 further provides that the proposed regulations, when finalized, will adopt this effective date rule and that taxpayers may rely on Notice 2000–1 until final regulations are issued. Accordingly, the final regulations adopt this effective date rule.

Finally, Notice 2000–1 provides that taxpayers may request a private letter ruling permitting them to apply the final regulations to transactions occurring on or after June 11, 1999 (the date the proposed regulations were filed with the **Federal Register**) to which the final regulations would not otherwise apply, and for which there was not a written agreement (subject to customary conditions) binding on June 11, 1999 and at all times thereafter. The Notice cautions, however, that a private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes, with respect to the applicability of the final regulations to the transaction. Any such requests for a ruling will continue to be considered.

Extension of the Repeal of the Bausch & Lomb Doctrine to ''B'' Reorganizations

A comment was received requesting that the IRS reconsider its position in Rev. Rul. 69–294 (1969–1 C.B. 110), where the *Bausch & Lomb* doctrine was applied to disqualify a purported section 368(a)(1)(B) reorganization that followed a tax-free section 332 liquidation. In Rev. Rul. 69–294, X owned all of the stock of Y and Y owned 80 percent of the stock of Z. Y completely liquidated into X in a section 332 liquidation. As part of the plan, X (now owning 80 percent of the stock of Z) acquired the minority 20 percent stock interest in Z in exchange for X voting stock in a purported ''B'' reorganization. The ruling holds that the exchange with the 20 percent minority shareholders was not a ''B'' reorganization. The rationale is that although the acquisition from the

minority shareholders was ''solely for voting stock,'' the liquidation of Y, as part of the same plan, resulted in X acquiring 80 percent of the Z stock in exchange for Y stock surrendered back to Y on the liquidation of Y and not solely in exchange for X voting stock.

The commentator's suggestion is beyond the scope of this regulations project, which relates to ''C'' reorganizations. In light of these regulations, however, the IRS and Treasury Department may reconsider Rev. Rul. 69–294.

Effect on Other Documents

The following publication is obsolete as of January 1, 2000: Rev. Rul. 54–396 (1954–2 C.B. 147).

Special Analyses

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

Drafting Information: The principal author of these regulations is Marnie Rapaport of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.368–2 is amended by adding paragraph (d)(4) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(d) * * *

(4)(i) For purposes of paragraphs (d)(1) and (2)(ii) of this section, prior ownership of stock of the target corporation by an acquiring corporation will not by itself prevent the solely for voting stock requirement of such paragraphs from being satisfied. In a transaction in which the acquiring corporation has prior ownership of stock of the target corporation, the requirement of paragraph (d)(2)(ii) of this section is satisfied only if the sum of the money or other property that is distributed in pursuance of the plan of reorganization to the shareholders of the target corporation other than the acquiring corporation and to the creditors of the target corporation pursuant to section 361(b)(3), and all of the liabilities of the target corporation assumed by the acquiring corporation (including liabilities to which the properties of the target corporation are subject), does not exceed 20 percent of the value of all of the properties of the target corporation. If, in connection with a potential acquisition by an acquiring corporation of substantially all of a target corporation's properties, the acquiring corporation acquires the target corporation's stock for consideration other than the acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties), whether from a shareholder of the target corporation or the target corporation itself, such consideration is treated, for purposes of paragraphs (d)(1) and (2) of this section, as money or other property exchanged by the acquiring corporation for the target corporation's properties. Accordingly, the transaction will not qualify under section 368(a)(1)(C) unless, treating such consideration as money or other property, the requirements of section 368(a)(2)(B) and paragraph (d)(2)(ii) of this section are met. The determination of whether there has been an acquisition in connection with a potential reorganization under section 368(a)(1)(C) of a target corporation's stock for consideration other than an acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties) will be made on the basis of all of the facts and circumstances.

(ii) The following examples illustrate the principles of this paragraph (d)(4):

Example 1. Corporation P (P) holds 60 percent of the Corporation T (T) stock that P purchased several years ago in an unrelated transaction. T has 100 shares of stock outstanding. The other 40 percent of the T stock is owned by Corporation X (X), an unrelated corporation. T has properties with a fair market value of $110 and liabilities of $10. T transfers all of its properties to P. In exchange, P assumes the $10 of liabilities, and transfers to T $30 of P voting stock and $10 of cash. T distributes the P voting stock and $10 of cash to X and liquidates. The transaction satisfies the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because the sum of $10 of cash paid to X and the assumption by P of $10 of liabilities does not exceed 20% of the value of the properties of T.

Example 2. The facts are the same as in *Example 1* except that P purchased the 60 shares of T for $60 in cash in connection with the acquisition of T's assets. The transaction does not satisfy the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because P is treated as having acquired all of the T assets for consideration consisting of $70 of cash, $10 of liability assumption and $30 of P voting stock, and the sum of $70 of cash and the assumption by P of $10 of liabilities exceeds 20% of the value of the properties of T.

(iii) This paragraph (d)(4) applies to transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter.

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: May 9, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–12406 Filed 5–18–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Part 32

[USCG 1998–4443]

RIN 2115–AF65

Emergency Control Measures for Tank Barges

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule implements measures for maintaining or regaining control of a tank barge that will reduce the likelihood of a tank barge's

grounding and spilling its cargo. These measures are necessary because without them a tug that loses its tow lacks ready means for regaining control of it. They should increase the safety of marine transport and protect the environment.

DATES: This final rule is effective June 19, 2000 except for 33 CFR 155.230(b)(1) and 46 CFR 32.15–15(e), which are effective on December 11, 2000.

ADDRESSES: The Docket Management Facility maintains the public docket for this rulemaking. Unless otherwise indicated, documents mentioned in this preamble 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.

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, call Mr. Robert Spears, Project Manager, Office of Standards Evaluation and Development, telephone 202–267–1099; or Mr. Allen Penn, Technical Advisor, Office of Design and Engineering Standards, telephone 202–267–2997. For questions on viewing the docket, call Ms. Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202–366–9329.

Background and Purpose

On January 19, 1996, the tugboat SCANDIA, towing the oil barge NORTH CAPE, caught fire five miles off the coast of Rhode Island. The crew could not control the fire, and without power they were unable to prevent the barge, carrying 4 million gallons of oil, from grounding and spilling about a quarter of its contents into the coastal waters. The NORTH CAPE spill led Congress to add, in section 901 of the 1996 Coast Guard Authorization Act (Pub. L. 104–324), a new statute, 46 U.S.C. 3719. It directs the Secretary of Transportation to issue rules necessary to reduce oil spills from single-hull non-self-propelled tank vessels. On October 6, 1997, we published a notice of proposed rulemaking (NPRM) on safety of towing vessels and tank barges (62 FR 52057). With the interim rule we published on December 30, 1998 (63 FR 71754), we adjusted safety measures proposed in the NPRM. With this final rule, instead of requiring just one emergency control measure, we are requiring an anchoring system (on single-hull tank barges) plus one other (backup) measure.

Statutory Mandate

46 U.S.C. 3719 directs us to issue rules requiring a single-hull, non-self-propelled tank vessel (or the vessel towing it), operating in the open ocean or coastal waters, to have at least one of the three safety measures listed in the law. Under reasonably foreseeable sea conditions, without assistance, either the tank barge or the vessel towing it must have—

(1) A crewmember and an operable anchor on board the tank barge that together can stop the barge from drifting; and either

(2) An emergency system that will allow the retrieval of the barge by the towing vessel if the towline parts; or

(3) Another measure or combination of measures that the Coast Guard determines will provide protection against grounding of the tank vessel equivalent to that provided by the measure described in paragraph (1) or (2).

Another statute to reduce oil spills from single-hull tank barges, 46 U.S.C. 4102(f)(2), directs the Coast Guard to require the use of fire suppression systems and other measures for towing vessels. On October 19, 1999, we published an interim rule, Fire Protection Measures for Towing Vessels (USCG 1998–4445) that implements some of the fire protection measures we had proposed in the NPRM of October 6, 1997. A supplemental notice of proposed rulemaking will propose further measures in response to comments we received. Both statutes mandating new rules direct the Coast Guard to consult with the Towing Safety Advisory Committee (TSAC) in developing them. As we noted in the NPRM, we considered the recommendations of the TSAC and incorporated them as we deemed appropriate.

Regulatory Approach

In response to these statutory mandates, the Coast Guard proposed rules for fire protection and fire-fighting on towing vessels operating anywhere in U.S. waters, and rules for arresting and retrieving tank barges. This final rule applies to single-hull tank barges, as specified in 46 U.S.C. 3719. Rules in 33 CFR 155.230 before this rulemaking required emergency towing capability for both single-hull and double-hull barges operating outside the boundary line. So double-hull tank barges already satisfy 33 CFR 155.230 as amended by this rule. The rules for barge control require any single-hull tank barge or the vessel towing it on certain waters to have two of three emergency control systems, where one serves for anchoring the barge while one of the other two serves for arresting or retrieving it.

Discussion of Comments and Changes

The Coast Guard received a total of 23 documents containing 38 comments to the public docket of the interim rule on emergency control measures for tank barges. Of these comments, 11 concerned anchoring systems, 5 concerned the rule as applied, or not applied, to barges being pushed or towed alongside on limited routes, 12 concerned specific sections of 33 CFR Part 155, and the rest concerned general features of the proposed rule. We held a public meeting on May 12, 1999, at the Department of Transportation in Washington, D.C. This final rule addresses the comments from the meeting and all other comments noted above. The following paragraphs contain summaries of the comments and explanations of any changes made by this rule to the interim rule.

Anchoring Systems

Eleven comments received from companies, organizations, or individuals on the West Coast opposed the use of anchoring systems there. They offered many reasons to support some alternative means of maintaining control of barges along the West Coast; many cited the unsuitability of anchors as a means to control barges due to the lack of anchorage areas. The comments also cited the high costs to retrofit their barges, arguing that water depths on the West Coast drop off into significantly deeper water closer to shore than along the East Coast. Some comments reported that the heavy surge gear and bridle legs used in towing on the West Coast act as anchors in shallow water when they lie on the bottom; it is not uncommon for operators to use this equipment to ''anchor'' barges in sheltered areas until storms or dangerous seas subside. The Coast Guard acknowledges these comments and has changed the interim rule to give those operating barges on the West Coast the option of using the heavy surge gear and bridle legs in place of the anchoring systems otherwise required by this final rule. We do not extend this option to barges operating on the East Coast and the Gulf Coast, since the anchoring system required by the final rule is both feasible and effective in the shallower waters of those Coasts. Further, the heavy surge gear and bridle legs have not been shown to be an effective means of anchoring barges in those waters.

Application to Barges Pushed or Towed Alongside on Limited Routes

Five comments opposed applying this rule to barges not towed astern or barges towed on limited routes. The Coast Guard agrees with these comments and has changed the rule to exempt these specific kinds of towing.

Comments Relating to Specific Sections of the CFR

1. *33 CFR 155.230(b)(1)(i)(C).* One comment suggests letting the operator of the system consult either the master or mate regarding appropriate length of line, cable, or chain. The Coast Guard agrees with the comment and has changed this section of the rule by adding the mate as an alternative to the operator of the system.

2. *33 CFR 155.230(b)(1)(i)(D).* Three comments opposed requiring the operator of the system to wear a safety belt or harness secured by lanyard to a lifeline, a drop line, or a fixed structure. The Coast Guard partially agrees with these comments and has changed this section of the rule to recommend that the operator of the system wear a safety belt or harness only during rough seas or foul weather.

3. *33 CFR 155.230(b)(1)(iii).* One comment opposed requiring training all crewmembers on manned barges in the operation of the anchoring system. The Coast Guard disagrees. To avoid having to place a person on a barge for a genuinely emergent anchoring or retrieval, it is essential that every crewmember already on the barge know how to operate the anchoring system. Another comment suggests that the Coast Guard require exam questions or training to improve safety of anchoring. The Coast Guard partially agrees, yet has not changed the rule, since this section already requires crew training in anchoring.

4. *33 CFR 155.230(b)(2)(iv).* Seven comments opposed requiring drills that involve actually retrieving a drifting barge. They state that requiring such drills will place one or more crewmembers in danger and impose high costs of re-rigging the system. A related comment suggested a one-time training ''exercise'' for each master, and quarterly ''tabletop'' retrieval drills and gear inspection. The Coast Guard agrees with these comments and has changed the rule to require an annual barge-retrieval drill, and a drill not more than one month after the employment of the master or mate responsible for supervising retrieval. This requirement allows for methods other than actually retrieving a drifting barge to demonstrate each participant's ability to perform his or her part in regaining control of a barge.

General Comments

1. One comment opposed the applicability of this rule to the Strait of Juan de Fuca and parts of Puget Sound. It states that the open-ocean type swells that can cause towline failures are not common in the Strait, and that there are ample sheltered areas for vessels to wait for changes in unfavorable winds or tides. The Coast Guard does not agree with this comment; towline failures may occur in these waters, and this rule's measures may reduce the likelihood of tank barges grounding and spilling cargo there. We have not changed the applicability of this rule.

2. Two comments support the use of escort tugs in certain areas, such as ''sensitive'' waters. This issue is beyond the scope of this rulemaking.

3. Three comments opposed remote-control anchoring systems. This is outside the scope of this rule because it does not require such anchoring systems. However, one could propose the use of such a system, and seek Coast Guard approval for it.

4. Two comments suggest grandfathering existing anchoring systems on tank barges. This would allow existing systems to meet less stringent standards (ones other than those from the American Bureau of Shipping (ABS)). The Coast Guard partially agrees, and has changed the wording to require ''general conformity'' rather than ''substantial agreement'' with ABS (or another recognized class society's) standards. If a Coast Guard representative inspects your anchoring system you should indicate which standards you are using as guidance. The Coast Guard may decide to establish whether or not your anchoring system is in general conformity with that standard or another acceptable standard. We will inform you of any corrective action needed. We will review this practice after getting some experience with it and will modify it as necessary.

5. One comment requested the use of synthetic line, instead of chain or wire, as approved equipment for the anchoring system. The wording in this final rule calls for anchor systems to generally conform with standards from ABS (or another recognized class society). It does not prohibit the use of new system components that are found (by ABS or another recognized class society) to be comparable to accepted or approved equipment in widespread use. However, wire cable may substitute for chain under current applicable rules of ABS; there is no mention in those rules of line (natural or synthetic) as a suitable substitute for anchor chain. Since it is not addressed in ABS rules, synthetic line is not yet acceptable.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. However, it is significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]; because of public interest generated by the NPRM, it has been reviewed by the Office of the Secretary.

A Regulatory Assessment under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Assessment follows; unless otherwise indicated, the Assessment expresses costs and benefits in end-of-1998 values:

Summary of Benefits

Measures published in this rule should yield a net cost of $307 per barrel of oil not spilled. This preventive cost compares favorably, for example, with costs of property damage and actual restoration and cleanup (excluding intangibles and transfer costs such as fines, judgments resulting from litigation, and insurance benefits paid) incurred thus far as a result of the 20,000-barrel spill from the barge NORTH CAPE in January of 1996. The costs of that spill thus far total about $50.2 million, which averages about $2,550 per barrel spilled. This per-barrel cost for only one spill is nearly seven times the per-barrel costs of this rule to avert similar events industry-wide.

Table 1 illustrates the calculation of net cost-effectiveness from total quantifiable costs and benefits resulting from implementation of this rule. It normalizes the benefits into cost-effectiveness ratios to reflect the cost per unit of oil not spilled. Here's how: The total estimated dollar cost of this rule appears on Line (1); the total property damage averted, an avoided cost expressed in dollars, appears on Line (2) and is subtracted from total dollar costs to yield a net cost, which appears on Line (3); pollution averted, the principal benefit, which is expressed in barrels of oil not spilled, appears on Line (4); and the net cost from Line (3), divided by the pollution-averted benefit from Line (4) to yield an expression of cost-

effectiveness shown in units of net discounted dollars per discounted barrels of oil not spilled, appears on the bottom line. This procedure permits us to treat benefits from avoidance of pollution and property damage together in terms of net cost-effectiveness.

TABLE 1.—CONTROL MEASURES FOR TANK BARGES (BARGE ANCHORING AND RETRIEVAL): COST EFFECTIVENESS EXPRESSED IN DOLLARS PER BARREL OF OIL NOT SPILLED

Type of benefits & costs	Quantity	Units
(1) Cost of this rule	8,803,031	Dollars (PV).
(2) *Property damage-averted* [1]	*5,667,792*	*Dollars (PV).*
(3) (1) minus (2) Net cost	3,135,239	Dollars (PV).
(4) *Pollution averted* [2]	*10,205*	*Barrels of oil unspilled (PV).*
(3)÷(4) **Net cost effectiveness**	**307**	**Dollars per barrel unspilled.**

Note: benefits, shown on lines (2) and (4), are italicized. Net cost effectiveness is shown in bold.
[1] Damage to vessels and equipment.
[2] Oil not spilled overboard into bodies of water.

The principal benefit of this rule is protection against oil spillage and property damage that may result when a tow line to a tank barge parts or the towing vessel otherwise loses control over the tank barge, permitting it to run aground. Quantifiable benefits accrue from averted pollution measured in barrels of oil not spilled and in averted damage to property such as vessels and machinery, measured in dollars. The latter is an avoided cost. During 1999–2014 inclusive, this rule will avert 10,205 barrels of oil spillage and $5.7 million of property damage.

To construct the benefits analysis, the Coast Guard used data from its Marine Safety Information System (MSIS) and underlying reports to provide a reasonable approximation for modeling marine casualties and pollution incidents. The model postulates that, if requirements in this rule were not enacted, the normalized frequency and severity of pollution and damage due to towline ruptures would continue at about the same magnitude as during a representative five-year base period, which the Coast Guard identified as 1992–1996. This period captures the maritime environment after the Oil Pollution Act (OPA 90); the Coast Guard considers the period long enough to capture a representative history, while short enough to be reasonably current. Reports for 1992–96 are largely complete. (We considered using 1992–1997, but rejected it because report histories for 1997 remain open and we consider them too preliminary to present a fair sample.)

The analysis recognized that a range of variables extant in the marine interface of people, vessels, machines, and the sea may result in the occurrence of some of the casualties targeted by this rule after it is in force. Accordingly, the Coast Guard assembled an analytical team comprised of marine inspectors, program analysts, and economists, who reviewed data and individual case files and who obtained consultations from a range of subject-matter experts. This team proceeded through a multi-step risk assessment that considered the combined and interactive effects of this rule and several related rules that are in effect or mandated by law for completion in the near future. The analysis yielded a probability of 32 percent that installed and working powered anchoring-systems and emergency-retrieval devices on the affected tank barges, both single-hull and double-hull vessels, would have prevented or mitigated pollution and property damage resulting from that particular casualty.

The benefits analysis uses the phase-out of tank-barge capacity due under OPA 90 as a proxy for the reduction of exposure and spill potential, an innovation that helped to guard against the overstatement of benefits, since, during 1998–2014 and before the final phase-out of all single-hull tank barges, single-hull tank barge capacity, which represents the segment of industry primarily affected by this rule, will likely decrease at a much sharper rate than will the actual count of available in-service single-hull tank barges. This is because the phase-out favors longevity for the smallest single-hull tank barges.

We used the phase-out schedule and probabilities of effectiveness to weigh capacity, and used this in turn to calculate the benefits and avoided costs. In addition, we reflated the avoided costs—averted dollar damages to property such as vessels and machinery—from base-period calculations to end-of-1998 values, by relying on an adjustment factor based on a Consumer Price Index.

The Coast Guard considered several non-quantifiable benefits. No injuries, deaths, or missing persons turned up in casualty reports for the base period. However, the types of casualties addressed in this rule, particularly ones that occur in inclement weather, are inherently dangerous; a future casualty of the kind that this rule will mitigate could otherwise result in some deaths and injuries. Further, while the pool of oil-pollution benefit analyzed in the assessment of this rule totaled slightly less than 39,000 barrels of oil during the base period, the upper bound of oil at risk in those casualties—the total cargo of oil aboard affected tank barges when accidents occurred—exceeded 180,000 barrels. Future casualties of the kind that this rule will mitigate could otherwise result in far more serious spills than this regulatory assessment indicates.

Summary of Costs

Firms running tank barges, along with a few State and local governments, will incur costs primarily to purchase, install, and maintain powered anchoring systems and owners' and operators' choices among retrieval systems on certain tank barges, and in some instances, on towing vessels. The Coast Guard will incur modest incremental inspection costs. Costs of this rule will total $8.8 million. We subtracted avoided costs from total costs to yield a $3.1 million net cost.

Where we adjusted benefit calculations to reflect phase-out of tank-barge capacity due under OPA 90 to approximate both declining exposure and declining potential for volume of spills, we also adjusted cost calculations to accommodate the phase-out of hulls instead of volume. We did this because we quantify the purchase, installation, and maintenance of equipment required by this rule hull by hull.

Purchase and installation costs accrue to owners and operators of tank barges

and their towboats between 90 days and two years after the publication of the interim rule [63 FR 71754 (December 30, 1998)]. They should total between $7.93 million and $7.98 million. Fleet-wide, costs for purchase and installation of powered anchoring systems will total $7.82 million, 98 percent of the total; and, fleet-wide, costs for retrieval systems will range between $112,000 and $157,000, depending on how individual owners and operators weigh the lower initial investment required for powered anchoring systems against the lower maintenance costs for retrieval systems using hooks. A sensitivity analysis contained in the regulatory assessment showed that a typical decision, if made on an economic basis, will depend on the particular deal that the owner or operator can drive and the remaining life of the barge. Beyond all those, qualitative decision factors include not only availability of up-front capital but personal or corporate preferences.

Recurring costs to industry comprise maintenance, repair, and, in some cases, replacement of components. The present value of these costs total about $751,000 for powered anchoring systems, and range between $49,000 for retrieval systems using hooks and $117,000 powered anchoring systems. Recurring incremental costs borne by the Coast Guard for inspections and law enforcement should total about $4,500 at present value.

Double-hull tank barges are already in compliance with this rule as a result of their satisfying 33 CFR 155.230 before this rulemaking. This rule should affect up to 180 single-hull tank barges operating on open oceans or in coastal waters. We believe that many of these barges are already in compliance. The costs that we report account for our estimates that, of the 180 barges, 97 will need to install powered anchoring systems and 24 barges or towing vessels will need to install retrieval systems. The Coast Guard does not expect economic abandonment of any barges on account of this rule. The per-barge costs are relatively low, and the first phase-out among the affected tank barges does not occur until January 1, 2004. The two-year phase-in for the more costly powered anchoring systems obviates the need for an extra, out-of-cycle dry-dock period for the installation. Most tank barges incurring new costs as a result of this rule are eligible to remain in service until 2015.

Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership

The Unfunded Mandates Reform Act of 1995 (UMRA) [2 U.S.C. 1531–1538] and E.O. 12875, Enhancing the Intergovernmental Partnership [58 FR 58093, (October 28, 1993)], govern the issuance of Federal rules that require unfunded mandates. An unfunded mandate is a requirement that a State, local, or tribal government or the private sector incur direct costs without the Federal Government's having first provided the funds to pay those costs. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, an analysis under the UMRA is necessary.

While several State and local governments operate some tank barges, entities in the private sector own and operate most of the affected barges. This final rule will not directly affect tribal governments. The total burden of Federal mandates imposed by this rule is about $8.8 million and will not result in annual expenditures of $100 million or more. Therefore, this rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. ''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 of less than 50,000.

An analysis of impacts on small entities for this final rule appears in the regulatory assessment; it is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Double-hull tank barges are already in compliance with this rule's requirements for equipment by virtue of their compliance with 33 CFR 155.230 before the interim rule on emergency control measures became effective. That section required an emergency towline, the most common form of barge-retrieval system, on any oil barge operating offshore. The requirements of this rule for anchoring systems apply only to single-hull barges. Further, most towing vessels are now in voluntary compliance with requirements, or their owners may choose an option that shifts requirements to a few barges that are not now in voluntary compliance. As a result, most towing vessels should not incur compliance costs.

The impact of this rule will fall primarily on single-hull tank barges and, perhaps, several towing vessels. The rule will require: (1) Owners and operators of single-hull tank barges that do not already have emergency anchoring systems to purchase and install them; (2) owners and operators of vessels towing tank barges, regardless of size, to purchase and carry emergency retrieval systems if they do not already have them; and (3) masters of towing vessels to learn, and train crews, to deploy anchors and operate retrieval systems. Owners and operators of tank barges and towing vessels are responsible for both inspecting their systems and maintaining them in good working order. The purpose is to decrease the probability of barge breakaways and of the oil spillage, pollution, and property damage that could result.

The Coast Guard established a two-year phase-in period for the requirements of anchoring systems. Although the Coast Guard received no comments concerning small entities, we recognize that some of the single-hull tank barges are likely owned and operated by small firms not dominant in the industry. Barges affected by this rule must undergo two drydock inspections in five years, no more than three years apart. The two-year phase-in permits barges to undergo the installation of a powered anchoring system during normal yard availability. So they may both avoid incurring the extra cost of a third drydocking during a five-year period and avoid incurring the opportunity costs of lost revenue during a third drydocking. The long phase-in will thus permit most small entities to explore the market, plan, and schedule

installations during normal yard availability. It reduces the pressure for small entities to compete with major operators for this availability.

Small owners and operators of single-hull tank barges do incur costs from the phase-out mandated by OPA 90. However, we believe that smaller barges affected by this rule are the very ones likeliest to be owned by small owners and operators, many of whom will have the opportunity to amortize purchase and installation costs associated with this rule through the end of the year 2014. The 146 relatively small barges among the 180 barges directly affected by this rule may remain in service until January 1, 2015, the end of the phase-out period: the last vessels to be phased out under OPA 90.

The equipment required by this rule is in common use in the industry and does not represent novel or untried technology. Some small entities, no doubt, are among the majority of owners and operators who already meet some or all of the requirements. Others will incur a financial burden under this rule, those who must purchase and install equipment. But the costs are fairly low in comparison with the replacement cost of a tank barge, very low in comparison with the replacement cost of a towing vessel, and extremely low in comparison with the damage that could be caused by, and the liability that could result from, an accident and resultant spill.

The crafting of this rule so that many affected vessels are already in compliance, and the two-year phase-in period for installation of retrievable anchoring systems, together provide important accommodations to, and significant flexibility for, small entities and others affected by this rule.

Accordingly, we certify under section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so they can better evaluate its effects on them and participate in the rulemaking. If this rule affects your small business or organization and you have questions concerning its provisions or options for compliance, please call Mr. Robert Spears, telephone 202–267–1099.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate this enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

Impact on Federalism

This final rule revises the regulations at 33 CFR 155.230 addressing equipment, equipment operation, maintenance, manning, and training (personnel qualification) for tank barges and the vessels towing them. It also revises those regulations at 46 CFR 32.15–15 that address equipment for tank barges. We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order (E.O.) 13132. It is well settled that States are preempted from establishing any requirements for tank vessels and the vessels that tow them in the categories of design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning. See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke* _____ U.S. _____, 2000 U.S. LEXIS 1895 (March 6, 2000). Thus, this entire rule falls within preempted categories. Because States may not promulgate regulations within the categories discussed above, preemption is not an issue under E.O. 13132.

The NPRM and an effective interim rule for this rulemaking were issued before the E.O. went into effect. However, we are aware that this is a national rule of great interest to coastal States. As a result, we provided States and the public ample opportunity to consult and comment during the comment periods and public meetings first for the NPRM and also following the publication of the interim rule that was in place before promulgation of this final rule. We have considered their comments on this rulemaking—whether received through consultation, letters to the docket, or public meetings—and believe that we have accommodated their concerns.

Barges Carrying Non-Petroleum Oil

The Edible Oil Regulatory Reform Act [Pub. L. 104–55, 109 Stat. 546–547 (1995)] requires federal agencies to differentiate between classes of oils and consider different treatment of these classes, if appropriate. The Coast Guard has determined that bulk spills of animal fat, vegetable oil, and other non-petroleum oil can be damaging to the environment; therefore, tank barges carrying these products must comply with this final rule.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraphs (34)(c) and (d) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 155 and 46 CFR part 32, as follows:

33 CFR PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 and the note following it continue to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703, 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii).

Sections 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials appear in 46 CFR parts 30 through 36, 150, 151, and 153.

2. Revise § 155.230 to read as follows:

§ 155.230 Emergency control systems for tank barges.

(a) *Application.* This section does not apply to foreign vessels engaged in innocent passage (that is, neither entering nor leaving a U.S. port); it applies to tank barges and vessels towing them on the following waters:

(1) On the territorial sea of the U.S. [as defined in Presidential Proclamation 5928 of December 27, 1988, it is the belt of waters 12 nautical miles wide with its shoreward boundary the baseline of the territorial sea], unless—

(i) The barge is being pushed ahead of, or towed alongside, the towing vessel; and

(ii) The barge's coastwise route is restricted, on its certificate of inspection (COI), so the barge may operate ''in fair weather only, within 20 miles of shore,'' or with words to that effect. The Officer in Charge, Marine Inspection, may define ''fair weather'' on the COI.

(2) In Great Lakes service unless—

(i) The barge is being pushed ahead of, or towed alongside, the towing vessel; and

(ii) The barge's route is restricted, on its certificate of inspection (COI), so the barge may operate ''in fair weather only, within 5 miles of a harbor,'' or with words to that effect. The Officer in Charge, Marine Inspection, may define ''fair weather'' on the COI.

(3) On Long Island Sound. For the purposes of this section, Long Island Sound comprises the waters between the baseline of the territorial sea on the eastern end (from Watch Hill Point, Rhode Island, to Montauk Point, Long Island) and a line drawn north and south from Premium Point, New York (about 40°54.5′N, 73°45.5′W), to Hewlett Point, Long Island (about 40°50.5′N, 73°45.3′W), on the western end.

(4) In the Strait of Juan de Fuca.

(5) On the waters of Admiralty Inlet north of Marrowstone Point (approximately 48°06′N, 122°41′W).

(b) *Safety program.* If you are the owner or operator of a single-hull tank barge or of a vessel towing it, you must adequately man and equip either the barge or the vessel towing it so the crew can arrest the barge by employing *Measure 1,* described in paragraph (b)(1) of this section. Moreover, the crew must be able to arrest or retrieve the barge by employing either *Measure 2* or *Measure 3,* described in paragraphs (b)(2) and (3) of this section, respectively. If you are the owner or operator of a double-hull tank barge, you must adequately equip it and train its crew or, if it is unmanned, train the crew of the vessel towing it, so the crew can retrieve the barge by employing *Measure 2* described in paragraph (b)(2) of this section.

(1) *Measure 1.* Each single-hull tank barge, whether manned or unmanned, must be equipped with an operable anchoring system that conforms to 46 CFR 32.15–15; except that, for barges operating only on the West Coast of the U.S., a system comprising heavy surge gear and bridle legs may serve instead of the anchoring system. Because these systems will also serve as emergency control systems, the owner or operator must ensure that they meet the following criteria:

(i) *Operation and performance.* When the barge is underway—

(A) The system is ready for immediate use;

(B) No more than two crewmembers are needed to operate the system and anchor the barge or arrest its movement;

(C) While preparing to anchor the barge or arrest its movement, the operator of the system should confer with the master or mate of the towing vessel regarding appropriate length of cable or chain to use; and

(D) Each operator of the system should wear a safety belt or harness secured by a lanyard to a lifeline, drop line, or fixed structure such as a welded padeye, if the sea or the weather warrants this precaution. Each safety belt, harness, lanyard, lifeline, and drop line must meet the specifications of ANSI A10.14.

(ii) *Maintenance and inspections.* The owner or operator of the system shall inspect it annually. The inspection must verify that the system is ready for immediate use, and must include a visual inspection of the equipment that comprises the system in accordance with the manufacturer's recommendations. The inspection must also verify that the system is being maintained in accordance with the manufacturer's recommendations. The inspection need not include actual demonstration of the operation of the equipment or system.

(iii) *Training.* On each manned barge, every crewmember must be thoroughly familiar with the operation of the system. On each vessel towing an unmanned barge, every deck crewmember must be thoroughly familiar with the operation of the system installed on the barge. If during the last 12 months the system was not used to anchor or arrest the movement of the barge, then a drill on the use of the system must be conducted within the next month. The drill need not involve actual deployment of the system. However, it must allow every participant to demonstrate the competencies (that is, the knowledge, skills, and abilities) needed to ensure that everyone assigned a duty in anchoring or arresting the movement of the barge is ready to do his or her duty.

(2) *Measure 2.* If you are the owner or operator of a tank barge or a vessel towing it and this section applies to you by virtue of paragraph (a) of this section, you must have installed an emergency retrieval system or some other measure acceptable to the Coast Guard, as provided in paragraph (b)(3) of this section. Any such system must meet the following criteria:

(i) *Design.* The system must use an emergency towline with *at least* the same pulling strength as required of the primary towline. The emergency towline must be readily available on either the barge or the vessel towing it. The towing vessel must have on board equipment to regain control of the barge and continue towing (using the emergency towline), without having to place personnel on board the barge.

(ii) *Operation and performance.* The system must use a stowage arrangement that ensures the readiness of the emergency towline and the availability of all retrieval equipment for immediate use in an emergency whenever the barge is being towed astern.

(iii) *Maintenance and inspection.* The owner or operator of the system shall inspect it annually. The inspection must verify that the emergency retrieval system is ready for immediate use, and must include a visual inspection of the equipment that comprises the system in accordance with the manufacturer's recommendations. The inspection must also verify that the system is being maintained in accordance with the manufacturer's recommendations. The inspection need not include actual demonstration of the operation of the equipment or system. Details concerning maintenance of towlines appear in 33 CFR 164.74(a)(3) and Navigation and Vessel Inspection Circular (NVIC) No. 5–92. Our NVICs are available online at http://www.uscg.mil/hq/g-m/nvic/index.htm.

(iv) *Training.* Barge-retrieval drills must take place annually, and not more than one month after a master or mate responsible for supervising barge retrieval begins employment on a vessel that tows tank barges.

(A) Each drill must allow every participant to demonstrate the competencies (that is, the knowledge, skills, and abilities) needed to ensure that everyone assigned a duty in barge retrieval is ready to do his or her part to regain control of a drifting barge.

(B) If the drill includes actual operation of a retrieval system, it must be conducted under the supervision of the master or mate responsible for retrieval, and preferably in open waters free from navigational hazards so as to minimize risk to personnel and the environment.

(3) *Measure 3.* If you are the owner or operator of a tank barge or a vessel towing it and this section applies to you by virtue of paragraph (a) of this section,

you may use an alternative measure or system fit for retrieving a barge or arresting its movement as a substitute for Measure 2, described in paragraph (b)(2) of this section. Before you use such a measure or system, however, it must receive the approval of the Commandant (G–MSE). It will receive this approval if it provides protection against grounding of the tank vessel comparable to that provided by one of the other two measures described in this section.

46 CFR PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIRMENTS

3. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

4. In § 32.15–15, revise paragraph (e) to read as follows:

§ 32.15–15 Anchors, Chains, and Hawsers-TB/ALL.

* * * * *

(e) *Barges Equipped with Anchors to Comply with 33 CFR 155.230(b)(1).* Each barge equipped with an anchor, to comply with 33 CFR 155.230(b)(1), must be fitted with an operable anchoring system that includes a cable or chain, and a winch or windlass. All components of the system must be in general conformity with the standards issued by a recognized classification society. A list of recognized classification societies, including information for ordering copies of approved standards, is available from Commandant (G–MSE), 2100 Second Street SW, Washington, DC 20593–0001; telephone (202) 267–6925 or fax (202) 267–4816. If the Coast Guard finds that your anchoring system is not in general conformity with an approved standard, it will advise you how to bring it into such conformity.

* * * * *

Dated: May 8, 2000.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 00–12570 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–00–013]

RIN 2115–AA97

Safety Zone; Atlantic Ocean, Virginia Beach, VA.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Virginia Beach fireworks displays, north of the Virginia Beach Fishing Pier, in the Atlantic Ocean. This action will restrict vessel traffic on the Atlantic Ocean within a 2500-foot radius of a fireworks laden barge. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

DATES: This rule is effective from May 20, 2000 through July 4, 2000.

ADDRESSES: Comments must be received by June 15, 2000. You may mail comments and related material to USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia, or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–00–013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing an NPRM. We were not notified of these events until May 5, 2000. There was insufficient time to publish an NPRM, allow for comments, and publish a final rule in sufficient time to allow notice to the public for the fireworks displays taking place prior to July 4, 2000. In previous years, these and similar events have been held without incident and without comment from the public regarding the Coast Guard's establishment of limited safety zones around barges engaged in launching fireworks. An NPRM will be published for those Virginia Beach fireworks displays taking place after July 4, 2000 of which we have been notified.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Most of these events will take place within 30 days of the publication of this rule. Delaying the effective date of the regulation would be contrary to the public interest because immediate action is needed to protect the mariners and spectators from the hazards associated with the fireworks display.

Background and Purpose

The Coast Guard is establishing a temporary safety zone for the Virginia Beach fireworks displays north of the Virginia Beach Fishing Pier, in the Atlantic Ocean. The safety zone will restrict vessel traffic within a 2500-foot radius of a fireworks laden barge in approximate position 36°50.75′ north and 076°58.40′ west. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone will be enforced from 9 p.m. until 11 p.m. on May 20, 2000; May 27, 2000—rain date May 28, 2000; June 4, 2000—rain date June 10, 2000; June 11, 2000—rain date June 17, 2000; June 18, 2000—rain date June 24, 2000; June 25, 2000—rain date July 1, 2000; and July 4, 2000.

Additional public notifications will be made prior to the event via marine information broadcasts.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This temporary final rule only affects a limited area for two hours/event, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DOT is unnecessary.

Small Entities

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

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

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Atlantic Ocean off Virginia Beach, Virginia within a 2500-foot radius of a fireworks laden barge located in approximate position 36°50.75′ north and 076°58.40′ west.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This temporary final rule only affects a limited area for two hours/event, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the federal government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This regulation will have no impact on the environment.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T05–013 to read as follows:

§ 165.T05–013 Safety Zone; Atlantic Ocean, Virginia Beach, VA.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean, north of the Virginia Beach Fishing Pier, within a 2500-foot radius of a fireworks laden barge in approximate position 36°50.75″ north and 076°58.40″ west

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first receive authorization from the Captain of the Port. The Coast Guard representative enforcing the safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by marine information broadcast on VHF marine band radio, channel 22 (157.1 MHz).

(d) *Dates.* This section applies from 9 p.m. until 11 p.m. on the following dates:

(1) May 20, 2000.

(2) May 27, 2000—rain date May 28, 2000.

(3) June 4, 2000—rain date June 10, 2000.

(4) June 11, 2000—rain date June 17, 2000.

(5) June 18, 2000—rain date June 24, 2000.

(6) June 25, 2000—rain date July 1, 2000.

(7) July 4, 2000.

Dated: May 12, 2000.

J. E. Schrinner,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 00–12640 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Preparation Changes for Palletized Standard Mail (A) and Bound Printed Matter and for Standard Mail (A) and Standard Mail (B) Claimed at DBMC Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service requiring mailers to utilize one Labeling List (L605) for palletized mailings of Standard Mail (A) packages of flats, letter trays, and sacks prepared on pallets, regardless of whether the mail is prepared for entry at destination bulk mail center (DBMC) rates; to require mailers to utilize Labeling List L605 for Standard Mail (A) and Standard Mail (B) machinable parcels prepared in sacks or on pallets for pieces claimed at DBMC rates; to implement package reallocation between auxiliary service facilities (ASFs) and BMCs for Standard Mail (A) packages of flats placed on pallets; and to utilize Labeling List L605 for the preparation of all Standard Mail (B) that is claimed at DBMC rates and for Bound Printed Matter other than machinable parcels prepared on pallets.

DATES: *Effective date:* October 15, 2000. Compliance is optional as of October 15, 2000. Compliance will be required early January 2001 on a date to be announced in the **Federal Register** that coincides with implementation of the R2000 omnibus rate case.

FOR FURTHER INFORMATION CONTACT: Karen A. Magazino, (202) 268–3854 or Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: On January 4, 2000, the Postal Service published for public comment in the **Federal Register** a proposed rule (65 FR 264–270) to allow offshore mail to ride along on DBMC pallets (or in sacks of machinable parcels) drop shipped to destination BMCs.

In addition, the document also proposed requiring mailers to use Labeling List L605 for all Standard Mail (A) flats, letter trays, and sacks prepared on pallets, regardless of where the mail is deposited or the rates are claimed. L605 currently is used for BMC and Origin BMC (OBMC) Presort of nonmachinable Parcel Post discounts. L605 delineates the ASF service areas and also includes the ZIP Codes for the offshore destinations within their respective BMC service areas. With this final rule, the offshore mail will ''ride along'' with the mail that is eligible for DBMC rate but will not be eligible for the DBMC discount. The benefit is that offshore mail will bypass the origin BMC and should receive better service. The three BMCs that presently service offshore destinations (New Jersey, San Francisco, and Seattle) already are receiving BMC service area pallets and sacks that contain offshore mail prepared using Labeling List L601. Therefore, the addition of offshore mail to these DBMC containers should have no negative impact.

Requiring the use of Labeling List L605 for all Standard Mail (A) flats, letter trays, and sacks prepared on pallets regardless of whether DBMC rates are claimed also will ensure that the eight ASFs always are included in the presort logic hierarchy and that ASF pallets are prepared when the volume warrants.

Labeling List L601 will be retained and will continue to be applicable for Standard Mail (A) and Standard Mail (B) machinable parcels, except when DBMC rates are claimed for such mail deposited at ASFs.

Current Labeling List L602, which contains the ZIP Code ranges for DBMC rate eligibility, will be deleted from the DMM. This information will appear, instead, in DMM Module E. This Final Rule does change current standards for DBMC rate eligibility. However, DMM E651.5.0 has been revised to reorganize and clarify eligibility requirements for Standard Mail (A) DBMC discounts.

Package Reallocation To Protect the BMC Pallet

To ensure that the creation of an ASF pallet does not take away from BMC pallets, the Postal Service will allow protection of the BMC pallet through the optional use of package reallocation between a ''child'' ASF and the ''parent'' BMC pallet. Package reallocation for protecting a BMC pallet is similar to the option implemented on July 29, 1999, for protecting the SCF pallet. In protecting a BMC pallet, any amount of mail necessary to achieve the minimum BMC pallet weight could be reallocated from one ASF pallet and the ASF pallet could be eliminated if necessary. Mailers who choose to utilize package reallocation to protect the BMC pallet must use PAVE-certified presort software.

Utilization of Labeling Lists L601 and L605 for Preparation of Standard Mail (B)

Rather than sorting to L601, palletized Bound Printed Matter (other than machinable parcels) will be required to be prepared using L605 for sortation of mail to both BMC and ASF pallets. L601 will continue to be used for sortation of Bound Printed Matter machinable parcels both in sacks and on pallets.

The elimination of Labeling List L602 affects Parcel Post (Parcel Select) claimed at DBMC rates. Rather than using L602 for both DBMC rate eligibility and mail preparation, Parcel Post (Parcel Select) mailers claiming DBMC rates must sort to and deposit mail at a BMC or ASF using L605. However, eligibility for the DBMC rates (which does not change) will be determined using new DMM Exhibit E652.1.3d. For Parcel Post (Parcel Select) machinable parcels, mailers claiming the DBMC rates may continue the current practice of opting to sort mail using L601 (BMC sortation only) under the condition that mail for 3-digit ZIP Codes served by an ASF in Exhibit E652.1.3d is not eligible for DBMC rates, nor is mail for 3-digit ZIP Codes that do not appear on Exhibit E652.1.3d.

L605 will continue to be used for BMC Presort and OBMC Presort mailings of nonmachinable Parcel Post. L601 will continue to be required for machinable parcels claiming BMC Presort and OBMC Presort rates.

Summary of Comments From the Proposed Rule

The Postal Service received three pieces of correspondence commenting on the Proposed Rule. Respondents included one mailer and two direct marketing companies.

The specific points raised in the comments are presented below, organized by general comments and by specific comments on particular issues. In addition to receiving these comments from the mailing industry, the Postal Service has had extensive ongoing exchanges of viewpoints with representatives of the mailing industry and software vendors. This cooperative effort has led to the development of revised standards that the Postal Service believes strikes a better balance between the interests of the mailers and those of the Postal Service.

1. General Comments

Two comments were received indicating that the elimination of L602 will create a positive effect in the data processing area by using one labeling list for packages of flats, letter trays, and sacks prepared on pallets. Commenters further explained that it is better to use one list for identifying where the mail is going independent of the drop shipment process. One mailer asked if the elimination of L602 was required to implement this rule. The elimination of L602 is necessary because mail for offshore destinations is not entitled to

the DBMC rate, these ZIPS are not included in L602, and mail for offshore destinations currently cannot be placed on DBMC pallets. Furthermore, when a mailer is sorting a list for entry at DBMC rates using this list, the offshore mail will be entered at the origin BMC and must be processed at the origin BMC and transported through the postal network to the destinating BMC that serves the offshore ZIP Codes. In addition, the offshore mail is frequently placed in sacks because it cannot be placed on DBMC pallets.

One commenter indicated that the creation of the ASF pallet, when volume warrants regardless of whether or not the mail is prepared for entry at the DBMC rates, should have a positive effect on their manufacturing area. Currently, if mail is prepared for DBMC rates and drop shipment is not utilized, then the pallet label must be changed to the appropriate BMC destination. Under this final rule, this would not happen and labor costs could be saved.

2. Eligibility of Offshore Destination Mail for the DBMC Discount

Two comments were received from direct marketing companies proposing that the offshore destinations that ''ride-along'' with the DBMC mail be eligible for the DBMC discount. The commenters also indicated that their customers would be paying freight costs to move these pieces, and will be preparing mail to enter the postal system further into the process, but will not be compensated by receiving the DBMC discount. The Postal Service cannot extend the DBMC discount for offshore destinations. The Postal Service needs the rates to fully reflect the true processing costs when offering a discount. This mail is unusual in its origin-destination characteristics and does not necessarily comply with the existing destination entry discount structure. The Postal Service still incurs significant transportation costs while moving the mail to the offshore destinations. In addition, the Postal Service does not want to discourage mailers from taking advantage of the DSCF discounts that are available. Sectional center facility mail entered at these offshore destinations might revert to DBMC entry if the DBMC discount was offered.

3. No Discounts for ASF Mail on BMC Pallets

One commenter was concerned that a discount does not exist for ASF mail on BMC pallets. If the discount requirements were more clearly documented, drop ship mailers could evaluate the costs and benefits of paying transportation costs for the ASF mail. The Postal Service would like to emphasize that the eligibility of ASF mail to qualify for the DBMC discount has not changed. ASF pallets are allowed and required only if the DBMC rate is claimed for mail deposited at the ASF. The significant change resulting from this final rule is that DMM E651 Exhibit 5.1 and DMM E652 Exhibit 1.3 will be used to determine eligibility, not Labeling List L602. If packages of flats on pallets are reallocated from an ASF pallet to a BMC pallet under M045.6.0, mail for the ASF ZIP Codes placed on the BMC pallet are not eligible for the DBMC rates.

4. Machine-Readable List for Section E and the Parent/Child BMC/ASF Table

One commenter stated that if L602 (which lists the ZIP Codes entitled to the DBMC discount) is moved from module L to module E, then the Postal Service must still provide a machine-readable list of these ZIP Codes. This commenter maintains if this list is not provided in machine-readable form, then the authors of computer presort and entry point analysis software, such as PAVE-certified software and Mail.dat application software, would each be required to key in updates by hand from a hard-copy printed list. Manual updates also could create an unacceptable amount of redundant work and would create an environment prone to numerous errors. This commenter also stated the Parent/Child BMC/ASF table should be made available in machine-readable form because the proposed changes for the protected BMC pallets will make this information increasingly important to authors of PAVE-certified and Mail.dat application software. The Postal Service has had extensive ongoing discussions with representatives from the USPS National Customer Support Service center and Distribution Networks at USPS headquarters. To address this concern the Postal Service will provide an electronic product to mailers of the Parent/Child table and the new Module E eligibility tables. The Postal Service believes that this effort strikes a better balance between the interests of the mailers and their concerns and the needs of the Postal Service to provide high quality service and optimize operational efficiency.

5. Package Reallocation

One commenter emphasized that the package reallocation options should be clearly stated. To clarify the package reallocation option, the Postal Service will review the DMM language for clarification purposes. In addition, a new Quick Service Guide will be designed to demonstrate the standards for package reallocation, protecting the SCF or BMC pallet level. Package reallocation will remain optional and if performed must be done for the complete mailing job using PAVE-certified software.

6. Lead Time for Software Vendors

One commenter indicated that the lead time for software changes should be factored into the implementation schedule. For the required elements, the Postal Service met with the software vendors and mailers to discuss this concern. Based on the comments received the Postal Service has determined to place all the provisions of this final rule into effect on an optional basis on October 15, 2000. The required provisions of this final rule will be required on the same date that new rules are implemented for the R–00 Omnibus Rate Case (expected in January 2001). Mail presented on and after that effective date must be prepared in accordance with the required provisions of this Final Rule. Generally, requests for exceptions to these required preparation standards on or after the implementation date will not be honored if the reason for the request is that software was not available to mailers in time to prepare the mailings. It is expected that this phased implementation period will provide software vendors and mailers enough time to develop, test, and implement the required provisions so that the mailings entered on or after the effective date will be prepared under these new standards.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual (DMM)

E ELIGIBILITY

E600 Standard Mail

* * * * *

E650 Destination Entry

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

* * * * *

5.0 DBMC DISCOUNT

5.1 Definition

[Amend 5.1 by replacing ''L602'' with ''E651.5.0 Exhibit 5.1'' to read as follows:]

For this standard, destination bulk mail center (DBMC) includes all bulk mail centers (BMCs) and auxiliary service facilities (ASF's) as shown in Exhibit 5.1.

[Add new Exhibit 5.1.]

EXHIBIT 5.1—BMC/ASF—DBMC RATES

Eligible destination ZIP codes	DBMC pallets
005, 068–079, 085–098, 100–119, 124–127, 340	BMC NEW JERSEY NJ 00102
010–067, 120–123, 128, 129	BMC SPRINGFIELD MA 05500
130–136, 140–149	ASF BUFFALO NY 140
150–168, 260–266, 439–447	BMC PITTSBURGH PA 15195
080–084, 137–139, 169–199	BMC PHILADELPHIA PA 19205
200–212, 214–239, 244, 254, 267, 268	BMC WASHINGTON DC 20499
240–243, 245–249, 270–297, 376	BMC GREENSBORO NC 27075
298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399	BMC ATLANTA GA 31195
299, 313–316, 320–339, 341, 342, 344, 346, 347, 349	BMC JACKSONVILLE FL 32099
369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729	BMC MEMPHIS TN 38999
250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474	BMC CINCINNATI OH 45900
434–436, 465–468, 480–497	BMC DETROIT MI 48399
500–516, 520–528, 612, 680, 681, 683–689	BMC DES MOINES IA 50999
498, 499, 540–551, 553–564, 566	BMC MPLS/ST PAUL MN 55202
570–577	ASF SIOUX FALLS SD 570
565, 567, 580–588	ASF FARGO ND 580
590–599, 821	ASF BILLINGS MT 590
463, 464, 530–532, 534, 535, 537–539, 600–611, 613	BMC CHICAGO IL 60808
420, 423, 424, 475–479, 614–620, 622–631, 633–639	BMC ST LOUIS MO 63299
640, 641, 644–658, 660–662, 664–679, 739	BMC KANSAS CITY KS 64399
730, 731, 734–738, 740, 741, 743–746, 748, 749	ASF OKLAHOMA CITY OK 730
706, 710–712, 718, 733, 747, 750–799, 885	BMC DALLAS TX 75199
690–693, 800–816, 820, 822–831	BMC DENVER CO 80088
832–834, 836, 837, 840–847, 898, 979	ASF SALT LAKE CTY UT 840
850, 852, 853, 855–857, 859, 860, 863, 864	ASF PHOENIX AZ 852
865, 870–875, 877–884	ASF ALBUQUERQUE NM 870
889–891, 893, 900–908, 910–928, 930–935	BMC LOS ANGELES CA 90901
894, 895, 897, 936–966	BMC SAN FRANCISCO CA 94850
835, 838, 970–978, 980–986, 988–994	BMC SEATTLE WA 98000

[Delete current 5.2 and 5.3 and replace with new 5.2 through 5.5. Redesignate current 5.4 and 5.5 as 5.6 and 5.7.]

5.2 General Eligibility

Pieces in a mailing that meet the standards in 1.0 through 5.0 are eligible for the DBMC rate when they meet all of the following conditions: (1) are deposited at a BMC or ASF, (2) are addressed for delivery to one of the 3-digit ZIP Codes served by the BMC or ASF where deposited that are listed in Exhibit 5.1, and (3) are placed in a tray, sack, or pallet (subject to the standards for the rate claimed) that is labeled to the BMC or ASF where deposited, or labeled to a postal facility within that BMC's or ASF's service area (see Exhibit 5.1). If packages of flats on pallets are reallocated from an ASF pallet to a BMC pallet under M045.6.0, mail for the ASF ZIP Codes placed on the BMC pallet are not eligible for the DBMC rates. DBMC rate mail must also be eligible for Presorted, automation, or Enhanced Carrier Route rates, subject to the corresponding standards for those rates.

5.3 Eligibility for ADC or AADC Sortation

All pieces in an ADC or AADC sack or tray are eligible for the DBMC discount if the ADC or AADC facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the BMC or ASF as shown in Exhibit 5.1 at which the sack or tray is deposited. All pieces in a palletized ADC package or bundle are eligible for the DBMC discount if the ADC facility that is the destination of the package or bundle (determined by using the label to ZIP Code in Column B of L004) is within the service area of the BMC or ASF at which it is deposited as shown in Exhibit 5.1.

5.4 Eligibility in Mixed ADC or Mixed AADC Containers

Mail in mixed ADC or mixed AADC sacks or trays qualify for the DBMC rates only if all the pieces in the sack or tray are for the service area of the DBMC or DASF as shown in Exhibit 5.1. Mailers who opt to claim the DBMC rates for mail in Mixed ADC or Mixed AADC containers must prepare separate mixed ADC or mixed AADC sacks or trays for pieces eligible for and claimed at the DBMC rate and for pieces not claimed at the DBMC rate. Otherwise applicable restrictions (*e.g.*, minimum volume, number of less-than-full trays) are excepted when necessary to comply with this standard.

5.5 Additional Standards for Machinable Parcels

Additional standards are as follows:

a. Destination BMC/ASF Containers. Machinable parcels palletized under M045 or sacked under M610 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L605. When machinable parcels are sorted to both destination BMCs and ASFs under L605, they qualify for DBMC rates under 5.2. Mailers also may opt to sort machinable parcels to only destination BMCs under L601. If machinable parcels are sorted under L601, then only mail for 3-digit ZIP Codes served by a BMC as listed in Exhibit 5.1 are eligible for DBMC rates (*i.e.*, mail for 3-digit ZIP Codes served by an ASF in Exhibit 5.1 is not eligible

for DBMC rates, nor is mail for 3-digit ZIP Codes that do not appear on Exhibit 5.1).

b. Mixed BMC Containers. Pieces in mixed BMC sacks or on mixed BMC pallets that are sorted to the origin BMC under M045 or M610 are eligible for the DBMC rates if both of the following conditions are met:

(1) The mixed BMC sack or pallet is entered at the origin BMC facility to which it is labeled.

(2) The pieces are for 3-digit ZIP Codes listed as eligible destination ZIP Codes for that BMC in Exhibit 5.1.

* * * * *

E652 Parcel Post

1.0 BASIC STANDARDS

* * * * *

1.2 General

[Revise 1.2 to read as follows:]

For Parcel Post mailings claimed at DBMC, DSCF, or DDU rates, pieces must meet the applicable standards in 1.0 through 6.0 and the following criteria:

a. May be bedloaded, on pallets, in pallet boxes on pallets, in sacks, or in other authorized containers as specified in 2.0 through 6.0, depending on the facility at which the pieces are deposited.

b. Is not plant-loaded.

c. Be part of a single mailing of 50 or more pieces that are eligible for and claimed at any Parcel Post rate or rates.

d. Be deposited at a destination BMC (DBMC) or destination auxiliary service facility (DASF) or other equivalent facility; destination sectional center (DSCF); or destination delivery unit (DDU) as applicable for the rate claimed and as specified by the USPS.

e. Be addressed for delivery within the ZIP Code ranges that the applicable entry facility serves.

[Revise 1.3 to read as follows:]

1.3 DBMC Rates

For DBMC rates, pieces must meet the applicable standards in 1.0 through 6.0 and the following:

a. Pieces must be part of a Parcel Post mailing that is deposited at a BMC or ASF under L605.

b. Pieces deposited at each BMC or ASF must be addressed for delivery within the ZIP Code range of that facility.

c. Pieces must be addressed for delivery within a ZIP Code eligible for DBMC rates under Exhibit 1.3, and if sacked or palletized must be prepared in accordance with M041 and M045 or M630. Mail meeting the additional criteria in 4.0 may be deposited at a designated facility other than the BMC or ASF where the DBMC parcels would otherwise be deposited.

[Move formerly designated 1.3 (e) and (f) to new section as 1.4 (a) and (b).]

[Add new Exhibit 1.3]

EXHIBIT 1.3—BMC/ASF—DBMC RATES

Eligible destination ZIP codes	DBMC pallets
005, 068–079, 085–098, 100–119, 124–127, 340	BMC NEW JERSEY NJ 00102
010–067, 120–123, 128, 129	BMC SPRINGFIELD MA 05500
130–136, 140–149	ASF BUFFALO NY 140
150–168, 260–266, 439–447	BMC PITTSBURGH PA 15195
080–084, 137–139, 169–199	BMC PHILADELPHIA PA 19205
200–212, 214–239, 244, 254, 267, 268	BMC WASHINGTON DC 20499
240–243, 245–249, 270–297, 376	BMC GREENSBORO NC 27075
298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399	BMC ATLANTA GA 31195
299, 313–316, 320–339, 341, 342, 344, 346, 347, 349	BMC JACKSONVILLE FL 32099
369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729	BMC MEMPHIS TN 38999
250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474	BMC CINCINNATI OH 45900
434–436, 465–468, 480–497	BMC DETROIT MI 48399
500–516, 520–528, 612, 680, 681, 683–689	BMC DES MOINES IA 50999
498, 499, 540–551, 553–564, 566	BMC MPLS/ST PAUL MN 55202
570–577	ASF SIOUX FALLS SD 570
565, 567, 580–588	ASF FARGO ND 580
590–599, 821	ASF BILLINGS MT 590
463, 464, 530–532, 534, 535, 537–539, 600–611, 613	BMC CHICAGO IL 60808
420, 423, 424, 475–479, 614–620, 622–631, 633–639	BMC ST LOUIS MO 63299
640, 641, 644–658, 660–662, 664–679, 739	BMC KANSAS CITY KS 64399
730, 731, 734–738, 740, 741, 743–746, 748, 749	ASF OKLAHOMA CITY OK 730
706, 710–712, 718, 733, 747, 750–799, 885	BMC DALLAS TX 75199
690–693, 800–816, 820, 822–831	BMC DENVER CO 80088
832–834, 836, 837, 840–847, 898, 979	ASF SALT LAKE CTY UT 840
850, 852, 853, 855–857, 859, 860, 863, 864	ASF PHOENIX AZ 852
865, 870–875, 877–884	ASF ALBUQUERQUE NM 870
889–891, 893, 900–908, 910–928, 930–935	BMC LOS ANGELES CA 90901
894, 895, 897, 936–966	BMC SAN FRANCISCO CA 94850
835, 838, 970–978, 980–986, 988–994	BMC SEATTLE WA 98000

[Redesignate 1.4 through 1.5 as 1.5 through 1.6 and insert new number 1.4 to read as follows:]

1.4 DSCF and DDU Rates

For DSCF and DDU rates, pieces must meet the applicable standards in 1.0 through 1.6 and the following criteria:

[Insert old 1.3e and 1.3f as new 1.4a and 1.4b.]

* * * * *

L LABELING LISTS

* * * * *

L600 Standard Mail

[Amend the heading of Labeling List 601 by removing ''Machinable Parcels'' to read as follows:]

L601 Bulk Mail Centers

[Revise introductory paragraph to read as follows:]

Use this list for the following:

(1) Standard Mail (A) machinable parcels if ASF mail is not prepared and claimed at DBMC rates.

(2) Bound Printed Matter machinable parcels.

(3) Parcel Post if ASF mail is not prepared and claimed at DBMC rates except non-machinable BMC and OBMC Presort rate mail.

(4) Presorted Special Standard Mail and Presorted Library Mail to BMC destinations.

* * * * *

[Remove Labeling List 602.]

* * * * *

[Revise the heading of Labeling List 605 to read as follows:]

L605 BMCs/ASFs

[Revise introductory paragraph to read as follows:]

Use this list for the following:

(1) Standard Mail (A) pallets of packages of flats, letter trays, and/or sacks.

(2) Parcel Post machinable parcels if ASF mail is entered at the ASF and claimed at the DBMC rates.

(3) Standard Mail (A) machinable parcels if ASF mail is entered at the ASF and claimed at DBMC rates.

(4) Parcel Post nonmachinable parcels claimed at OBMC and BMC Presort rates.

(5) Bound Printed Matter packages and/or sacks on pallets.

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.2 Presort Levels

[Amend 1.2 by revising 1.2n to read as follows:]

Terms used for presort levels are defined as follows:

* * * * *

n. ASF/BMC: all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF) or bulk mail center (BMC) (see L601 or L605, as applicable).

* * * * *

M040 Pallets

M041 General Standards

* * * * *

5.0 PREPARATION

5.1 Presort

[Amend 5.1 by revising the last two sentences to read as follows:]

* * * The standards for package reallocation to protect the SCF or BMC pallet (M045.5.0 and 6.0) are optional methods of pallet preparation designed to retain as much mail as possible at the SCF or BMC level. These standards may result in some packages of Periodicals and Standard Mail (A) flats and irregular parcels that are part of a mailing job prepared in part as palletized flats at automation rates not being placed on the finest level of pallet possible. Mailers must use PAVE-certified presort software to prepare mailings using package reallocation (package reallocation is optional, but, if performed, must be done for the complete mailing job).

5.2 Required Preparation

[Amend 5.2 by revising 5.2a to read as follows:]

These standards apply to:

a. Periodicals, Standard Mail (A), and Parcel Post (other than BMC Presort, OBMC Presort, DSCF, and DDU rate mail). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays. For packages of Periodicals flats, irregular parcels, and packages of Standard Mail (A) flats on pallets prepared under the standards for package reallocation (M045.5.0), not all mail for a required 5-digit destination is required to be on a 5-digit pallet or optional 5-digit scheme pallet. For packages of Standard Mail (A) flats on pallets prepared under the standards for package reallocation (M045.6.0), not all mail for a required ASF pallet is required to be on an ASF pallet. Mixed pallets of sacks, trays, or machinable parcels must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer sortation levels under M045, as appropriate.

* * * * *

6.0 COPALLETIZED, COMBINED, OR MIXED-RATE LEVEL MAILINGS OF FLAT-SIZE MAILPIECES

* * * * *

6.4 Standard Mail (A)

[Amend 6.4 by and replacing the first sentence with the following sentence to read as follows:]

To copalletize different Standard Mail (A) flat-size mailings, the mailer must consolidate on pallets all independently sorted packages from each mailing to achieve the finest presort level for the mailing, except that a copalletized mailing prepared under M045.5.0 or 6.0, using package reallocation, may not always result in all packages being placed on the finest pallet level possible.* * *

* * * * *

M045 Palletized Mailings

* * * * *

4.0 PALLET PRESORT AND LABELING

4.1 Packages, Bundles, Sacks, or Trays on Pallets

[Amend 4.1 by revising 4.1e to read as follows:]

Preparation sequence and Line 1 labeling:

* * * * *

e. As appropriate:

(1) Periodicals: ADC: required; for Line 1, use L004.

(2) Standard Mail: BMC/ASF: required, except that an ASF may not be required if using package reallocation used under 6.0; for Line 1, use L605.

* * * * *

4.2 Machinable Parcels—Standard Mail

[Amend 4.2 by revising 4.2b and 4.2c to read as follow:]

Preparation sequence and Line 1 labeling:

* * * * *

b. ASF: allowed and required only if DBMC rate is claimed for mail deposited at ASF; for Line 1, use L605. Exhibit E651.5.1 or Exhibit E652.1.3 determines DBMC rate eligibility.

c. Destination BMC: required; for Line 1, use L601 (L605 if DBMC rate is claimed for mail deposited at ASF under 4.2b).

* * * * *

[Revise heading of 5.0 to read as follows:]

5.0 PACKAGE REALLOCATION TO PROTECT SCF PALLET FOR PERIODICALS FLATS AND IRREGULAR PARCELS AND STANDARD MAIL (A) FLATS ON PALLETS

5.1 Basic Standards

[Amend 5.1 by revising the first sentence to read as follows:]

Package reallocation to protect the SCF pallet is an optional preparation method (if performed, package reallocation must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 5.2 through 5.4 * * *

* * * * *

[Redesignate 6.0 through 14.0 as 7.0 through 15.0, respectively, and insert new 6.0 to read as follows:]

6.0 PACKAGE REALLOCATION TO PROTECT BMC PALLET FOR STANDARD MAIL (A) FLATS ON PALLETS

6.1 Basic Standards

Package reallocation to protect the BMC pallet level is an optional preparation method (if performed, package reallocation to protect the BMC pallet must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 6.2 through 6.4. The software will determine if mail for a BMC service area would fall beyond the BMC level when ASF pallets are prepared. Reallocation is performed only when there is mail for the BMC service area that would fall beyond the BMC pallet level as a result of an ASF pallet being prepared. The amount of mail required to bring the mail that would fall beyond the BMC pallet level back to a BMC level is the minimum volume that would be reallocated from an ASF pallet, where possible. The ''parent'' BMCs listed in Exhibit 6.1 can be protected with package reallocation by using mail from the ASF ''child'' pallets.

EXHIBIT 6.1—''PARENT'' BMC/CHILD'' ASF

''Parent'' BMC service areas	''Child'' ASF ZIP code areas served
Pittsburgh BMC	Buffalo ASF: 130–136; 140–149
Denver BMC	Albuquerque ASF: 865, 870–875, 877–884
	Phoenix ASF: 850, 852, 853, 855–857, 859, 860, 863, 864
	Salt Lake City ASF: 832–834, 836, 837, 840–847, 898, 979
	Billings ASF: 590–599, 821
Dallas BMC	Oklahoma City ASF: 730, 731, 734–738, 740, 741, 743–746, 748, 749
Des Moines BMC	Sioux Falls ASF: 570–577
Minneapolis BMC	Fargo ASF: 565, 567, 580–588

6.2 General Reallocation Rules

In general, when reallocating:

a. The reallocation process does not affect package preparation. Reallocate only complete packages and only the minimum number of packages necessary to create a BMC pallet that meets the 250-pound minimum pallet weight. Based on the weight of individual pieces within a package and packaging parameters, the weight of mail that is reallocated may be slightly more than the minimum volume required to create a BMC pallet.

b. Use Exhibit 6.1 to reallocate packages from the ASF pallet to create a BMC pallet. The ASF pallet may be eliminated to protect the BMC pallet.

c. Reallocate mail only from the ASF pallet. Package reallocation is used only between the ''parent'' BMC and the ''child'' ASF. Mail from finer levels of pallets (e.g., SCF pallet) may not be reallocated.

d. Mailers may use any minimum pallet weight(s) permitted by standard and may use different minimum weights for different pallet levels in conjunction with package reallocation.

6.3 Reallocation of Packages from ASF pallets

When reallocating packages from ASF pallets:

a. Use Exhibit 6.1 to identify an ASF pallet of adequate weight that can support reallocation of one or more packages to bring the mail that has fallen through the BMC level back to the BMC level without eliminating the ASF pallet. A sufficient amount of mail must remain on the ASF pallet after reallocation to meet the ASF pallet weight minimum of 250 pounds. If an ASF pallet of adequate weight is available, then create a BMC pallet by combining the reallocated mail from the ASF pallet with the mail that would fall beyond the BMC pallet level.

b. If no single ASF pallet within the BMC service area contains an adequate volume of mail to allow reallocation of the portion of the mail on a pallet as described in 6.3a, then eliminate one ASF pallet and reallocate all of the mail to create a BMC pallet.

6.4 Documentation

Mailings must be supported by documentation produced by PAVE-certified software meeting the standards in P012.

* * * * *

10.0 Pallets of Machinable Parcel

* * * * *

[Amend 10.3, formerly 9.3, to read as follows:]

10.3 DBMC Rate

If applicable, a BMC pallet may include pieces that are eligible for the DBMC rate and pieces that are ineligible.

* * * * *

M073 Combined Mailings of Standard Mail (A) and Standard Mail (B) Parcels

1.0 COMBINED MACHINABLE PARCELS—RATES OTHER THAN PARCEL POST OBMC PRESORT, BMC PRESORT, DSCF, AND DDU

* * * * *

1.6 Sack Preparation

[Amend 1.6 by revising 1.6a(2) and 1.6a(3) to read as follows:]

The requirements for sack preparation are as follows:

a. Sack size, preparation sequence, and Line 1 labeling:

* * * * *

(2) Destination ASF: allowed and required only if DBMC rate is claimed for mail deposited at ASF (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L605. DBMC rate eligibility is determined by Exhibit E651.1.3.

(3) Destination BMC: required (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L605 if DBMC rate is claimed for mail deposited at ASF under 4.2b; otherwise,

use L601. DBMC rate eligibility is determined by Exhibit E651.5.1.

* * * * *

M610 Presorted Standard Mail (A)

* * * * *

5.0 MACHINABLE PARCELS

* * * * *

5.2 Sack Preparation

[Amend 5.2 by revising 5.2(b) and 5.2(c) to read as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. Destination ASF: allowed and required only if DBMC rate is claimed for mail deposited at ASF (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L605. DBMC rate eligibility is determined by Exhibit E651.1.3.

c. Destination BMC: required (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L605 if DBMC rate is claimed for mail deposited at ASF under 5.2b; otherwise, use L601. DBMC rate eligibility is determined by Exhibit E651.5.1.

* * * * *

M630 Standard Mail (B)

* * * * *

6.0 MACHINABLE PARCELS

* * * * *

6.2 Sack Preparation

[Amend 6.2 by revising 6.2b and 6.2c to read as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. ASF: allowed and required only if DBMC rate is claimed for mail deposited at ASF (minimum of 10 pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1, use L605. Exhibit E652.1.3d determines DBMC rate eligibility.

c. Destination BMC: required (minimum of 10 pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1, use L605 if DBMC rate is claimed for mail deposited at ASF under 6.2b; otherwise, use L601. Exhibit E652.1.3d determines DBMC rate eligibility.

* * * * *

P POSTAGE AND PAYMENT METHODS

P000 Basic information

P010 General Standards

* * * * *

P012 Documentation

* * * * *

2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

* * * * *

2.2 Format and Content

[Amend 2.2 by replacing last two sentences of 2.2d (4) to read as follows:]

For First-Class Mail, Periodicals, and Standard Mail (A), standardized documentation includes:

* * * * *

d. For packages on pallets, the body of the listing reporting these required elements:

* * * * *

(4) * * * Document SCF or BMC pallets created as a result of package reallocation under M045.5.0 or 6.0 on the USPS Qualification Report by designating the protected pallet with an identifier of ''PSCF'' (for a SCF pallet) or ''PBMC'' (for a BMC pallet). These identifiers are required to appear only on the USPS Qualification Report; they are not required to appear on pallet labels or in any other mailing documentation.

* * * * *

2.4 Sortation level

[Amend 2.4 by inserting new sortation level and abbreviation immediately below ''SCF [pallets created from package reallocation]'' to read as follows:]

The actual sortation level (or corresponding abbreviation) is used for the package, tray, sack, or pallet levels required by 2.2 and shown below:

Sortation level	Abbreviation
* * * *	*
BMC [pallets created from package reallocation]	PBMC
* * * *	*

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–12444 Filed 5–18–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6604–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Action to Delete Releases at the Mid-Atlantic Wood Preservers, Inc. Site from the National Priorities List (NPL).

SUMMARY: The EPA announces the deletion of releases at the Mid-Atlantic Wood Preservers, Inc. Site (the Site) from the NPL. The NPL is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA has determined that no further response pursuant to CERCLA is appropriate.

DATES: This ''direct final'' action will be effective July 18, 2000 unless EPA receives dissenting comments by June 19, 2000. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Matthew T. Mellon, Remedial Project Manager, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103–2029.

Comprehensive information on the Site is available at EPA's Region III office and at the local information repository located at the Provinces Branch Library, Severn Square Shopping Center, 2624 Annapolis Road, Severn, MD 21144.

Requests for copies of documents associated with this action should be directed to the Region III Docket Office. The address and phone number for the Regional Docket Office is U.S. EPA Region III Public Reading Room, 1650 Arch Street, Philadelphia, PA 19103–2029; (215) 814–3157.

FOR FURTHER INFORMATION CONTACT:

Matthew T. Mellon, Remedial Project Manager, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103–2029, (215) 814–3168, or

Richard Kuhn, Community Involvement Coordinator, U.S. EPA, Region III, 1650 Arch Street (3HS43), Philadelphia, PA 19103–2029, (215) 814–3063.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region III announces the deletion of releases at the Site from the NPL, which constitutes Appendix B of the NCP. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the Site warrant such action.

The EPA will accept comments on this notice for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of the Mid-Atlantic Wood Preservers, Inc. Site and explains how the Site meets the deletion criteria. Section V announces EPA's intention to delete the Site from the NPL unless dissenting comments are received during the comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete Sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

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

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

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

Sites may not be deleted from the NPL until the State in which the site is located has concurred on the proposed deletion.

III. Deletion Procedures

Section 300.425(e)(4) of the NCP sets forth requirements for site deletions to ensure public involvement in the decision. The EPA is required to conduct the following activities:

(i) Publish a notice of intent to delete in the **Federal Register** and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) Publish a notice of availability of the notice of intent to delete in a major local newspaper of general circulation at or near the Site;

(iii) Place copies of information supporting the proposed deletion in the information repository at or near the site proposed for deletion; and,

(iv) Respond to each significant comment and any significant new data submitted during the comment period and include this response document in the final deletion package.

Upon completion of the public comment period, the EPA Regional Office will, if necessary, prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the EPA Region III Office to obtain a copy of this Responsiveness Summary, if one is prepared.

If none of the comments received during the comment period are dissenting, the Site will be deleted from the NPL, effective July 18, 2000.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist Agency management.

IV. Basis for Site Deletion

The Mid-Atlantic Wood Preservers, Inc. Site occupies approximately 3.17 acres straddling Shipley Avenue in Harmans, Anne Arundel County, Maryland in a mixed industrial and residential area. Between 1974 and February 1993, the Site was occupied by a wood treatment facility operated under the name of Fort McHenry Lumber Company, d/b/a Mid-Atlantic Wood Preservers, Inc. (collectively MAWP). Until MAWP ceased operations, this facility utilized a chromated copper arsenate (CCA) water-borne wood treating process. This two-part process began by pressure treating dimensional lumber in a housed processing plant. The wood was then moved to a concrete drip pad and left to dry. The facility consisted of two parcels: a Treatment Yard to the east of Shipley Avenue and a Storage Yard to the west.

Stoney Run Creek flows north through a wetland area approximately six hundred feet west of the Site, extending approximately four miles before discharging to the Patapsco River near Elkridge, Maryland. Drainage from the Treatment Yard enters the storm water drain in Shipley Avenue, which ultimately discharges to Stoney Run Creek, approximately 1200 feet from the Site. Drainage from the Storage Yard flows west to Stoney Run Creek.

In 1978, water in a shallow residential well hydraulically downgradient of the MAWP facility was found to contain up to 19,500 µg/l chromium, far exceeding the Federal and State drinking water standard of 50 µg/l for chromium (this standard has since been increased to 100 µg/l). Subsequently, the Maryland Water Resources Administration (WRA) identified MAWP as a user of chromium and a potential source of ground water contamination.

In February 1979, the Maryland WRA determined that MAWP had discharged CCA into the soil and that the ground water beneath the facility had become contaminated with chromium and arsenic. The Maryland WRA issued an Administrative Order requiring MAWP to develop and implement a plan to remove contaminated soil and to remediate contaminated ground water in the vicinity of the facility. Mandated actions included removal of twenty-six cubic yards of contaminated soil at the facility, modification of the product storage system to prevent overflows, and installation of a concrete drainage pad to collect CCA drippings. On December 26, 1980, Maryland WRA issued a ''Notice of Compliance.''

A Site Investigation was performed at the Site by EPA in January 1983. Analyses of ground water indicated that arsenic and chromium levels in the ground water still exceeded drinking water standards. The public water supply was extended to properties in the area by the local government. The Site was promulgated to the National Priorities List (NPL) in June 1986. In July 1986, MAWP entered into a Consent Order with EPA to perform a Remedial Investigation and Feasibility Study (RI/FS) at the Site.

The RI reaffirmed the presence of elevated levels of arsenic in the on-Site soil and slightly elevated levels of chromium in the ground water. The risk assessment concluded that arsenic and chromium were contaminants of concern and that the potential carcinogenic risk at the Site was dominated by incidental ingestion of

on-Site surface soil by workers. On December 31, 1990, the EPA Regional Administrator signed the Record of Decision (ROD) identifying the remedial action to be taken to address the unacceptable risks to human health identified in the RI/FS process.

In December 1991, following unsuccessful efforts to negotiate a Consent Decree with MAWP, EPA issued a Unilateral Administrative Order (UAO) requiring MAWP to implement the selected remedy. The selected remedy, as described in the ROD and the UAO, consisted of the following:

- Excavation, stabilization and off-site disposal of ''hot spots'' of contaminated soils with arsenic concentrations greater than 1,000 mg/kg;
- Construction of an enlarged roofed drip pad that complies with the Resource Conservation and Recovery Act (RCRA) Subpart W wood treating regulations;
- Capping of those portions of the Treatment Yard that were not covered by the treatment plant, enlarged drip pad or paved parking area with an asphalt/concrete cap;
- Capping of soils in the Storage Yard contaminated with arsenic exceeding 10 mg/kg with an asphalt/concrete cap;
- Excavation of any off-Site soils containing arsenic at concentrations greater than 10 mg/kg (i.e., background concentration of arsenic in area soils) and consolidation of those soils on-Site prior to paving with the asphalt/concrete cap;
- Environmental monitoring to ensure the effectiveness of the remedy;
- Implementation of a deed restriction to preclude future land use which might compromise the effectiveness of the remedy.

Pre-design sampling performed in April and June 1992 indicated that no soil on- or off-site had concentrations of arsenic greater than 1,000 mg/kg and therefore, excavation, stabilization and off-site disposal was not necessary. Predesign sampling did, however, indicate that surface soils on a portion of the adjacent Number One Supply property had been contaminated by runoff from the MAWP property. The sampling results indicated that the western portion of the Number One Supply property nearest the paved parking lot was not contaminated (i.e., levels of arsenic were less than 10 mg/kg), but the center portion and the eastern portions of the property did contain arsenic at concentrations greater than 10 mg/kg.

On February 4, 1993, MAWP informed EPA that it was ceasing business operations and closing the facility. Because MAWP was ceasing its wood treating operations, there was no longer a need to expand the drip pad to prevent potential future releases from wood drying operations. The remedial objectives were satisfied by extending the asphalt cap to all areas of the Treatment Yard not currently paved or covered by existing buildings, including those areas previously planned to be covered by the expanded drip pad.

The Remedial Action Work Plan and Remedial Design were approved by EPA on May 14, 1993. The scaled-back remedy included excavation and consolidation of contaminated soils from the Number One Supply property, paving of the MAWP property, implementation of institutional controls, long-term monitoring, and maintenance of the asphalt cap.

Construction activities were implemented from June to August 1993. In September 1993, EPA negotiated a Prospective Purchaser Agreement (PPA) with Gunther's Leasing Transport, Inc. (Gunther), which became effective January 24, 1994. In accordance with the PPA, Gunther agreed to implement the necessary institutional controls and perform operation and maintenance (O&M) activities, including environmental monitoring, as required by the EPA-approved O&M Plan. On July 5, 1994, Gunther filed EPA-approved ''Restrictions on Land Use'' for the MAWP site with the Clerk of Circuit Court, Anne Arundel County, Maryland.

Long-term environmental monitoring has been performed in accordance with the Post-Remedy Sampling and Analysis Plan contained in the RA Work Plan (ERM, April 1993). Monitoring and maintenance of the asphalt cap has been conducted with reports submitted to EPA on a biannual basis. A Five-Year Review dated August 26, 1998, confirmed that measures taken at the site remain effective, as do the results from long-term environmental monitoring completed on February 12, 1999.

The remedial action selected for the Site has been implemented in accordance with the Record of Decision. As a result, human health threats and potential environmental impacts arising from releases at the Site have been eliminated. Continued protection of human health and the environment will be achieved by maintenance activities and performance of the Five-Year Reviews, as required by CERCLA.

V. Action

The EPA, with concurrence from the State of Maryland, has determined that all appropriate response under CERCLA at the Site has been completed, and no further CERCLA response action is appropriate in order to provide protection of human health and environment. Therefore, EPA is deleting the Site from the NPL.

This action will be effective July 18, 2000. However, if EPA receives dissenting comments by June 19, 2000, EPA will publish a document that withdraws this action. If, after reviewing such comments, EPA decides to proceed with the deletion, EPA will publish a notice of deletion in the **Federal Register** and place copies of the final deletion package, including a Responsiveness Summary, in the Site repositories.

List of Subjects in 40 CFR Part 300

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

Dated: April 5, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

Part 300, title 40 of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Mid-Atlantic Wood Preservers, Inc., Harmans, Maryland.''.

[FR Doc. 00–12516 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 87]

RIN 3090–AH18

Federal Travel Regulation; Maximum Per Diem Rates and Other Travel Allowances; Correction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects entries listed in the prescribed maximum per diem rates for locations within the continental United States

(CONUS) contained in a final rule appearing in Part III of the **Federal Register** of Thursday, December 2, 1999 (64 FR 67670). The rule, among other things, increased/decreased the maximum lodging amounts in certain existing per diem localities, added new per diem localities, and removed a number of previously designated per diem localities.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–4857.

SUPPLEMENTARY INFORMATION: In rule document 99–31215 beginning on page 67670 in the issue of Thursday, December 2, 1999, make the following corrections:

Appendix A to Chapter 301 [Corrected]

1. On page 67674, under the State of Colorado, city of Aspen, the seasonal dates, column one and lodging rates, column three are revised to read as follows: ''January 1–March 31 $163, April 1–May 31 $68, June 1–December 31 $140''.

2. On page 67678, under the State of Louisiana, the names of cities of New Orleans/Plaquemine/St. Bernard, column two is revised to read as follows: ''Orleans, Iberville, Jefferson Parish and St. Bernard''.

Pages 67674 and 67678, as corrected, read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

BILLING CODE 6820–34–P

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2, 3]					
(October 1-May 31)		69		38		107
San Mateo/Redwood City	San Mateo	99		42		141
Santa Barbara	Santa Barbara	99		38		137
Santa Cruz	Santa Cruz					
(June 1-September 30)		99		42		141
(October 1-May 31)		68		42		110
Santa Rosa	Sonoma	65		42		107
Santa Monica	City limits of Santa Monica (see Los Angeles)					
(June 1-September 30)		110		38		148
(October 1-May 31)		99		38		137
South Lake Tahoe	El Dorado (see also Stateline, NV)	108		42		150
Sunnyvale/Palo Alto/San Jose	Santa Clara	125		46		171
Tahoe City	Placer	128		42		170
Truckee	Nevada	69		42		111
Visalia	Tulare	58		38		96
West Sacramento	Yolo	64		30		94
Yosemite National Park	Mariposa					
(May 1-October 31)		100		46		146
(November 1-April 30)		76		46		122
COLORADO						
Aspen	Pitkin					
(January 1-March 31)		163		46		209
(April 1-May 31)		68		46		186
(June 1-December 31)		140		46		114
Boulder	Boulder					
(May 1-October 15)		90		42		132
(October 16-April 30)		79		42		121
Colorado Springs	El Paso					
(May 15-September 14)		73		38		111
(September 15-May 14)		59		38		97
Cortez	Montezuma	64		34		98
Crested Butte	City limits of Crested Butte (see Gunnison)	95		42		137
Denver	Denver, Adams, and Arapahoe	83		42		125
Durango	La Plata					
(June 1-October 31)		95		38		133
(November 1-May 31)		61		38		99
Fort Collins	Larimer (except Loveland)	59		34		93
Gunnison	Gunnison (except Crested Butte)					
(June 15-September 30)		69		34		103
(October 1-June 14)		60		34		94
Jefferson County	Jefferson County	69		34		103
Loveland	City limits of Loveland (see Larimer County)	69		30		99
Montrose	Montrose	59		34		93
Pueblo	Pueblo					
(June 1-September 30)		75		34		109
(October 1-May 31)		58		34		92
Silverthorne/Keystone	Summit					
(December 1-April 1)		170		38		208
(April 2-November 30)		130		38		168

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2], [3]					
South Bend	St. Joseph	58		34		92
Valparaiso/Burlington Beach	Porter	69		34		103
IOWA						
Cedar Rapids	Linn	56		34		90
Des Moines	Polk	67		34		101
KANSAS						
Kansas City/Overland Park	Wyandotte and Johnson	85		38		123
Wichita	Sedgwick	58		38		96
KENTUCKY						
Covington	Kenton	80		38		118
Louisville	Jefferson	63		38		101
LOUISIANA						
Baton Rouge	East Baton Rouge Parish	65		38		103
Gonzales	Ascension Parish	59		34		93
Lake Charles	Calcasieu Parish	74		34		108
New Orleans/Plaquemine/St. Bernard	Orleans, Iberville, Jefferson Parish and St. Bernard	88		42		130
Shreveport	Caddo	60		38		98
St. Francisville	West Feliciana	75		38		113
MAINE						
Bangor	Penobscot	56		30		86
Bar Harbor	Hancock					
(July 1-September 15)		104		38		142
(September 16-June 30)		75		38		113
Bath	Sagadahoc					
(May 1-October 31)		61		34		95
(November 1-April 30)		55		34		89
Kennebunk	York	62		38		100
Kittery	Portsmouth Naval Shipyard (see York County)					
(May 1-October 31)		70		34		104
(November 1-April 30)		55		34		89
Portland	Cumberland					
(July 1-October 31)		80		38		118
(November 1-June 30)		70		38		108
Rockport	Knox	87		42		129
Wiscasset	Lincoln	59		38		97
MARYLAND						
(For the counties of Montgomery and Prince George's, see District of Columbia.)						
Annapolis	Anne Arundel	90		42		132
Baltimore	Baltimore	110		42		152
Columbia	Howard	109		42		151
Grasonville	Queen Annes	63		38		101

Dated: May 11, 2000.

Peggy G. DeProspero,

Acting Director, Travel Management Policy Division.

[FR Doc. 00–12340 Filed 5–18–00; 8:45 am]

BILLING CODE 6820–34–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000120016–0135–02; I.D. 112299C]

RIN 0648–AM70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag, Red Grouper, and Black Grouper Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures in the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule increases the commercial and recreational minimum size limits for gag and black grouper; prohibits the commercial harvest and the sale or purchase of gag, black grouper, and red grouper from February 15 to March 15 each year; and establishes two areas in the eastern Gulf of Mexico that are closed to all fishing, except fishing for highly migratory species. The intended effect of this final rule is to protect the spawning aggregations for these species and to prevent overfishing.

DATES: This final rule is effective June 19, 2000.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 727–570–5305, fax: 727–570–5583, email: Richard.Raulerson@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Roy.Crabtree@noaa.gov.

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

In accordance with the framework procedures of the FMP, the Council recommended, and NMFS published, a proposed rule (65 FR 4221, January 26, 2000) to increase the commercial and recreational minimum size limits for gag and black grouper; prohibit the commercial harvest and the sale or purchase of gag, black grouper, and red grouper harvested from the Gulf EEZ from February 15 to March 15 each year; and establish two areas in the eastern Gulf of Mexico (Madison and Swanson sites and Steamboat Lumps) that would be closed to all fishing, except fishing for highly migratory species (i.e., tunas, marlin, sailfish, swordfish, and oceanic sharks). The preamble to the proposed rule explained the need and rationale for these measures. Those descriptions are not repeated here.

After considering the comments received on the proposed rule, NMFS partially approved the regulatory amendment. The proposed additional increases in the recreational minimum size limit for gag and black grouper from 22 inches to 24 inches (55.9 cm to 61 cm), to be phased in over a 2-year period following implementation of this final rule, were disapproved (see Response to Comment 3 under ''Comments and Responses'' below).

Comments and Responses

Comment 1: Two Council members stated in their minority report that the proposed measures are insufficient to prevent overfishing and protect male gag. Specifically, they stated that the commercial 1-month closed season is too short to be effective. Several environmental groups also suggested that additional measures, including additional marine reserves, are needed to protect gag.

Response: NMFS agrees that additional measures to reduce fishing mortality will probably be required to achieve levels consistent with the Council's management objective. The Council's intent in preparing this amendment was to reduce overfishing to a level consistent with the 20–percent spawning potential ratio (SPR) management target in effect at the time it adopted final measures for the regulatory amendment. On November 17, 1999, NMFS approved a maximum fishing mortality threshold of 30-percent SPR for gag and black grouper, as proposed by the Council under its Generic Sustainable Fisheries Act Amendment to the Fishery Management Plans of the Gulf of Mexico. Additional reductions in fishing mortality will probably be needed to prevent this threshold from being exceeded. To address this concern, and other problems in the grouper fishery, the Council is developing an FMP amendment. NMFS agrees that the effectiveness of the 1-month closure of the commercial fishery could be reduced if, in response to the closure, fishing effort increases immediately before or after the closure; however, the closure will provide some reduction in fishing mortality and provide some protection to spawning aggregations. NMFS believes that additional measures to protect spawning aggregations may be required in the future; however, the 1-month closure is an appropriate step at this time.

Comment 2: A for-hire fishing organization and two Council members stated that the proposal to close two areas to all fishing exceeds the most restrictive alternative presented and discussed at public hearings and should be disapproved. A commercial fishing organization and a for-hire fishing organization questioned the need for closing the two areas to all fishing. Nine individuals and seven environmental organizations expressed strong support for the two closed areas and suggested the closure period should be extended beyond the 4-year period.

Response: This rule closes the two areas only to fisheries under the jurisdiction of the Council. The Council has requested that NMFS' Highly Migratory Species Division (HMS Division), Office of Sustainable Fisheries, issue a compatible rule prohibiting fishing for all Atlantic highly migratory species in these two areas. The HMS Division is currently considering this request and expects to take appropriate action soon. Any HMS Division's rulemaking action will involve proposed and final rules and will provide the opportunity for public comment on proposed measures. The Council recommended closure of the two areas to all fishing in order to reduce bycatch mortality of gag and black grouper and to improve enforcement of the closure to fishing.

The closure to all fishing under the Council's jurisdiction is a logical extension of the Council's earlier proposal that was the subject of public hearings and a workshop involving affected fishery participants and is based on public comments. This earlier proposal would have closed areas to all

reef fish fishing and to the use of all bottom gear capable of catching reef fish. At the Council's March 1999 meeting, NMFS enforcement personnel stated that the areas should be closed to all fishing rather than just to fishing in one fishery to enhance enforcement significantly. At its July 1999 meeting and after receiving public comment on the selection of the two sites, the Council determined that a closure to all fishing was necessary to achieve the goals of the proposed measure.

NMFS has approved this measure along with its 4-year sunset provision as recommended by the Council. The Council may consider extending the duration of the closure, as appropriate, at some subsequent time.

Comment 3: Two Council members stated in their minority report that the proposed measures place an unfair and greater burden on the recreational sector than on the commercial fishery. Eighteen individuals objected to the proposal to increase the recreational minimum size limit and stated that regulations should reduce the commercial harvest only. Several individuals stated that reductions in the recreational bag limit would be more effective than increases in the minimum size limit since some released fish die as a result of capture trauma. A total of 277 individuals favored the increase in the recreational minimum size limit. In a minority report, four other Council members objected to the delay in the increase in the recreational minimum size limit to 24 inches (61.0 cm) and argued that an immediate increase to 24 inches (61.0 cm) is needed to reduce overfishing. A total of 279 individuals supported the increase in the commercial minimum size limit, and 3 individuals opposed this increase. Three environmental groups expressed support for the increased size limit and one expressed opposition.

Response: NMFS believes that minimum size limits are an appropriate and effective method of protecting immature fish in many fisheries. NMFS recognizes that the effectiveness of minimum size limits can be reduced if release mortality rates are high. In the shallow-water grouper recreational fishery and the hand-line commercial fishery, release mortality rates appear to be relatively low and, therefore, consistent with effective minimum size limits.

NMFS disagrees that regulations should affect only the commercial sector. Restrictions in both the recreational and commercial sectors should be equitable. The increase in the recreational minimum size limit to 22 inches (55.9 cm) and the measures intended to reduce the commercial harvest should result in an equitable harvest by each sector. NMFS believes that the proposed increase in the recreational minimum size limit from 22 to 24 inches (55.9 cm to 61.0 cm) could disproportionately reduce the recreational harvest compared to the commercial harvest reduction. Such an inequitable reduction in the harvest between the two sectors is contrary to national standard 4 and section 303(a)(14) of the Magnuson-Stevens Act. The administrative record indicates that the proposed increase in the minimum size limit from 22 inches to 24 inches (55.9 cm to 61.0 cm) in the recreational fishery would result in a disproportionally large reduction in the recreational harvest compared to the commercial harvest reduction resulting from the combined measures for the commercial fishery. Consequently, NMFS has disapproved the Council's proposed increase in the recreational minimum size limit from 22 inches to 24 inches (55.9 cm to 61.0 cm). NMFS will consider further minimum size limit changes for the recreational fishery if the Council proposes measures that ensure equitable reductions in the harvest by each sector. NMFS believes that the Council can resolve this issue later this year as it develops a comprehensive FMP amendment to address problems in the shallow-water grouper fishery.

The Council considered, but did not recommend, establishing a separate bag limit for gag. The current bag limit of five fish is an aggregate bag limit for shallow-water grouper. The Council considered analyses indicating that harvest would not be reduced significantly by setting a gag bag limit of two fish per person per day because few individuals land more than two fish. The Council may choose to reconsider bag limit reductions as it develops an FMP amendment to address conservation and management issues in the grouper fishery.

Comment 4: Four Council members, a commercial fishing organization, and a for-hire fishing organization stated that the proposed measures are not based upon the best available science. Specifically, a Council minority report questioned the need for the protection of male gag and the scientific information indicating a recent declining proportion of male gag in the Gulf of Mexico. The for-hire organization objected to the use of SPR as a valid reference point upon which to base management decisions. Conversely, two individuals and five environmental organizations argued that the measures are based on the best available science, which they believe particularly supports the need to protect male gag through closed areas.

Response: NMFS believes that the approved measures are based on the best available science and are consistent with the precautionary approach to fisheries management. Uncertainty regarding scientific information does not preclude precautionary management action. Sufficient scientific information suggests that the proportion of males in the Gulf gag stock has decreased as a result of heavy exploitation. NMFS is concerned that the loss of males and the fishing effort on spawning aggregations could disrupt spawning and ultimately reduce recruitment. It is uncertain to what extent males have been depleted and whether such depletion has affected spawning success. However, closure of two areas to allow further study of this issue is an appropriate precautionary management measure.

SPR is an appropriate proxy for fishing mortality and, thus, an appropriate reference point upon which to base management decisions that are intended to address overfishing. The intent of this final rule is to reduce and prevent overfishing; thus, the use of SPR in this context is appropriate.

Comment 5: Four Council members stated in their minority report that the 1-month closure of the commercial fishery only is not fair and equitable to all fishermen and should be disapproved based on national standard 4. An organization representing the commercial fishing industry, one environmental group and 25 individuals also objected to the 1-month closure of the commercial fishery. Many of these individuals explicitly objected to the lack of prior notice regarding the closure during 2000 and stated that uncertainty regarding the closure in 2000 interfered with efficient fishing operations. An additional 273 individuals questioned the effectiveness of a 1-month closure. They stated that effort would be shifted to other months and that ex-vessel prices would decrease as a result of the closure. Seventeen individuals and three environmental groups expressed support for the 1-month closure, although many of these believed that the closure should be extended to encompass the entire spawning season (3–4 months). Some individuals also suggested that a seasonal closure of spawning areas should be established.

Response: NMFS believes that the approved measures will result in approximately equal percent reductions of the harvests in the recreational and commercial sectors and, thus, the approved measures are fair and equitable. NMFS agrees that effort

shifting in the commercial fishery may reduce the effectiveness of the 1-month closure of the commercial fishery; however, NMFS believes that the closure will provide some reductions in fishing mortality of gag, black grouper, and red grouper and will provide some limited protection to spawning aggregations of these species. Additional measures to reduce fishing mortality and protect spawning aggregations may be required in the future. NMFS also recognizes that limited notification of fishery closures places a hardship on the participants in the commercial fishery. Because this final rule does not become effective until after March 15, 2000, the 1-month closure of the commercial fishery will not occur until 2001.

Comment 6: Four Council members stated in their minority report that the regulatory amendment does not adequately consider the economic impact on fishing communities.

Response: For analyzing economic impacts, information is available at the county level and is not available disaggregated to show fishing communities. However, all affected entities are included in the RIR's aggregate economic analysis. Therefore, because fishing communities would be affected, the economic impact on them is included in the aggregate analysis. The Council and NMFS prepared a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA) that assess the socioeconomic effects of the preferred measures and alternatives considered by the Council and NMFS. The costs and benefits of the rule are assessed in the RIR and the economic impacts on small entities are assessed in the RIR/FRFA. The Council considered the economic implications of each alternative for achieving the management objective of reducing and preventing overfishing. The FRFA identifies the alternatives with less adverse economic impacts on small entities and sets forth the reasons why such alternatives were rejected. NMFS believes that the approved measures are based on the best available scientific information and will achieve the management objective in a fair and equitable manner, while minimizing the adverse economic impacts to the extent practicable.

Comment 7: Four Council members stated in their minority report that the regulatory amendment fails to address bycatch in the recreational fishery as required by the Magnuson-Stevens Act. One environmental group opposed the size limit increase based on its belief that bycatch would be increased.

Response: NMFS believes that the approved increase in the minimum size limit will reduce fishing mortality on small, immature grouper in the shallow-water grouper fishery and that this reduction in fishing mortality outweighs any increase in the resulting regulatory discards. National standard 9 requires that bycatch and bycatch mortality be minimized to the extent practicable. NMFS believes that bycatch in the recreational gag/black grouper fishery has been reduced to the extent practicable. Most bycatch in the recreational grouper fishery results from regulatory discards, which are an inevitable result of measures such as bag limits, size limits, and closed seasons. The elimination of these measures, with the intent of reducing bycatch, would increase overall fishing mortality and increase the rate of exploitation of immature grouper. Thus, the elimination of these measures to reduce bycatch would contribute to overfishing and is not practicable.

Comment 8: A total of 284 individuals commented that longlines were responsible for most of the problems in the shallow-water grouper fishery and suggested that longlines either be eliminated from the fishery or restricted to depths beyond 40–50 fathoms (73.2–91.4 m). One individual suggested that spear fishing for grouper be eliminated. Another individual suggested that fish traps be eliminated.

Response: The Council did not propose gear restrictions in the grouper fishery in this regulatory amendment. The Council is expected to consider additional gear restrictions in its FMP amendment for the grouper fishery currently under development.

Comment 9: Two individuals and five environmental groups responded to concerns raised by the NMFS Southeast Fisheries Science Center regarding the closed areas (see the proposed rule preamble). Comments received stated that (1) baseline data exist with which to compare changes in the closed area after 4 years; (2) the 4-year duration of the closure is too short but can and should be extended by the Council and NMFS; (3) scientists can provide criteria with which to judge the ''success'' or ''failure'' of the closure after the closure is approved; and (4) the results of studies within the closed areas will provide useful information to management agencies.

Response: NMFS has approved the closure of the two areas and will work with the Council to develop an appropriate experimental design and review existing baseline data.

Changes From the Proposed Rule

For the reasons discussed under the Response to Comment 3, NMFS has disapproved the measure that would have phased in additional increases in the recreational minimum size limit for gag and black grouper from 22 inches (55.9 cm) to 24 inches (61 cm). Those additional phased-in increases have been removed from § 622.37(d)(2)(iii)(B) of this final rule.

In § 622.45(c)(4), the wording of the seasonal restriction on sale or purchase of gag, black grouper, or red grouper harvested by a vessel with a Federal commercial permit for Gulf reef fish has been revised to clarify that the restriction applies throughout the Gulf rather than only in the Gulf EEZ. This is consistent with the wording of the corresponding seasonal closure of the commercial fishery for gag, black grouper, and red grouper.

Classification

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

The regulatory amendment implemented by this final rule was prepared by the Council and submitted to NMFS for review, approval, and implementation under authority of the Magnuson-Stevens Act. The Council prepared an initial regulatory flexibility analysis (IRFA) for the four measures proposed in the regulatory amendment. NMFS prepared an FRFA for the final rule implementing the regulatory amendment. The FRFA was based on the IRFA, public comments, and subsequent analysis by NMFS. A summary of the FRFA follows:

The final rule implements four management actions: (1) An increase in the minimum size limits for gag and black grouper from 20 to 24 inches (50.8 cm to 61.0 cm) for commercial fishermen; (2) an increase in the minimum size limits for gag and black grouper from 20 inches to 22 inches (from 50.8 cm to 55.9 cm) for recreational fishermen; (3) a 1-month seasonal closure of the commercial fishery for gag, black and red grouper; and (4) a year-round prohibition of recreational and commercial fishing in two specific areas where gag spawning aggregations are known to occur. The Council also proposed that the recreational minimum size limit for gag and black grouper be increased from 22 inches to 24 inches (from 55.9 cm to 61.0 cm) over the 2-year period following implementation of this final rule; however, NMFS disapproved that provision. The approved measures will result in a significant economic impact

on a substantial number of small business entities.

NMFS received over 600 comments on the proposed action. The comments pertaining to economic impacts of the actions are summarized as follows. Some comments stated that the proposal to close two areas to all fishing is too restrictive, while other comments gave strong support to the two closed areas. NMFS responds that the closure to all fishing under the Council's jurisdiction is a logical extension of the Council's earlier proposal to close areas to reef fish fishing and is based on public comment. However, this final rule closes the areas to fishing only for species under the Council's management.

Some comments stated that the size limit proposal unfairly limits the recreational catch while several individuals favored bag limit reductions instead. There were 227 comments in favor of the proposed recreational size limit. 279 comments favored the commercial size limit, and 3 were opposed. NMFS believes that size limits are an appropriate method of protecting immature fish but is concerned that the proposed increases in the recreational size limit to 24 inches (61.0 cm) could unfairly reduce the recreational harvest. NMFS, therefore, disapproved the increase in the recreational size limit beyond 22 inches (55.9 cm).

A total of 273 individuals questioned the effectiveness of a 1-month closure, with some noting that the closure should be extended to encompass the entire spawning season (3–4 months). NMFS agrees that a 1-month closure would be less effective than a longer closure, but notes that the closure will result in a reduction in fishing mortality and is, therefore, an appropriate step at this time, notwithstanding the possible need for future reductions in fishing mortality.

Some comments stated that the regulatory amendment does not adequately consider the economic impact on fishing communities. NMFS notes that an RIR, IRFA, and FRFA were prepared that assess the economic impacts of the Council's proposed measures and the alternatives it considered.

In summary, there were no changes to the proposed rule that were based solely on the public comments. However, NMFS disapproved the Council's proposal for a subsequent increase in the recreational size limit for gag and black grouper from 22 inches to 24 inches (55.9 cm to 61.0 cm) because this size increase for the recreational sector could cause disproportionately large harvest reductions compared to the commercial sector's harvest reductions, and would, thus, be in conflict with national standard 4. Numerous public comments were in support of this decision; they alleged that the further minimum-size increase for the recreational fishery was discriminatory because of the arguably unfair and inequitable potential effects on recreational harvests.

The Council determined that 242 commercial vessels historically fishing in the Gulf of Mexico EEZ would be negatively affected by the seasonal and year-round area closures. A relatively small proportion of the for-hire fleet is also expected to be impacted adversely by the two year-round area closures. The minimum size limits will affect 757 commercial vessels and an unknown number of for-hire vessels. All of these units are classified as small business entities under the RFA. Most of the commercial vessels use handline gear, have an average length of 38 ft (11.6 m), and generate average annual gross revenues of about $50,000. The for-hire businesses tend to use traditional charter fishing boats with offshore capability. No additional reporting, recordkeeping, or other compliance requirements by small entities are contained in the final rule.

Significant alternatives to the proposed actions were identified. The Council rejected four alternatives to change the size limits. The status quo of a 20-inch (50.8-cm) minimum size limit was rejected because increasing the size limits will help achieve the objective of preventing overfishing. The impacts of some of the other rejected alternatives were greater than for the proposed limits, and the proposed alternative would help meet the regulatory amendment objectives while minimizing the adverse economic impacts. NMFS' decision to disapprove the phased-in increase to a 24-inch (61.0-cm) recreational minimum size limit will tend to minimize adverse impacts on some for-hire small businesses.

There were three alternatives to the proposal to implement a 1-month seasonal commercial closure for gag, black and red grouper. The status quo was rejected because action was needed in order to attain the objectives of the regulatory amendment. The other two alternatives were rejected because they would have resulted in greater adverse impacts on fishermen.

The remaining action would prohibit fishing for 4 years in two specific areas. The Council considered and rejected four alternatives to the closed areas, including the status quo. The status quo was rejected because the area closures will provide essential protection for a portion of the gag population. Based on the sizes of the closed areas considered, impacts from the other alternatives would have lesser or greater impacts. The Council's recommendation falls in the middle and represents an attempt to achieve the objective of protecting gag stocks while minimizing negative economic impacts. The 4-year sunset provision for the closed areas also represents an attempt to minimize the negative economic impacts.

This rule is necessary because the gag stock is approaching an overfished condition, and the Magnuson-Stevens Act requires the Council to take action to prevent overfishing.

A copy of the FRFA is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

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

Dated: May 12, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

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

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

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

2. In § 622.34, add paragraphs (k) and (o) to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(k) *Closure of the Madison and Swanson sites and Steamboat Lumps.* No person may fish within the Madison and Swanson sites or Steamboat Lumps for any species of fish except highly migratory species. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*). This prohibition is effective through June 16, 2004. For the purpose of this paragraph (k), fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17′	85°50′
B	29°17′	85°38′
C	29°06′	85°38′
D	29°06′	85°50′
A	29°17′	85°50′

Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°14′	84°48′
B	28°14′	84°37′
C	28°03′	84°37′
D	28°03′	84°48′
A	28°14′	84°48′

* * * * *

(o) *Seasonal closure of the commercial fishery for gag, red grouper, and black grouper.* From February 15 to March 15, each year, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may possess gag, red grouper, or black grouper in the Gulf, regardless of where harvested. However, a person aboard a vessel for which the permit indicates both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain gag, red grouper, and black grouper under the bag and possession limit specified in § 622.39(b), provided the vessel is operating as a charter vessel or headboat. From February 15 until March 15, each year, the sale or purchase of gag, red grouper, or black grouper is prohibited as specified in § 622.45(c)(4).

3. In § 622.37, paragraph (d)(2)(ii) is revised and paragraph (d)(2)(iii) is added to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(2) * * *

(ii) Red grouper and yellowfin grouper—20 inches (50.8 cm), TL.

(iii) Black grouper and gag—(A) For a person not subject to the bag limit specified in § 622.39(b)(1)(ii)—24 inches (61.0 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—22 inches (55.9 cm), TL.

* * * * *

4. In § 622.45, paragraph (c)(4) is added to read as ollows:

§ 622.45 *Restrictions on sale/purchase.*

* * * * *

(c) * * *

(4) From February 15 until March 15, each year, no person may sell or purchase a gag, black grouper, or red grouper harvested from the Gulf by a vessel with a valid Federal commercial permit for Gulf reef fish. This prohibition on sale/purchase does not apply to gag, black grouper, or red grouper that were harvested, landed ashore, and sold prior to February 15 and were held in cold storage by a dealer or processor.

* * * * *

[FR Doc. 00–12578 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 654

[Docket No. 000511134–0134–01; I.D. 072699D]

RIN 0648–AL81

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of the Gulf of Mexico; Addition to FMP Framework Provisions; Stone Crab Gear Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement those provisions of the Generic Sustainable Fisheries Act Amendment to the Fishery Management Plans (FMPs) of the Gulf of Mexico (SFA Amendment) that modify the framework regulatory adjustment procedures in the FMPs for reef fish, red drum, and coastal migratory pelagics. These FMP framework modifications allow timely addition of various stock population parameters to the appropriate FMP(s), including biomass-based estimates of minimum stock size thresholds (MSSTs), optimum yield (OY), maximum sustainable yield (MSY), stock biomass achieved by fishing at MSY (B_{MSY}), and maximum fishing mortality thresholds (MFMTs). These regulations also revise the stone crab trap construction requirements, as proposed by the SFA Amendment. The intended effects are to provide a more timely mechanism for incorporating stock population parameters into the applicable FMPs when such information becomes available and to establish stone crab trap construction regulations that are compatible with those of the State of Florida and that will reduce finfish bycatch.

DATES: This final rule is effective June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Crabtree, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Roy.Crabtree@noaa.gov.

SUPPLEMENTARY INFORMATION: The SFA Amendment addresses fisheries under the FMPs for coral and coral reef resources, coastal migratory pelagics, red drum, reef fish, shrimp, spiny lobster, and stone crab. The FMPs were prepared by the Gulf of Mexico Fishery Management Council (Council), except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the South Atlantic and Gulf of Mexico Fishery Management Councils. All of these FMPs, except the spiny lobster and stone crab FMPs, are implemented

under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. The Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic is implemented by regulations at 50 CFR part 640; the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico is implemented by regulations at 50 CFR part 654.

On August 18, 1999, NMFS announced the availability of the SFA Amendment and requested comments on it (64 FR 44884). On November 2, 1999, NMFS published a proposed rule to implement those provisions of the SFA Amendment that required rulemaking (i.e., the modifications of the framework procedures of the applicable FMPs and the changes to the stone crab trap construction requirements) and requested comments on the proposed rule (64 FR 59153). The background and rationale for the measures in the SFA Amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

On November 17, 1999, after considering the comments received, NMFS partially approved the SFA Amendment. NMFS approved the portions of the amendment dealing with descriptions of the fisheries and fishing communities, the spawning potential ratio (SPR) proxies submitted for the MFMTs (except for red snapper), the MSSTs for shrimp, and the proposed changes in the construction characteristics of stone crab traps. NMFS disapproved the portion of the amendment dealing with bycatch reporting, because the Council has not fulfilled the Magnuson-Stevens Act requirement to develop standardized reporting to assess the amount and type of bycatch. NMFS also disapproved the portion of the amendment dealing with bycatch reduction, except for the measure for the construction of stone crab traps. This disapproval was based on national standard 9, because the Council has not fulfilled the Magnuson-Stevens Act mandate to reduce bycatch to the extent practicable and has not adequately explained why additional measures to reduce bycatch are not practicable. NMFS disapproved the following actions regarding overfishing targets and thresholds. All of the SPRs submitted as proxies for MSY, OY, and the MSST were disapproved based on national standards 1 and 2 because they are not consistent with the best available scientific information and do not provide an adequate basis for achieving OY on a continuing basis. The targets and thresholds proposed for shrimp are biomass-based; however, the proxies for MSY and OY were disapproved and must be revised to reflect the yields associated with the various biomass proxies proposed. The MFMT (referred to as an ''overfishing threshold'') for royal red shrimp was disapproved based on national standards 1 and 2 because no fishing mortality rate is explicitly specified; therefore, no objective basis was provided for determining whether overfishing is occurring. NMFS disapproved the rebuilding schedules for king mackerel and red snapper based on national standards 1 and 2. The rebuilding targets specified are fishing mortality based (static SPR) rather than biomass-based as required by the Magnuson-Stevens Act and the national standard guidelines. NMFS recently provided the information needed to develop new rebuilding plans to the Council. The static SPR targets would not allow an adequate determination of the management measures required to rebuild these stocks to a biomass capable of producing MSY because static SPR is not sensitive to population size and reflects only current levels of fishing mortality. The Council did not propose rebuilding schedules for red drum, Nassau grouper, or jewfish. Additional rationale for NMFS' approvals and disapprovals of the various components of the SFA Amendment are provided in the Comments and Responses Section.

Those measures that were disapproved were not contained in the proposed rule; therefore, no changes to the proposed rule resulted from the disapprovals. No comments were received on the proposed rule, and the proposed rule has been adopted as final without change. NMFS received 11 comments on the SFA Amendment. They are summarized below:

Comments and Responses

Comment 1: Two environmental groups recommended that NMFS disapprove the environmental assessment (EA) included in the amendment. They commented that the EA failed to adequately analyze the direct, indirect, and cumulative environmental impacts of the proposed actions and reasonable alternatives that would minimize adverse impacts.

Response: NMFS disagrees. NMFS has determined that no significant impact on the human environment will result from the approved measures. The proposed action, in the context of the fishery as a whole, will not have an adverse impact on the environment. The description of the affected environment for the fisheries under the jurisdiction of the Gulf of Mexico Fisheries Management Council is discussed in the Generic Amendment for Addressing Essential Fish Habitat. The only specific regulatory action that would affect fish stocks or the environment is the adoption of the construction characteristics of stone crab traps set forth in Chapter 46–13.002(2)(a) of Florida law. This measure is intended to reduce bycatch in the stone crab fishery and is not expected to have any adverse effects on the environment. The remaining measures proposed in the SFA Amendment address bycatch, overfishing definitions, and rebuilding schedules; however, the amendment proposes no regulatory actions that directly affect allocations or would be expected to substantially alter existing fishing practices in a way that would be detrimental to the environment. In addition, section 13.0 of the EA incorporates by reference sections of the amendment containing a description of the expected environmental consequences of each of the proposed alternatives considered. Additional environmental analyses and determinations will be made as future regulatory measures are implemented to achieve the goals of the SFA Amendment.

Comment 2: Five groups objected to the provisions of the amendment regarding reporting and minimization of bycatch. All commented that additional reporting requirements were needed to fully describe bycatch and that additional measures were required to reduce bycatch.

Response: NMFS agrees that additional bycatch reporting measures are required. NMFS has disapproved the portion of the amendment dealing with bycatch reporting. The Council has not fulfilled the Magnuson-Stevens Act requirement to develop standardized reporting to assess the amount and type of bycatch. The Council has taken steps to improve bycatch reporting, such as the cooperative state-Federal program under development by the Gulf States Marine Fisheries Commission, but this program is not yet fully implemented. Furthermore, NMFS is developing a bycatch reporting requirement in future and current logbooks that will be implemented on January 1, 2001. The Council proposed no new measures to improve bycatch reporting in its SFA Amendment; however, the Council is currently developing options to address bycatch problems in the shrimp fishery. These options include requiring bycatch reduction devices (BRDs) in the eastern Gulf, permits, logbooks, and observer programs.

NMFS agrees that the SFA amendment does not fulfill the Magnuson-Stevens Act mandate to reduce bycatch to the extent practicable. The Council has not adequately explained why additional measures to reduce bycatch are not practicable. NMFS has disapproved the portion of the amendment dealing with bycatch reduction except the modifications in the construction of stone crab traps. NMFS has requested that the Council take more aggressive action throughout the Gulf to reduce shrimp trawl bycatch. Such action could include extending the requirement for BRDs into Federal waters east of Cape San Blas, Florida, effort reduction in the fishery, closed areas, or seasonal closures. NMFS has approved the proposed changes in the construction characteristics of stone crab traps intended to reduce bycatch in that fishery.

Comment 3: Three environmental groups recommended disapproval of the proposed rebuilding plans for overfished species on the basis that the plans were either incomplete or proposed no specific description of how stocks are to be rebuilt. Some recommended that interim goals were needed within the proposed rebuilding period to ensure that rebuilding was occurring on schedule.

Response: NMFS has disapproved the rebuilding schedules for king mackerel and red snapper based on national standards 1 and 2 because they specified fishing mortality-based rebuilding targets rather than biomass-based targets, and because the time to rebuild in the absence of fishing mortality was not estimated based on rebuilding to biomass at MSY, as required by the Magnuson-Stevens Act and the national standard guidelines. Therefore, they are not based on the best available scientific information and provide no adequate basis for preventing overfishing and rebuilding stocks. Furthermore, the 26-percent spawning potential ratio (SPR) level specified as a proxy for red snapper is unlikely to reflect the fishing mortality rate at MSY according to the 1999 report of the Reef Fish Stock Assessment Panel. The Council did not propose rebuilding schedules for red drum, Nassau grouper, or jewfish. NMFS has recently provided the Council with information needed to revise rebuilding plans and requested that the Council submit the revisions through framework procedures as soon as possible. NMFS agrees that interim goals within an extended rebuilding period would be a valuable and precautionary way to ensure that a stock is rebuilding as planned; however, such goals are not explicitly required by the guidelines.

Comment 4: Four environmental groups commented on the fishery management targets and thresholds proposed and specifically on the lack of any specification of the minimum stock size threshold (MSST). Some groups suggested that an interim SPR proxy be established for the MSST until biomass-based estimates are available.

Response: NMFS has disapproved the SPRs submitted as proxies for MSY, OY, and MSST based on national standards 1 and 2. The Council must provide biomass-based estimates of MSY, OY, and MSST that are consistent with the Magnuson-Stevens Act and the national standard guidelines rather than proxies based on fishing mortality, which is not based on the best available scientific information and would not provide an adequate measure for determining whether OY can be achieved on a continuing basis. The SPR proxies submitted for MFMT were approved with the exception of red snapper, which was disapproved based on national standards 1 and 2 because the 26-percent SPR level specified is unlikely to reflect the fishing mortality rate at MSY, according to the 1999 report of the Reef Fish Stock Assessment Panel. The MFMT for royal red shrimp was also disapproved because no fishing mortality rate is explicitly specified. Static SPR is an acceptable proxy for the MFMT; however, SPR is not biomass-based and is not an acceptable proxy for MSST. Transitional SPR can be a useful measure of the extent to which past fishing mortality has distorted the age structure of a stock, but it is not sensitive to population size or biomass and, thus, is not an acceptable proxy for MSST.

Comment 5: Two charter-boat groups commented on the need for increased bycatch reduction in the shrimp fishery. They stated that BRDs have not reduced bycatch sufficiently and that a bycatch quota is needed in the shrimp fishery.

Response: NMFS agrees that additional bycatch reduction is required in the Gulf shrimp fishery. NMFS has disapproved the portion of the amendment dealing with bycatch reduction. The Council has not fulfilled the Magnuson-Stevens Act mandate to reduce bycatch to the extent practicable and has not adequately explained why additional measures to reduce bycatch are not practicable. NMFS has encouraged the Council to take more aggressive action throughout the Gulf to reduce shrimp trawl bycatch. NMFS has also notified the Council that additional measures to monitor bycatch in the shrimp fishery are needed. The Council is currently developing options to address bycatch problems in the shrimp fishery. These options include BRDs in the eastern Gulf, permits, logbooks, and observer programs. The Council has not previously considered bycatch quotas in the shrimp fishery; however, this idea may merit future consideration.

Comment 6: Three charter-boat groups commented that the overfishing thresholds for finfish were too conservative and should be disapproved. They specifically objected to the proposed thresholds for red snapper, jewfish, and Nassau grouper. They stated that MSY should be established on an individual basis.

Response: NMFS agrees that MSY thresholds should be established on an individual species basis. NMFS disagrees that the proposed overfishing thresholds are overly conservative. The proposed SPR levels are consistent with a large body of published scientific literature regarding appropriate threshold levels to prevent recruitment overfishing. NMFS has disapproved the SPRs submitted as proxies for MSY, OY, and MSST based on national standards 1 and 2, because they are based on fishing mortality and are not consistent with the best available scientific information and are not adequate criteria for determining whether OY can be achieved on a continuing basis. The Council must provide species-specific, biomass-based estimates of MSY, OY, and MSST that are consistent with the Magnuson-Stevens Act and the national standard guidelines.

Comment 7: One environmental group commented that the MFMT level should be set lower than MSY.

Response: NMFS disagrees. Both MSY and MFMT are limit thresholds. MSY is a biomass-based yield and MFMT is a fishing mortality rate, and, therefore, the two thresholds are not strictly comparable. NMFS' technical guidance recommends that MFMT be specified as the fishing mortality rate associated with MSY (F_{MSY}). The SFA amendment specified fishing-mortality-rate proxies (i.e., SPR) for MSY for most species. Thus, the amendment specifies MSY equal to MFMT for most stocks. The use of an SPR proxy is appropriate for MFMT but not for MSY, and NMFS has disapproved the SPR proxies submitted for MSY. Static SPR is an acceptable proxy for the MFMT; however, SPR is not biomass-based and is not indicative of any particular stock size or yield. Transitional SPR can be a useful measure of the extent to which past fishing mortality has distorted the age structure of a stock, but it is not sensitive to population size or biomass

and, thus, is not an acceptable proxy for MSY. The Council must provide species-specific, biomass-based estimates of MSY and MSST in addition to the fishing-mortality-based proxies provided.

Comment 8: Two environmental groups commented that additional measures are required to reduce bycatch in the reef fish fishery. These groups specifically raised concerns regarding bycatch of Nassau grouper and jewfish and requested that NMFS evaluate the level of bycatch of these two species.

Response: The Marine Recreational Fisheries Statistics Survey monitored bycatch in the reef fish recreational fishery. NMFS agrees that additional measures to reduce bycatch and better bycatch reporting measures in the commercial fishery are required. NMFS has disapproved the portions of the amendment dealing with reducing bycatch and bycatch reporting. The Council has taken steps to improve bycatch reporting, such as the cooperative state-Federal program under development by the Gulf States Marine Fisheries Commission, but this program is not yet fully implemented. Furthermore, NMFS is developing a bycatch reporting requirement in future and current logbooks that will be implemented on January 1, 2001. NMFS intends to continue to evaluate the effect of bycatch on the recovery of overfished reef fish stocks and to encourage the Council to take additional steps to reduce bycatch and increase the survival rates of fish caught and released in the reef fish fishery as needed. Thus, the Council has made progress towards improved bycatch monitoring in the Gulf, but several of the measures are still in development. The Council is also considering the need for mandatory observers to monitor bycatch in Gulf fisheries.

NMFS intends to continue to evaluate the effect of bycatch on the recovery of overfished reef fish stocks and to encourage the Council to take additional steps to reduce bycatch and increase the survival rates of fish caught and released in the reef fish fishery as needed. NMFS recently published a NOAA Technical Report assessing the status of Nassau grouper and jewfish. NMFS is currently monitoring numbers of jewfish and Nassau grouper caught and released in the recreational fishery.

Comment 9: One commercial industry group commented that the proposed red snapper overfishing targets and thresholds were far too conservative.

Response: NMFS disapproved the proposed red snapper overfishing targets and thresholds but disagrees with the assertion that the proposed thresholds are overly conservative. The proxies proposed for red snapper overfishing targets and thresholds are consistent with previous recommendations of the reef fish stock assessment panels that were available to the Council at the time the SFA amendment was prepared. NMFS disapproved the overfishing thresholds and the rebuilding period proposed for red snapper because (1) the rebuilding target specified is fishing-mortality-based (26-percent SPR) rather than biomass-based, (2) the 26-percent SPR level specified as a proxy for MSY is unlikely to reflect the fishing mortality rate at MSY, according to the 1999 report of the Reef Fish Stock Assessment Panel, and (3) the time to rebuild in the absence of fishing mortality was not estimated based on rebuilding to biomass at MSY, as required by the Magnuson-Stevens Act and the national standard guidelines. The Council must provide additional biomass-based estimates of MSY and MSST, in addition to the fishing-mortality-based proxies provided, that address the recommendations of the Stock Assessment Panel and are consistent with the Magnuson-Stevens Act and the national standard guidelines. Biomass-based targets and thresholds were included in the 1999 red snapper stock assessment and have been reviewed by the Reef Fish Stock Assessment Panel, but not yet by the Council.

Comment 10: One commercial industry group commented that the Gulf shrimp fishery has already minimized bycatch to the extent practicable. They argued that BRDs do not reduce bycatch mortality effectively and should not be required.

Response: NMFS disagrees. Current estimates of the effectiveness of BRDs suggest that a reduction in red snapper mortality of approximately 40 percent has been achieved and that greater reductions in 2000 are likely to result from changes in the design of acceptable BRDs, and from improvements in industry's ability to use BRDs effectively as experience is gained. The 1999 Reef Fish Stock Assessment Panel also concluded that red snapper bycatch was reduced about 40 percent in 1999. BRD performance improved in 1999, in part, because NMFS no longer allows the BRD configuration in which the elephant ear flap obstructs the opening of the BRD.

The Council is currently developing options to address bycatch problems in the shrimp fishery. These options include BRDs in the eastern Gulf, permits, logbooks, and observer programs. NMFS believes that BRDs have significantly reduced shrimp trawl bycatch in the western Gulf but that additional reductions are needed. NMFS has disapproved the portion of the amendment dealing with bycatch reduction based on national standard 9, except that portion addressing the modifications in stone crab trap construction. The Council has made progress towards reducing bycatch in the Gulf shrimp fishery by requiring BRDs in the western Gulf, but the Council has not adequately explained why additional measures to reduce bycatch are not practicable. Thus, it is not clear that the Council has fulfilled the Magnuson-Stevens Act's mandate to reduce bycatch to the extent practicable. Bycatch in the shrimp fishery has a substantial effect on many finfish stocks, including red snapper. NMFS has encouraged the Council to take more aggressive action throughout the Gulf to reduce shrimp trawl bycatch. Such action could include extending the requirement for BRDs into Federal waters east of Cape San Blas, Florida, effort reduction in the fishery, closed areas, or seasonal closures. NMFS believes that these actions may be practicable and could reduce bycatch substantially. NMFS has also notified the Council that additional measures to monitor bycatch in the shrimp fishery are needed.

Comment 11: Two environmental groups commented that more conservative fishery management targets and thresholds are needed for hermaphroditic species (species that change sex) such as groupers.

Response: NMFS agrees that a precautionary approach to the management of hermaphroditic species is appropriate. Hermaphroditic species may respond differently to fishing mortality than typical non-hermaphroditic species do, and, in some situations, hermaphrodites that change sex from female to male may be more sensitive to overfishing than non-hermaphrodites. The SFA amendment proposes more conservative targets and thresholds for grouper than those currently approved. NMFS has approved the SPR proxies proposed for MFMT for hermaphroditic groupers but has disapproved the SPR proxies proposed for MSY, OY, and MSST for hermaphroditic groupers based on national standards 1 and 2, because they are based on fishing mortality, are not consistent with the best available scientific information, and are not adequate criteria for determining whether OY can be achieved on a continuing basis. The Council must provide biomass-based estimates of MSY, OY, and MSST; the estimates

must be consistent with the national standard guidelines in addition to the fishing-mortality-based proxies provided by the Council. The Reef Fish Stock Assessment Panel will review these biomass-based estimates and evaluate their appropriateness for promoting sustainable fisheries for hermaphroditic species.

Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, determined that the approved measures of the SFA Amendment are necessary for the conservation and management of the fisheries of the Gulf of Mexico and that, with the exception of the provisions that were disapproved, the SFA Amendment is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects

50 CFR Part 622

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

50 CFR Part 654

Fisheries, Fishing.

Dated: May 15, 2000

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 622 and 654 are amended as follows:

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

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

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

2. In § 622.48, paragraphs (c) and (d) are revised, and paragraph (j) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(c) *Coastal migratory pelagic fish.* For a species or species group: Age-structured analyses, target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}) (or proxy), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), OY, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, and permit requirements.

(d) *Gulf reef fish.* (1) For a species or species group: Target date for rebuilding an overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, quotas, MSY (or proxy), OY, and estimates of stock biomass achieved by fishing at MSY (B_{MSY}), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT).

(2) SMZs and the gear restrictions applicable in each.

* * * * *

(j) *Gulf red drum.* Target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}), OY, TAC, minimum stock size threshold (MSST), maximum fishing mortality threshold (MFMT), escapement rates for juvenile fish, bag limits, size limits, gear harvest limits, and other restrictions required to prevent exceeding allocations or quotas.

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

3. The authority citation for part 654 continues to read as follows:

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

4. In § 654.22, paragraph (a) is revised to read as follows:

§ 654.22 Gear restrictions.

(a) *Trap construction requirements.* No person fishing for stone crab may transport on the water or fish with any trap which does not meet the following requirements:

(1) Each trap must be constructed of wood, plastic, or wire.

(2) A trap may be no larger in dimension than 24 by 24 by 24 inches (61 by 61 by 61 cm) or 8.0 ft^3 (0.23 m^3).

(3) The throats (entrances) to all wood and plastic traps must be located on the top horizontal section of the trap. If the throat is longer in one dimension, the throat size in the longer dimension must not exceed 5½ inches (14.0 cm) and in the shorter dimension must not exceed 3½ inches (9.0 cm). If the throat is round, the throat size must not exceed 5 inches (12.7 cm) in diameter.

(4) In any wire trap used to harvest stone crabs, each throat must be horizontally oriented. The width of the opening where the throat meets the vertical wall of the trap and the opening of the throat at its farthest point from the vertical wall, inside the trap, must be greater than the height of any such opening. No such throat may extend farther than 6 inches (15.2 cm) into the inside of any trap, measured from where the throat opening meets the vertical wall of the trap to the throat opening at its farthest point from the vertical wall, inside the trap.

(5) A wire trap must have at least three unobstructed escape rings installed, each with a minimum inside diameter of 2⅜ inches (6.0 cm). One such escape ring must be located on a vertical outer surface adjacent to each crab retaining chamber.

(6) A plastic or wire trap must have a degradable panel.

(i) A plastic trap will be considered to have degradable panel if it contains at least one sidewall with a rectangular opening no smaller in either dimension than that of the throat. This opening may be obstructed only with a cypress or untreated pine slat or slats no thicker than ¾ inch (1.9 cm) such that when the slat degrades, the opening in the sidewall of the trap will no longer be obstructed.

(ii) A wire trap will be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(A) The trap lid tie-down strap is secured to the trap at one end by a single loop of untreated jute twine, a corrodible loop composed of non-coated steel wire measuring 24 gauge or thinner, or an untreated pine dowel no larger than 2 inches (5.1 cm) in length by ⅜ inch (0.95 cm) in diameter. The trap lid must be secured so that when the jute, corrodible loop, or pine dowel degrades, the lid will no longer be securely closed.

(B) The trap contains at least one sidewall with a vertical rectangular opening no smaller in either dimension than 6 inches (15.2 cm) in height by 3 inches (7.6 cm) in width. This opening may be laced, sewn, or otherwise obstructed by—

(*1*) A single length of untreated jute twine knotted only at each end and not tied or looped more than once around a single mesh bar;

(*2*) Untreated pine slat(s) no thicker than 3/8 inch (0.95 cm);

(*3*) Non-coated steel wire measuring 24 gauge or thinner;

(*4*) A panel of ferrous single-dipped galvanized wire mesh made of 24 gauge or thinner wire; or

(*5*) A rectangular panel made of any material, fastened to the trap at each of the four corners of the rectangle by rings made of non-coated 24 gauge or thinner wire or single strands of untreated jute twine. When the jute, untreated pine slat(s), non-coated steel wire, wire mesh panel, or corner fasteners degrade, the opening in the sidewall of the trap must no longer be obstructed.

* * * * *

[FR Doc. 00–12669 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980414095–8240–02; I.D. 051200A]

Fisheries of the Northeastern United States; Dealer Reporting Requirements

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

ACTION: Notification of a 2-month termination of the deferral of Interactive Voice Response (IVR) System reporting requirements for Atlantic cod purchases.

SUMMARY: NMFS announces that it is terminating the current deferral of IVR reporting requirements of Atlantic cod for a 2-month period, beginning May 28, 2000, and ending July 31, 2000. One of the management measures for Atlantic cod includes two conditional 1-month closures in the Gulf of Maine (GOM). If the preliminary landings of GOM cod from May 1, 2000, through July 31, 2000, indicate that the trigger of 1.67 million lb (759 mt) has been reached, the closures would become effective. This deferral will enable NMFS to determine if the trigger has been reached. Any dealer issued a Northeast (NE) multispecies permit must submit, through the IVR system, a weekly summary of Atlantic cod purchased from May 28, 2000, through July 31, 2000.

DATES: The 2-month termination of the deferral of the IVR system reporting requirements is effective May 28, 2000, through July 31, 2000. Effective August 1, 2000, the IVR system reporting requirement for Atlantic cod is deferred until notification terminating the deferral for Atlantic cod is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sandra Arvilla, (978) 281–9255 or Gregory Power, (978) 281–9304.

SUPPLEMENTARY INFORMATION: To effectively monitor landings of quota-managed species on a timely basis, NMFS issued a final rule (63 FR 52639, October 1, 1998) requiring federally permitted dealers to submit a weekly summary of purchases of quota-managed species through the IVR system within 3 days of the end of the reporting week. To minimize the burden of dealer reporting requirements, the regulations implementing the use of an IVR system authorize (§ 648.7(a)(ii)) the Administrator, Northeast Region, NMFS (RA), to defer the IVR reporting requirements for any species if landings are not expected to reach levels that would cause the applicable target exploitation rate specified in the applicable Fishery Management Plan (FMP) for that species to be achieved, resulting in specific management changes. NMFS announced in the **Federal Register** (63 FR 57931, October 29, 1998) the deferral of IVR reporting requirements for Atlantic mackerel, butterfish, and regulated NE multispecies, which included Atlantic cod.

To address the overfishing of Gulf of Maine and Georges Bank cod, NMFS recently published a final rule implementing Framework Adjustment 33 to the NE Multispecies FMP (65 FR 21658, April 24, 2000). One of the management measures under Framework Adjustment 33 is the conditional 1-month closure of two areas, which would become effective if preliminary landings from May 1, 2000, through July 31, 2000, indicate that more than 1.67 million lb (759 mt) of GOM cod have been landed. As specified in § 648.81(o), if the RA determines that preliminary landings through July 31, 2000, indicate that more than 1.67 million lb (759 mt) has been landed as of, or before, July 31, 2000, NMFS shall implement the closures. The trigger (1.67 million lb (759 mt)) is established at a level that is 50 percent of the total allowable catch (TAC) level between the TACs associated with $F_{0.1}$ and F_{max}.

In order to monitor effectively Atlantic cod landings relative to the trigger of 1.67 million lb (759 mt), NMFS is requiring any dealer issued a NE multispecies permit to submit, through the IVR system, a weekly summary of Atlantic cod purchases made from May 28, 2000, through July 31, 2000. IVR reports must be submitted within 3 days of the end of the reporting week. Purchases of Atlantic cod transacted July 30–31, 2000, must be reported via the IVR system by midnight, Eastern time, Tuesday, August 8, 2000. Following submission of IVR reports for Atlantic cod purchases occurring from May 28, 2000, through July 31, 2000, the IVR system reporting requirements for Atlantic cod will again be deferred until notification terminating the deferral is published in the **Federal Register**.

Dealers must continue to report through the IVR system, their purchases of the species specified in § 648.7(a) for which IVR reporting requirements have not been deferred. These species are summer flounder, scup, black sea bass, *Illex* squid and *Loligo* squid. If no purchases of any quota-managed species are made during the reporting week, a negative report, so stating, must be submitted.

As specified in § 648.7(a)(1), dealers must continue to report purchases of all species, including those species for which IVR reporting has been deferred, on the detailed written reports.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: May 15, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–12668 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 98
Friday, May 19, 2000

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 50

Public Workshop on Performance-Based Approach—Voluntary Option

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) will host a public workshop to solicit feedback on the implementation of the direct final rule for 10 CFR 50.54(a) and to gather information to determine the need for the development of the voluntary alternative rulemaking based on Nuclear Energy Institute petition PRM–50–62. On February 23, 1999, the NRC published a direct final rule in the **Federal Register** (64 FR 9029), that amended its regulations to permit power reactor licensees to implement certain quality assurance (QA) program changes without obtaining prior NRC approval of these changes. The direct final rule became effective on April 26, 1999. Based on the workshop outcome, the staff will determine whether additional rulemaking is warranted. The NRC invites comments from interested parties who are unable to attend the workshop.

DATES: The workshop will be held on Wednesday, June 7, 2000, from 9 a.m. to 12 p.m.

ADDRESSES: U.S. Nuclear Regulatory Commission, One White Flint North (Room 14 B6), 11555 Rockville Pike, Rockville, MD 20852–2738, (301) 415–7000.

FOR FURTHER INFORMATION CONTACT: Robert Pettis, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–3214, email *rlp4@nrc.gov.*

SUPPLEMENTARY INFORMATION: The discussion topics are tentative and subject to change. Anyone interested in providing a presentation on these or other related topics, please contact Robert Pettis at (301) 415–3214.

Dated at Rockville, Maryland this 12th day of May, 2000.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Chief, IQMB, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–12621 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 777 series airplanes, that currently requires repetitive testing of the engine fire shutoff switch (EFSS) to determine if the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. That AD also requires, for certain airplanes, installation of a collar on a specific circuit breaker of the standby power management panel, and installation of placards to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. That AD was prompted by a report indicating that a solenoid and an override mechanism of the EFSS were not operational due to overheating of the solenoid. The actions specified by the proposed AD are intended to prevent damage to the EFSS solenoid and to the override mechanism, and consequent failure of the EFSS due to overheating of the solenoid; such failure could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire. This action would add various actions that would terminate the repetitive testing requirements.

DATES: Comments must be received by July 3, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket Number 99–NM–163–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 5, 1997, the FAA issued AD 97–10–11, amendment 39–10023 (62 FR 25837, May 12, 1997), applicable to all Boeing Model 777 series airplanes, to require repetitive testing of the engine fire shutoff switch (EFSS) to determine if the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. That AD also requires, for certain airplanes, installation of a collar on a specific circuit breaker of the standby power management panel, and installation of placards to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. That action was prompted by a report indicating that a solenoid and an override mechanism of the EFSS were not operational due to overheating of the solenoid. The actions specified by that AD are intended to prevent damage to the EFSS solenoid and to the override mechanism due to overheating of the solenoid; such failure of the EFSS could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire.

Actions Since Issuance of Previous Rule

In the preamble to AD 97–10–11, the FAA specified that the actions required by that AD were considered ''interim action'' and that once a final action is identified, the FAA may consider additional rulemaking action. The FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–26A0009, dated October 23, 1997. The service bulletin describes procedures for activating the circuit breaker C26612 in the P310 panel; removing the placards in the flight compartment; and replacing the EFSS with a new EFSS. Accomplishment of these actions eliminates the need for repetitive testing of the EFSS required by AD 97–10–11. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–10–11 to continue require repetitive testing of the EFSS to determine if the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. The proposed AD also would continue to require, for certain airplanes, installation of a collar on a specific circuit breaker of the standby power management panel, and installation of placards to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. In addition, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed AD and the Service Bulletin

Operators should note that the effectivity listing of Boeing Alert Service Bulletin 777–26A0009 affects airplanes having line positions 1 through 93 inclusive. The FAA has determined that, although the engine fire control switches, part number (P/N) 233W6201–1, and P/N's S231W263–1 and –2, were installed on affected airplanes during manufacture, it may be possible that these switches have been installed on Model 777 series airplanes during maintenance activities. Therefore, the FAA has determined that the applicability of the proposed AD would affect all Model 777 series airplanes.

Cost Impact

There are approximately 196 airplanes of the affected design in the worldwide fleet. The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 97–10–11, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on the U.S. operators is estimated to be $2,880, or $60 per airplane, per testing cycle.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,054 per airplane. Based on these figures, the cost impact of the new proposed requirements of this AD on U.S. operators is estimated to be $197,472, or $4,114 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10023 (62 FR 25837, May 12, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–163–AD. Supersedes AD 97–10–11, Amendment 39–10023.

Applicability: All Model 777 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the engine fire shutoff switch (EFSS) solenoid and to the override mechanism, and consequent failure of the EFSS, which could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire, accomplish the following:

Restatement of Actions Required by AD 97–10–11

Repetitive Testing of the EFSS

(a) For all airplanes: Within 14 days after May 27, 1997 (the effective date of AD 97–10–11, amendment 39–10023), perform a test of the EFSS of both the left-and right-hand engines to determine if the override mechanism and the switch handle are operational, in accordance with Boeing Alert Service Bulletin 777–26A0012, dated May 1, 1997.

(1) If the override mechanism and the switch handle of the EFSS are operational, prior to further flight, accomplish the requirements of paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable, in accordance with the alert service bulletin.

(i) For Group 1 airplanes identified in the alert service bulletin: Install a collar on circuit breaker C26612 of panel P310 of the standby power management panel. Following accomplishment of this installation, prior to further flight, install placards near the EFSS of both engines and near the auxiliary power unit (APU) EFSS to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch.

(ii) For Group 2 airplanes identified in the alert service bulletin: Ensure that a collar is installed on circuit breaker C26612 of panel P310 of the standby power management panel. If a collar is not installed, prior to further flight, install a collar on circuit breaker C26612 of panel P310 of the standby power management panel.

(2) If the override mechanism or the switch handle of the EFSS is not operational, prior to further flight, replace the EFSS with a new or serviceable EFSS, in accordance with the alert service bulletin.

(b) For all airplanes: Repeat the requirements of paragraph (a) of this AD thereafter at intervals not to exceed 500 flight hours.

New Actions Required by This AD

Terminating Action

(c) For all airplanes: Within 2 years after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD in accordance with Boeing Alert Service Bulletin 777–26A0009, dated October 23, 1997. Accomplishment of all three actions constitutes terminating action for the repetitive testing requirements of paragraph (b) of this AD.

(1) Replace the engine fire control module.

(2) Activate the circuit breaker C26612 in the P310 panel.

(3) Remove the placards in the flight compartment.

Spares

(d) As of the effective date of this AD, no person shall install an engine fire control module, part number (P/N) 233W6201–1, or engine fire switches P/N S231W263–1 or –2, on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

(f) 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.

Issued in Renton, Washington, on May 15, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–12674 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–12–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–60 series airplanes. This proposal would require affixing a label containing revised engine limitations on the ditching hatch, and revising the airplane flight manual to reflect the revised engine limitations. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the use of incorrect engine limitations, which could result in an overspeed of the propellers and potential for blade failure.

DATES: Comments must be received by June 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–12–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain Short Brothers Model SD3–60 series airplanes. The CAA advises that the manufacturer has revised the engine limitations to reflect amended propeller speed tolerance. The display of old, incorrect engine limitations could result in an overspeed of the propellers and potential for blade failure.

Explanation of Relevant Service Information

The manufacturer has issued Shorts Service Bulletin SD360–11–23, dated November 17, 1998, which describes procedures for affixing a label containing revised engine limitations on the ditching hatch. The new label will ensure that the flight crew observes the new engine limitations and amended propeller speed tolerance. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 015–11–98 in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Service Bulletin SD360–11–23 refers to certain revisions to the Aircraft Flight Manual (AFM), which also contain the revised engine limitations and propeller speed tolerances. These AFM revisions include Doc. No. SB 4.8, amendment P9; Doc. No. SB 4.9, amendment P12; and Doc. No. SB 4.10, amendment P7.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $900, or $60 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers PLC: Docket 2000–NM–12–AD.

Applicability: Model SD3–60 series airplanes, certificated in any category, serial numbers SH3716 through SH3763 inclusive.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the display of incorrect engine limitations, which could result in an overspeed of the propellers and potential for blade failure, accomplish the following:

Label Replacement and AFM Revision

(a) Within 6 months after the effective date of this AD: Replace the existing engine-limitations label with a new label containing revised engine limitations, and revise the

Limitations section of the FAA-approved airplane flight manual to reflect the revised engine limitations; in accordance with Shorts Service Bulletin SD360–11–23, dated November 17, 1998.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in British airworthiness directive 015–11–98.

Issued in Renton, Washington, on May 15, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–12673 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107644–98]

RIN 1545–AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 472 of the Internal Revenue Code that relate to accounting for inventories under the last-in, first-out (LIFO) method. The proposed regulations provide guidance regarding methods of valuing dollar-value LIFO pools and affect persons who elect to use the dollar-value LIFO and inventory price index computation (IPIC) methods. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by August 17, 2000. Requests to speak (with outlines of oral comments) at a public hearing scheduled for September 15, 2000, at 10 a.m., must be received by August 25, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–107644–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to:

CC:DOM:CORP:R (REG–107644–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jeffery G. Mitchell, (202)622–4970; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor of the Regulations Unit at (202) 622–7180 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that relate to the last-in, first-out (LIFO) inventory accounting method under section 472 of the Internal Revenue Code (Code). The LIFO method of accounting for goods treats inventories on hand at the end of the year as consisting first of inventory on hand at the beginning of the year and then of inventories acquired during the year.

Under § 1.472–8, a taxpayer is permitted to use the dollar-value LIFO method of accounting for inventories, which accounts for inventories in terms of dollars of cost rather than specific goods. The dollar-value LIFO method measures increases or decreases in inventory quantities by comparing the total cost of the quantity of goods on hand at the beginning and end of the taxable year in terms of equivalent-value dollars, *i.e.*, base-year cost. The current-year dollar cost of beginning and ending inventory may be converted into a base-year dollar cost using price indexes. Then, the quantity of base-year cost in beginning and ending inventory can be compared and the increase (increment) or decrease (liquidation) can be measured.

Section 472(f) directs the Secretary to prescribe regulations that permit the use of suitable published governmental price indexes for purposes of the LIFO method. The IRS and Treasury Department prescribed the inventory price index computation (IPIC) method in § 1.472–8(e)(3) (TD 7814, 47 FR 11271, 1982–1 C.B. 84), pursuant to authority contained in sections 472 and 7805. Under the IPIC method, inventory price indexes are computed with reference to consumer or producer price indexes published by the United States Bureau of Labor Statistics (BLS). The IPIC method was intended to simplify the use of the dollar-value LIFO method so that the LIFO method could be used by more taxpayers and would be easier to use by taxpayers already using the dollar-value LIFO method.

Explanation of Provisions

This document contains proposed amendments to the IPIC method provided in § 1.472–8(e)(3) of computing the LIFO value of a dollar-value inventory pool that are intended to simplify and clarify certain aspects of the IPIC method as well as to modify the computational methodology so that the IPIC method produces a more accurate and suitable inventory price index. In addition, the proposed regulations provide rules for computing the LIFO value of a dollar-value pool when a taxpayer receives LIFO inventories in certain nonrecognition transactions.

1. Elimination of Requirement To Use 10 Percent Categories and BLS Weights

Section 1.472–8(e)(3)(iii) of the regulations provides detailed rules for assigning inventory items to index categories published by the BLS in the ''CPI Detailed Report'' or the ''PPI Detailed Report'' for purposes of computing an inventory price index. Items are first assigned to the most detailed index category listed in the appropriate table of the ''CPI Detailed Report'' or the ''PPI Detailed Report'' that contains those items. If the total current-year cost of the items in a single detailed index category equals or exceeds 10 percent of the total inventory value, the taxpayer must use the published index for that selected index category for all items that are included in that detailed index category. If the total current-year cost of items in a

single detailed index category is less than 10 percent of the total inventory value, the taxpayer must investigate successively less detailed index categories until it reaches an index category that meets the 10 percent threshold. The taxpayer, however, may only use the published index for a less detailed selected index category if it has at least one item that would have been included in each of the most detailed index categories subsumed by the selected category. For example, a taxpayer may only use the published index for the ''Fresh fruits'' category from the ''CPI Detailed Report'' if its inventory includes at least one apple, banana, orange, citrus fruit other than orange, and other fresh fruit. If the taxpayer's inventory does not contain at least one item in each of the most detailed index categories within the selected index category, the taxpayer must compute an appropriate index for the selected index category. An appropriate index for the selected index category is a weighted average of the published indexes for the most detailed index categories that include at least one of the taxpayer's inventory items. The weights to be used in computing the appropriate index are the BLS weights listed for the detailed index categories. In computing an index for a pool, however, a taxpayer must weight the appropriate indexes for the selected index categories comprising the pool according to the taxpayer's actual inventory weights for those selected index categories.

The proposed regulations eliminate the requirement to use 10 percent categories and BLS weights to determine an appropriate index for two reasons. First, the weight assigned to an index category by the BLS may vary dramatically from the taxpayer's actual inventory weight for that category. Consequently, the index computed for those items using BLS weights will not accurately reflect the taxpayer's inflation experience. Second, the requirement to use 10 percent categories and BLS weights was intended to simplify the index computation procedure for those taxpayers that did not keep detailed inventory records. In practice, however, this requirement adds complexity to the index computation for most taxpayers. Moreover, even the most detailed BLS index categories are fairly broad and, with current inventory recordkeeping procedures and practices, most taxpayers have sufficiently detailed books and records to classify their inventory items according to the most detailed BLS index categories.

The proposed regulations require a taxpayer to classify its inventory items into the most detailed index category listed in the ''CPI Detailed Report'' or the ''PPI Detailed Report.'' For purposes of computing a weighted average pool index, the weight assigned to each selected index category will be the relative current-year cost of the items in that category. The IRS and Treasury Department request written comments regarding rules for excluding index categories that contain items with a *de minimis* amount of relative current-year cost from the pool index computation.

2. Weighted Harmonic Mean for Computing Pool Index

A pool index computed using the dollar-value LIFO method should reflect a weighted average of the inflation rates of the items contained in the ending inventory. Under LIFO methods that compute an internal index, the index computation procedure automatically produces an appropriately weighted pool index. However, when a taxpayer computes a LIFO inventory pool index using externally generated inflation rates, the taxpayer must weight the inflation rates to compute an appropriate composite index for the pool.

Section 1.472–8(e)(3)(iii)(B) states that the appropriate indexes are weighted according to the relative current-year costs of the items in each selected index category. However, the regulations do not set forth how to compute a weighted average of the appropriate indexes using the amount of relative current-year costs in each selected index category. The IRS provided an example of IPIC weighting methodology in Rev. Proc. 84–57 (1984–2 C.B. 496). The example computes a weighted average pool index based on a weighted arithmetic mean of the appropriate indexes. (Weighted Arithmetic Mean = [Sum of (Weight × Appropriate Index)]/Sum of Weights). The example provided in Rev. Proc. 98–49 (1998–37 I.R.B. 9), also used a weighted arithmetic mean to compute a weighted average percent change for a selected index category.

The IRS and Treasury Department have determined that a weighted arithmetic mean is mathematically inappropriate for averaging inflation indexes based on current-year costs. The mathematically correct method of averaging inflation indexes using relative current-year costs is a weighted harmonic mean. (Weighted Harmonic Mean = Sum of Weights/Sum of [Weight/Appropriate Index]). Therefore, the proposed regulations make the weighted harmonic mean the only acceptable method of computing a weighted average pool index using relative current-year costs of items in ending inventory.

3. Double-Extension or Link-Chain Method of Index Computation

The current regulations do not indicate whether the inventory price index should be computed using a link-chain or double-extension methodology. Section 1.472–8(e)(3)(ii) merely states that ''[a]n inventory price index computed [under the IPIC method] shall be a stated percentage of the percent change in the selected consumer or producer price index or indexes for a specific category or categories of goods.''

In practice, some taxpayers have used a link-chain methodology, and others a double-extension methodology. The proposed regulations specifically permit either method. The proposed regulations also explain how to compute an index under each method and provide examples.

4. Selecting Indexes as of an Appropriate Month

Section 1.472–8(e)(3)(iii)(C) states that a taxpayer not using the retail inventory method must select indexes ''as of the month or months'' most appropriate to its method of determining current-year cost, or make a one-time binding election of an appropriate representative month. The IRS has ruled that a month is an appropriate representative month if there is a nexus between the selected month, the taxpayer's method of determining current-year cost, and the taxpayers' historical experience of inventory purchases. Rev. Rul. 89–29 (1989–1 C.B. 168). In practice, there has been confusion about the meaning of the phrase ''month or months most appropriate to the taxpayer's method of determining current-year cost.''

The proposed regulations clarify that, for each dollar-value pool, a taxpayer should either annually determine the month most appropriate to its method of determining the current-year cost of the pool (appropriate month) or make a one-time election of a representative appropriate month (representative month) for the pool. The principles of Rev. Rul. 89–29 continue to apply for purposes of determining whether a particular month is appropriate or representative. An appropriate index is computed by comparing the published cumulative index for the appropriate or representative month to the published cumulative index for the appropriate or representative month used for the immediately preceding year (in the case of a taxpayer using the link-chain IPIC method) or the published cumulative index for the month preceding the first

day of the base year (in the case of a taxpayer using the double-extension IPIC method). The proposed regulations also clarify that a taxpayer electing to use a representative month must use an appropriate month, rather than the representative month, to compute an appropriate index in certain circumstances, such as a short taxable year.

5. Taxpayers Eligible To Use ''Department Store Inventory Price Indexes''

The current regulations prohibit the use of the IPIC method by a taxpayer that is eligible to use inventory price indexes prepared by the BLS for the purpose of valuing the LIFO inventories of a specific industry. Specifically, § 1.472–8(e)(3)(i) provides that a taxpayer eligible to use the retail price indexes prepared by the BLS and published in ''Department Store Inventory Price Indexes'' may not use the IPIC method.

Some retailers may carry goods traditionally carried by department stores and other goods that are not traditionally carried by department stores. Such taxpayers may qualify as department stores, but ''Department Store Inventory Price Indexes'' may not provide indexes that are applicable for some of the taxpayers' departments. Whenever one or more departments of a department store do not fit into any one of the 23 major groups established by the BLS or into the special combinations listed in Rev. Proc. 86–46 (1986–2 C.B. 739), the taxpayer may use either an index that represents an average for the whole of the remainder of the LIFO inventory or the store total index published by the BLS. However, the express terms of the current regulations prohibit taxpayers eligible to value their LIFO inventories using ''Department Store Inventory Price Indexes'' from using the IPIC method to compute an index for any dollar-value pool.

The proposed regulations eliminate the eligibility restrictions applicable to the IPIC method. Generally, any taxpayer may adopt the IPIC method as long as it uses that method for all goods accounted for under the dollar-value LIFO method. However, a taxpayer eligible to use ''Department Store Inventory Price Indexes'' may elect to use those indexes for LIFO inventory items that fall within any of the 23 major groups listed in ''Department Store Inventory Price Indexes'' and the IPIC method for the remainder of its LIFO inventory items, or may elect to use the IPIC method for all of its LIFO inventories. The proposed regulations do not, however, affect the ability of an eligible taxpayer to use ''Department Store Inventory Price Indexes'' to value its LIFO inventories in accordance with § 1.472–1(k) and Rev. Proc. 86–46.

6. Selection From ''CPI Detailed Report'' or ''PPI Detailed Report''

Section 1.472–8(e)(3)(iii)(C) states that a retailer may select indexes from the ''CPI Detailed Report'' or the ''PPI Detailed Report,'' but if equally appropriate indexes may be selected from either, a retailer using the retail inventory method must select from the ''CPI Detailed Report'' and a retailer not using the retail inventory method must select from the ''PPI Detailed Report.''

The proposed regulations eliminate the need for a retailer to determine whether the ''CPI Detailed Report'' and ''PPI Detailed Report'' contain equally appropriate indexes. The proposed regulations require retailers using the retail inventory method to select indexes from the ''CPI Detailed Report.'' All other taxpayers must select indexes from the ''PPI Detailed Report.''

7. Elimination of Requirement To Convert Published Indexes Into Retail Price Indexes or Cost Price Indexes

Section 1.472–8(e)(3)(iii)(C) provides that if a retailer using the retail inventory method selects an index from the ''PPI Detailed Report,'' the selected index must be converted into a retail price index, and that if a retailer not using the retail inventory method selects an index from the ''CPI Detailed Report,'' the selected index must be converted into a cost price index. The regulations further provide that manufacturers, processors, wholesalers, jobbers, and distributors must convert selected indexes into cost price indexes.

This conversion requirement in the current regulations was intended to more accurately represent the taxpayer's inflation experience relative to the selected price index. However, due to the inability of many taxpayers to determine gross profit percentages at the detailed index category level and the fact that gross profit percentages for many taxpayers are relatively constant, this conversion requirement may not actually increase the accuracy of the indexes used in the inventory price index computation. The IRS and Treasury Department have concluded that the administrative burden of converting published indexes into retail price or cost price indexes outweighs any benefits of increased accuracy from the procedure. Thus, the proposed regulations eliminate the requirement to convert published price indexes into either retail price indexes or cost price indexes.

8. Relocation and Clarification of Special Pooling Rules

Section 1.472–8(e)(3)(iv) provides special, elective pooling rules for retailers, wholesalers, jobbers, and distributors that use the IPIC method. Such taxpayers are permitted to establish an inventory pool for any group of goods included in one of the eleven general categories of consumer goods described in the ''CPI Detailed Report.'' Although wholesalers, jobbers and distributors are allowed to pool goods according to categories found in the ''CPI Detailed Report,'' they must select indexes from the ''PPI Detailed Report'' pursuant to § 1.472–8(e)(3)(iii)(C). The current regulations provide no special, elective pooling rules for manufacturers that use the IPIC method. However, Rev. Proc. 84–57 provides that an inventory pool or pools may be established for any group of goods included within one of the 15 general categories of producer goods described in Table 6 of the ''PPI Detailed Report.''

The proposed regulations provide special, elective pooling rules for LIFO inventories accounted for under the IPIC method. Specifically, retailers using the retail inventory method may establish an inventory pool for any group of goods accounted for under the IPIC method included within one of the general expenditure categories (*i.e.,* major groups) in Table 3 of the ''CPI Detailed Report.'' Retailers not using the retail method, wholesalers, jobbers, distributors, processors, and manufacturers may establish an inventory pool for any group of goods accounted for under the IPIC method included within one of the 2-digit commodity codes (*i.e.,* major commodity groups) in Table 6 of the ''PPI Detailed Report.'' The special, elective pooling rules provided in the proposed regulations correspond with the pooling rules found in section 474(b) so that a taxpayer may change from the simplified dollar-value LIFO method of section 474 to the IPIC method without changing its pooling structure. In addition, the special, elective pooling rules for taxpayers using the IPIC method are relocated with the general pooling rules applicable to all taxpayers in § 1.472–8(b) and (c).

9. Clarification of the Definition of ''Eligible Small Business''

Section 1.472–8(e)(3)(ii) permits an eligible small business, as defined under section 474(b) of the Internal Revenue

Code of 1954, to compute an inventory price index for its pool(s) using 100 percent of the percent change in the selected indexes. All other taxpayers must compute an inventory price index for their pools using 80 percent of the percent change in the selected indexes. At the time the regulations were published, section 474(b) defined an eligible small business as a taxpayer with average annual gross receipts that did not exceed $2,000,000 for the 3-taxable-year period ending with the taxable year.

Section 474 was amended by the Tax Reform Act of 1986. Public Law 99–514, 100 Stat. 2348. An eligible small business is now defined by section 474(c) as a taxpayer with average annual gross receipts that do not exceed $5,000,000 for the 3 preceding taxable years. The proposed regulations clarify that the IPIC method definition of ''eligible small business'' mirrors the definition in current section 474.

10. New Base Year for IPIC Method Changes

Section 1.472–8(e)(vi) requires a taxpayer that changes to the IPIC method from another dollar-value LIFO method to treat the year of change as the base year in determining the LIFO value of the inventory pool(s) for the year of change and later taxable years. The taxpayer is also required to restate indexes of existing layers of increment in terms of new base-year cost. This procedure is generally known as updating the base year.

The proposed regulations clarify that the base year updating procedure applies in the case of a voluntary change to the IPIC method, but is discretionary in the case of an involuntary change to the IPIC method. If an examining agent determines that a taxpayer's dollar-value LIFO method does not clearly reflect income, the agent may require the taxpayer to change to the double-extension IPIC method on a cut-off basis with or without an updated base year. If the examining agent chooses not to update the base year, the examining agent will ascertain the amount of any increment in terms of base-year cost for the year of change by comparing the total base-year cost of the beginning inventory determined under the taxpayer's dollar-value LIFO method and the total base-year cost of the ending inventory determined under the double-extension IPIC method. Any increment so determined will be valued using the index computed under the double-extension IPIC method.

11. Inventories Received in a Nonrecognition Transaction

Under current law, the treatment of LIFO inventories received in a nonrecognition transaction depends upon whether the transaction qualifies as a corporate reorganization to which section 381 applies. Section 381(c)(5) provides that inventory accounting methods generally carry over, uninterrupted, to a transferee in a transaction described in section 381(a).

However, inventory accounting methods generally do not carry over to a transferee in other nonrecognition transactions such as transfers to a controlled corporation under section 351, divisive ''D'' reorganizations under section 368(a)(1)(D), or contributions to a partnership under section 721 (non-section 381 transfers). *Textile Apron Company, Inc.* v. *Commissioner,* 21 T.C. 146 (1953), *acq.,* 1954–1 C.B. 7. But see § 1.263A–7(c)(4); 1.1502–17. If a transferee that has never owned inventories or that has accounted for inventories using a method other than LIFO wants to use the LIFO method to account for inventories received in a non-section 381 transfer, it must elect the LIFO method for the year of transfer. The inventories received in the transfer are treated as opening inventory and their cost is determined using the average cost method as provided in section 472(b)(3). Rev. Rul. 70–564 (1970–2 C.B. 109). A transferee that previously elected to use the LIFO method may account for the LIFO inventories received in a non-section 381 transfer using its preexisting LIFO method. The LIFO layers of the transferor retain the transferor's original acquisition dates and costs and are integrated into the transferee's existing LIFO layers. *Commissioner* v. *Joseph E. Seagram & Sons, Inc.,* 394 F.2d 738 (1968), rev'g, 46 T.C. 698 (1966); Rev. Rul. 70–565 (1970–2 C.B. 110).

An election to use the dollar-value LIFO method for LIFO inventories received in a non-section 381 transfer, however, may not continue the LIFO reserve of the transferor. If the mix of goods in the inventory changes significantly after the transfer, the mechanics of the dollar-value LIFO method may produce an increment in the first taxable year that effectively eliminates the LIFO reserve established by the transferor. This occurs because the transferee's base year is the year in which it elects LIFO.

A taxpayer using the dollar-value LIFO method determines whether there is an increase or decrease in the quantity of inventory by comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory. When inventory is received in a non-section 381 transfer, the transferee's basis is determined by reference to the transferor's basis in the inventory. The transferee's base-year cost, however, is not determined by reference to the transferor's base-year cost. The transferee's base-year cost of inventory received in a non-section 381 transfer is equal to the transferee's cost of the inventory, which is generally the carryover basis of the inventory. Since the transferor's basis was established by reference to the actual cost of the goods in years prior to the transfer, the carryover basis of the inventory may be considerably lower than what it would cost to purchase or produce the goods in the current year. If a new item enters the transferee's inventory, § 1.472–8(e)(2)(iii) only permits the transferee to reconstruct the base-year unit cost of that item back to the year in which it elected LIFO. If the transferee elected LIFO in the year in which the non-section 381 transfer occurred, the base-year unit cost of the new item will not be comparable to the base-year unit cost of the items that were received in the transfer and comprised the opening inventory. The disparity in the base-year unit costs may produce an increment in terms of base-year cost that would not have occurred but for the low base-year unit cost of the inventory received in the transfer.

While the current regulations contain a provision requiring a taxpayer that changes to the IPIC method from another LIFO method to treat the year of change as the base year in determining the LIFO value of the inventory pool(s) for the year of change and later taxable years, the provision does not apply to an initial adoption of LIFO by a transferee. When a transferee elects the LIFO and IPIC methods for LIFO inventories received in a non-section 381 transfer, the transferee will have an increment in the year in which the inventories are received even without a significant change in the mix of goods in the transferee's ending inventory. The IPIC method invariably produces an increment because the index used to convert the current-year cost of the ending inventory to base-year cost will reflect only one year of inflation while the difference between the current-year cost and the carryover basis of the opening inventory reflects more than one year of inflation.

The IRS and Treasury Department have determined that recapture of the LIFO reserve established by the transferor's use of the dollar-value LIFO method solely by virtue of the mechanical application of the dollar-

value LIFO method after a non-section 381 transfer is inappropriate, given the business continuity principles governing the tax treatment of the underlying transaction. Accordingly, the proposed regulations provide that if a transferee uses the dollar-value LIFO method for inventories that were received in a nonrecognition transaction to which section 381 does not apply and that were accounted for using the dollar-value LIFO method by the transferor, the transferee must use the year of transfer as the base year and the transferor's current-year cost of the inventory received as the new base-year cost of such inventory for purposes of determining future increments and liquidations. The proposed regulations do not affect a newly formed transferee's ability to elect new accounting methods or the holdings of Rev. Rul. 70–564 and Rev. Rul. 70–565. However, the new base year rule does not apply to a non-section 381 transaction if the transaction was made with the principal purpose of availing the transferee of a method of accounting that would be unavailable to the transferor (or would be unavailable without securing consent from the Commissioner). In determining the principal purpose of a transfer, consideration will be given to all of the facts and circumstances. However, if a transferor acquired inventory in a bargain purchase within the five taxable years preceding the year of the transfer and accounted for that inventory using a dollar-value LIFO method that did not treat the bargain purchase inventory and physically identical inventory acquired at market prices as separate items, the transfer will be deemed made with the principal purpose of availing the transferee of a method of accounting that would be unavailable to the transferor (or would be unavailable without securing consent from the Commissioner).

Proposed Effective Date

These regulations are proposed to be effective for taxable years beginning on or after the date they are published in the **Federal Register** as final regulations.

Effect on Other Documents

Rev. Proc. 84–57 will become obsolete as of the date these regulations are published in the **Federal Register** as final regulations. In addition, Rev. Proc. 98–49 is modified with respect to the requirements to use 10 percent categories and BLS weights, to compute a weighted average using a weighted arithmetic mean, and to convert selected indexes to cost, as of the date these regulations are published in the **Federal Register** as final regulations.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 15, 2000, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written or electronic comments by August 17, 2000 and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by August 25, 2000.

A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these regulations is Jeffery G. Mitchell of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.472–8 also issued under 26 U.S.C. 472. * * *

Par. 2. Section 1.472–8 is amended as follows:

1. Paragraph (b)(4) is added.

2. The text of paragraph (c) following the paragraph heading is redesignated as paragraph (c)(1) and a paragraph heading for newly designated paragraph (c)(1) is added.

3. Paragraph (c)(2) is added.

4. Paragraphs (e)(3) and (h) are revised.

The revisions and additions read as follows:

§ 1.472–8 Dollar-value method of pricing LIFO inventories.

* * * * *

(b) * * *

(4) *Inventory price index pools.* A manufacturer or processor that elects to use the inventory price index computation method described in paragraph (e)(3) of this section to value its dollar-value pools may establish an inventory pool for any group of goods included within one of the 2-digit commodity codes (*i.e.*, major commodity groups) in Table 6 (Producer price indexes for commodity groups, subgroups, product classes, and individual items) of the ''PPI Detailed Report'' published by the United States Bureau of Labor Statistics (Available from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954). Inventory pools that comprise less than 5 percent of the total inventory value may be combined to form a single miscellaneous inventory pool. If the resulting miscellaneous inventory pool

itself comprises less than 5 percent of the total inventory value, that pool may be combined only with the largest inventory pool.

(c) * * * (1) *In general.* * * *

(2) *Inventory price index pools.* A retailer using the retail inventory method that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (the IPIC method) may establish an inventory pool for any group of goods accounted for under the IPIC method included within one of the general expenditure categories (*i.e.*, major groups) in Table 3 (Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, detailed expenditure categories) of the ''CPI Detailed Report'' published by the United States Bureau of Labor Statistics (Available from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954). A retailer not using the retail inventory method, wholesaler, jobber, or distributor electing to use the IPIC method may establish an inventory pool for any group of goods accounted for under the IPIC method included within one of the 2-digit commodity codes (*i.e.*, major commodity groups) in Table 6 (Producer price indexes for commodity groups, subgroups, product classes, and individual items) of the ''PPI Detailed Report'' published by the United States Bureau of Labor Statistics. Inventory pools that comprise less than 5 percent of the total inventory value may be combined to form a single miscellaneous inventory pool. If the resulting miscellaneous inventory pool itself comprises less than 5 percent of the total inventory value, that pool may be combined only with the largest inventory pool.

* * * * *

(e) * * *

(3) *Inventory price index computation method*—(i) *In general.* The inventory price index computation method provided by this paragraph (e)(3) (the IPIC method) is a method of determining the LIFO value of a dollar-value inventory pool with reference to indexes published by the United States Bureau of Labor Statistics (BLS). An inventory price index computed using the IPIC method will be accepted by the Commissioner as an appropriate method of computing an index, and the use of that inventory price index to compute the LIFO value of a dollar-value inventory pool will be accepted as accurate, reliable, and suitable. The appropriateness of a taxpayer's computation of an inventory price index, including the selection of the consumer or producer price indexes and the propriety of all computations incidental to the use of those consumer or producer price indexes, will be determined in connection with the examination of the taxpayer's income tax return. A taxpayer using the IPIC method may elect to establish inventory pools in accordance with the special rules in paragraphs (b)(4) and (c)(2) of this section or the general rules for establishing inventory pools in paragraphs (b) and (c) of this section. Taxpayers eligible to use the IPIC method are described in paragraph (e)(3)(ii) of this section. The manner in which an inventory price index is computed using the IPIC method is described in paragraph (e)(3)(iii) of this section. Rules relating to the adoption of, or change to, the IPIC method are in paragraph (e)(3)(iv) of this section.

(ii) *Eligibility.* Any taxpayer electing to use the dollar-value LIFO method may elect to compute an inventory price index in accordance with the IPIC method. Except as provided in this paragraph (e)(3)(ii), a taxpayer using the IPIC method must use that method in determining the value of all goods for which the taxpayer has elected to use the dollar-value LIFO method. A taxpayer that uses the retail price indexes prepared by the BLS and published in ''Department Store Inventory Price Indexes'' (Available from the BLS by calling (202) 606–6325 and entering document code 2415) may elect to use the IPIC method for inventory items that do not fall within any of the major groups listed in ''Department Store Inventory Price Indexes.''

(iii) *Computation of an inventory price index*—(A) *In general.* An inventory price index computed using the IPIC method is used to convert the current-year cost of the inventory in a dollar-value inventory pool to base-year cost for purposes of determining whether an increment or liquidation in terms of base-year cost exists and to value the increment, if any, at current-year cost. A taxpayer must compute a separate inventory price index for each dollar-value inventory pool. The computation of an index for each pool involves the following four steps which are described in more detail in this paragraph (e)(3)(iii): First, selection of a BLS table and an appropriate month, second, selection of an index category, third computation of an appropriate index for each selected index category, and fourth, computation of a pool index. A taxpayer may compute an inventory price index for each dollar-value inventory pool under the IPIC method using a double-extension method (the double-extension IPIC method) or a link-chain method (the link-chain IPIC method) without regard to whether the use of a double-extension method is impractical or unsuitable. See paragraphs (e)(3)(iii)(D) and (E) of this section. The use of the double-extension IPIC method or the link-chain IPIC method is a method of accounting, and whichever method is adopted must be applied consistently to all of the taxpayer's dollar-value inventory pools accounted for using the IPIC method.

(B) *Selection of a BLS table and appropriate month*—(*1*) *In general.* An inventory price index computed using the IPIC method is computed with reference to the consumer or producer price indexes for specific categories of inventory items listed in the ''CPI Detailed Report'' or ''PPI Detailed Report'' published by the BLS for the appropriate month. A taxpayer may elect to use either the preliminary or final indexes published by the BLS for the appropriate month provided that the chosen indexes are used consistently from year to year. A taxpayer that elects to use final indexes must use preliminary indexes for the appropriate month for any taxable year in which it files its original federal income tax return before the BLS publishes final indexes.

(*2*) *BLS table selection.* Manufacturers, processors, wholesalers, jobbers, distributors, and retailers not using the retail inventory method must select indexes from Table 6 (Producer price indexes for commodity groups, subgroups, product classes, and individual items) of the ''PPI Detailed Report,'' unless the taxpayer can demonstrate that the selection of an index from another table of the ''PPI Detailed Report'' would be more appropriate. Retailers using the retail inventory method must select indexes from Table 3 (Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories) of the ''CPI Detailed Report.''

(*3*) *Appropriate month.* In the case of a retailer using the retail inventory method, the appropriate month is the last month of the retailer's taxable year. In the case of all other taxpayers, the appropriate month is a month most appropriate to the taxpayer's method of determining the current-year cost of each dollar-value inventory pool under paragraph (e)(2)(ii) of this section. A taxpayer not using the retail inventory method may annually select an appropriate month for each dollar-value inventory pool or make an election of a representative appropriate month (representative month). An election of a representative month is a method of

accounting and must be used for the taxable year of the election and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner as provided in § 1.446–1(e) to change or revoke its election. The election of a representative month must be clearly set forth on Form 970. See paragraph (e)(3)(iv)(A) of this section.

(C) *Selection of an index category*—(*1*) *In general.* The inventory items in each dollar-value pool should be classified according to the most detailed listings in the appropriate tables of the ''CPI Detailed Report'' or the ''PPI Detailed Report.'' The selection of a consumer or producer price index category for a specific item to compute an inventory price index under the IPIC method is a method of accounting. However, the selection of a new consumer or producer price index category for a specific item as a result of revisions to the ''CPI Detailed Report'' or the ''PPI Detailed Report'' is a change in underlying facts and not a change in method of accounting. Change in method of accounting rules relating to changes in selected indexes are in paragraph (e)(3)(iv) of this section.

(*2*) *Index selection from the PPI Detailed Report.* Manufacturers, processors, wholesalers, jobbers, distributors, and retailers not using the retail inventory method must classify their inventory items according to the detailed listings in the appropriate table(s) of the ''PPI Detailed Report.'' Each specific inventory item in the taxpayer's inventory must be assigned to the most detailed index category listed in the appropriate tables (as determined under paragraph (e)(3)(iii)(B)(*2*) of this section) of the ''PPI Detailed Report'' that includes that specific inventory item. Manufacturers and processors must assign each raw material inventory item to the most detailed index category that includes that raw material and each finished good inventory item to the most detailed index category that includes that finished good. Manufacturers and processors must assign work-in-process inventory items to the most detailed index category that includes the finished good into which the item will be manufactured or processed. For this purpose, the term finished good means a good that is in a saleable state. For example, a gasoline engine manufacturer that also produces pistons for the engines must assign finished pistons that have not yet been affixed to an engine block and the piston work-in-process items to the most detailed index category that includes pistons. Finished pistons that have been affixed to an engine block must be assigned to the most detailed index category that includes the engine.

(*3*) *Index selection from the CPI Detailed Report.* Retailers using the retail inventory method must classify their inventory items according to the detailed listings in the appropriate tables of the ''CPI Detailed Report.'' Each specific inventory item in the taxpayer's inventory must be placed in the most detailed index category listed in the appropriate table (as determined under paragraph (e)(3)(iii)(B)(*2*) of this section) of the ''CPI Detailed Report'' that includes that specific inventory item.

(D) *Computation of an appropriate index*—(*1*) *Double-extension IPIC method.* In the case of a taxpayer using the double-extension IPIC method, an appropriate index for a selected index category is the percent change in the published cumulative indexes for that category for the index period between the appropriate or representative month of the current taxable year (determined under paragraph (e)(3)(iii)(B)(*3*) of this section) and the month preceding the first day of the base year (the base month). The percent change in the published indexes is equal to the quotient of the published cumulative index for the appropriate or representative month of the current year divided by the published cumulative index for the base month.

(*2*) *Link-chain IPIC method.* In the case of a taxpayer using the link-chain IPIC method, an appropriate index for a selected index category is the percent change in the published cumulative indexes for that category during the index period between the appropriate or representative month of the current taxable year (determined under paragraph (e)(3)(iii)(B)(*3*) of this section) and the appropriate or representative month used for the immediately preceding taxable year. The percent change in the published indexes is equal to the quotient of the published cumulative index for the appropriate or representative month of the current year divided by the published cumulative index for the appropriate or representative month used for the immediately preceding year (or, for the month immediately preceding the first day of the taxable year, if such year is the first taxable year in which the taxpayer uses dollar-value LIFO).

(*3*) *Limitation on index period.* A taxpayer electing to use a representative month under paragraph (e)(3)(iii)(B)(*3*) of this section must use an appropriate month, rather than the representative month, to determine the index period in the circumstances described in this paragraph (e)(3)(iii)(D)(*3*) and other similar circumstances. For example, if the first taxable year in which the taxpayer uses the IPIC method is also the first taxable year in which the taxpayer uses the dollar-value LIFO method, the index period is the period between the month immediately preceding the first day of the taxable year and an appropriate month for that taxable year. Likewise, in the case of a short taxable year, the index period ordinarily is the period between the base month (double-extension IPIC method) or the appropriate or representative month used for the preceding taxable year (link-chain IPIC method) and the appropriate month for the short taxable year. Similarly, if a taxpayer using the link-chain IPIC method is granted consent to change its method of determining the current-year cost of a dollar-value pool and its representative month, the index period is the period between the old representative month used for the preceding taxable year and the new representative month for the year of change.

(E) *Computation of a pool index*—(*1*) *Weighted average pool index.* To compute an inventory price index for a dollar-value pool, a taxpayer must compute a weighted average pool index. A weighted average pool index is a weighted harmonic mean of the appropriate indexes (determined under paragraph (e)(3)(iii)(D) of this section) for each selected index category represented in the taxpayer's ending inventory. The formula for computing a weighted harmonic mean is: Sum of weights/Sum of (Weight/Appropriate Index). The costs to be used in computing a weighted harmonic mean are the relative amount of current-year costs (or, in the case of a retailer using the retail inventory method, the relative retail selling prices) in each index category represented in the ending inventory of the pool.

(*2*) *Double-extension IPIC method.* Under the double-extension IPIC method, an inventory price index computed for each pool is 1.0 plus a stated percentage of the increase since the base date in the weighted average pool index determined under paragraph (e)(3)(iii)(E)(*1*) of this section. In the case of an eligible small business as defined in section 474, the stated percentage is 100%. In the case of all other taxpayers, the stated percentage is 80%. Thus, the inventory price index for an eligible small business is equal to the weighted average pool index determined under paragraph (e)(3)(iii)(E)(*1*) of this section. The inventory price index for all other taxpayers is computed using the

following formula: 1 + [0.8 * (weighted average pool index − 1)].

(*3*) *Link-chain IPIC method.* Under the link-chain IPIC method, an inventory price index for each pool is 1.0 plus a stated percentage of the increase since the base date in a cumulative index. In the case of an eligible small business as defined in section 474, the stated percentage is 100%. In the case of all other taxpayers, the stated percentage is 80%. The cumulative index for each taxable year is the product of the weighted average pool index determined under paragraph (e)(3)(iii)(E)(*1*) of this section multiplied by the cumulative index for the immediately preceding taxable year. The cumulative index for the taxable year is computed using the following formula: (weighted average pool index * preceding year's Cumulative Index). The inventory price index for a taxable year of an eligible small business is equal to the cumulative index for the taxable year. The inventory price index for a taxable year of all other taxpayers is computed using the following formula: 1 + [0.8 * (Cumulative Index for the taxable year − 1)].

(F) *Examples.* The following examples illustrate the rules of this paragraph (e)(3)(iii):

Example 1. Double-extension Method.

(i) *Introduction.* R is a retail furniture merchant with more than $5,000,000 in average annual gross receipts for all relevant years. For the taxable year ending December 31, 1996, R used the first-in, first-out method of identifying inventory and valued its inventory at cost. R's inventory on December 31, 1996, had a cost of $850,000.00. R elected to use the dollar-value LIFO and double-extension IPIC methods for its taxable year ending December 31, 1997. R determines the current-year cost of inventory items by reference to the actual cost of the goods most recently purchased. R elected to pool its inventory in accordance with the special IPIC pooling rules of paragraph (b)(4) of this section. R does not use the retail inventory method. All of R's inventory items fall within the 2-digit commodity code in Table 6 (Producer price indexes for commodity groups, subgroups, product classes, and individual items) of the ''PPI Detailed Report'' for ''furniture and household durables.'' Therefore, R will maintain a single inventory pool.

(ii) *Select a BLS table and appropriate month for the 1997 taxable year.* R determines that the appropriate month for the taxable year ending December 31, 1997, is October. Because R is a retailer not using the retail inventory method, R must select indexes from the ''PPI Detailed Report.'' The indexes in Table 6 of the ''PPI Detailed Report'' are appropriate for R's inventory.

(iii) *Select index categories for the 1997 taxable year.* R's inventory items can be classified into five detailed categories listed in Table 6 of the ''PPI Detailed Report'' published for October, 1997. The categories and current-year cost of items in those categories can be summarized as follows:

Commodity code	Category	Current-year cost
12120101	Living Room Table	$111,924.00
12120211	Dining Room table	159,578.00
12120216	Dining Room chairs	98,639.00
12130101	Upholstered Sofas	332,488.00
12130111	Upholstered Chairs	218,751.00
		921,380.00

(IV) *Compute appropriate indexes for the 1997 taxable year.* Because R elected to use the double-extension IPIC method, R will compute appropriate indexes in accordance with paragraph (e)(3)(iii)(D)(*1*) of this section (published cumulative index for October, 1997 divided by published cumulative index for December, 1996). R computes the appropriate indexes as follows:

Category	Oct. '97 index	Dec. '96 index	Appropriate index
Living Room Table	172.4	169.2	1.018913
Dining Room Table	171.9	168.1	1.022606
Dining Room Chairs	172.8	169.7	1.018268
Upholstered Sofas	142.2	140.9	1.009226
Upholstered Chairs	134.1	132.5	1.012075

(v) *Compute a weighted average pool index for the 1997 taxable year.* R must first compute a weighted average pool index using the formula set forth in paragraph (e)(3)(iii)(E)(*1*) of this section (Sum of weights/Sum of [Weight/Appropriate Index]). The weighted average pool index is computed as follows:

Category	Weight	Appropriate index	Quotient
Living Room Table	$111,924.00	1.018913	$109,846.47
Dining Room Table	159,578.00	1.022606	156,050.33
Dining Room Chairs	98,639.00	1.018268	96,869.39
Upholstered Sofas	332,488.00	1.009226	329,448.51
Upholstered Chairs	218,751.00	1.012075	216,141.10
Total	921,380.00		$908,355.80

Sum of weights	Sum of (weight/appropriate index)	Weighted average pool index
$921,380.00	$908,355.80	1.0143382

(vi) *Compute an inventory price index for the 1997 taxable year.* R computes an inventory price index for the pool using the formula set forth in paragraph (e)(3)(iii)(E)(*2*) of this section. The inventory price index is 1.0114710 (1 + [0.8 * (1.0143382 − 1)]).

(vii) *Determine the LIFO value of the pool for the 1997 taxable year.* R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the inventory items in the pool by the inventory price index. The total base-year cost of R's ending inventory is $910,930.71 ($921,380/1.011471). R compares the ending inventory at base-year cost to the beginning inventory at base-year cost and determines that the amount of the layer of increment for the taxable year in terms of base-year cost is

$60,930.71 ($910,930.71 − $850,000.00). R multiplies the base-year cost of the increment by the inventory price index computed for the taxable year and determines that the LIFO value of the increment is $61,629.65 ($60,930.71 * 1.011471). Thus, the LIFO value of R's inventory at the end of the 1997 taxable year is $911,629.65 ($850,000 opening inventory + $61,629.65 increment).

(viii) *Select a BLS table and appropriate month for the 1998 taxable year.* For the 1998 taxable year, R must compute a new inventory price index under the double-extension IPIC method to determine the LIFO value of its dollar-value pool. R determines that the appropriate month for the taxable year ending December 31, 1998, is November.

(ix) *Select index categories for the 1998 taxable year.* The inventory items contained in R's ending inventory can be classified into five detailed categories listed in Table 6 of the ''PPI Detailed Report'' published for November, 1998. The categories and current-year cost of items in those categories can be summarized as follows:

Commodity code	Category	Current-year cost
12120103	Living Room Desks	$125,008.00
12120211	Dining Room Table	136,216.00
12120216	Dining Room Chairs	113,569.00
12130101	Upholstered Sofas	343,900.00
12130111	Upholstered Chairs	233,050.00
		951,743.00

(x) *Compute appropriate indexes for the 1998 taxable year.* Because R uses the double-extension IPIC method, R will compute an appropriate index in accordance with paragraph (e)(3)(iii)(D)(*1*) of this section (published cumulative index for November, 1998 divided by published cumulative index for December, 1996). R computes the appropriate indexes as follows:

Category	Nov. '98 index	Dec. '96 index	Appropriate index
Living Room Desks	172.6	160.3	1.076731
Dining Room Table	174.8	168.1	1.039857
Dining Room Chairs	177.0	169.7	1.043017
Upholstered Sofas	144.9	140.9	1.028389
Upholstered Chairs	136.6	132.5	1.030943

(xi) *Compute a pool index for the 1998 taxable year.* R must first compute a weighted average pool index using the formula set forth in paragraph (e)(3)(iii)(E)(*1*) of this section (Sum of weights/(Sum of [Weight/Appropriate Index])). The weighted average pool index is computed as follows:

Category	Weight	Appropriate index	Quotient
Living Room Desks	$125,008.00	1.076731	$116,099.56
Dining Room Table	136,216.00	1.039857	130,994.93
Dining Room Chairs	113,569.00	1.043017	108,885.09
Upholstered Sofas	343,900.00	1.028389	334,406.53
Upholstered Chairs	233,050.00	1.030943	226,055.17
Total	951,743.00		916,441.28

Sum of weights	Sum of (weight/appropriate index)	Weighted average pool index
$951,743.00	$916,441.28	1.0385204

(xii) *Compute an inventory price index for the 1997 taxable year.* R computes the inventory price index for the pool using the formula set forth in paragraph (e)(3)(iii)(E)(*2*) of this section. The inventory price index is 1.0308163 (1 + [0.8 * (1.0385204 − 1)]).

(xiii) *Determine the LIFO value of the pool for the 1998 taxable year.* R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the inventory items in the pool by the pool index. The total base-year cost of the ending inventory is $923,290.60 ($951,743.00/1.0308163). R compares the ending inventory at base-year cost to the beginning inventory at base-year cost and determines that the amount of the layer of increment for the taxable year in terms of base-year cost is $12,359.89 ($923,290.60 − $910,930.71). R multiplies the base-year cost of the increment by the pool index computed for the taxable year and determines that the LIFO value of the increment is $12,740.78 ($12,359.89 * 1.0308163). Thus, the LIFO value of R's inventory at the end of the 1997 taxable year is $924,370.43 ($850,000.00 base year layer + $61,629.65 1997 layer + $12,740.78 1998 layer).

Example 2. Link-chain Method. (i) *Introduction.* The facts are the same as Example 1, except that R uses the link-chain IPIC method. The double-extension IPIC method and the link-chain IPIC method yield the same results for the first taxable year in which the IPIC method is used. Therefore, this example only illustrates how R would compute an inventory price index and determine the LIFO value of its dollar-value pool for the 1998 taxable year.

(ii) *Select a BLS table and appropriate month for the 1998 taxable year.* R determines that the appropriate index month for the taxable year ending December 31, 1998, is November.

(iii) *Select index categories for the 1998 taxable year.* R's inventory items can be classified into five detailed categories listed in Table 6 of the ''PPI Detailed Report'' published for November, 1998. The categories and current-year cost of items in those categories can be summarized as follows:

Commodity code	Category	Current-year cost
12120103	Living Room Desks	$125,008.00
12120211	Dining Room Table	136,216.00

Commodity code	Category	Current-year cost
12120216	Dining Room Chairs	113,569.00
12130101	Upholstered Sofas	343,900.00
12130111	Upholstered Chairs	233,050.00
		951,743.00

(iv) *Compute appropriate indexes for the 1998 taxable year.* Because R uses the link-chain IPIC method, R will compute an appropriate index in accordance with paragraph (e)(3)(iii)(D)(*2*) of this section (published cumulative index for the November, 1998 divided by published cumulative index for the October, 1997). R computes the appropriate indexes as follows:

Category	Nov. '98 index	Oct. '97 index	Appropriate index
Living Room Desks	172.6	162.0	1.065432
Dining Room Table	174.8	171.9	1.016870
Dining Room Chairs	177.0	172.8	1.024306
Upholstered Sofas	144.9	142.2	1.018987
Upholstered Chairs	136.6	134.1	1.018643

(v) *Compute a pool index for the 1998 taxable year.* R must first compute a weighted average pool index using the formula set forth in paragraph (e)(3)(iii)(E)(*1*) of this section (Sum of weights/Sum of [Weight/Appropriate Index]). The weighted average pool index is computed as follows:

Category	Weight	Appropriate index	Quotient
Living Room Desks	$125,008.00	1.065432	$117,330.81
Dining Room Table	136,216.00	1.016870	133,956.16
Dining Room Chairs	113,569.00	1.024306	110,874.09
Upholstered Sofas	343,900.00	1.018987	337,492.04
Upholstered Chairs	233,050.00	1.018643	228,784.77
Total	951,743.00		928,437.87

Sum of weights	Sum of (weight/appropriate index)	Weighted average pool index
$951,743.00	$928,437.87	1.0251014

(vi) *Compute an inventory price index for the 1997 taxable year.* R computes the inventory price index in accordance with paragraph (e)(3)(iii)(E)(*3*) of this section. R multiplies the weighted average pool index by the prior year's cumulative index to get the cumulative index for the taxable year. Because 1997 was the first year in which R used the link-chain IPIC method, the prior year's cumulative index is equal to the 1997 weighted average pool index. The cumulative index for 1998 is 1.0397995 (1.0143382 * 1.0251014). R computes the inventory price index using the formula set forth in paragraph (e)(3)(iii)(E)(*3*) of this section. The inventory price index is 1.0318396 (1 + [0.80 * (1.0397995 − 1)]).

(vii) *Determine the LIFO value of the pool for the 1998 taxable year.* R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the inventory items in the pool by the inventory price index. The total base-year cost of the ending inventory is $922,374.95 ($951,743.00/1.0318396). R compares the ending inventory at base-year cost to the beginning inventory at base-year cost and determines that the amount of the layer of increment for the taxable year in terms of base-year cost is $11,444.24 ($922,374.95 − $910,930.71). R multiplies the base-year cost of the increment by the pool index computed for the taxable year and determines that the LIFO value of the increment is $11,808.62 ($11,444.24 * 1.0318396). Thus, the LIFO value of R's inventory at the end of the 1998 taxable year is $923,438.27 ($850,000 base year layer + $61,629.65 1997 layer + $11,808.62 1998 layer).

(iv) *Adoption or change of method—* (A) *Adoption or change to IPIC method.* The use of an inventory price index computed using the IPIC method is a method of accounting. A taxpayer permitted to adopt the dollar-value LIFO method without first securing the consent of the Commissioner may also adopt the IPIC method incident to that adoption without first securing the consent of the Commissioner. The IPIC method may be adopted and used only if the taxpayer indicates on a Form 970, ''Application to Use LIFO Inventory Method,'' or in such other manner as may be acceptable to the Commissioner, a listing of each dollar-value inventory pool, the type of goods included in each pool, the consumer or producer price index or indexes selected for each pool, whether the taxpayer will use the double-extension IPIC method or the link-chain IPIC method of computing an inventory price index, and if the taxpayer makes a one-time binding election of an appropriate representative month, the representative month. In the case of a taxpayer permitted to adopt the IPIC method without requesting the Commissioner's consent, the Form 970 shall be attached to the taxpayer's income tax return for the taxable year of that adoption. In all other cases, a taxpayer may change to the IPIC method prescribed by this paragraph only after first securing the consent of the Commissioner as provided in § 1.446–1(e). In such cases, the Form 970 containing the information described above must be attached to a Form 3115, ''Application for Change in Accounting Method,'' filed in accordance with § 1.446–1(e). Taxpayers must maintain adequate books and records in order to satisfy the requirements of § 1.472–2(h), including adequate books and records of the use and computations of the IPIC method. Notwithstanding the rules in paragraph (e)(1) of this section, a taxpayer that adopts or changes to the use of an inventory price index computed using the IPIC method is not required to demonstrate that the use of any other method of computing the LIFO value of a dollar-value inventory pool is impractical.

(B) *Change in selected index.* The selection of a consumer or producer price index category for a specific item

to compute an appropriate index under paragraph (e)(3)(iii)(B) of this section is a method of accounting. A taxpayer desiring to change the selection of such a consumer or producer price index must secure the consent of the Commissioner as provided in § 1.446–1(e).

(C) *New base year*—(*1*) *Voluntary change*—(*i*) *In general.* In the case of a taxpayer using a method other than the IPIC method to determine the LIFO value of a dollar-value inventory pool, any layers of inventory increments previously determined by that method and the LIFO value of those layers are retained if the taxpayer voluntarily changes to the use of the IPIC method. In the case of a taxpayer changing the selection of an index category for an inventory item, any layers of inventory increments previously determined and the LIFO value of those layers are retained. Instead of using the earliest taxable year for which the taxpayer adopted the LIFO method for any items in the pool, the year of change is used as the new base year in determining the LIFO value of the inventory pool for the year of change and later taxable years. The cumulative index as of the first day of the year of change (the base date) is 1.00. The base-year costs of layers of increment in the pool at the beginning of the year of change must be restated in terms of new base-year cost, using the year of change as the new base year, and the indexes for previously determined inventory increments must be recomputed accordingly. The new base-year cost of a pool is equal to the total current-year cost of all the items in the pool as determined pursuant to the taxpayer's established method of determining the total current-year cost of items making up the pool under paragraph (e)(2)(ii) of this section. See paragraph (f)(2) of this section for rules relating to a change to the dollar-value method from another method of pricing LIFO inventories.

(*ii*) *Example.* The following example illustrates the rules of this paragraph (e)(3)(iv)(C)(*1*):

Example. (i) X began using a dollar-value LIFO method other than the IPIC method in 1990 and maintains a single dollar-value pool. X is granted permission to change to the IPIC method, beginning with the taxable year ending December 31, 2000. X will continue to use a single dollar-value pool under the IPIC method. X's beginning inventory as of January 1, 2000, computed using its former method, is as follows:

	Base-year costs	Index	LIFO value
Base layer	$135,000	1.00	$135,000
1991 layer	20,000	1.43	28,600
1994 layer	60,000	1.55	93,000
1995 layer	13,000	1.59	20,670
1997 layer	2,000	1.61	3,220
Totals	230,000		280,490

(ii) Under X's method of determining the current-year cost of items, the current-year cost of the beginning inventory is $391,000. Thus, X's new base-year cost as of January 1, 2000 is $391,000. X allocates this new base-year cost to each LIFO layer based on the ratio of old base-year cost of the layer to the total old base-year cost of the pool. To recompute the indexes for each of its LIFO layers, X divides the LIFO value of each layer by the new base-year cost attributable to the layer. The new base-year costs, recomputed indexes, and LIFO value of X's inventory are as follows:

	Base-year costs	Index	LIFO value
Base layer	$229,500	0.588235	$135,000
1991 layer	34,000	0.841176	28,600
1994 layer	102,000	0.911765	93,000
1995 layer	22,100	0.935294	20,670
1997 layer	3,400	0.947059	3,220
Totals	391,000		280,490

(*2*) *Involuntary change*—(*i*) *In general.* If a taxpayer uses a method of accounting other than the IPIC method to determine the LIFO value of a dollar-value inventory pool and the Commissioner determines that the method does not clearly reflect income, the Commissioner may require the taxpayer to change to the IPIC method. If a taxpayer is unable to provide a sufficient basis, including information from its books and records, to compute an adjustment under section 481, and the Commissioner requires the taxpayer to change to the IPIC method, the Commissioner will require the taxpayer to change to the double-extension IPIC method and implement the change on a cut-off basis without a new base year. Under the cut-off basis without a new base year, the Commissioner will determine the amount of any increment in terms of base-year cost for the year of change by comparing the total base-year cost of the beginning inventory under the taxpayer's method and the total base-year cost of the ending inventory under the double-extension IPIC method described in this paragraph (e)(3) and value any increment so determined using the inventory price index computed under the double-extension IPIC method.

(*ii*) *Example.* The following example illustrates the rules of this paragraph (e)(3)(iv)(C)(*2*):

Example. (i) Y began using a dollar-value LIFO method other than the IPIC method in 1994 and maintains a single dollar-value pool. Under Y's method of determining the current-year cost of items, the current-year cost of Y's ending inventory for the 2000 taxable year is $348,160. Y's beginning inventory as of January 1, 2000, computed using its method, is as follows:

	Base-year costs	Index	LIFO value
Base layer	$105,000	1.00	$105,000
1995 layer	3,000	1.70	5,100
1996 layer	5,500	2.00	11,000

	Base-year costs	Index	LIFO value
1997 layer	2,900	2.50	7,250
1998 layer	1,400	2.85	3,990
Totals	117,800		132,340

(ii) Upon examination, it is determined that Y's dollar-value LIFO method does not clearly reflect income. If Y is unable to provide the examining agent with a sufficient basis to compute a section 481 adjustment arising from a change to a dollar-value LIFO method that does clearly reflect income, and the examining agent chooses to change Y to the IPIC method, the change will be implemented as follows. First, the examining agent will compute an inventory price index under the double-extension IPIC method in accordance with this paragraph (e)(3). For purposes of this example, assume that the inventory price index computed under the double-extension IPIC method is 1.438793. Second, the examining agent will divide the current-year cost of Y's ending inventory by the inventory price index to determine the base-year cost of Y's inventory under the double-extension IPIC method. The base-year cost is $241,980.60 ($348,160/1.438793). Third, the examining agent will compare the base-year cost of the ending inventory determined under the double-extension IPIC method to the base-year cost of the beginning inventory determined under Y's method of accounting to determine the amount of any increment. The increment at base-year cost for the 2000 taxable year is $124,180.60 ($241,980.60 − $117,800.00). Fourth, the examining agent will value the increment by multiplying the base-year cost of the increment by the inventory price index. The LIFO value of the increment is $178,670.18 ($241,980.60 * 1.438793). Finally, the examining agent will reduce Y's cost of goods sold and increases Y's gross income for the 2000 taxable year by the increase in the LIFO value of the 2000 ending inventory, or $178,670.18.

(v) *Effective date*—(A) *In general.* The rules of this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section are applicable for taxable years beginning on or after the date these regulations are published in the **Federal Register** as final regulations.

(B) *Change in method of accounting.* Any change in a taxpayer's method of accounting necessary to comply with this paragraph (e)(3) or paragraphs (b)(4) or (c)(2) of this section is a change in method of accounting to which the provisions of section 446 and the regulations thereunder apply. For the first taxable year beginning on or after the date these regulations are published in the **Federal Register** as final regulations, a taxpayer is granted the consent of the Commissioner to change its method of accounting to a method required or permitted by this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section. A taxpayer that wants to change its method of accounting under this paragraph (e)(3)(v) must follow the automatic consent procedures in Rev. Proc. 99–49 (1999–52 I.R.B. 725) (see § 601.601(d)(2) of this chapter). However, the scope limitations in section 4.02 of Rev. Proc. 99–49 do not apply. In addition, if the taxpayer's method of accounting for its LIFO inventories is an issue under consideration at the time the application is filed with the national office, the audit protection of section 7 of Rev. Proc. 99–49 does not apply. If a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) is under examination, before an appeals office, or before a federal court with respect to any income tax issue, the taxpayer must provide a copy of the application to the examining agent(s), appeals officer or counsel for the government, as appropriate, at the same time it files the application with the national office. A change under this paragraph (e)(3)(v)(B) must be made using a cut-off basis and new base year in accordance with paragraph (e)(3)(iv)(C)(*1*) of this section. Because a change under this paragraph (e)(3)(v)(B) is made on a cut-off basis, a section 481(a) adjustment is not required. However, a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) must comply with the requirements of section 10.04(3) of the APPENDIX of Rev. Proc. 99–49 (concerning bargain purchases).

* * * * *

(h) *Inventories received in certain nonrecognition transactions*—(1) *In general.* Except as provided in paragraph (h)(3) of this section, if inventories are received in a transaction described in paragraph (h)(2) of this section, then for purposes of determining future increments and liquidations the transferee must use the year of the transfer as the base year and the current-year cost (determined under the transferor's method of accounting) of the inventories received as the new base-year cost of such inventories. Likewise, the transferee must use the current-year cost (determined under the transferee's method of accounting) of its beginning inventory, if any, as the new base-year cost of the beginning inventory for purposes of determining future increments and liquidations. The total new base-year cost of the transferee's beginning inventory is equal to the new base-year cost of the inventories received and the new base-year cost of the beginning inventory. The cumulative index as of the first day of the year in which the inventory is received (the base date) is 1.00. The base-year costs of any layers of increment in the pool, as determined after the transfer, must be restated in terms of new base-year costs and the indexes for all such layers must be restated in terms of the new base year index. See paragraph (e)(3)(iv)(C)(*1*) of this section for an example of this computation.

(2) *Transactions to which this paragraph (h) applies.* A transaction is described in this paragraph (h) if—

(i) The transferee determines its basis in the inventories, in whole or in part, by reference to the basis of the inventories in the hands of the transferor;

(ii) The transferor used the dollar-value LIFO method to account for the transferred inventories;

(iii) The transferee uses the dollar-value LIFO method to account for the inventories in the year of the transfer; and

(iv) The transaction is not described in section 381(a).

(3) *Anti-avoidance rule.* The rule in paragraph (h)(1) of this section will not apply to a transaction entered into with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor (or would be unavailable to the transferor without securing consent from the Commissioner). In determining the principal purpose of a transfer, consideration will be given to all of the facts and circumstances. However, a transfer is deemed made with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor without securing consent from the Commissioner if the transferor acquired inventory in a bargain purchase within the five taxable years preceding the year of the transfer and used a dollar-value LIFO method to account for that inventory that did not treat the bargain purchase inventory and physically identical inventory acquired at market prices as separate items. Inventory is deemed acquired in a bargain purchase

if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was less than or equal to 50 percent of the replacement cost of physically identical inventory. Inventory is not considered acquired in a bargain purchase if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was greater than or equal to 75 percent of the replacement cost of physically identical inventory.

(4) *Effective date.* The rules of this paragraph (h) are applicable for transfers on or after the date these regulations are published in the **Federal Register** as final regulations.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–12174 Filed 5–18–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105089–99]

RIN 1545–AX38

Guidance Under Section 356 Relating to the Treatment of Nonqualified Preferred Stock and Other Preferred Stock in Certain Exchanges and Distributions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the treatment of nonqualified preferred stock and other preferred stock in certain exchanges and distributions under section 356 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Wednesday, May 31, 2000, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on January 26, 2000, (65 FR 4203), announced that a public hearing was scheduled for May 31, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. The subject of the public hearing is proposed regulations under section 354, 355, 356, and 1036 of the Internal Revenue Code. The deadline for requests to speak and outlines of oral comments expired on May 10, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of May 15, 2000, no one has requested to speak. Therefore, the public hearing scheduled for May 31, 2000, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–12682 Filed 5–18–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 897]

RIN 1512–AA07

Red Mountain Viticultural Area (99R–367P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing to establish a viticultural area within the State of Washington to be called ''Red Mountain.'' The proposed viticultural area is within Benton County and entirely within the existing Yakima Valley viticultural area as described in the regulations. Mr. Lorne Jacobson of Hedges Cellars submitted the petition. Mr. Jacobson believes that ''Red Mountain'' is a widely known name for the petitioned area, that the area is well defined, and that the area is distinguished from other areas by its soil and climate.

DATES: Send your comments on or before July 18, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 897).

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added 27 CFR part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

An American viticultural area is a delimited grape-growing region distinguishable by geographic features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Red Mountain Petition

ATF has received a petition proposing to establish a viticultural area within the State of Washington to be known as ''Red Mountain.'' The petitioner is Mr. Lorne Jacobson of Hedges Cellars. The proposed viticultural area is entirely within the existing Yakima Valley

viticultural area described in 27 CFR 9.69. According to Mr. Jacobson, Red Mountain has a distinct identity that sets it apart from the rest of the Yakima Valley viticultural area. He reports that grapes grown on Red Mountain are known for their quality and are highly sought after by Washington State winemakers.

The proposed area encompasses approximately 3,400 acres, of which approximately 600 acres are planted to vineyards. The petitioner estimates the proposed area can accommodate 2,700 acres of grape plantings.

What Name Evidence Has Been Provided?

The petitioner has submitted as evidence of name recognition several newspaper and magazine articles referencing Red Mountain as a wine producing area. These publications include: The Seattle Post-Intelligencer; the Globe and Mail, (Toronto); Wine Access (Canada); Decanter (UK); and Wine (UK). Other sources cited by the petitioner as referring to the wines of Red Mountain include: Decanter Magazine Guide to Oregon, Washington State and Idaho (Third Edition, 1996); Touring the Washington Wine Country, published by the Washington Wine Commission (1997 edition); and Connoisseur's Guide to California (July 1997 edition).

Several of these references describe the geographic and climatic conditions of Red Mountain as particularly suited to grape growing. Examples include:

- Decanter Magazine Guide to Oregon, Washington State and Idaho (Third Edition, 1996): ''The Red Mountain region, at the confluence of the Columbia, Snake and Yakima rivers, is a relatively warm area, and vineyards on upper slopes, again with south facing aspects, are yielding superior wine. * * *. Evidence is mounting to indicate that Red Mountain may be one of the genuine special vineyard sites.''
- Wine Access, November 1998: ''Although most of Eastern Washington's vineyards bask in a hot, dry climate, Klipsun [an area vineyard] sits between a gap in the Rattlesnake and Red Mountains in the lower Yakima Valley that is regularly blessed with slightly cooler air that filters through the gap from Canada. This, along with its stingy soils best described as sandy, silty loam, and silty loam over gravel, helps to explain the elegant, concentrated nature of the Klipsun fruit.''
- Touring the Washington Wine Country, by the Washington Wine Commission (1997 edition): ''Many of the award-winning Cabernet Sauvignons that emerged from Washington's first quarter-century of fine winemaking used a percentage of their fruit from the vineyards sloping down from Red Mountain toward the Yakima River just above Benton City near Richland. This site offers good air drainage and light soils that encourage grape vines to seek nutrients via deep roots. Irrigated vineyards allow the grape growers to control vine vigor and to ease the vines into dormancy before winter.''

What Boundary Evidence Has Been Provided?

The petitioner has submitted as boundary evidence one U.S.G.S. map titled ''Benton City, Washington'' (1974) on which Red Mountain is prominently labeled. The proposed viticultural area starts on the ridgeline of Red Mountain and then sweeps down in a triangle toward the southwest, encompassing the southern slope of the mountain down to an elevation of 560 feet. The petitioner notes that there is a small vineyard site on the eastern bank of the Yakima River, due west of the proposed boundaries. He states that this valley floor site has different growing conditions than those on the higher elevations of Red Mountain. There are currently 13 vineyards on Red Mountain, all on the southwestern slope and within the proposed boundaries. The oldest of these vineyards was planted in 1975. According to the petitioner, these boundaries contain a grape growing area with a distinctive character based on soil, topography and climate.

What Evidence Relating to Geographical Features Has Been Provided?

The petitioner asserts that geographical and climatic features of Red Mountain distinguish it from the surrounding Yakima Valley viticultural area.

- *Soil:* The petitioner states that Red Mountain's soil associations (landscapes with distinctive proportional patterns of soils) are unique in the Yakima Valley viticultural area. In support of this statement, the petitioner has submitted soil survey maps issued by the U.S. Department of Agriculture's Soil Conservation Service for the Yakima County and Benton County areas. Using these maps, the petitioner compared the soil associations for Red Mountain and other grape growing areas in the Yakima Valley viticultural area.

According to the Benton County area soil survey maps, the dominant soil association of Red Mountain is Warden-Shano. A more specific analysis reveals that the following soils are present within the Warden-Shano association: Warden silt loam, Hezel loamy fine sand, Scooteney silt loam, and Kiona very stony silt loam. The petitioner compared this data with soil data for Gleed, Buena, and Sunnyside, other grape growing areas in Washington State within the Yakima Valley viticultural area. The soil associations of these areas are composed of Weirman-Ashue, Harwood-Gorst-Selah, Ritzville-Starbuck, Cowiche-Roza, Warden Esquatzel, and Quincy-Hezel. Thus, argues the petitioner, Red Mountain has a soil association which sets it apart from the rest of the Yakima Valley viticultural area.

- *Climate:* According to the petitioner, temperatures on Red Mountain tend to be hotter during the growing season than those in other areas of the Yakima Valley viticultural area.

To support this contention, the petitioner submitted temperature data gathered from weather stations in the Washington Public Agriculture Weather System administered by Washington State University. He compared data from the weather stations of Benton City, Sunnyside, Buena, and Gleed, all located in the Yakima Valley viticultural area. The Benton City station is located on Red Mountain within the proposed viticultural area. A comparison of average annual air temperatures for the years 1995 through 1999 shows that the Benton City station consistently had the warmest temperatures. The average temperature difference between Benton City and Gleed, the coolest site, ranged from 3.92 to 5.61 degrees.

The petitioner states that the difference of only a few degrees over the course of a growing season can produce dramatic results on the enological characteristics of wine. He further states that Red Mountain is typically the first grape growing area in Washington State to harvest grapes because of its warmer temperatures. According to the petitioner, the warmer temperatures also help to produce fully mature, ripe grapes with exceptional balance that differ substantially in quality from those of other growing areas in the state.

- *Topography:* Existing vineyards in the proposed viticultural area lie on the southwest-facing slope of Red Mountain. Elevation ranges of these vineyards are from approximately 600 to 1,000 feet. The petitioner notes that there is an immense gap separating the northwest end of Red Mountain from the southeast extremity of nearby Rattlesnake Ridge. He states that cooler, continental air masses flow south from Canada through this gap. In addition, the Yakima River flows north around Red Mountain before joining the Columbia River, creating an air drainage

system. The petitioner further states that these characteristics, along with the predominate southwest facing slope of Red Mountain, serve to flush the warm daytime air off the face of Red Mountain and replace it with a cooler air mass. According to the petitioner, the resulting growing environment yields grapes that are both high in sugar (due to warmer daytime temperatures) and high in acid (due to lower evening temperatures).

3. Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested persons. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

Can I Review Comments Received?

Copies of the petition, the proposed regulations, the appropriate map, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC, 20226.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We may also disclose the name of any person who submits a comment.

How Do I Send Facsimile Comments?

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be 8½″ x 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending the comments to nprm@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages 8½″ x 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov/core/regulations/rules.htm.*

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit your request in writing to the Director within the 60-day comment period. The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

4. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

These proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement or approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information: The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, for the reasons set out in the preamble, Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.167 to read as follows:

* * * * *

§ 9.167 Red Mountain.

(a) Name. The name of the viticultural area described in this section is ''Red Mountain.''

(b) Approved Maps. The appropriate map for determining the boundaries of the Red Mountain viticultural area is one U.S.G.S. map titled ''Benton City, Washington'' 7.5 minute series (topographic), (1974).

(c) Boundaries. The Red Mountain viticultural area is located within Benton County, Washington, entirely within the existing Yakima Valley viticultural area. The boundaries are as follows:

(1) The northwest boundary beginning on this map at the intersection of the 560-foot elevation level and the aqueduct found northwest of the center of section 32.

(2) Then following the aqueduct east to its endpoint at an elevation of approximately 650-feet, again in section 32.

(3) From this point in a straight line southeast to the 1173-foot peak, located southeast of the center of section 32.

(4) From this peak southeast in a straight-line across the lower southwest corner of section 33 to the 1253-foot

peak located due north of the center of section 4.

(5) Then in a straight-line southeast to the 1410-foot peak located in the southwest corner of section 3.

(6) From this peak in a straight-line southeast to the border of Sections 10 and 11 where the power-line crosses these two sections. This intersection is northeast of the center of section 10 and northwest of the center of section 11.

(7) From this point in a straight line southeast to the 600-foot elevation line where this intersections State Highway 224 southwest of the center of section 11.

(8) From this point southwest, following the north side of State Highway 224, through section 10, through the southeast corner of section 9, through the northwest corner of section 16, through section 17 to where the 560-foot elevation level intercepts State Highway 224 southwest of the center of section 17 just east of Demoss Road.

(9) From this 560-foot elevation point, running north along this elevation line through section 17, through section 8, through section 5 and through section 32 until meeting the beginning point at the aqueduct in section 32.

Signed: May 11, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–12662 Filed 5–18–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–1999–5198]

Port Access Route Study for Approaches to Los Angeles/Long Beach

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: The Coast Guard announces the results of a Port Access Route Study which evaluated the vessel routing and traffic management measures for the approaches to Los Angeles and Long Beach. The study was necessary because of major port improvements made to both ports. It was completed in July, 1999. This document summarizes the study recommendations.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–5198 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 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.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Commander Brian Tetreault, Vessel Traffic Management Officer, Eleventh Coast Guard District, telephone 510–437–2951, e-mail Btetreault@d11.uscg.mil; or Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968, e-mail MVanHouten@d11.uscg.mil. For questions on viewing the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: You may obtain a copy of the Port Access Route Study (PARS) by contacting either person at the Eleventh Coast Guard District listed under **FOR FURTHER INFORMATION CONTACT**. A copy is also available in the public docket at the address listed under the **ADDRESSES** section and electronically on the DMS Web Site at http://dms.dot.gov.

Geographic coordinates. All geographic coordinates cited in this notice utilize the North American Datum of 1983 (NAD 83).

Definitions

The following definitions should help you review this document:

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Regulated Navigation Area or RNA is a water area within a defined boundary for which regulations for vessels navigating within the area have been established under this part.

Separation Zone or line means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established.

Traffic Separation Scheme or TSS means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

When Did the Coast Guard Conduct This Port Access Route Study (PARS)?

We announced the PARS in a document published in the **Federal Register** on March 11, 1999 (63 FR 12140) and completed the study in July, 1999.

Why Did the Coast Guard Conduct the PARS?

A PARS was needed to evaluate the effects of port improvement projects for the ports of Los Angeles and Long Beach on navigational safety and vessel traffic management efficiency, and to recommend any necessary changes to existing routing measures. This study recommends modifications to the existing TSS's.

The study area included the navigable waters of Los Angeles and Long Beach Harbors, the Los Angeles/Long Beach TSS, and all waters bounded by the coastline and the following coordinates:

Latitude	Longitude
33°47.00′ N	118°25.40′ W.
33°47.00′ N	118°38.60′ W.
33°15.50′ N	118°38.60′ W.
33°15.50′ N	117°52.70′ W.
33°35.30′ N	117°52.70′ W.

Major port improvement projects for the Ports of Los Angeles and Long Beach began in 1995 and should be completed by June, 2000. These projects include the following:

- Lengthening of the Los Angeles Approach Channel to extend approximately 3.5 nautical miles beyond the Los Angeles breakwater.
- Deepening of the Los Angeles Approach Channel to a project depth of 81 feet.
- Slight shift of the Long Beach Approach to a 355 degrees True inbound course.
- Deepening of the Long Beach Approach Channel to a project depth of 69 feet.

Fill and construction activities within the Los Angeles/Long Beach Harbors and development of a shallow water habitat have constricted the amount of room available for small commercial and recreational traffic to maneuver within the Outer Harbor and in the area

immediately outside the San Pedro, Middle, and Long Beach breakwaters. This has the effect of concentrating traffic flows and placing small marine traffic more directly in competition with deep draft traffic for use of the Precautionary Area.

What Data Did the Coast Guard Use To Help Conduct the PARS?

Recommendations relied heavily on the comments received during the PARS. While all comments on related issues of vessel routing were welcome, the notice of study solicited comments on the following specific questions to help focus the study:

1. What navigational hazards do vessels operating in the study area face? Will there be additional hazards once port improvement projects are completed?

2. Are there strains on the current vessel routing system? Will there be additional strains once port improvement projects are completed?

3. Are modifications to the existing vessel routing measures needed to address existing or future hazards and strains and improve traffic management efficiency in the study area?

4. Do you have any specific recommendations regarding aids to navigation design for the lengthened approach channels?

Three comment letters were received and indicated strong overall support for the study recommendations. We also reviewed the results of a 1982 LA/LB Port Access Route Study (47 FR 27430, June 24, 1982) and a 1995 Port Access Route Study (61 FR 55248, October 25, 1996) which focused on vessel traffic management measures along the California coast from San Francisco to Los Angeles.

Study Recommendations

The study recommends three changes to the existing vessel routing and traffic management measures.

1. Expand the Existing LA/LB Precautionary Area

The study found that the existing Precautionary Area should be expanded to provide enhanced navigational safety in light of the pending and planned improvements to the port facilities and navigational channels previously discussed. The port improvements discussed above will allow even larger vessels to call on Los Angeles and Long Beach. These larger, less maneuverable ships will be constrained to the channels. The study also noted that the current practice of freighters, tankers, tugs and barges, fishing boats and pleasure craft converging in the Precautionary Area would continue to present hazards for all mariners.

Expansion of the existing Precautionary Area should result in several positive impacts for safe navigation. First, the expanded Precautionary Area should give vessels of all types, sizes, and drafts more time and room to maneuver in their approach to or departure from the ports. Second, the Commander, Eleventh Coast District, is planning modifications to the San Pedro Bay RNA, promulgated at 33 CFR 165.1109, to geographically match the expanded Precautionary Area. When specified categories of vessels enter the RNA, they are required to slow. This allows more time for vessel traffic management, *e.g.* queuing of vessels arriving and departing during peak periods and coordinating passing arrangements. Finally, the expanded Precautionary Area should be well adapted to the lengthened Los Angeles entrance channel. This study recommends the new Precautionary Area as the area enclosed by the following geographical positions:

Latitude	Longitude
33°43.40′ N	118°10.80′ W.
33°37.70′ N	118°06.50′ W.
33°35.50′ N	118°09.00′ W.
33°35.50′ N	118°17.60′ W.
33°42.30′ N	118°17.60′ W.

2. Relocate the Western and Southern TSSs

The study found that the existing western and southern TSSs do not yield safe or practical approaches to the improved Long Beach and Los Angeles entrance channels. The study recommends a shift of the western TSS to the south and a shift of the southern TSS to the west.

A. Western TSS

In order to reduce the maneuvering difficulties for vessels needing to use the extended Los Angeles entrance channel, the western TSS needs to be relocated to the south. The proposed coordinates should allow even the largest vessels safe transit between Los Angeles channel and the western lane. This study recommends shifting the western TSS 2.25 nautical miles (NM) to the south. The new northern edge of the northbound coastwise lane would begin at 33°38.70′ N, 118°17.60′ W, extend approximately 2.5 NM at 270° True, and turn northwest to 300° True at 33°38.70′ N, 118°20.60′ W. The new southern edge of the southbound coastwise lane would extend the existing lane at 120° True for approximately 4.45 NM before turning to 090° True at 33°35.50′ N, 118°23.43′ W. The lane will meet the Precautionary Area at 33°35.50′ N, 118°17.60′ W. Traffic lanes will remain 1 NM wide and separated by the Separation Zone formed by a line connecting the following geographical positions:

Latitude	Longitude
33° 37.70′ N	118° 17.60′ W.
33° 36.50′ N	118° 17.60′ W.
33° 36.50′ N	118° 23.10′ W.
33° 43.20′ N	118° 36.90′ W.
33° 44.90′ N	118° 35.70′ W.
33° 37.70′ N	118° 20.90′ W.

B. Southern TSS

In order to reduce the maneuvering difficulties for vessels needing to use the extended Los Angeles entrance channel and the Long Beach channel, the southern TSS should be shifted westward. The recommended shift aligns the southern TSS with Long Beach channel and should allow a more direct approach to Los Angeles channel. The study also noted that by shifting the existing southern TSS, oil platforms located in the TSS separation zone would no longer be in the TSS, which should increase the safety of the platforms and transiting vessels.

This study recommends the following changes to the southern TSS for the Los Angeles/Long Beach approach. The eastern edge of the northbound coastwise lane would begin at 33°20.00′ N, 118°02.30′ W, extend in the direction of 340° True and meet the Precautionary Area at 33°35.50′ N, 118°09.00′ W. The western edge of the southbound coastwise lane would begin at the Precautionary Area at 33°35.50′ N, 118°114.00′ W, extend in the direction of 160° True, and end at 33°18.70′ N, 118°06.75′ W. The Separation Zone formed by a line connecting the following geographical positions will separate inbound and outbound traffic lanes:

Latitude	Longitude
33°35.50′ N	118°10.30′ W.
33°35.50′ N	118°12.75′ W.
33°19.70′ N	118°03.50′ W.
33°19.00′ N	118°05.60′ W.

The new lanes will no longer be tapered, but will have a constant width of 1 NM wide through their entire length.

Modifications to Aids to Navigation

The PARS solicited specific recommendations regarding the aids to navigation design for the lengthened approach channels to Los Angeles and Long Beach, CA. Specific

recommendations included adding, deleting, relocating and upgrading the existing buoys in these channels. The Commander, Eleventh Coast Guard District will review these recommendations and make final decisions concerning Los Angeles-Long Beach aids to navigation in light of the Coast Guard's waterways analysis management system (WAMS). Specific questions on WAMS should be directed to the Eleventh Coast Guard District's points of contact listed in **FOR FURTHER INFORMATION CONTACT**.

Modifications to the RNA

The Commander, Eleventh Coast Guard District is planning modifications to the San Pedro Bay RNA. A notice of proposed rulemaking (NPRM), only dealing with the RNA, will be published in the **Federal Register**. As previously discussed, one proposed change will make the RNA geographically the same as the precautionary area. The RNA rulemaking will also address vessel operating requirements; vessel size, speeds, draft limitations; operating conditions; pilot boarding areas; and restrictions under hazardous conditions.

Conclusion

We appreciate the comments we received concerning the PARS. We will solicit additional comments on the recommended changes to the existing routing measures we will propose in an NPRM to be published in the **Federal Register** before making any submission to the International Maritime Organization.

Dated: May 11, 2000.

R.C. North,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–12572 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD–FRL–6701–1; Docket No. A–99–05]

RIN 2060–AF01

Requirements for Preparation, Adoption, and Submittal of State Implementation Plans (Guideline on Air Quality Models); Conference on Air Quality Modeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; conference.

SUMMARY: We announce the Seventh Conference on Air Quality Modeling. Such a conference is required by Section 320 of the Clean Air Act (CAA) to be held every 3 years. The purpose of the Seventh Conference is to provide a forum for public review and comment on proposed revisions to the Guideline on Air Quality Models—''Guideline'' published on April 21, 2000. The proposed revisions are based on our review and analyses of comments received at the Sixth Conference on Air Quality Modeling, held in August 1995.

DATES: The seventh conference will be held on June 28, 2000 from 9 a.m. to 5:30 p.m. and on June 29, 2000 from 8:30 a.m. to 5 p.m. Requests to speak at the conference should be submitted to the individual listed below by June 15, 2000. All written comments must be submitted by close of business August 21, 2000.

ADDRESSES: *Conference:* The conference will be held in the EPA Auditorium, 401 M Street, S.W., Washington, D.C.

Comments: Written statements or comments not presented at the conference should be submitted (in duplicate if possible) to: OAR Regulatory Docket (6102), Room M–1500, Waterside Mall, Attention: OAR Regulatory Docket A–99–05, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. We invite you to submit adverse or critical comments pertinent to the proposal to that docket. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the address above. Please furnish duplicate comments to Tom Coulter, Air Quality Modeling Group (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. You may send electronic versions of comments pertinent to the proposal to: A-AND-R-DOCKET@epamail.epa.gov. Alternatively, comments are acceptable in WordPerfect 6.1 (or higher), preferably zipped (*e.g.,* WinZip) as an attachment to the e-mail message. You must include the docket identification (A–99–05) with all electronic submittals. You may file electronic comments on this proposal online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: C. Thomas Coulter, Air Quality Modeling Group (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0832.

SUPPLEMENTARY INFORMATION:

Background

The Guideline (appendix W to 40 CFR part 51) is used by EPA, States, and industry to prepare and review new source permits and State Implementation Plan revisions. The Guideline serves as a means by which consistency is maintained in air quality analyses. We originally published the Guideline in April 1978 and it was incorporated by reference in the regulations for the Prevention of Significant Deterioration (PSD) of Air Quality in June 1978. We revised the Guideline in 1986, and updated it with supplement A in 1987, supplement B in July 1993, and supplement C in August 1995. We published the Guideline as appendix W to 40 CFR part 51 when we issued supplement B. We republished the Guideline in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs.

To support the process of developing and revising the Guideline during the period 1977–1988, we held the First, Second and Third Conferences on Air Quality Modeling as required by Section 320 of the Clean Air Act to help standardize modeling procedures. These modeling conferences provided us with comments on the Guideline and associated revisions, thereby helping us introduce improved modeling techniques into the regulatory process.

In October 1988, we held the Fourth Conference on Air Quality Modeling. Its purpose was to advise the public on new modeling techniques and to solicit comments to guide our consideration of any rulemaking needed to further revise the Guideline. The new models provided techniques for situations where specific procedures had not previously been available, and also improved several previously adopted techniques.

We held the Fifth Conference on Air Quality Modeling in March 1991, which served as a public hearing for the proposed supplement B revisions to the Guideline (*op. cit.*). Since the Fifth Conference and the adoption of supplement C, we believed it was time to consider a wide range of modeling issues in order to update our available modeling tools with state-of-the-science techniques. We thus held the sixth conference as an ideal forum for airing these issues and for the public to offer new ideas. We reviewed and analyzed the public feedback from the sixth conference, and placed a summary in the docket (II–G–01). This information served as a foundation for the proposed Guideline revision we announced on April 21, 2000 (65 FR 21506).

To review support documents and data for our proposal, and to prepare for the seventh conference, you may obtain technical materials from several sources. You may get copies of some materials from the docket (see **ADDRESSES**). We have uploaded many materials, for example essential codes, preprocessors, utilities, test cases, and user's manuals for the new modeling systems, to our website (www.epa.gov/scram001; see 7th Conference).

Public Participation

The Seventh Conference on Air Quality Modeling will be open to the public; no admission fee is charged and there is no formal registration. The conference will begin the first morning with introductory remarks by the presiding EPA official. The conference will continue with prepared presentations on several key modeling systems: The development of an enhanced Gaussian dispersion model with boundary layer parameterization (AERMOD [1]); the development of the CALPUFF modeling system by Earth Tech, Inc. under the auspice of the Interagency Workgroup on Air Quality Modeling (IWAQM [2]); the development and testing of ISC–PRIME by the Electric Power Research Institute's building downwash program; and revisions to the Emissions and Dispersion Modeling System (EDMS) by the Federal Aviation Administration. There will also be presentations on several models for consideration as ''alternative models'' for case-by-case application.

The second morning, there will be critical reviews/discussions of the new modeling systems facilitated first by the American Meteorological Society's Committee on Meteorological Aspects of Air Pollution, and then by the Air & Waste Management Association's AB–3 Committee. We also plan to feature a special panel presentation on the next generation of air quality models that may be driven by output from four-dimensional prognostic models. This will be followed by statements from representatives of State and local air pollution control agencies and by appropriate Federal agencies. The conference will then be opened to statements and comments from the general public. As information develops, we will post an agenda for the conference on our website (www.epa.gov/scram001; see 7th Conference).

For the new models and modeling techniques described on June 28th, EPA will be asking the public to address the following questions:

- Has the scientific merit of the models presented been established?
- Are the models' accuracy sufficiently documented?
- Are the proposed regulatory uses of individual models for specific applications appropriate and reasonable?
- Do significant implementation issues remain or is additional guidance needed?
- Are there serious resource constraints imposed by modeling systems presented?
- What additional analyses or information are needed?

Those wishing to speak at the conference, whether to volunteer a presentation on a special topic or to offer general comment on any of the modeling techniques scheduled for presentation, should contact us at the address given in the **FOR FURTHER INFORMATION CONTACT** section no later than June 15, 2000. Such persons should identify the organization (if any) on whose behalf they are speaking and the length of presentation. If a presentation of general comments is projected to be longer than 10 minutes, the presenter should also state why a longer period is needed. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the conference and they will be scheduled on a time-available basis.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be produced and placed in the docket. Speakers should bring extra copies of their presentation for inclusion in the docket and for the convenience of the reporter. Speakers will be permitted to enter into the record any additional written comments that are not presented orally. Additional written statements or comments should be sent to the OAR Regulatory Docket (see **ADDRESSES** section). A transcript of the proceedings and a copy of all written comments will be maintained in Docket A–99–05 which will remain open until August 21, 2000 for the purpose of receiving additional comments.

[1] AMS/EPA Regulatory MODel; AERMOD is being developed by AERMIC: AMS/EPA Regulatory Model Improvement Committee.

[2] IWAQM was formed in 1991 to provide a focus for development of technically sound regional air quality models for regulatory assessments of pollutant source impacts on federal Class I areas. IWAQM is an interagency collaboration that includes efforts by EPA, U.S. Forest Service, National Park Service, and Fish and Wildlife Service.

Dated: May 9, 2000.

Bob Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–12390 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AZ–098–0025 FRL–6703–1]

Determination of Attainment of the 1-Hour Ozone Standard for the Phoenix Metropolitan Area, Arizona and Determination Regarding Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that the Phoenix metropolitan serious ozone nonattainment area has attained the 1-hour ozone air quality standard deadline required by the Clean Air Act (CAA), November 15, 1999. Based on this proposal, we also propose to determine that the CAA's requirements for reasonable further progress and attainment demonstrations and for contingency measures are not applicable to the area for so long as the Phoenix metropolitan area continues to attain the 1-hour ozone standard.

DATES: Comments on this proposal must be received in writing by June 19, 2000. Comments should be addressed to the contact listed below.

ADDRESSES: Copies of our draft technical support document for this rulemaking and our policies governing attainment findings and the applicability of CAA requirements in areas attaining the 1-hour ozone standard are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 9, Office of Air Planning, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248.

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix, Arizona 85012, (602) 207–2217

Copy of this document and the TSD are also available in the air programs section of EPA Region 9's website, www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning

(AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248, wicher.frances@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Attainment Finding

A. Phoenix's Current Ozone Classification

The Phoenix metropolitan ozone nonattainment area is located in the eastern portion of Maricopa County, Arizona and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, 17 other jurisdictions, and considerable unincorporated County lands. The area is currently classified as serious for the 1-hour ozone national ambient air quality standard (NAAQS). 40 CFR 81.303.

When the Clean Air Act (CAA) Amendments were enacted in 1990, each area of the County that was designated nonattainment for the 1-hour ozone standard, including the Phoenix area, was classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme'' depending on the severity of the area's air quality problem. CAA sections 107(d)(1)(C) and 181(a). The Phoenix metropolitan area was initially classified as moderate. See 40 CFR 81.303 and 56 FR 56694 (November 6, 1991).

Upon the Phoenix area's classification as moderate, the CAA required Arizona to submit a state implementation plan (SIP) demonstrating attainment of the 1-hour ozone standard in the Phoenix area as expeditiously as practicable but no later than November 15, 1996. CAA sections 181(a)(1) and 182(b)(1)(A)(i). The SIP had to also meet several other CAA requirements for moderate areas. See generally CAA section 182(b).

The Phoenix area was still violating the 1-hour ozone standard in late 1996. On November 6, 1997, we determined that the Phoenix metropolitan area had not attained the 1-hour ozone standard by its attainment date of November 15, 1996. As a result of our finding, the area was reclassified to serious, by operation of law under CAA section 181(b)(1)(A). 62 FR 60001.

Upon the Phoenix area's reclassification to serious, the CAA required Arizona to submit a revised SIP demonstrating attainment of the 1-hour ozone standard in the Phoenix area as expeditiously as practicable but no later than November 15, 1999. CAA sections 181(a)(1) and 182(c)(2)(A). The SIP had to also meet several other CAA requirements for serious areas. See generally CAA section 182(c). The serious area SIP revisions were due to us by March 22, 1999. 63 FR 64415 (November 20, 1998).

B. Clean Air Act Requirements for Attainment Findings

Under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the standard. If we find that a serious area has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe.[1] Under CAA section 181(b)(2)(A), we must base our determination of attainment or failure to attain on the area's design value as of its applicable attainment date, which for the Phoenix metropolitan area is November 15, 1999.

The 1-hour ozone NAAQS is 0.12 ppm not to be exceeded on average more than one day per year over any three year period. 40 CFR 50.9 and appendix H. Under our policies, we determine if an area has attained the one-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding three year period.[2] For this proposal, we have based our determination of attainment on both the design value and the average number of exceedance days per year as of November 15, 1999.

The design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a State designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous three years. An area's design value is the highest of the design values from the area's monitors.[3]

We make attainment determinations for ozone nonattainment areas using all available, quality-assured air quality data for the 3-year period up to and including the attainment date.[4] Consequently, we used all 1997, 1998, and 1999 (through November 15) quality-assured air quality data available to determine whether the Phoenix area attained the 1-hour ozone standard by November 15, 1999. From the available data, we have calculated the average number of days over the standard and the design value for each ozone monitor in the Phoenix nonattainment area.

C. Attainment Finding for the Phoenix Area

1. Adequacy of the Phoenix Area Ozone Monitoring Network

Determining whether or not an area has attained under CAA section 181(b)(1)(A) is based on monitored air quality data. Thus, the validity of a determination of attainment depends on whether the monitoring network adequately measures ambient ozone levels in the area.

We have previously expressed concerns regarding the adequacy of the

[1] If a state does not have the clean data necessary to show attainment of the 1-hour standard but does have clean air in the year immediately preceding the attainment date and has fully implemented its applicable SIP, it may apply to EPA, under CAA section 181(a)(5), for a one-year extension of the attainment date.

[2] See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994 (Berry memorandum). While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

[3] The fourth highest value is used as the design value because a monitor may record up to 3 exceedances of the standard in a 3 year period and still show attainment, that is, with 3 exceedances it would average 1 day over the standard per year, the maximum allowed to show attainment of the 1-hour ozone standard. If the monitor records a fourth exceedance in that period, it would average more than 1 exceedance day per year and would no longer show attainment. Therefore, if a State can reduce the fourth highest ozone value to below the standard, thus preventing a fourth exceedance, then it will be able to demonstrate attainment.

[4] All quality-assured available data include all data available from the state and local/national air monitoring (SLAMS/NAMS) network as submitted to EPA's AIRS system and all data available to EPA from special purpose monitoring (SPM) sites that meet the requirements of 40 CFR 58.13. See *Memorandum* John Seitz, Director, OAQPS, to Regional Air Directors; ''Agency Policy on the Use of Ozone Special Purpose Monitoring Data,'' August 22, 1997.

official ozone monitoring network in the Phoenix area.[5] However, over the past several years, the Maricopa County Environmental Services Department, which operates the local air monitoring system, has made substantial revisions to its ozone monitoring network.

We evaluate four basic elements in determining the adequacy of an area's ozone monitoring network. The network needs to meet the design requirements of 40 CFR part 58, appendix D; the network needs to utilize monitoring equipment designated as reference or equivalent methods under 40 CFR part 53; the agency or agencies operating the equipment need to have a quality assurance plan in place that meets the requirements of 40 CFR part 58, appendix A; and for urban areas with populations greater than 200,000, at least two monitoring sites must be designated as National Air Monitoring Stations (NAMS).

The ozone network in the Phoenix area meets or exceeds all four of these requirements and is therefore adequate for use in determining the ozone attainment status of the area. A more detailed analysis of the ozone monitoring network is contained in the TSD accompanying this proposal.

2. The Phoenix Area's Ozone Design Value for the 1997–1999 Period

We have listed in Table 1 the design values and the number of exceedance days for the 1997 to 1999 period for each monitoring site in the Phoenix metropolitan area. We calculated the design values following the procedures in the Laxton memo.[6] A complete listing of the ozone exceedances at each monitor as well as our calculations of the design values can be found in the TSD.

TABLE 1.—AVERAGE NUMBER OF OZONE EXCEEDANCES DAYS PER YEAR AND DESIGN VALUES BY MONITOR IN THE PHOENIX METROPOLITAN AREA (1997–1999)

Site	Average number of exceedance days per year	Site design value (ppm)
Blue Point	0	0.107
Central Phoenix	0	0.103
Fountain Hills	0	0.113
South Scottsdale	0	0.098
Emergency Management	0	0.109
Falcon Field	0	0.101
Maryvale	0	0.101
Mesa	0	0.109
South Phoenix	0	0.1
West Phoenix	0	0.112
Pinnacle Peak	0	0.112
North Phoenix	0	0.113
Glendale	0	0.099
West Chandler	0	0.094
Palo Verde	0	0.091
JLG Supersite	0	0.098
Mount Ord	0	0.106
Humboldt Mountain	0	0.101

From Table 1, the highest design value at any monitor, and thus the design value for the Phoenix metropolitan ozone nonattainment area, is 0.113 ppm at the Fountain Hills and North Phoenix sites. The Phoenix metropolitan area has not recorded an exceedance of the 1-hour ozone standard at any monitoring site during the 1997 to 1999 period, so the average number of days over the standard at all monitors in the area is zero.

Because the area's design value is below the 0.12 ppm 1-hour ozone standard and the area has averaged less than 1 exceedance per year at each monitor for the 1997 to 1999 period, we propose to find that the Phoenix metropolitan area has attained the 1-hour ozone standard by its Clean Air Act mandated attainment date of November 15, 1999.

D. Attainment Findings and Redesignations to Attainment

A finding that an area has attained the 1-hour ozone standard under CAA section 181(b)(1)(A) does not redesignate the area to attainment for the 1-hour standard nor does it guarantee a future redesignation to attainment.

The redesignation of an area to attainment is a separate process under CAA section 107(d)(3)(E) from a finding of attainment under CAA section 181(b)(1)(A). Unlike an attainment finding where we need only determine that the area has had the pre-requisite number of clean years, a redesignation requires multiple determinations. Under section 107(d)(3)(E), these determinations are:

1. We must determine, *at the time of the redesignation,* that the area has attained the relevant NAAQS.

2. The State must have a fully approved SIP for the area.

3. We must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions.

4. We must have fully approved a maintenance plan for the area under CAA section 175(A).

5. The State must have met all the nonattainment area requirements applicable to the area.

At this time, Arizona has not formally requested that we redesignate the Phoenix metropolitan area to attainment for the 1-hour ozone standard nor has it submitted a maintenance plan for the area.

II. Applicability of Clean Air Act Planning Requirements

A. EPA's Policy and its Legal Basis

CAA section 182(c) requires States with serious ozone nonattainment areas to submit certain revisions to their SIPs. These revisions include:

1. a demonstration that the plan will result in emission reductions of ozone precursors of at least 3 percent per year from 1996 to 1999 (this provision is known as the 9 percent rate of progress (ROP) plan), CAA section 182(c)(2)(B);

2. a demonstration that the plan will result in attainment of the 1-hour ozone standard as expeditiously as practicable but not later than November 15, 1999, CAA section 182(c)(2)(A);

3. contingency measures that will be undertaken if the area fails to make reasonable further progress, meet a rate of progress milestone, or to attain the standard by the applicable attainment date, CAA sections 172(c)(9) and 182(c)(9).

For the reasons described below and discussed in our Ozone Clean Data Policy,[7] we believe that it is reasonable

[5] For a description of these concerns, see ''Technical Support Document for the Notice of Final Rulemaking for the Finding of Failure to Attain and Denial of Attainment Date Extension for Ozone in the Phoenix (Arizona) Metropolitan Area,'' EPA Region 9, October 27, 1997.

[6] See *memorandum,* William G. Laxton, Director, Technical Support Division, Office of Air Quality Planning and Standards to Regional Air Directors, ''Ozone and Carbon Monoxide Design Value Calculations,'' June 18, 1990.

[7] See *memorandum,* John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, ''Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995. We have also explained at length in other actions our rationale for the reasonableness of this interpretation of the Act and incorporate those explanations by reference here. See 61 FR 20458

Continued

to interpret the CAA not to require these provisions for serious ozone nonattainment areas that are determined to be meeting the 1-hour ozone standard.

9 percent ROP Plan

The 9 percent ROP requirement in section 182(c)(2)(B) is the minimum RFP requirement for serious areas.[8]

CAA Section 171(1) states that, for purposes of part D of Title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirement for a 9 percent ROP in section 182(c)(2)(B), the stated purpose of RFP is to ensure attainment by the applicable attainment date. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled. We, therefore, do not believe that a State needs to submit revisions providing for the further emission reductions to meet the RFP/ROP provisions of sections 172(c)(2) or 182(c)(2)(B) for serious areas meeting the 1-hour ozone standard.

We note that we took this view with respect to the general RFP requirement of section 172(c)(2) in our ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990'' at 57 FR 13498 (April 16, 1992). In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR 13564.)[9]

Closely tied with the RFP/ROP requirement is the milestone demonstration requirement in CAA section 182(g). This section requires that States with ozone nonattainment areas classified as serious and above must determine every three years, starting in 1996, whether each area has achieved the reductions necessary to meet the required rate of progress milestone. These milestone reports are due to EPA within 90 days after the date on which the milestone occurs (e.g., 90 days after November 15 1996 and November 16, 1999).[10]

For areas that are meeting the 1-hour standard, there is no RFP/ROP requirement and thus no milestone on which to report. Consequently, we believe the milestone reporting requirement in section 182(g) is also not applicable to areas attaining the 1-hour ozone standard.

Attainment Demonstration

Analogous reasoning applies to the attainment demonstration requirement. Section 182(c)(2) requires that a State submit a SIP revision for a serious ozone nonattainment area demonstrating that the plan will ''provide for attainment of the ozone national primary ambient air quality standard by the attainment date'' and that this demonstration be based on ''photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' If a serious area has in fact monitored attainment of the standard based on existing controls, we believe it is not necessary for the State to make a further submission containing additional measures or demonstrations to show attainment.

This belief is also consistent with our interpretation of certain section 172(c) requirements in the General Preamble to Title I, where we stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR 13564; *see also* the September 4, 1992, John Calcagni memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Closely tied with the attainment demonstration requirement is the tracking requirement in section 182(c)(5). This section requires that States with ozone nonattainment areas classified as serious and above submit every three years, starting in 1996, a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's attainment demonstration.

In an area meeting the 1-hour ozone standard, there is no attainment demonstration that requires the use of estimated aggregate vehicle mileage, aggregate vehicle emissions, or other relevant parameters. Consequently, we believe the parameter tracking requirement in section 182(c)(5) is also not applicable to areas attaining the 1-hour ozone standard.

Contingency Measures

CAA section 172(c)(9) requires a State to submit contingency measures that will be implemented if an area fails to make RFP or fails to attain by the applicable attainment date. Section 182(c)(9) additionally requires that the State must submit contingency measures that will be implemented if an area fails to meet a ROP milestone.

We have previously interpreted the contingency measure requirement of section 172(c)(9) as no longer applying once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' See 57 FR 13564; *see also* the September 4, 1992, John Calcagni memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' at page 6. Similarly, the section 182(c)(9) requirement for contingency measures are directed at assuring ROP milestones are met. Because no milestones are required for areas attaining the 1-hour standard, there is no need for contingency measures to ensure that they will be met.

Other Serious Nonattainment Area SIP Requirements

A number of SIP requirements for serious ozone nonattainment areas are not tied to whether the area has attained the 1-hour standard. Arizona is obligated to submit these requirements

(May 7, 1996) (Cleveland-Akron-Lorrain, Ohio); 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah); 60 FR 37366 (July 20, 1995) and 61 FR 31832–31833 (June 21, 1996) (Grand Rapids, MI). Our interpretation has also been upheld by the United States Court of Appeals for the 10th Circuit in *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996).

[8] The title of section 182(c)(2)(B) is ''REASONABLE FURTHER PROGRESS DEMONSTRATION,'' which makes clear that the 9 percent ROP requirement is the minimum RFP requirement for serious areas.

[9] *See also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'').

[10] Milestone reports are not required when a milestone occurs on an attainment date in cases where the standard has been attained. In this case, we are proposing to determine that the Phoenix metropolitan area has attained by its attainment date, November 15, 1999, which is also its milestone date. Thus, even if we believed that the milestone requirement applies to areas attaining the 1-hour ozone standard, Arizona would not be required to submit a milestone report.

even if we finalize today's proposed determination that the area has attained the 1-hour standard and that the CAA planning requirements discussed above no longer apply to the area. These requirements include:

- A current, comprehensive, and accurate emission inventory of actual emissions (section 172(c)(3));
- Reasonable available control technology for major sources and certain other sources (section 182(a)(2));
- An enhanced motor vehicle inspection and maintenance program (section 182(c)(3));
- A new source review program (sections 172(c)(5), 173(a), and 182(c)(6)–(8) and (10));
- An enhanced ambient monitoring program (section 182(c)(1)); and
- A clean fuel vehicle program (section 182(c)(4)).

B. Effects of the Proposed Determination on the Phoenix Area and a Future Violation on This Proposed Determination

If we finalize today's proposed determinations for the Phoenix metropolitan ozone nonattainment area, then the State of Arizona will no longer be required to submit a 9 percent ROP plan, an attainment demonstration, or contingency measures for the area. Any sanction clocks under CAA section 179(a) or requirements that we promulgate a federal implementation plan under CAA section 110(c) for these SIP requirements are suspended.

The lack of a requirement to submit these SIP revisions and the suspension of sanction clocks/FIP requirements will exist only as long as the Phoenix metropolitan area continues to attain the 1-hour ozone standard. If we subsequently determine that the Phoenix area has violated the 1-hour ozone standard (prior to a redesignation to attainment), the basis for the determination that the area need not make these SIP revisions would no longer exist. Thus, a determination that an area need not submit these SIP revisions amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

Should the Phoenix metropolitan area begin to violate the 1-hour standard, we will notify Arizona that we have determined that the area is no longer attaining the 1-hour standard. We also will provide notice to the public in the **Federal Register**. Once we determine that the area is no longer attaining the 1-hour ozone standard then Arizona will be required to address the pertinent SIP requirements within a reasonable amount of time. We will set the deadline for the State to submit the required SIP revisions at the time we make a nonattainment finding.

Arizona must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance.

C. Effect of the Proposed Determination on Transportation Conformity

CAA section 176(c) requires that federally funded or approved transportation actions in nonattainment areas ''conform'' to the area's air quality plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards.

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and to meet the air quality standards. These motor vehicle emissions levels are set in an area's attainment, maintenance and/or RFP demonstrations and are known as the ''transportation conformity budget.''

We set the current ozone conformity budget for the Phoenix metropolitan area in our revised federal 15 percent ROP plan. 64 FR 36243 (July 6, 1999). A finding that the Phoenix area has attained the 1-hour and that the State no longer needs to submit attainment and ROP/RFP demonstrations will not affect the continued applicability of this budget. This budget will remain applicable until Arizona submits a maintenance demonstration with a revised transportation conformity budget (or should the Phoenix area again violate the 1-hour ozone standard, attainment and RFP/ROP demonstrations with budgets) and we find the new budget adequate.

III. Administrative Requirements

This action merely proposes to find that the Phoenix area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. It also proposes to determine that certain Clean Air Act requirements no longer apply to the Phoenix area because of the attainment finding. If finalized, it would not impose any new regulations, mandates, or additional enforceable duties on any public, nongovernmental or private entity. Accordingly, the Administrator certifies that this proposed 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.*). Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. It does not contain any unfunded mandate or significantly or uniquely affects small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) nor does it significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed action also is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this proposed action because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act. As required by section 3 of Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996), in issuing this proposed action, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for

the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 11, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–12644 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6604–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal to delete releases at the Mid-Atlantic Wood Preservers, Inc. Site from the National Priorities List (NPL).

SUMMARY: The EPA proposes to delete releases at the Mid-Atlantic Wood Preservers, Inc. Site (the Site) from the NPL and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA has determined that no further response pursuant to CERCLA is appropriate.

DATES: Comments concerning this deletion must be received by June 19, 2000.

ADDRESSES: Comments may be mailed to Matthew T. Mellon, Remedial Project Manager, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103–2029.

Comprehensive information on the Site is available at EPA's Region III office and at the local information repository located at the Provinces Branch Library, Severn Square Shopping Center, 2624 Annapolis Road, Severn, MD, 21144.

Requests for copies of documents associated with this action should be directed to the Region III Docket Office. The address and phone number for the Regional Docket Officer is U.S. EPA Region III Public Reading Room, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3157.

FOR FURTHER INFORMATION CONTACT: Matthew T. Mellon, Remedial Project Manager, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103–2029, (215) 814–3168, or Richard Kuhn, Community Involvement Coordinator, U.S. EPA, Region III, 1650 Arch Street (3HS43), Philadelphia, PA 19103–2029, (215) 814–3063.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**.

Dated: April 5, 2000.

Bradley M. Campbell,

Regional Administrator.

[FR Doc. 00–12517 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1159

RIN 3135–AA16

Implementation of the Privacy Act of 1974

AGENCY: National Endowment for the Arts, NFAH

ACTION: Proposed rule.

SUMMARY: The National Endowment for the Arts (Endowment) proposes to amend its Privacy Act regulations to reflect administrative changes at the agency and to comply with the President's Memorandum on Plain Language in Government Writing. These regulations establish procedures by which an individual may determine whether a system of records maintained by the Endowment contains a record pertaining to him or her; gain access to such records; and request correction or amendment of such records. These regulations also establish exemptions from certain Privacy Act requirements for all or part of certain systems of records maintained by the Endowment.

DATES: Written comments on these regulations must be received by June 19, 2000.

ADDRESSES: Interested persons should submit written comments concerning these regulations to Karen Elias, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Room 518, Washington, DC 20506. Written comments may also be sent to Ms. Elias by telefax at (202) 682–5572 or by electronic mail at eliask@arts.endow.gov.

FOR FURTHER INFORMATION CONTACT: Karen Elias, (202) 682–5418.

SUPPLEMENTARY INFORMATION: The Endowment operates as part of the National Foundation on the Arts and the Humanities under the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq*). The corresponding regulations published at 45 CFR Chapter XI, Subchapter A apply to the entire Foundation, while the regulations published at 45 CFR Chapter XI, Subchapter B apply only to the Endowment.

This proposed rule adds Privacy Act regulations to Subchapter B (45 CFR part 1159), replacing existing regulations in Subchapter A (45 CFR part 1115) with regard to the Endowment. The new regulations reflect administrative changes at the Endowment. In addition, the new regulations' question-and-answer format and increased detail as to several provisions of the Privacy Act are intended to increase understanding of the Endowment's Privacy Act policies. The Endowment is authorized to propose the new regulations under 5 U.S.C. 552a(f) of the Privacy Act.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not classified as a significant rule under Executive Order 12866 because it will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or 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. In addition, based on the assessments noted in this paragraph, this proposed rule is not a ''major rule'' as defined at 5 U.S.C. 804(2).

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 include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency certifies, under 5 U.S.C. 605(b), that the regulation will not have a significant economic impact on a substantial number of small entities. The Endowment has considered the impact of this proposed rule under the Regulatory Flexibility Act and certifies that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Endowment certifies that this proposed rule does not require additional reporting under the criteria of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

Unfunded Mandates Reform Act of 1995

This proposed rule does not include a Federal mandate that may result in the expenditure by the private sector or by State, local, and tribal governments (in the aggregate) of $100 million or more in any one year. Therefore, a statement under 2 U.S.C. 1532 is not required.

Submission to Congress and the OMB

This rule is hereby submitted for printing in the **Federal Register**, pursuant to 5 U.S.C. 552a(f). Copies of this proposed rule have been sent to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the OMB, in accordance with 5 U.S.C. 552a(r).

List of Subjects in 45 CFR Part 1159

Privacy.

For the reasons set out in this preamble, the Endowment proposes to add Title 45, Code of Federal Regulations, part 1159, as follows:

PART 1159—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

Authority 5 U.S.C. 552a(f).

§ 1159.1 What definitions apply to these regulations?

The definitions of the Privacy Act apply to this part. In addition, as used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the Federal government, including the Executive Office of the President or any independent regulatory agency.

(b) *Business day* means a calendar day, excluding Saturdays, Sundays, and legal public holidays.

(c) *Chairperson* means the Chairperson of the Endowment, or his or her designee;

(d) *Endowment* means the National Endowment for the Arts;

(e) *Endowment system* means a system of records maintained by the Endowment;

(f) *General Counsel* means the General Counsel of the Endowment, or his or her designee.

(g) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(h) *Maintain* means to collect, use, store, or disseminate records, as well as any combination of these recordkeeping functions. The term also includes exercise of control over and, therefore, responsibility and accountability for, systems of records;

(i) *Privacy Act* means the Privacy Act of 1974, as amended (5 U.S.C. 552a);

(j) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency and contains the individual's name or another identifying particular, such as a number or symbol assigned to the individual, or his or her fingerprint, voice print or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(k) *Routine use* means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(l) *Subject individual* means the individual to whom a record pertains. Uses of the terms ''I'', ''you'', ''me'', and other references to the reader of the regulations in this part are meant to apply to subject individuals as defined in this paragraph (l); and

(m) *System of records* means a group of records under the control of any agency from which information is retrieved by use of the name of the individual or by some number symbol, or other identifying particular assigned to the individual.

§ 1159.2 What is the purpose of these regulations?

The regulations in this part set forth the Endowment's procedures under the Privacy Act, as required by 5 U.S.C. 552a(f), with respect to systems of records maintained by the Endowment. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether an Endowment system contains a record pertaining to him or her, to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements, prescribe fees to be charged for copying records, and establish exemptions from certain requirements of the Act for certain Endowment systems or components thereof.

§ 1159.3 Where should individuals send inquiries about the Endowment's system of records or implementation of the Privacy Act?

Inquiries about the Endowment's systems of records or implementation of the Privacy Act should be sent to the following address: National Endowment for the Arts, Office of the General Counsel, 1100 Pennsylvania Avenue NW, Room 518, Washington, DC 20506.

§ 1159.4 How will the public receive notification of the Endowment's systems of records?

(a) As required by the Privacy Act, the Endowment shall publish annually a notice of its systems of records in the **Federal Register**. Such publication shall not be made for those systems of records maintained by other agencies while in the temporary custody of the Endowment.

(b) At least 30 days prior to publication of information under paragraph (a) of this section, the Endowment shall publish in the **Federal Register** a notice of its intention to establish any new routine uses of any of its systems of records, thereby providing the public an opportunity to comment on such uses. This notice published by the Endowment shall contain the following;

(1) The name of the system of records for which the routine use is to be established;

(2) The authority for the system;

(3) The purpose for which the record is to be maintained;

(4) The proposed routine use(s);

(5) The purpose of the routine(s); and

(6) The categories of recipients of such use.

(c) Any request for additions to the routine uses of Endowment systems should be sent to the Office of the General Counsel (see § 1159.3 of this part).

(d) Any individual who wishes to know whether an Endowment system contains a record pertaining to him or her should write to the Office of the General Counsel (see § 1159.3 of this part). Such individuals may also call the Office of the General Counsel at (202) 682–5418 on business days, between the hours of 9 a.m. and 5:30 p.m., to schedule an appointment to make an inquiry in person. In either case, inquiries should be presented in writing and should specifically identify the Endowment systems involved. The Endowment will attempt to respond to an inquiry as to whether a record exists within 10 business days of receiving the inquiry.

§ 1159.5 What government entities will the Endowment notify of proposed changes to its systems of records?

When the Endowment proposes to establish or significantly changes any of its systems of records, it shall provide adequate advance notice of such proposal to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals. This report will be submitted in accordance with guidelines provided by the OMB.

§ 1159.6 What limits exist as to the contents of the Endowment's systems of records?

(a) The Endowment shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. In addition, the Endowment shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timelines, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Endowment shall not be required to update retired records.

(b) The Endownment shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 1159.7 Will the Endowment collect information from me for its records?

The Endowment shall collect information, to the greatest extent practicable, directly from you when the information may result in adverse determinations about your rights, benefits, or privileges under Federal programs. In addition, the Endowment shall inform you of the following, either on the form it uses to collect the information or on a separate form that you can retain, when it asks you to supply information:

(a) The statutory or executive order authority that authorizes the solicitation of the information;

(b) Whether disclosure of such information is mandatory or voluntary;

(c) The principle purpose(s) for which the information is intended to be used;

(d) The routine uses that may be made of the information, as published pursuant to § 1159.4 of this part; and

(e) Any effects on you of not providing all or any part of the required or requested information.

§ 1159.8 How can I acquire access to Endowment records pertaining to me?

The following procedures apply to records that are contained in an Endowment system:

(a) You may request review of records pertaining to you by writing to the Office of the General Counsel (see § 1159.3 of this part). You may also call the Office of the General Counsel at (202) 682–5418 on business days, between the hours of 9 a.m. and 5:30 p.m., to schedule an appointment to make such a request in person. In either case, your request should be presented in writing and should specifically identify the Endowment systems involved.

(b) Access to the record, or to any other information pertaining to you that is contained in the system, shall be provided if the identification requirements of § 1159.9 of this part are satisfied and the record is otherwise determined to be releasable under the Privacy Act and these regulations. The Endowment shall provide you an opportunity to have a copy made of any such record about you. Only one copy of each requested record will be supplied, based on the fee schedule in § 1159.12 of this part.

(c) The Endowment will comply promptly with requests made in person at scheduled appointments, if the requirements of this section are met and the records sought are immediately available. The Endowment will acknowledge mailed requests, or personal requests for documents that are not immediately available, within 10 business days, and the information requested will be provided promptly thereafter.

(d) If you make your request in person at a scheduled appointment, you may, upon your request, be accompanied by a person of your choice to review your record. The Endowment may require that you furnish a written statement authorizing discussion of your record in the accompanying person's presence. A record may be disclosed to a representative chosen by you upon your proper written consent.

(e) Medical or psychological records pertaining to you shall be disclosed to you unless, in the judgment of the Endowment, access to such records might have an adverse effect upon you. When such determination has been made, the Endowment may refuse to disclose such information directly to you. The Endowment will, however, disclose this information to a licensed physician designated by you in writing.

§ 1159.9 What identification will I need to show when I request access to Endowment records pertaining to me?

The Endowment shall require reasonable identification of all individuals who request access to records in an Endowment system to

ensure that they are disclosed to the proper person.

(a) The amount of personal identification required will of necessity vary with the sensitivity of the record involved. In general, if you request disclosure in person, you shall be required to show an identification card, such as a driver's license, containing your photograph and sample signature. However, with regard to records in Endowment systems that contain particularly sensitive and/or detailed personal information, the Endowment reserves the right to require additional means of identification as are appropriate under the circumstances. These means include, but are not limited to, requiring you to sign a statement under oath as to your identity, acknowledging that you are aware of the penalties for improper disclosure under the provisions of the Privacy Act.

(b) If you request disclosure by mail, the Endowment will request such information as may be necessary to ensure that you are properly identified. Authorized means to achieve this goal include, but are not limited to, requiring that a mail request include certification that a duly commissioned notary public of any State or territory (or a similar official, if the request is made outside of the United States) received an acknowledgment of identity from you.

(c) If you are unable to provide suitable documentation or identification, the Endowment may require a signed, notarized statement asserting your identity and stipulating that you understand that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

§ 1159.10 How can I pursue amendments to or corrections of an Endowment record?

(a) You are entitled to request amendments to or corrections of records pertaining to you pursuant to the provisions of the Privacy Act, including 5 U.S.C. 552a(d)(2). Such a request should be made in writing and addressed to the Office of the General Counsel (see § 1159.3 of this part).

(b) Your request for amendments or corrections should specify the following:

(1) The particular record that you are seeking to amend or correct;

(2) The Endowment system from which the record was retrieved;

(3) The precise correction or amendment you desire, preferably in the form of an edited copy of the record reflecting the desired modification; and

(4) Your reasons for requesting amendment or correction of the record.

(c) The Endowment will acknowledge a request for amendment or correction of a record within 10 business days of its receipt, unless the request can be processed and the individual informed of the General Counsel's decision on the request within that 10-day period.

(d) If after receiving and investigating your request, the General Counsel agrees that the record is not accurate, timely, or complete, based on a preponderance of the evidence, then the record will be corrected or amended promptly. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Endowment function for which the record was provided or is maintained. In either case, you will be informed in writing of the amendment, correction, or deletion. In addition, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If after receiving and investigating your request, the General Counsel does not agree that the record should be amended or corrected, you will be informed promptly in writing of the refusal to amend or correct the record and the reason for this decision. You will also be informed that you may appeal this refusal in accordance with § 1159.11 of this part.

(f) Requests to amend or correct a record governed by the regulations of another agency will be forwarded to such agency for processing, and you will be informed in writing of this referral.

§ 1159.11 How can I appeal a refusal to amend or correct an Endowment record?

(a) You may appeal a refusal to amend or correct a record to the Chairperson. Such appeal must be made in writing within 10 business days of your receipt of the initial refusal to amend or correct your record. Your appeal should be sent to the Office of the General Counsel (see § 1159.3 of this part), should indicate that it is an appeal, and should include the basis for the appeal.

The Chairperson will review your request to amend or correct the record, the General Counsel's refusal, and any other pertinent material relating to the appeal. No hearing will be held.

(c) The Chairperson shall render his or her decision on your appeal within 30 business days of its receipt by the Endowment, unless the Chairperson, for good cause shown, extends the 30-day period. Should be Chairperson extend the appeal period, you will be informed in writing of the extension and the circumstances of the delay.

(d) If the Chairperson determines that the record that is the subject of the appeal should be amended or corrected, the record will be so modified, and you will be informed in writing of the amendment or correction. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If your appeal is denied, you will be informed in writing of the following:

(1) The denial and the reasons for the denial;

(2) That you may submit to the Endowment a concise statement setting forth the reasons for your disagreement as to the disputed record. Under the procedures set forth in paragraph (f) of this section, your statement will be disclosed whenever the disputed record is disclosed; and

(3) That you may seek judicial review of the Chairperson's determination under 5 U.S.C. 552a(g)(1)(a).

(f) Whenever you submit a statement of disagreement to the Endowment in accordance with paragraph (e)(2) of this section, the record will be annotated to indicate that it is disputed. In any subsequent disclosure, a copy of your statement of disagreement will be disclosed with the record. If the Endowment deems it appropriate, a concise statement of the Chairperson's reasons for denying your appeal may also be disclosed with the record. While you will have access to this statement of the Chairperson's reasons for denying your appeal, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of your statement of disagreement, as well as any statement of the Chairperson's reasons for denying your appeal.

§ 1159.12 Will the Endowment charge me fees to locate, review, or copy records?

(a) The Endowment shall charge no fees for search time or for any other time expended by the Endowment to review a record. However, the Endowment may charge fees where you request that a copy be made of a record to which you have been granted access. Where a copy of the record must be made in order to provide access to the record (e.g., computer printout where no screen reading is available), the copy will be made available to you without cost.

(b) Copies of records made by photocopy or similar process will be charged to you at the rate of $0.10 per page. Where records are not susceptible to photocopying (e.g., punch cards, magnetic tapes, or oversize materials),

you will be charged actual cost as determined on a case-by-case basis. A copying fee totaling $3.00 or less shall be waived, but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at your request, such as certification or authentication, postal insurance, and special mailing arrangement costs, will be charged to you.

(d) A copying fee shall not be charged or, alternatively, it may be reduced, when the General Counsel determines, based on a petition, that the petitioning individual is indigent and that the Endowment's resources permit a waiver of all or part of the fee.

(e) All fees shall be paid before any copying request is undertaken. Payments shall be made by check or money order payable to the ''National Endowment for the Arts.''

§ 1159.13 In what other situations will the Endowment disclose its records?

(a) The Endowment shall not disclose any record that is contained in a system of records to any person or to another agency, except pursuant to a written request by or with the prior written consent of the subject individual, unless disclosure of the record is:

(1) To those officers or employees of the Endowment who maintain the record and who have a need for the record in the performance of their official duties;

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request to the Endowment formulated in accordance with the National Foundation on the Arts and the Humanities regulations published at 45 CFR part 1100;

(3) For a routine use as published in the annual notice in the **Federal Register**;

(4) To the Census Bureau for purposes of planning or carrying out a census, survey, or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Endowment with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her designee, to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Endowment for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. The Endowment may also disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the General Accounting Office;

(11) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e); or

(12) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Endowment shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(b) Before disseminating any record about any individual to any person other than an Endowment employee, the Endowment shall make reasonable efforts to ensure that such records are, or at the time they were collected were, accurate, complete, timely, and relevant for Endowment purposes. This paragraph (b) does not apply to disseminations made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.

§ 1159.14 Will the Endowment maintain a written account of disclosures made from its systems of records?

(a) The Office of the General Counsel shall maintain a written log containing the date, nature, and purpose of each disclosure of a record to any person or to another agency. Such accounting shall also contain the name and address of the person or agency to whom each disclosure was made. This log need not include disclosures made to Endowment employees in the course of their official duties, or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Endowment shall retain the accounting of each disclosure for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Endowment shall make the accounting of disclosures of a record pertaining to you available to you at your request. Such a request should be made in accordance with the procedures set forth in § 1159.8 of this part. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 1159.13(a)(7) of this part.

§ 1159.15 Who has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems?

The Deputy Chairman for Management and Budget has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained, including all reports and outputs from such systems that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data, and must furthermore minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Endowment.

(2) All records, when not under the personal control of the employees authorized to use the records, must be stored in a locked metal filing cabinet. Some systems of records are not of such confidential nature that their disclosure would constitute a harm to an individual who is the subject of such record. However, records in this category shall also be maintained in locked metal filing cabinets or maintained in a secured room with a locking door.

(3) Access to and use of a system of records shall be permitted only to persons whose duties require such access within the Endowment, for routine uses as defined in § 1159.1 as to any given system, or for such other uses as may be provided herein.

(4) Other than for access within the Endowment to persons needing such records in the performance of their official duties or routine uses as defined in § 1159.1, or such other uses as provided herein, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to the General Counsel.

(5) Access to areas where a system of records is stored will be limited to those persons whose duties required work in such areas. There shall be an accounting of the removal of any records from such storage areas utilizing a written log, as directed by the Deputy Chairman for Management and Budget. The written log shall be maintained at all times.

(6) The Endowment shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within a system of records shall be in accordance with the rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form. Whenever such data, whether contained in punch cards, magnetic tapes or discs, are not under the personal control of an authorized person, such information must be stored in a locked or secured room, or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning nor in the case of tapes or discs, degaussing, in accordance with my regulations now or hereafter proposed by the General Services Administration or other appropriate authority.

§ 1159.16 Will the Endowment take steps to ensure that its employees involved with its systems of records are familiar with the requirements and implications of the Privacy Act?

(a) The Chairperson shall ensure that all persons involved in the design, development, operation or maintenance of any Endowment system are informed of all requirements necessary to protect the privacy of subject individuals. The Chairperson shall also ensure that all Endowment employees having access to records receive adequate training in their protection, and that records have adequate and proper storage with sufficient security to assure the privacy of such records.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications of the Privacy Act, and the fact that the Endowment may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and these regulations.

§ 1159.17 Which of the Endowment's systems of records are covered by exemptions in the Privacy Act?

(a) Pursuant to and limited by 5 U.S.C. 552a(j)(2), the Endowment system entitled ''Office of the Inspector General Investigative Files'' shall be exempted from the provisions of 5 U.S.C. 552a, except for subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i), insofar as that Endowment system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to and limited by 5 U.S.C. 552a(k)(2), the Endowment system entitled ''Office of the Inspector General Investigative Files'' shall be exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f), insofar as that Endowment system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

(c) The Endowment system entitled ''Office of the Inspector General Investigative Files'' is exempt from the above-noted provisions of the Privacy Act because their application might alert investigation subjects to the existence or scope of investigations; lead to suppression, alteration, fabrication, or destruction of evidence, disclose investigative techniques or procedures, reduce the cooperativeness or safety of witnesses; or otherwise impair investigations.

§ 1159.18 What are the penalties for obtaining an Endowment record under false pretenses?

(a) Under 5 U.S.C. 552a(i)(3), any person who knowingly and willfully requests or obtains any record concerning an individual from the Endowment under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(b) A person who falsely or fraudulently attempts to obtain records under the Privacy Act may also be subject to prosecution under other statutes, including 18 U.S.C. 494, 495, and 1001.

§ 1159.19 What restrictions exist regarding the release of mailing lists?

The Endowment may not sell or rent an individual's name and address unless such action is specifically authorized by law. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

Dated: May 10, 2000.

Karen Elias,

Deputy General Counsel.

[FR Doc. 00–12624 Filed 5–18–00; 8:45 am]

BILLING CODE 7537–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF81

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Rule To List the Santa Barbara County Distinct Population of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; second extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposed rule to list the Santa Barbara distinct population of the California tiger salamander will be reopened to allow for the inclusion of new information regarding the presence of the California tiger salamander in areas previously not identified as known salamander sites. The extension will allow all interested parties to submit oral or written comments on the proposal.

DATES: The reopened comment period closes June 5, 1999. Comments must be received by the closing date. Any comments received after the closing date may not be considered in the final decision on the proposal.

ADDRESSES: Written comments should be sent to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, at the above Ventura, California address, phone 805/644–1766, facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2000, the Fish and Wildlife Service (Service) proposed to list the Santa Barbara County Distinct Vertebrate Population Segment of the California tiger salamander, (*Ambystoma californiense*), as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended (Act). An emergency rule listing the population was published concurrently in the same issue of the **Federal Register**. The Santa Barbara County population segment of the California tiger salamander is endemic to low elevation (typically below 300 meters (1,000 feet)) vernal pools and seasonal ponds and the surrounding grasslands, oak woodlands, and coastal scrub of Santa Barbara County, California, and is imperiled primarily by habitat loss from conversion of natural habitat to intensive agriculture and urban development, habitat fragmentation, and agricultural contaminants. The original comment period closed March 20, 2000.

On March 24, 2000, the Service reopened the comment period in response to citizen requests that a public hearing be held. The comment period was extended until May 4, 2000, during which a public hearing was held on April 20, 2000, in Santa Maria, California.

This second extension of the comment period will enable the Service to consider in its final rule the results of surveys for California tiger salamanders conducted during this breeding season. Written comments may be submitted until June 5, 2000, to the Service office in the **ADDRESSES** section.

Author: The primary author of this notice is Carl Benz (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: May 15, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations.

[FR Doc. 00–12609 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE30

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), reopen the comment period on the proposed rule to list the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*) as an endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). The comment period is reopened in response to a request from the California Department of Fish and Game for additional time to obtain biological information regarding the mountain yellow-legged frog and formulate comments on the proposed rule. In addition, reopening of the comment period will allow further opportunity for all interested parties to submit comments on the proposal, which is available (see **ADDRESSES** section). We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The reopened comment period closes June 19, 2000.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) at (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1999, the Service published a rule proposing endangered status for the southern California DPS of the mountain yellow-legged frog (*Rana muscosa*) in the **Federal Register** (64 FR 71714). The original comment period closed on February 22, 2000. On March 20, 2000, the Service published a notice reopening the comment period for 30 days (65 FR 14936). This reopened comment period closed on April 19, 2000. The comment period now closes on June 19, 2000. Written comments should be submitted to the Service (see **ADDRESSES** section).

The mountain yellow-legged frog is a true frog in the family Ranidae. The southern California mountain yellow-legged frog can still be found in small streams in the San Gabriel mountains, San Bernardino mountains, and the San Jacinto mountains. In addition to predation from trout and other widespread factors, the few remaining frogs are threatened by recreation (i.e. suction dredging, campgrounds, day use areas), the introduction of non-native competitors and predators, and demographics associated with small populations. Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location and status of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on the mountain yellow-legged frog or its habitat.

Author: The primary author of this notice is Glen Knowles (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 15, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 00–12608 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000504124–0124–01; I.D. 011900B]

RIN 0648–AK11

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Prohibition on the Use of Set Net Fishing Gear

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes regulations to prohibit the use of set net (gillnet and trammel nets) fishing gear to take groundfish species in portions of the exclusive economic zone (EEZ) (also known as the fishery management area) adjacent to state waters at four areas off California. Groundfish fisheries in the fishery management area are managed under the Fishery Management Plan for Groundfish Fisheries off the West Coast (Groundfish FMP). California has jurisdiction over fishing for groundfish and other species both within State waters and, with respect to State registered vessels, in the EEZ off California as long as State regulations are not in conflict with Federal regulations. This action would achieve consistency between regulations in waters under California jurisdiction and those in the EEZ. This action is intended to promote effective and consistent conservation of groundfish stocks and California managed species throughout their range and to avoid unnecessary bycatch of California-managed species that might otherwise be harvested in the closed areas but discarded.

DATES: Comments must be submitted by June 19, 2000.

ADDRESSES: Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes regional fishery management councils to prepare and submit fishery management plans (FMPs) to the Secretary of Commerce (Secretary) for approval and implementation. An FMP may incorporate the relevant fishery conservation and management measures of the coastal states, to the extent they are consistent with the National Standards, the other provisions of the Magnuson-Stevens Act, and any other applicable law.

The Groundfish FMP was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce in 1982. The FMP covers fisheries for over 80 species, including species that are taken in the EEZ and in State waters off California, Oregon and Washington. In the absence of Federal regulations under the Magnuson-Stevens Act a state may continue to apply its own regulations to fishers registered under the laws of that State even if they are fishing in the EEZ. Further, even for a fishery managed under an FMP, a state's regulations that affect fishing for managed species may remain in force as long as they do not conflict with the Federal regulations governing that fishery.

The Council recognized that there could be instances in which it might be desirable or necessary to adjust Federal regulations (pertaining to) fishing for species under the FMP to be consistent with state regulations to achieve effective conservation of groundfish as well as non-groundfish stocks that occur in both the EEZ and state waters. Therefore, the FMP contains procedures whereby state regulations can be reviewed by the Council to determine that state regulations are consistent with the FMP. The Council, after making such a determination, may request that Federal regulations be promulgated to ensure consistency in letter and effect.

This is the case with this proposed rule. As provided by the FMP, the Council reviewed for consistency with the goals and objectives of the FMP, California regulations prohibiting the use of set nets in certain EEZ waters adjacent to California waters. In deference to California's historical management of halibut and white croaker and in the interest of sound and consistent fishery management, the Council recommended that NMFS implement regulations to prohibit set net fishing for groundfish species in the portions of the EEZ in the areas currently closed under California law.

There are four California closures that would be affected by this proposed rule: (1) The portion of the fishery management area in an area between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and the westerly extension of the California-Oregon boundary; (2) any waters in the fishery management area which are 40 fathom (fm) or less deep at mean lower low tide between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and a line extending 225° magnetic from Pillar Point at half Moon Bay in San Mateo County, and 60 fm or less deep at mean lower low tide between a line extending 225° magnetic from Pillar Point at Half Moon Bay in San Mateo County to a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County; (3) any waters in the fishery management area that are 30 fm or less deep at mean lower low tide within the portion of California District 18 north of a line extending due west from Point Sal in Santa Barbara County; and (4) any waters in the fishery management area that are less than 35 fm deep in the area between a line running 180° true from Point Fermin and a line running 270° true from the south jetty of Newport Harbor. This last area is called Huntington Flats.

The primary goal of closures (1) through (3) was to minimize entanglement and drowning of protected birds and marine mammals off central California. Federal studies confirm that the take of sea otters and harbor porpoises has decreased significantly since California established set net closures in coastal waters. Closure (4) was the result of the Marine Resources Protection Act (MRPA), which was adopted through voters' approval of a ballot initiative (Proposition 132) in 1990. As in central California, several set net prohibitions in southern California were motivated

by the desire to minimize the adverse impacts of set net fishing on nontarget marine mammals, rockfish, and lingcod resources. However, at Huntington Flats, the primary emphasis was on public concern for state species, particularly California halibut, rather than protected species or targeted groundfish.

''Set net'' is a term used in California law to define ''any net or line used to take fish that is anchored to the bottom on each end and is not free to drift with the tide or current.'' This generic term includes gillnets and trammel nets as specified in Federal regulations: ''Set net*:* A stationary, buoyed, and anchored gillnet or trammel net'' (50 CFR 660.302(17)). A ''gillnet'' is defined in Federal regulations as ''a rectangular net that is set upright in the water'' (50 CFR 600.10(i)); a ''trammel net'' is defined as ''a gillnet made with two or more walls joined to a common float line'' (50 CFR 660.302(20)). Set nets work by gilling or entangling fish in their mesh.

Laws regulating set nets in the EEZ off California have typically been enacted by the California legislature to prevent drowning of marine birds and mammals, to conserve fishery resources, and to reduce fisheries conflicts. In 1990, California voters approved the MRPA, which prohibits the use of set nets to take rockfish in the EEZ. It also prohibits the use of set nets to take all species of fish in California waters along the mainland shore, within 1 mile of the offshore Channel Islands south of Point Arguello and in an area of the EEZ less than 35 fm deep at the Huntington Flats between the ports of San Pedro, Los Angeles County, and Newport Beach, Orange County.

Federal regulations implementing the FMP prohibit the use of set nets in the EEZ north of 38° N.lat. (Point Reyes, Marin County) but are silent on whether California's set net laws involving the take of groundfish continue to apply in the EEZ south of 38° N. lat. The current regulations do not specifically authorize California to regulate set nets in the EEZ south of 38° N.lat.

The absence of Federal groundfish regulations that specifically address California laws resulted in a Federal district court challenge by the Los Angeles Commercial Fishermen's Association (LACFA) on the legality of California's enforcement of set net prohibitions on the take of groundfish in the EEZ in the Huntington Flats area. On November 22, 1996, the LACFA obtained a court order that prohibited California from enforcing the MRPA prohibition on the use of set nets at Huntington Flats, and authorized set net permittees to fish for all commercial species of fish, not just groundfish, with set nets in the EEZ at Huntington Flats in waters less than 70 fm deep. This temporary restraining order was extended by a preliminary injunction issued March 20, 1997.

The purpose of this proposed action is to resolve the unintended conflict between the lack of Federal regulations under the FMP, which is silent on the use of set nets south of 38° N.lat. and California regulations, which prohibit the use of set nets both in State waters and some areas inside the EEZ. The set net closures are intended to conserve a number of non-groundfish species and non-fish living marine resources that are managed under California regulations and are taken in some areas incidental to fishing for groundfish. This proposed action should resolve this legal dispute and allow lifting of the injunction, allowing effective enforcement of the California law and regulations and conservation of the fish and non-fish species involved.

This action is consistent with the Magnuson-Stevens Act and especially with National Standards 7 and 9. National Standard 7 provides that management shall minimize duplication and costs in the conservation of fishery resources. The proposed action will reduce the cost of administering and enforcing state conservation and management measures in the identified areas by providing a single set of consistent measures. National Standard 9 provides that conservation and management measures shall, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. This National Standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Set net gear is relatively non-selective gear, and though groundfish may be the target species, there is often bycatch of other, non-groundfish species such as California halibut (much of which is dead and therefore wasted). The proposed action will reduce this bycatch of species managed under California regulations in both California waters and the EEZ.

The proposed action also promotes conservation Objective 4 of the FMP, which is to control the impacts of the groundfish fishery on non groundfish species to maintain their long-term reproductive health where conservation problems have been identified for non-groundfish species and the best scientific information shows that the groundfish fishery has a direct impact on the ability of those species to maintain their long-term reproductive health. The FMP authorizes the Council to consider establishing management measures to reduce fishing mortality of non-groundfish species for documented conservation reasons. In this instance, fishers are currently able to fish for groundfish with set net gear in the identified areas, and non-groundfish will be taken incidental to groundfish. Those non-groundfish species will either be killed and discarded or will be retained illegally; in either case, there will be fishing mortality above that which the state would allow in its management program for those non-groundfish species. The proposed action is designed to eliminate this mortality from bycatch of non-groundfish species while minimizing disruption of the groundfish fishery; it will not preclude achievement of any quota, harvest guideline, or allocation of groundfish.

In addition to the preferred action, two alternatives to address this issue were considered by the Council. The ''no action'' alternative would have resulted in the Council not recommending any regulations. The second alternative would have set Federal regulations the same as State laws for three areas off central California but allowed the continued use of set nets to take groundfish in the EEZ at Huntington Flats off southern California. The Council ultimately concluded that the lack of a determination affirming the consistency of Federal and California regulations left a legal void that impaired enforcement of California laws and regulations to conserve non-groundfish species and other living marine resources.

Classification

The proposed action is consistent with the requirements of the Magnuson-Stevens-Act and the Groundfish FMP. The proposed action will not result in, or promote overfishing of, any groundfish stocks or other species. The proposed action should reduce bycatch of non-groundfish species in the area closed to set net fishing. There may be some improved protection of essential fish habitat for groundfish species in the areas closed to set net fishing. The proposed action will eliminate confusion about applicable regulations in the area while enhancing the enforcement of California regulations. There will be no duplication of effort.

NMFS prepared an initial regulatory flexibility analysis (IRFA) that describes the impacts that the proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

The direct effect of this Federal action would be to prohibit fishing for groundfish species using set net gear in the EEZ in the Huntington Flats area. This will affect fishers who have used set net gear in the waters to be closed. It is noted that four areas would be closed; however, direct effects of the action would only be felt at Huntington Flats, as there apparently has been no set net fishing in the other three areas for many years. Therefore, no new effects would be felt from the closure of those 3 years by Federal regulation. This action is not expected to affect processors since other gear types continue to land Federal species in this area at levels comparable to those before the closure.

The category of small businesses possibly affected by the proposed regulation is the 89 vessels that reported set net landings from the Huntington Flats area between 1990 and 1995. Owners of 33 of the 89 vessels held gill and trammel net permits in the 1996–1997 season, and thus may be directly affected by this rule by not being able to fish for groundfish in the EEZ at depths less than 35 fm in the Huntington Flats area. These 33 permit holders represent 14 percent of California's total of 235 gill and trammel net permit-holders. While an evaluation of the effects on individual vessels has not been conducted, estimates for the group of vessels show that the reduction in gross revenues for most vessels is likely to be well below 5 percent. An analysis for the proposed action showed that, for a subset of active set net vessels, an average of 30 percent of total annual value by vessel comes from set net fishing in the Huntington Flats area. The remaining 70 percent is taken by other gear types or in other areas. Of the average vessel's annual value of landings from Huntington Flats (30 percent of the total from all areas and gear types), the value of groundfish species represents only 4.5 percent. This represents the value of groundfish species caught in the entire Huntington Flats area, and thus includes the EEZ outside the closure in question (beyond depths of 35 fm). The proposed action allows for set net fishing for groundfish at depths deeper than 35 fm, and public testimony from LACFA indicates up to seven vessels can successfully operate outside 35 fm (see Section 4.2). Further, the proposed action does not prohibit the use of other gear or fishing for other species within or outside the closure area. Based on this analysis, it is expected the closure of Federal waters out to 35 fm at the Huntington Flats area will result in an average reduction of 1.4 percent of annual gross revenue by vessel.

In addition to the proposed action, two alternatives were considered. The first, a ''no action'' alternative, would impose the least burden on small entities. However, this alternative would leave the inconsistency between California and Federal regulations in place and would greatly increase the difficulty of enforcing California regulations at Huntington Flats. There could be significant bycatch and discard mortality of state-managed species taken in association with groundfish. Further, if set net fishing were to resume in the other three areas, there could be adverse effects on marine mammals and seabirds. The other alternative would adopt the proposed Federal closures for the three areas in which California's action has already resulted in elimination of set net fishing, while allowing set net fishing to continue at Huntington Flats. This alternative would reinforce California's closures and maintain protection for marine mammals and seabirds. However, it would also maintain the inconsistency between State and Federal regulations at Huntington Flats, creating enforcement difficulties for the California and possibly result in significant bycatch and discard mortality as set net fishers could retain groundfish but not state-managed species taken in this portion of the EEZ. Therefore, this alternative was rejected.

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

An informal consultation was conducted under section 7 of the Endangered Species Act and it was determined that the proposed action is not likely to adversely affect any listed species or adversely affect any critical habitat designated for any listed species.

The proposed action should reduce the potential for entanglement of marine mammals in set nets in the area to be closed to set net fishing and therefore is consistent with the Marine Mammal Protection Act.

This action is being proposed in response to a request from California that was endorsed by the Council. The action will make California regulations and Federal regulations consistent and will thus facilitate sound conservation of state-managed resources as well as federally-managed resources. No new costs are imposed on California. Thus, the proposed action is consistent with E.O. 13132 of August 4, 1999.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 12, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.322, paragraph (d) is revised to read as follows:

§ 660.322 Gear restrictions.

* * * * *

(d) *Set nets.* Fishing for groundfish with set nets is prohibited in the following portions of the fishery management area:

(1) Waters north of 38° N.lat.;

(2) The area between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and the westerly extension of the California-Oregon boundary;

(3) Waters which are 40 fm or less deep at mean lower low tide between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and a line extending 225° magnetic from Pillar Point at half Moon Bay in San Mateo County, and 60 fm or less deep at mean lower low tide between a line extending 225° magnetic from Pillar Point at Half Moon Bay in San Mateo County to a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County;

(4) The portion of California District 18 north of a line extending due west from Point Sal in Santa Barbara County in waters 30 fm or less deep at mean lower low tide in the portion of the EEZ between a line extending due west form Point Sal in Santa Barbara County and a line extending due south from Point San Luis in San Luis Obispo County; and

(5) In waters less than 35 fm deep between a line running 180° true from Point Fermin and a line running 270° true from the south jetty of Newport Harbor.

[FR Doc. 00–12576 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 65, No. 98

Friday, May 19, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture

AGENCY: Office of the Secretary, Department of Agriculture.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting in June of the Commission on 21st Century Production Agriculture. The purpose of the meeting on June 14–16, 2000 is a working session, which will be to address issues regarding agricultural policy initiatives to be included in the Commission report. The meeting is open to the public.

PLACE, DATE, AND TIME OF MEETING: This meeting will be held June 14, 2000 from 12–5 p.m. EST in Room 108–A, Whitten Building; June 15, 2000 from 9 a.m.–5 p.m. EST in Room 108–A, Whitten Building; June 16, 2000 from 9 a.m.–12 EST in Room 221–A, Whitten Building.

FOR FURTHER INFORMATION CONTACT: Mickey Paggi on (202–720–3139), Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: May 15, 2000.

Keith J. Collins,

Chief Economist.

[FR Doc. 00–12656 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–041–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of the export of animals and animal products from the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by July 18, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–041–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.
Please state that your comment refers to Docket No. 00–041–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding the use of VS Form 17–140, contact Dr. Lisa Ferguson, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–4928. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION: *Title:* U.S. Origin Health Certificate.

OMB Number: 0579–0020.

Expiration Date of Approval: October 31, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. As part of its mission, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Most countries require a certification that our animals are free from specific diseases and show no clinical evidence of disease. This certification generally must carry the USDA seal and be endorsed by an authorized APHIS veterinarian. VS Form 17–140, United States Origin Health Certificate, is generally used to meet these requirements. Regulations requiring a U.S. Origin Health Certificate under certain circumstances are contained in 9 CFR part 91. The regulations in part 91 are authorized under 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; and 49 U.S.C. 1509 (d).

We are asking the Office of Management and Budget (OMB) to approve our continued use of VS Form 17–140, United States Origin Health Certificate, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .4994 hours per response.

Respondents: State, Federal, and accredited veterinarians, animal owners, and exporters.

Estimated annual number of respondents: 2,800.

Estimated annual number of responses per respondent: 15.

Estimated annual number of responses: 42,000.

Estimated total annual burden on respondents: 21,009 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of May 2000.

Bobby R. Accord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–12658 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

RIN 0584–AC87

Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: By this notice, the Department of Agriculture is updating for Fiscal Year 2000 the maximum food stamp allotments for participating households in Alaska, Hawaii, Guam, and the Virgin Islands. These annual adjustments, required by law, take into account changes in the cost of food and statutory adjustments since the amounts were last calculated.

EFFECTIVE DATE: This notice is effective May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302, or telephone at (703) 305–2516. The e-mail address is Margaret.Batko@FNS.USDA.GOV.

SUPPLEMENTARY INFORMATION:

Implementation

As required by Section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012(o), State agencies should have implemented this action on October 1, 1999, based on advance notice of the new amounts. As required by regulations published at 47 FR 46485 (October 19, 1982), annual statutory adjustments to the maximum allotment levels and income eligibility standards are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Executive Order 12866

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

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related notice to 7 CFR part 3015, subpart V (48 FR 29916, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The Under Secretary for Food, Nutrition, and Consumer Services has certified that this action will not have a significant economic impact and will not have an impact on a substantial number of small entities. The action will increase the amount of money spent on food through increases in food stamp benefits. However, this money will be distributed among all eligible food stamp vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or record keeping requirements subject to review by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Background

Thrifty Food Plan (TFP) and allotments. As provided for in Section 3(o) of the Act, 7 U.S.C. 2012(o), the TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan provides for a diet required to feed a family of four persons consisting of a man and woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFPs for Alaska and Hawaii are based on an adjusted average for the six-month period that ends with June 1999. Since the Bureau of Labor Statistics (the source of food price data) no longer publishes monthly information to compute Alaska and Hawaii TFPs, the adjusted average provides a proxy for actual June 1999 TFP costs. The adjusted average is equal to January-June 1999 TFP costs for Alaska and Hawaii increased by the average percentage difference between the cost of the TFP in Alaska and Hawaii in June and the January-June average in 1986 (a 1.53 percent increase over January-June costs in Alaska and 1.82 percent increase in Hawaii).

For the period January through June 1999, the average cost of the TFP was $516.20 in Alaska, and $653.10 in Hawaii. The proxy in Alaska for actual June 1999 TFP costs was $524.09. This proxy is multiplied by three separate adjustment factors to create three TFPs for Urban Alaska, Rural I Alaska, and

Rural II Alaska. The proxy in Hawaii for actual June 1999 TFP costs was $664.98. The June 1999 cost of the TFP was $628.80 in Guam and $548.50 in the Virgin Islands.

The maximum food stamp allotment is paid to households that have no net income. For households with some type of income, their allotments are determined by reducing the maximum allotment for their household size by 30 percent of the household's net income in accordance with Section 8 (a) of the Act, 7 U.S.C. 2017 (a). To obtain the maximum food stamp allotment for each household size, the TFP costs are divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result rounded down to the nearest dollar.

Pursuant to Section 3 (o)(3) of the Act, maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and the District of Columbia, so they are based upon either the lower of their respective TFPs or the TFP for rural II Alaska.

MAXIMUM ALLOTMENT AMOUNTS [1]—OCTOBER 1999 AS ADJUSTED.

Household size	Urban Alaska	Rural I Alaska	Rural II Alaska	Hawaii	Guam[2]	Virgin Islands[2]
1	$158	$202	$245	$199	$188	$164
2	290	370	450	365	345	301
3	415	530	645	523	495	431
4	528	673	819	664	628	548
5	627	799	973	789	746	651
6	752	959	1168	947	896	781
7	831	1060	1291	1047	990	863
8	950	1212	1475	1196	1131	987
Each Additional Member	+119	+152	+184	+150	+141	+123

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, and 100 percent of the TFP and rounding.

[2] Adjusted to reflect changes in the cost of food in the 48 States and D.C., which correlate with price changes in these areas. Maximum allotments in these areas cannot exceed those in Rural II Alaska.

Dated: February 16, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–12654 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

RIN 0584–AC88

Food Stamp Program: Maximum Allotments for the 48 States and the District of Columbia, and Income Eligibility Standards for the 48 States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The purpose of this notice is to update for Fiscal Year 2000 the maximum allotment levels, which are the basis for determining the amount of food stamps which participating households receive and the gross and net income limits for food stamp eligibility. These adjustments, required by law, take into account changes in the cost of living and statutory adjustments since the amounts were last calculated.

DATES: This notice is effective May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2516. The e-mail address is Margaret.Batko@FNS.USDA.GOV

SUPPLEMENTARY INFORMATION:

Implementation

As required by Section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012(o), State agencies should have implemented the adjustments to the maximum food stamp allotments reflected in this notice on October 1, 1999, based on advance notice of the new amounts. In accordance with regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the maximum allotment levels and income eligibility standards are issued by general notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12866

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

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The Under Secretary for Food, Nutrition and Consumer Services has certified that this action will not have a significant economic impact and will not have an impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or record keeping requirements subject to approval by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or

tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of more than $100 million or more in any one year. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Income Eligibility Standards

The eligibility of households for the Food Stamp Program, except those in which, in accordance with Section 5(a) of the Act, 7 U.S.C. 2014(a), all members are receiving ''benefits under a State program funded under part A of title IV of the Social Security Act, supplemental security income [SSI] benefits under title XVI of the Social Security Act, or aid to the aged, blind, or disabled under title I, X, XIV, or XV of the Social Security Act * * *'', is determined by comparing their incomes to the appropriate income eligibility standards (limits). Pursuant to Section 5(c)(2) of the Act, households containing an elderly or disabled member are required to have qualifying net incomes, while households which do not contain an elderly or disabled member must have qualifying net incomes and qualifying gross incomes. Households in which all members are receiving Social Security Act title IV benefits or SSI are ''categorically eligible;'' under 7 CFR 273.2(j)(2) their incomes do not have to be below the income limits.

As provided in Section 5(c)(1) of the Act, the net and gross income limits applicable to food stamp eligibility are derived from the Federal income poverty guidelines established under Section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2). The net income limit is 100 percent of the poverty line. The gross income limit is 130 percent of the poverty line. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated each October 1. Instructions for implementation of the required adjustments for October 1, 1999, were issued by the Deputy Administrator of the Food and Nutrition Service, Food Stamp Program, in a July 26, 1999, memorandum to all State Food Stamp Program Directors. The revised income eligibility standards for the 48 States (including the District of Columbia, Guam and the Virgin Islands), Alaska and Hawaii are as follows:

FOOD STAMP PROGRAM

[October 1, 1999–September 30, 2000]

Household size	48 States [1]	Alaska	Hawaii
Net Monthly Income Eligibility Standards (100 Percent of Poverty Level)			
1	$687	$860	$791
2	922	1,154	1,061
3	1,157	1,447	1,331
4	1,392	1,740	1,601
5	1,627	2,034	1,871
6	1,862	2,327	2,141
7	2,097	2,620	2,411
8	2,332	2,914	2,681
Each Add. Member	+235	+294	+270
Gross Monthly Income Eligibility Standards (130 Percent of Poverty Level)			
1	$893	$1,118	$1,029
2	1,199	1,500	1,380
3	1,504	1,881	1,731
4	1,810	2,262	2,082
5	2,115	2,644	2,433
6	2,421	3,025	2,784
7	2,726	3,406	3,135
8	3,032	3,788	3,486
Each Add. Member	+306	+382	+351
Gross Monthly Income Eligibility Standards for Households Where Elderly Disabled Are a Separate Household (165 Percent of Poverty Level)			
1	$1,133	$1,419	$1,305
2	1,521	1,903	1,751
3	1,909	2,387	2,196
4	2,297	2,871	2,642
5	2,684	3,355	3,087
6	3,072	3,839	3,533
7	3,460	4,323	3,978
8	3,848	4,807	4,424
Each Add. Member	+388	+484	+446

[1] Includes District of Columbia, Guam, and the Virgin Islands

Thrifty Food Plan (TFP) and Allotments

As provided for in Section 3(o) of the Act, the TFP is a plan for the consumption of foods of different types (food groups) that a household might use to provide nutritious meals and snacks for household members. The plan reflects a diet required to feed a family of four persons consisting of a man and woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing food stamp allotments. ''Allotment'' is defined in Section 3(a) of the Act as ''the total value of coupons a household is authorized to receive during each month.'' Food stamp allotments are adjusted periodically to reflect the changes in food cost levels indicated in the changing amounts of the TFP. Prior to the amendment of Section 3(o) of the Act by Section 804 of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, allotment amounts were established on each October 1 at 103% of the cost of the TFP in the previous June. Amended Section 3(o)(4) of the Act now provides that the TFP will be adjusted each October 1 to reflect the exact cost, or 100%, of the TFP for the previous June, rounding the results to the nearest lower dollar increment for each household size, except that on October 1,1996, the TFP was not to have been reduced below the amounts in effect on September 30, 1996.

To obtain the maximum food stamp allotment for each household size for the period October 1, 1999, to September 30, 2000, June 1999 TFP costs for the above described four-person household were divided by four, multiplied by the appropriate household size and economy of scale factor, in accordance with Section 3(o)(1) of the Act, and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households with no net income. For a household with income, the household's allotment is determined by reducing the maximum allotment for the household's size by 30 percent of the individual household's net income in accordance with Section 8(a) of the Act, 7 U.S.C. 2017(a). The following table shows the current allotments for the 48 States and the District of Columbia.

MAXIMUM FOOD STAMP ALLOTMENTS

[October 1999—September 2000]

Household size	48 States and DC
1	127
2	234
3	335
4	426
5	506
6	607
7	671
8	767
Add on	96

Dated: February 16, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–12655 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Berkeley Electric Cooperative, Inc; Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of aailability of an Environmental Assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an Environmental Assessment (EA) with respect to the potential environmental impacts related to the construction of a 115/24.9 kV electric distribution substation by Berkeley Electric Cooperative. RUS may provide financing assistance for the project.

FOR FUTHER INFORMATION CONTACT: Bob Quigel, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–0468. Bob's e-mail address is bquigel@rus.usda.gov. Information is also available from Tom Meyers, Vice President of Engineering, at Berkeley Electric Cooperative, P.O. Box 1234, Monks Corner, South Carolina, 29461–1234, telephone (843) 761–8200.

SUPPLEMENTARY INFORMATION: The project consists of the construction of a 115/24.9 kV electric distribution substation located in Dorchester County, South Carolina, on the southern side of Ridge Road approximately 1000 feet east of the intersection of Parkers Ferry Road and Ridge Road. The fenced area for the substation will be approximately 7.5 acres. The fence surrounding the substation will be 7 feet high and topped with 3 strands of barbed wire. A short gravel road will be constructed from Ridge Road to the substation site. Approximately 500 feet of overhead 115 kV transmission line will connect the substation to an existing transmission line south of Parkers Ferry Road. Three underground distribution feeder lines will connect the substation to Berkeley Electric Cooperative's electric distribution system.

Berkeley Electric Cooperative submitted to RUS an environmental report which describes the project further and considers its potential environmental impacts. RUS has conducted an independent evaluation of the environmental report and believes that it accurately assesses the impacts of the proposed project. No adverse impacts are expected with the construction of the project. RUS has accepted the document as its Environmental Assessment and is making it available for public review.

The EA can be reviewed at Berkeley Electric Cooperative's Headquarters Office at 414 North Highway 52, Moncks Corner, South Carolina 29461 and their Johns Island District Office located at 3351 Maybank Highway, Johns Island, South Carolina 29455.

Questions and comments should be sent to RUS at the address provided. RUS should receive comments on the EA in writing within 30 days of the publication date of this notice to ensure that the comments are taken into consideration prior to RUS making its environmental determination.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the Council on Environmental Quality Regulations and RUS Environmental Policies and Procedures.

Dated: May 15, 2000.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 00–12653 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–15–U

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–837)

Notice of Court Decision: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In a suit challenging the Department of Commerce's antidumping duty investigation of large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan, the Court of International Trade has affirmed the Department of Commerce's remand determination and entered final judgment. *See Mitsubishi Heavy Industries, Ltd., et al.,* v. *United States,* Consol. Court No. 96–10–02292, Slip Op. 00–45 (CIT April 26, 2000). This decision was not in harmony with the Department of Commerce's original final determination. As a result, the revised antidumping duty margin for Mitsubishi Heavy Industries, Ltd. is 59.67 percent. The revised antidumping duty margin for Tokyo Kikai Seisakusho, Ltd., is 51.97 percent. The revised ''All Others'' rate is 55.05 percent.

Consistent with the decision of the Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990), the Department of Commerce will direct the Customs Service to change the cash deposit rate being used in connection with the suspension of liquidation of the subject merchandise once there is a ''final and conclusive'' decision in this case.

EFFECTIVE DATE: May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta Tzafolias at (202) 482–0922, or David J. Goldberger at (202) 482–4136, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 1996, the Department of Commerce (the Department) published notice of its final determination of the less-than-fair-value (LTFV) investigation of large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Japan. *See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 61 FR 38139 (July 23, 1996). In the final determination of the LTFV investigation, the Department established a final dumping margin of 62.96 percent ad valorem for Mitsubishi Heavy Industries, Ltd. (MHI), 56.28 percent ad valorem for Tokyo Kikai Seisakusho, Ltd., (TKS) and 58.97 percent ad valorem for ''All Others.'' On September 4, 1996, the Department published an antidumping duty order correcting ministerial errors made in the final determination and instructing the Customs Service to collect cash deposits at the rate of 62.26 percent ad valorem for MHI, 56.28 percent ad valorem for TKS, and 58.69 percent ad valorem for ''All Others.'' *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 61 FR 46621 (September 4, 1996).

Following publication of the Department's antidumping duty order, respondents MHI and TKS and the petitioner, Goss Graphic System, Inc., filed a lawsuit with the Court of International Trade (CIT) challenging various aspects of the Department's final determination of the LTFV investigation. In its first decision in this case on June 23, 1998, *Mitsubishi Heavy Industries, Ltd.* v. *United States,* 15 F. Supp. 2d 807 (CIT 1998), the CIT issued an order remanding several issues to the Department. As part of its remand determination filed on December 21, 1998, the Department revised its calculation of certain indirect selling expenses, resulting in revised margins for the respondents. *See September 17, 1998, Final Results of Redetermination Pursuant to Court Remand* at 1–4. In *Mitsubishi Heavy Industries,* v. *United States,* 54 F. Supp. 2d 1183 (CIT 1999), the CIT ordered a second remand determination in order for the Department to further explain its foreign like product determination. No additional recalculations were required in the Department's second redetermination, and the CIT has now affirmed the redetermination and issued final judgment.

As a result, the revised antidumping duty margin for MHI is 59.67 percent. The revised antidumping duty margin for TKS is 51.97 percent. The revised ''All Others'' rate is 55.05 percent.

Suspension of Liquidation

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Court of Appeals for the Federal Circuit (CAFC) held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's determination. Publication of this notice fulfills this obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a ''final and conclusive'' decision on the case. Therefore, pursuant to *Timken,* the Department must continue to suspend liquidation of the subject merchandise pending the expiration of the period to appeal the CIT's April 26, 2000 ruling, or if that ruling is appealed, pending a final decision by the CAFC. However, because entries of the subject merchandise continue to be suspended pursuant to the antidumping duty order in effect (the Department is conducting an administrative review for the 1998–1999 period), the Department need not send additional instructions to the Customs Service to suspend liquidation. Further, consistent with *Timken,* the Department will order the Customs Service to change the relevant cash deposit rates in the event that the CIT's ruling is not appealed or the CAFC issues a final decision affirming the CIT's ruling.

Dated: May 12, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–12677 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Public Workshop Regarding a Proposed Memorandum of Understanding Between the National Institute of Standards and Technology and the National Cooperation for Laboratory Accreditation

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NISTO invites interested parties to attend a public workshop regarding a proposed Memorandum of Understanding (MOU) between NIST and the National Cooperation for Laboratory Accreditation (NACLA). The workshop will include a brief presentation on the

components of the MOU, and an opportunity for discussion.

The purpose of the proposed MOU is to develop and maintain a system in the United States that will (a) recognize competent laboratory accreditation bodies to accredit testing and calibration laboratories when the services of such laboratories are required to demonstrate compliance with procurement and regulatory requirements of government at Federal, state or local levels, and to meet the needs of the private sector; (b) promote the use by government and the private sector of such accreditation bodies; and, (c) recognize competent laboratory accreditation bodies to carry out designated activities under government-to-government agreements on the mutual recognition of conformity assessment activities in support of NIST's role as a designating authority under those agreements.

The proposed MOU with NACLA will support a key goal of the National Technology Transfer and Advancement Act of 1995 (NTTAA) by reducing redundancy and complexity in the development and promulgation of conformity assessment requirements and measures by government at all levels. The draft MOU will be posted on the NIST website at *http://www.ts.nist.gov* by June 1st. Copies of the draft MOU may also be requested from NIST. Interested parties are invited to submit comments to NIST a any time before the workshop. There is no charge to attend the workshop.

DATES: The workshop will be held on June 23, 2000, from 10 a.m. to 12 p.m.

ADDRESSES: The workshop will be held at The National Institute Standards and Technology, Administration Building, Lecture Room A, 100 Bureau Drive, Gaithersburg, MD 20899. Comments on the proposed MOU should be sent to the attention of ''NACLA Comments'' at the Office of the Director, Technology Services, National Institute of Standards and Technology, Mail Stop 2000, Gaithersburg, MD 20899–2000.

FOR FURTHER INFORMATION CONTACT: For further information, you may telephone 301–975–2396 or e-mail: mary.saunders@nist.gov.

SUPPLEMENTARY INFORMATION: The National Technology Transfer and Advancement Act of 1995 (PL 104–113, 1996) directs NIST to coordinate Federal, state and local conformity assessment activities with the private sector with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures. NIST focused on coordination of laboratory accreditation as a key element of conformity assessment in the Implementation Plan it provided to Congress. NIST believes that a proposed MOU with NACLA supports an important goal of the NTTAA, to reduce redundancy and complexity in the development and promulgation of conformity assessment requirements and measures by government at all levels. The MOU will also improve coordination and communication between and within the private and public sectors on conformity assessment requirements and practices.

The purpose of the MOU will be to develop and maintain a system in the United States that will (a) recognize competent laboratory accreditation bodies to accredit testing calibration laboratories when the services of such laboratories are required to demonstrate compliance with procurement and regulatory requirements of government at Federal, state or local levels; (b) promote the use by government and the private sector of such accreditation bodies; and, (c) recognize competent laboratory accreditation bodies to carry out designated activities under government-to-government agreements on the mutual recognition of conformity assessment activities in support of NIST's role as a designating authority under those agreements.

A brief presentation on the MOU will be made at the workshop. After the presentation there will be an opportunity for public discussion. Written comments may be submitted to NIST at any time prior to the workshop. There is no attendance fee.

Raymond G. Kammer,

Director.

[FR Doc. 00–12636 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. 000404094–0094–01]

RIN 0648–ZA84

Improved Methods for Ballast Water Treatment and Management and Prevention of Small Boat Transport of Invasive Species: Request for Proposals for FY 2000

AGENCIES: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce and Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) and the U.S. Fish and Wildlife Service (Service) are entertaining proposals to participate in innovative research, outreach, and demonstration projects that address the problems of aquatic invasive species in U.S. waters. In FY 2000 only, Sea Grant expects to make available about $700,000, and the Service $300,000, to support projects to improve ballast water treatment and management in the Chesapeake Bay and the Great Lakes in particular (Sea Grant), and in U.S. coastal and Great Lakes waters in general (Service). Also in FY 2000 only, Sea Grant expects to make available about $40,000 to support projects to reduce the transport of invasive species by small boats in the Lake Champlain Basin.

DATES: Proposals must be submitted before 5 p.m. EST on June 19, 2000.

ADDRESSES: Proposals must be submitted to the National Sea Grant Office at: National Sea Grant College Program, R/SG, Attn: Invasive Species Competition, Room 11841, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Leon M. Cammen, Invasive Species Coordinator, National Seat Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, or Mary Robinson, Secretary, National Sea Grant Office, 301–713–2435; facsimile 301–713–0799; or Sharon Gross, U.S. Fish and Wildlife Service, 703–358–1718; facsimile 703–358–2044.

SUPPLEMENTARY INFORMATION:

1. Program Authority

Authority: 16 U.S.C. 4701 *et seq.;* 33 U.S.C. 1121–1131.

Catalog of Federal Assistance Number: 11.417, Sea Grant Support; 15.FFA, Fish and Wildlife Management Assistance.

II. Program Description

Background

Nonindigenous species introductions are increasing in frequency and causing substantial damage to the Nation's environment and economy. Although the most prominent of these introductions in the aquatic environment has been the zebra mussel, many other nonindigenous species have been introduced and have truly become

a nationwide problem that threatens many aquatic ecosystems. While some intentional introductions may have been beneficial effects, many other nonindigenous species already present in U.S. waters, or with the potential to invade, may cause significant damage to coastal resources and the economies that depend upon them. In response, the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*) and the National Invasive Species Act of 1996 (16 U.S.C. 4711–4714) established a framework for the Nation to address the problems of aquatic nuisance species invasions of coastal and Great Lakes ecosytems.

In addition, the Acts recognized the serious threat posed by ballast water discharge in causing new invasions and called for ballast water management demonstration programs. A 1996 National Research Council study of the ballast water problem, ''Stemming the Tide,'' concluded that with the growth of global shipping, and the changes modern shipping practices, introductions of nonindigenous species through ballast water discharge were likely to remain a serious problem. The study called for the development of improved technology for the management of ballast water to eliminate this threat to the Nation's ecosystems. A demonstration project testing filtration of ballast water as a method of reducing introductions has been carried out in the Great Lakes, but the possibility that there will be a single solution that is acceptable for all modes of shipping operations and classes of vessels is unlikely.

In addition, vessels that declare No Ballast On Board (NOBOB) may still pose a potential risk for introducing nonindigenous species by reballasting into tanks containing residual ballast (including sediments) and subsequently discharging this mixture into the receiving waters. Although the concern has been most strongly expressed with respect to the Great Lakes, residual water and sediment also represent a potential problem in other regions of the country.

In addition to the potential for introductions of nonindigenous species from large ships, small recreational boats are a major vector of movement of some invasive species. For example, recreational boating has been identified as a major cause of the movement of zebra mussels from larger bodies of water, such as the Great Lakes and Lake Champlain, to smaller inland lakes. Outreach and educational activities targeting the recreational boating community appear to be the most effective means of addressing this problem.

Funding Availability and Priorities

(1) Ballast Water Treatment and Management

The National Sea Grant College Program of the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce (DOC) and the U.S. Fish and Wildlife Service of the Department of the Interior (DOI) encourage proposals that address one of the following three program areas:

(a) Research to develop workable and effective methods to eliminate nonindigenous species introductions from ballast water without imposing undue hardships on the shipping industry. Possible approaches include (but are not limited to) development and/or demonstration of ship-board or on-shore technologies for treatment or management of ballast water. Projects that include on-vessel demonstrations of feasibility will be given priority.

(b) Research and/or synthesis of existing information and measurement to develop a set of ballast water effluent standards and/or test methods that can be used to evaluate the effectiveness of ballast water exchange and other technologies or treatments that may be developed, such that by meeting such a standard, any ballast water pumped into the environment would not pose an unacceptable risk of introduction on nonindigenous species to the receiving waters.

(c) Research and/or synthesis of information and measurements to determine the risk of the introduction of nonindigenous species to the receiving waters from vessels carrying residual ballast (also known as vessels declaring No Ballast On Board, or NOBOB). Research should include consideration of vessels that have reballasted into tanks containing residual ballast and subsequently discharged this mixture into the receiving waters. Studies that examine the risk of introductions by NOBOBs, through analyses of shipping patterns and biological components, would be useful in developing preventative technology and practices. An approach that compared NOBOB patterns and risks of the Great Lakes and Chesapeake Bay would be very useful, as the Chesapeake could serve as a model for other U.S. coastal port systems.

The National Sea Grant College Program will support only those ballast water projects that clearly target ballast water management issues in the Chesapeake Bay and/or the Great Lakes, but investigators located outside those regions may participate if all demonstrations are carried out in the targeted regions. About $700,000 is available from Sea Grant to support these activities in FY 2000. The Federal funding requested for individual projects may not exceed $350,000; matching funds may also be included, but are not required. Proposals are limited to one year of funding, but activities may extend for up to two years; an annual report showing satisfactory progress must be submitted at the end of the first year. Project activities should include identified milestones for each project year. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

The U.S. Fish and Wildlife Service will support projects that address ballast water management issues anywhere in coastal waters of the United States. About $300,000 is available to support these activities in FY 2000. The Federal funding requested for individual projects may not exceed $150,000; matching funds may also be included, but are not required. The indirect cost rate may not exceed 15 percent of direct costs. Proposals are limited to one year of funding, but activities may extend for up to two years; an annual report showing satisfactory progress must be submitted at the end of the first year. Project activities should include identified milestones for each project year.

(2) Small Boat Transport of Zebra Mussels and Other Aquatic Nuisance Species From Lake Champlain

The National Sea Grant College Program encourages proposals that address the following program area:

(a) Outreach and education to prevent the spread of aquatic nuisance species from Lake Champlain to nearby waters. Project activities should be consistent with the Recreational Activities Guidelines developed by the Aquatic Nuisance Species Task Force [**Federal Register**, April 13, 2000, Volume 65, Number 72, Pages 19953–19957].

About $40,000 is available from Sea Grant to support the ''Small Boat Transport'' program area in FY 2000; matching funds may also be included,

but are not required. Proposals are limited to one year of funding, but activities may extend for up to two years; an annual report showing satisfactory progress must be submitted at the end of the first year. Project activities should include identified milestones for each project year. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

III. Eligibility

Any person may apply for funding in response to this announcement. Applications from non-Federal and eligible Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Federal agencies will be funded through an inter-agency transfer.

Please Note: A Federal applicant will be considered eligible only if it can demonstrate that it has legal authority to receive funds from another federal agency in excess of its appropriation. The Economy Act (31 U.S.C. 1535) will not be considered as legal authority to transfer funds since awards issued under this announcement will not constitute a purchase of goods or services by DOC or DOI.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under this announcement are as follows:

(1) Impact of Proposed Project (65%): The effect this activity will have on reducing the impact of invasive species on the environment and/or the economy, or the need for this activity as a necessary step toward such a reduction in impact; inclusion of field-scale demonstration for projects proposing to develop ballast water treatment technologies or practices; and the degree to which potential users of the results of the proposed activity have been involved in planning the activity and will be involved in the execution of the activity as appropriate.

(2) Scientific or Professional Merit (35%): Degree to which the activity will advance the state of the science or discipline through synthesis of existing information and use and extension of cutting edge as well as state-of-the-art methods; degree to which new approaches to solving problems and exploiting opportunities in resource management or development, or in public outreach on such issues will be employed; degree to which investigators are qualified by education, training and/or experience to execute the proposed activity; and record of achievement with previous funding.

V. Selection Procedures

Proposals will be subjected to peer review and ranked in accordance with the assigned weights of the above evaluation criteria by an independent panel consisting of government, academic, and industry experts. Panel members will provide individual evaluations on each proposal, but there will be no consensus advice. Their recommendations and evaluations will be considered by the Federal Program Officers for Sea Grant and the Service who will: (a) Ascertain which proposals best meet the program priorities, as described in Section II under Funding Availability and Priorities, giving consideration to geographic distribution and representation, maintaining a balanced program of research, and not substantially duplicating other projects that are currently funded or are approved for funding by NOAA, DOI, and other State and Federal agencies (hence, awards may not necessarily be made to the highest-scored proposal); (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal.

Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current DOC or DOI grants procedures. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

Timetable

June 19, 2000, 5 p.m. EST—Full proposals due at NSGO.

July 15, 2000 (approximate)—Successful applicants notified.

October 1, 2000 (approximate)—Funds awarded to successful applicants; projects begin.

General Guidelines

The ideal proposal attacks a well-defined problem that will be or is a significant societal issue. The organization or people whose task it will be to make related decisions, or who will be able to make specific use of the project's results, will have been identified and contacted by the Principal Investigator(s). The project will show an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and will show how that information will be provided by the proposed activity, or in concert with other planned activities.

Research projects are expected to have: A rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address an engineering problem; a strong rationale for the proposed research; and a clear and established relationship with the ultimate users of the information. Their contribution to the research may be in the form of collaboration, in-kind services, or dollar support. Projects that are solely monitoring efforts are not appropriate for funding.

What To Submit

Each proposal must include the first seven items listed below; the standard forms included as Item 8 will be required only for proposals selected for funding. All pages should be single- or double-spaced, typewritten in at least a 10-point font, printed on metric A4 (210 mm x 297 mm) or 8.5″ x 11″ paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs, and other pictorial presentations, are included in the 15-page limitation for the Project Description; letters of support, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative. The Principal Investigators and collaborators and the institutional representative should be identified by affiliation and contact information. The total amount of

Federal funds being requested should be listed for each budget period; for projects involving multiple institutions, the total should include all subrecipient budgets.

(2) Project Summary: This information is very important. Prior to attending the peer review panel meetings, some of the panelists may read only the project summary. Therefore, it is critical that the project summary accurately describes the research being proposed and conveys all essential elements of the research. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the following information:

1. Title: Use the exact title as it appears in the rest of the application.

2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator.

3. Funding: Funding request for each year of the project, including matching funds if appropriate.

4. Project Period: Start and competition dates. Proposals should request a start date of September 1, 2000, or later.

5. Project Summary: This should be a brief statement of the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a summary of work to be completed.

(3) Project Description (15-Page Limit)

(a) Introduction/Background/Justification: Subjects that the investigator(s) may wish to include in this section are: (i) current state of knowledge; (ii) contributions that the study will make to the particular discipline or subject area; (iii) contributions and impacts the study will make toward reducing the problem of aquatic invasive species; and (iv) as appropriate, contributions of investigator's previously funded research results to current proposal.

(b) Research or Technical Plan: (i) Objectives to be achieved, hypotheses to be tested; (ii) plan of work—discuss how stated project objectives will be achieved; and (iii) role of project personnel.

(c) Output: Describe the project outputs and impacts that will enhance the Nations's ability to reduce the impacts of aquatic invasive species.

(d) Coordination with other Program Elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

(e) Vessel Selection (if appropriate): Applications proposing on-board demonstrations of ballast water management should address the requirements and priorities listed in the National Invasive Species Act of 1996 (16 U.S.C. 4711–4714) for selecting vessels for demonstration projects. These requirements are available through the Sea Grant web site (www.mdsg.umd.edu/NSGO/research/nonindigenous/RFPOO.html) or from Dr. Leon Cammen at the National Sea Grant Office (phone: 301–713–2435 x136 or e-mail: leon.cammen@noaa.gov).

(4) Literature Cited

(5) Budget and Budget Justification: There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated if provided. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For those applications to be supported by the Service, the indirect cost rate may not exceed 15 percent of direct costs. For those applications to be supported by Sea Grant, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(6) Current and Pending Support: Applicants must provide information on all current and pending support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. All current project support from whatever source (*e.g.*, Federal, State, or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the Principal Investigator and other senior personnel must be included, even if they receive no Federal salary support from the project(s). The number of person-months per year to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within the Departments of Commerce and the Interior.

(7) Vitae (2 pages maximum per investigator).

(8) Standard Application Forms: These forms will be required only for those proposals selected for funding following the review process. Applicants may obtain all required application forms through the Sea Grant web site: (*http://www.nsgo.seagrant.org/research/rfp/index. html#3*) or from Dr. Leon M. Cammen at the National Sea Grant Office (phone: 301–713–2435 x136 or e-mail: leon.cammen@noaa.gov).

(a) Standard Forms 424, Application for Federal Assistance, and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, applicants should enter either ''11.417'' for the CFDA Number and ''Sea Grant Support'' for the title or ''15.FFA'' for the CFDA Number and ''Fish and Wildlife Management Assistance'' for the title depending on the agency that will be supporting the project. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying'', and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, ''Non-Procurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions'', and the lobbying section of the certification form prescribed above applies to applications/bids for

grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single-family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities'', as required under 15 CFR part 28, Appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities''. Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

VII. How To Submit

Proposals must be submitted to the National Sea Grant Office according to the schedule outlined above. Although investigators are not required to submit more than 3 copies of each proposal, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient copies for the full review process, if it does not cause a financial hardship, if they wish all reviewers to receive color, unusually sized (not 8.5″ x 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. Proposals should be addressed to: National Sea Grant Office, R/SG, Attn.: Mrs. Geraldine Taylor, Invasive Species Competition, 1315 East-West Highway, Room 11806, Silver Spring, MD 20910 (phone number for express mail applications is 301–713–2435).

Applications received after the deadline and applications that deviate from the format described above or exceed the budget limitations will be returned to the sender without review. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

VIII. Other Requirements

(1) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal, DOC, and DOI policies, regulations, and procedures applicable to Federal financial assistance awards.

(2) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(3) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC or DOI to cover pre-award costs.

(4) No Obligation for Future Funding—If an application is selected for funding, DOC and DOI have no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC or DOI.

(5) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(a) The delinquent account is paid in full,

(b) A negotiated repayment schedule is established and at least one payment is received, or

(c) Other arrangements satisfactory to DOC or DOI are made.

(6) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity.

(7) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(8) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

(9) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(10) Pursuant to Executive Orders 12876, 12900, and 13021, DOC/NOAA is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the Nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

(11) For awards receiving funding for the collection or production of geospatial data (*e.g.*, GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 FR 17671 (April 11, 1994). The award recipient must document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (http://www.fgdc.gov/standards/standards/html).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

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

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Budget Form, 90–4, Sea Grant Summary Form, 90–2, and Standard Forms 424 and 424b have been approved under control numbers 0648–0362, 0648–0362, 0348–0043, and 0348–0040, respectively. Send comments on any aspect of these collections to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding

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

Dated: May 12, 2000.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

Dated: May 10, 2000.

Cathleen Short,

Assistant Director—Fisheries, Fish and Wildlife Service.

[FR Doc. 00–12627 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–KA–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

May 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 69228, published on December 10, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 15, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 19, 2000, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
315	134,267,555 square meters.
336	176,630 dozen.
338/339	2,340,182 dozen of which not more than 1,727,430 dozen shall be in Categories 338–S/339–S [2].
341	684,724 dozen of which not more than 415,540 shall be in Cateogry 341–Y [3].
342	269,911 dozen.
345	128,000 dozen.
347/348	2,302,424 dozen.
351	567,560 dozen.
352	1,642,583 dozen.
360	8,076,935 numbers of which not more than 5,369,811 shall be in Category 360–P [4].
361	4,343,917 numbers.
362	7,264,329 numbers.
443	129,225 numbers.
445/446	284,457 dozen.
447	69,344 dozen.
640	1,359,055 dozen.
647	1,539,516 dozen.
648	1,107,760 dozen.
649	961,354 dozen.
651	787,814 dozen of which not more than 140,341 dozen shall be in Category 651–B [5].
659–S [6]	637,529 kilograms
Group II	
330, 332, 349, 353, 354, 359–O [7], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [8], as a group.	125,767,893 square meters equivalent.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,881,397 square meters equivalent.
Level not in a Group	
870	33,149,638 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[4] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[5] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[6] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[7] Category 359–O: all HTS number except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–12604 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in India

May 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70220, published on December 16, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 15, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 22, 2000, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
336/636	997,391 dozen.
338/339	4,159,857 dozen.
340/640	2,166,908 dozen.
341	4,565,583 dozen of which not more than 2,828,440 dozen shall be in Category 341–Y [2].
342/642	1,300,544 dozen.
345	231,410 dozen.
351/651	311,800 dozen.
363	51,293,555 numbers.
369–D [3]	1,468,208 kilograms.
641	1,661,508 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–12605 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on a Request That the United States Consult With Mexico and Canada Concerning a Certain Filament Yarn; Amendment

May 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Amending request for public comments concerning a request for consultations on certain filament yarn.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice published in the **Federal Register** on March 1, 2000 (65 FR 11040) advised the public that CITA had been petitioned to initiate consultations with Mexico and Canada under Section 7(2) of Annex 300–B of the North American Free Trade Agreement (NAFTA) for the purpose of amending the NAFTA rules of origin to permit the use of non-North American filament viscose rayon yarn classified in HTS headings 5403.10, 5403.31, 5403.32 and 5403.41 of the Harmonized Tariff Schedule of the United States in NAFTA originating goods. This notice amends, but does not cancel, that notice. The petition has been amended to request consultations on the use of non-North American filament yarn classified in HTS heading 5403.39 of the Harmonized Tariff Schedule of the United States, in addition to the four filament viscose rayon yarn headings listed in that notice.

There will be a 30-day comment period beginning on May 19, 2000 and extending through June 19, 2000. Anyone wishing to comment or provide data or information regarding domestic production or availability of filament yarn classified in HTS headings 5403.10, 5403.31, 5403.32, 5403.39 and 5403.41 is invited to submit 10 copies of such comments or information to D. Michael Hutchinson, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute a ''foreign affairs function of the United States.''

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–12626 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0150]

Submission for OMB Review; Comment Request Entitled Small Disadvantaged Business Procurement Credits

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 (9000–0150).

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 Small Business Procurement Credit Programs. A request for public comments concerning this burden was published at 65 FR 13953, March 15, 2000. 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: Comments may be submitted on or before June 19, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503; and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA, (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement concerning small disadvantaged procurement credit programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

B. Annual Reporting Burden

Number of Respondents: 20,340
Responses Per Respondent: 8.97
Total Responses: 183,257
Average Burden Hours Per Response: 2.09
Total Burden Hours: 383,007

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: May 16, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–12633 Filed 5–18–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0152]

Proposed Collection; Comment Request Entitled Service Contracting

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 (9000–0152).

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 Service Contracting. A request for public comments concerning this burden estimate was published at 65 FR 13953, March 15, 2000. 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: Comments may be submitted on or before June 19, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement implements the statutory requirements of Sec. 834, Pub. L. 101–510, concerning uncompensated overtime. The coverage requires that offerors identify uncompensated overtime hours and the uncompensated overtime rate for procurements valued at $100,000 or more. This permits Government contracting officers to ascertain cost realism of proposed labor rates for professional employees.

B. Annual Reporting Burden

Number of Respondents: 19,906
Responses Per Respondent: 1
Total Responses: 19,906
Average Burden Per Response: 30 minutes
Total Burden Hours: 9,953

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0152, Service Contracting, in all correspondence.

Dated: May 16, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–12634 Filed 5–18–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice of a new system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on June 19, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: Mrs. Pauline E. Korpanty at (703) 607–3743.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service records system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on April 24, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: May 10, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7335

SYSTEM NAME:

Defense Civilian Pay System (DCPS).

SYSTEM LOCATION:

Defense Finance and Accounting Service-Denver Finance Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Defense Finance And Accounting Service-Pensacola Operation Location, Civilian Pay Directorate, Code P, 130 West Avenue, Suite A, Pensacola, FL 32508–5120.

Defense Finance and Accounting Service-Charleston Operating Location, Civilian Pay Directorate, Code P, 1545 Truxtun Avenue, Charleston, SC 29405–1968.

Defense Finance and Accounting Service, Systems Engineering Organization Pensacola, 250 Raby Avenue, Building 801, Pensacola, FL 32509–5128.

Director, Area Command Mechanicsburg, 5450 Carlisle Pike, Building 309, Mechanicsburg, PA 17055–0975.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DoD civilian employees paid by appropriated funds and employees of the Executive Office of the President who are paid by the Defense Finance and Accounting Service's consolidated civilian payroll offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's pay and leave records; source documents for posting of time and leave attendance; individual retirement deduction records, source documents, and control files; wage and separation information files; health benefit records; income tax withholding records; allowance and differential eligibility files, such as, but not limited to clothing allowances and night rate differentials; withholding and deduction authorization files, such as, but not limited to federal income tax withholding, insurance and retirement deductions; accounting documents files, input data posting media, including personnel actions affecting pay; accounting and statistical reports and computer edit listings; claims and waivers affecting pay; control logs and collection/disbursement vouchers; listings for administrative purposes, such as, but not limited to health insurance, life insurance, bonds, locator files, and checks to financial institutions; correspondence with the civilian personnel office, dependents, attorneys, survivors, insurance companies, financial institutions, and other governmental agencies; leave and earnings statements; separation documents; official correspondence; federal, state, and city tax reports and tapes; forms covering pay changes and deductions; and documentation pertaining to garnishment of wages.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Chapter 53, 55, and 81; and E.O. 9397 (SSN).

PURPOSE(S):

The records are used to accurately compute individual employees pay entitlements, withhold required and authorized deductions, and issue payments for amounts due. Output products are forwarded as required to the subject matter areas to ensure accurate accounting and recording of pay to civilian employees.

These records and related products are also used to verify and balance all payments, deductions, and contributions with the DD Form 592 (Payroll for Personal Services Certification and Summary) in the DFAS civilian pay office and other applicable subject matter areas, and to report this information to the recipients and other government and nongovernment agencies.

Records are also used for extraction or compilation of data and reports for management studies and statistical analyses for use internally or externally as required by DoD or other government agencies.

All records in this system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Federal Reserve Banks under procedures specified in 31 CFR part 210 for health benefit carriers to ensure proper credit for employee-authorized health benefit deductions;

Officials of labor organizations recognized under E.O. 11491 and E.O. 11636, as amended, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions (including disclosure of reasons for non-deduction of dues, if applicable);

To the U.S. Treasury, to maintain cash accountability;

To the Internal Revenue Service to record withholding and social security information;

To the Bureau of Employment Compensation to process disability claims;

To the Social Security Administration and Office of Personnel Management to credit the employee's account for Federal Insurance Contributions Act or Civil Service Retirement withheld;

To the National Finance Center, Office of Thrift Savings Plan for participating employees;

To state revenue departments to credit employee's state tax withholding;

To state employment agencies which require wage information to determine eligibility for unemployment compensation benefits of former employees;

To city revenue departments of appropriate cities to credit employees for city tax withheld;

To any agency or component thereof that needs the information for proper accounting of funds, such as, but not limited to the Office of Personnel Management to assist in resolving complaints, grievances, etc. and to compute Civil Service Retirement annuity.

To Federal, State, and local agencies for the purpose of conducting computer matching programs as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

The ''Blanket Routine Uses'' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, and visible file binders/cabinets; in card files; in computers and computer output products; and on microform such as microfiche or microfilm.

RETRIEVABILITY:

Retrieved by name, Social Security Number, civilian payroll number, or other identification number or system identifier (Unit Identification Code, Submitting Office Number, Accountable Disbursing Station Symbol Number).

SAFEGUARDS:

As a minimum, records are accessed by person(s) responsible for servicing and authorized to use the record system in the performance of their official duties who are properly screened and cleared for need to know. Additionally, at some Centers, records are in office buildings protected by guards and controlled by the screening of personnel and the registration of visitors.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Defense Finance and Accounting Service-Headquarters, ATTN: DFAS–HQ/FMP–SMO, 250 Raby Avenue, Building 801, Pensacola, FL 32509–5128.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individual should furnish full name, Social Security Number, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide full name, Social Security Number, or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Information is obtained from previous employers, financial institutions, medical institutions, automated systems interfaces, state or local governments, and from other DoD components and other Federal agencies such as, but not limited to, Social Security Administration, Internal Revenue Service, state revenue departments, State Department, and Department of Defense components (including the Department of the Air Force, Army, or Navy, or Defense agencies); correspondence with attorneys, dependents, survivors, or guardians may also furnish data for the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–12190 Filed 5–18–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: June 12–16, 2000.

Place: Laguna Cliffs Marriott Resort, Dana Point, California.

Time: 1 p.m. to 5 p.m. (June 12, 2000).
8 a.m. to 5 p.m. (June 13, 2000)
8 a.m. to 4:30 p.m. (June 14, 2000)
8:30 a.m. to 10:30 a.m. (June 15, 2000)
1 p.m. to 5 p.m. (June 15, 2000)
8 a.m. to 12 p.m. (June 16, 2000)

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel Robin R. Cababa, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: The Coastal Inlets Research Program and the Monitoring Completed Coastal Projects Program Reviews, in conjunction with the CERB, will be discussed on the afternoon of June 12.

The CERB meeting will be June 13–14. The theme of the meeting is Regional Sediment Management. The session on June 13 will consist of presentations dealing with a review of CERB business and updates, such as Strategic Planning for Research and Development (R&D); R&D Funding Update; National Shoreline Study; Section 227, Shoreline Erosion Control Development and Demonstration Program; and North Carolina Beaches Study. A field trip is planned for the afternoon with an overview preceding the trip. On Wednesday, June 14, there will be presentations pertaining to the theme, such as Regional Sediment Management (Mobile Demonstration), Expansion of Regional Sediment Management, Ports Role in Regional Sediment Management, Dredging Industry Capabilities to Support Regional Sediment Management, Role of Academia in Regional Sediment Management, panel discussion of the State of California Perspectives on Regional Sediment Management, San Diego County Beach Nourishment Program, a panel discussion on County Perspectives on Regional Sediment Management, U.S. Geological Survey Research Relevant to Regional Sediment Management, and Regional Sediment Management Work Unit. The Board will go into Executive Session on the morning of June 15.

On Thursday afternoon, June 15, the Coastal Navigation and Storm Damage Reduction Program Review will be held, which also includes the Coastal Sedimentation and Dredging Proposals.

On Friday morning, June 16, the Coastal Navigation and Storm Damage Reduction Program Review continues with the Coastal Navigation Hydrodynamics Program proposals and the Coastal Structure Evaluation and Design work units. The morning session concludes with the Coastal Field Data Collection Program Review.

These meetings are open to the public; participation by the public is scheduled for 3:30 p.m. on June 14.

The entire meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

James R. Houston,

Director, Coastal and Hydraulics Laboratory.

[FR Doc. 00–12675 Filed 5–18–00; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Quality of Life will meet to examine Quality of Life issues for Sailors and Marines in an effort to anticipate what they will be for the new Navy of the 21st century and what the Navy's responses to the new challenges will have to look like. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Wednesday, May 31, 2000, 8:30 a.m. to 5 p.m.; on Thursday, June 1, 2000, from 8:30 a.m. to 5 p.m.; and on Friday, June 2, 2000, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–6769.

Dated: May 11, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–12595 Filed 5–18–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 19, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 15, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision of a currently approved collection.

Title: Goals 2000, Parental Information and Resource Center's Annual/Final Performance Report (JM).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden: Responses: 58; Burden Hours: 226.

Abstract: Recipients of grants under the Parental Assistance Program must submit an annual performance report that establishes substantial progress toward meetintg their project objective to receive a continuation award.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify

the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jackie Montague at (202) 708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–12606 Filed 5–18–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Web-based Education Commission; Telephone Conference Call

AGENCY: Office of Postsecondary Education, Education.

ACTION: Web-based Education Commission; Telephone Conference Call.

SUMMARY: This notice announces the telephone conference call for the full Commission. Notice of this conference call is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to call into the conference.

DATE: The conference call will be on May 25, 2000, from 12:00–1:00 p.m. eastern standard time. Individuals interested in listening in on the call should contact the Commission for instructions.

FOR FURTHER INFORMATION CONTACT: David Byer, Executive Director, Web-based Education Commission, U.S. Department of Education, 1990 K Street, NW, Washington, DC 20006–8533. Telephone: (202) 219–7045. Fax: (202) 502–7873. Email: *web—commission_ed.gov.*

SUPPLEMENTARY INFORMATION: The Web-based Education Commission is authorized by Title VIII, Part J of the Higher Education Amendments of 1998, as amended by the Fiscal 2000 Appropriations Act for the Departments of Labor, Health, and Human Services, and Education, and Related Agencies. The Commission is required to conduct a thorough study to assess the critical pedagogical and policy issues affecting the creation and use of web-based and other technology-mediated content and learning strategies to transform and improve teaching and achievement at the K–12 and postsecondary education levels. The Commission must issue a final report to the President and the Congress, not later than 12 months after the first meeting of the Commission, which occurred November 16–17, 1999. The final report will contain a detailed statement of the Commission's findings and conclusions, as well as recommendations.

The purpose of the May 25 conference call is to (1) Provide an update on Commission activities; (2) discuss activities of each working group; (3) report on the progress of the web site design; and (4) discuss plans for the next Commission hearing in Atlanta on June 26, 2000.

The conference call is open to the public. Records are kept of all Commission proceedings and are available for public inspection at the office of the Web-based Education Commission, Room 8089, 1990 K Street, NW, Washington, DC 20006–8533 from the hours of 9:00 a.m. to 5:30 p.m.

Assistance To Individuals With Disabilities

The conference call is accessible to individuals with disabilities. Individuals who will need accommodations for a disability in order to participate in the call (i.e. interpreting services, assistive listening devices, or materials in alternative format) should contact the person listed in this notice at least two weeks before the scheduled meeting date. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation.

Electronic Access To This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news/html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previously mentioned sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/indes.html*

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–12670 Filed 5–18–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting; correction.

On May 9, 2000, the Department of Energy published a notice of open meeting announcing a meeting on May 24, 2000 of the Environmental Management Site-Specific Advisory Board, Los Alamos (65 FR 26824). In that notice the meeting address was Highlands University, Kennedy Hall, 11th Street and University Avenue, Las Vegas, New Mexico. Today's notice is announcing that the meeting address has changed due to the fires at Los Alamos. The new meeting address is 2040 South Pacheco Street, Santa Fe, New Mexico 87505.

Issued in Washington, DC on May 16, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–12748 Filed 5–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed information collection that DOE is developing for submission to the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*). This information collection would collect information from Combined Heat and Power (CHP) facilities concerning the details of newly installed CHP power systems.

DATES: Consideration will be given to comments submitted by July 18, 2000.

ADDRESSES: Written comments may be submitted to the U.S. Department of Energy, Office of Industrial Technologies, Attn: Thomas J. King, Room 5F–064, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas J. King, (202) 586–2387.

SUPPLEMENTARY INFORMATION

Collection Title: U.S. Department of Energy/Combined Heat and Power Registry

Type of Review: New collection.

OMB Number: None.

Type of Respondents: Individuals, Businesses, State and Local Governments.

Estimated Number of Respondents: 1,000.

Estimated Total Burden Hours: 500.

Frequency of Response: One time only.

Abstract: DOE plans to publicize widely the existence of the registry through it Regional Offices, the CHP website, meetings, conferences and the like, and through its relationship with CHP organizations. Due to the recent high level of interest in CHP, DOE expects that many CHP installers, individuals, utilities, governments, and businesses will wish to register their CHP systems in order to gain recognition on the CHP webpage and also be potentially eligible for an award. Registration would take place electronically (a paper form would be available upon request) by responding to a series of very brief questions. If a system met the established criteria, a CHP certificate would be sent to the facility. Registration would take place one time only. DOE plans to aggregate the data and generate reports detailing the geographic distribution of systems and among other things, the sizes and types of systems. This data collection will assist DOE in its management of and planning for the continued success of the CHP initiative.

Request for Comments: Pursuant to 44 U.S.C. 3506(c)(2)(A), DOE invites comments on: (1) Whether the proposed collection of information is necessary to measure the progress and success of the CHP registry; (2) the accuracy of DOE's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who choose to respond. Additional information about DOE's proposed information collection may be obtained from the contact person named in this notice.

Issued in Washington, DC on May 9, 2000.

Dan Reicher,

Assistant Secretary, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 00–12635 Filed 5–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–54–000, et al.];

Tenaska Alabama Partners, L.P., et al.; Electric Rate and Corporate Regulation Filings

May 12, 2000.

Take notice that the following filings have been made with the Commission:

1. Tenaska Alabama Partners, L.P.

[Docket Nos. EG00–54–000 and ER00–840–001]

Take notice that on May 4, 2000, Tenaska Alabama Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama) submitted for filing with the Federal Energy Regulatory Commission a notification of non-material change in status to the Tenaska Alabama partnership.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Cabrillo Power I LLC

[Docket No. ER00–2426–000]

Take notice that on May 8, 2000, Cabrillo Power I LLC (Cabrillo I), tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, a revised Schedule A to the Reliability Must Run Agreement (the RMR Agreement) between Cabrillo I and the California Independent System Operator Corporation (the ISO) relating to the Encina generating plant at Carlsbad, California.

Cabrillo I states that the revisions to Schedule A correct certain inaccuracies in the figures for reactive power in the currently effective version, which was originally filed by San Diego Gas & Electric Company (SDG&E) which formerly operated the Encina plant. Cabrillo I further states that the corrections are acceptable to the ISO and to SDG&E, which, under the ISO Tariff, bears costs payable by the ISO under the RMR Agreement.

Cabrillo I states that it has served a copy of its filing on the California Public Utilities Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER00–2427–000]

Take notice that on May 8, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and PG&E Energy Trading—Power, L.P. for acceptance by the Commission.

The ISO states that this filing has been served on PG&E Energy Trading—Power, L.P., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of April 26, 2000.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER00–2428–000]

Take notice that on May 8, 2000, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and GPU Solar, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on GPU Solar, Inc., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 1, 2000.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Unicom Energy, Inc.

[Docket ER00–2429–000]

Take notice that on May 8, 2000, Unicom Energy, Inc. (UEI), tendered for filing proposed market-based rate schedules for the sale of capacity and energy pursuant to negotiated agreements, together with a form of service agreement and a code of conduct to govern relationships with franchised public utilities.

UEI requests that the Commission accept these rate schedules for filing and grant such waivers of its regulations and blanket authorizations as the Commission has granted to power marketers and non-franchised public utilities with market-based rate authority.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Potomac Electric Power Company

[Docket No. ER00–2430–000]

Take notice that on May 8, 2000, Potomac Electric Power Company (Pepco), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and NewEnergy, Inc.

An effective date of May 1, 2000 for this service agreement, with waiver of notice, is requested.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Chesapeake Company, L.L.C.

[Docket No. ER00–2431–000]

Take notice that on May 8, 2000, Commonwealth Chesapeake Company, L.L.C. (Commonwealth Chesapeake), tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994), and Part 35 of the Commission's regulations, 18 CFR 35, revisions to its tariff to provide for sales of regulation service at market-based rates through the Pennsylvania-New Jersey-Maryland Interchange Energy Market (PJM PX). Commonwealth Chesapeake further proposes to amend its tariff to confirm the availability of operating reserves and energy imbalance service at market-based rates.

Commonwealth Chesapeake requests waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3, to permit its filing to become effective as of June 1, 2000, or the date on which the PJM Interconnection, L.L.C. implements amendments to its Open Access Transmission Tariff and Operating Agreement regarding market-based pricing for regulation service.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER00–2432–000]

Take notice that on May 8, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Public Utility District No. 1 of Snohomish County (Snohomish PUD), as Transmission Customer.

A copy of the filing was served upon Snohomish PUD.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Corporation

[Docket No. ER00–2434–000]

Take notice that on May 8, 2000, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with Enron Power Marketing, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER00–2435–000]

Take notice that on May 8, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing two Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Inc. as agent for Ameren Services Company (AE). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to AE pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No. ER00–2436–000]

Take notice that on May 8, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with LG&E Energy Marketing Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on April 28, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–2437–000]

Take notice that on May 8, 2000, Wisconsin Energy Corporation Operating Companies tendered for filing notice that effective May 1, 2000, Service Agreement No. 8, under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Original Volume No. 1, is to be canceled.

Copies of the filing have been served on El Paso Merchant Energy, L. P., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Company Services, Inc.

[Docket No. ER00–2438–000]

Take notice that on May 9, 2000, Southern Company Services, Inc. (SCS), by and on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern), tendered for filing a Notice of Cancellation of SCSI Rate Schedule No. 73. This rate schedule relates only to the Unit Power Sales Agreement between Southern and the City of Tallahassee, Florida, which expires by its terms on May 31, 2000. The Notice of Termination filed by Southern in the referenced docket seeks an effective date of May 31, 2000, the same date as set forth for termination in the underlying Unit Power Sales Agreement.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Consumers Energy Company

[Docket No. ER00–2439–000]

Take notice that on May 9, 2000, Consumers Energy Company (Consumers), tendered for filing a Facilities Agreement Between Consumers and Modular Power Systems, LLC, (Modular), dated May 1, 2000. Under the Facilities Agreement, Consumers is to construct, operate and maintain various protective, monitoring and metering facilities that will be needed in connection with the operation of generating facilities being constructed by Modular.

Consumers requests that the Facilities Agreement be allowed to become effective within 60 days after filing.

Copies of the filing were served upon Modular and upon the Michigan Public Service Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. El Paso Electric Company

[Docket No. ER00–2440–000]

Take notice that on May 9, 2000, El Paso Electric Company tendered for filing an amendment to two power sale agreements with Rio Grande Electric Cooperative.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2441–000]

Take notice that on May 9, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Calpine Power Services Company as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of May 1, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER00–2442–000]

Take notice that on May 9, 2000, Midwest Independent Transmission System Operator, Inc., tendered for filing executed signature pages to the ''Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation,'' and the ''Agency Agreement for Open Access Transmission Service Offered by the Midwest ISO for Nontransferred Transmission Facilities' executed by Madison Gas & Electric Company were filed with the Commission.

A copy of this filing was served on Public Service Commission of Wisconsin.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Central Maine Power Company

[Docket No. ER00–2443–000]

Take notice that on May 9, 2000, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-firm Local Point-to-Point Transmission Service entered into with Constellation Power Source, Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER00–2444–000]

Take notice that on May 9, 2000, Florida Power & Light Company (FPL), tendered for filing Service Agreements with Conectiv Energy Supply, Inc., Duke Energy Trading and Marketing, L.L.C., and Sempra Energy Trading Corp., for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on April 12, 2000.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. PJM Interconnection, L.L.C.

[Docket Nos. ER00–2445–000 and EL00–74–000]

Take notice that on May 8, 2000, PJM Interconnection, L.L.C. (PJM) submitted pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, the following revised sheets to Attachment K of PJM's Open Access Transmission Tariff (Tariff) on file with the Commission:

Fourth Revised Sheet No. 172
Third Revised Sheet No. 173
Second Revised Sheet No. 174
Original Sheet No. 174a

PJM also requests, pursuant to FPA Section 206, 16 U.S.C. § 824e, that the Commission order the same revisions to the same language as it appears on the following pages of Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (OA):

Third Revised Page No. 41
Second Revised Page No. 42
Sixth Revised Page No. 43
Original Page No. 43a

PJM states that these Tariff and OA revisions are intended to forestall an abusive bidding tactic that is enabled by a market design flaw identified by PJM's Market Monitoring Unit (MMU), which last summer resulted in electric customers paying in excess of the maximum lawful price prescribed by the OA.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–12629 Filed 5–18–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6700–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Establishing No-Discharge Zones Under Clean Water Act Section 312

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Establishing No-Discharge Zones Under Clean Water Act section 312, EPA ICR Number 1791.03, OMB Control Number 2040–0187; current expiration date 10/31/2000. This ICR will consolidate two ICRs associated with the establishment of no-discharge zones under CWA section 312 (EPA ICR Numbers 1791.01 to 1791.02). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 18, 2000.

ADDRESSES: A copy of this ICR can be obtained from and written comments may be submitted to James C. Woodley, Marine Pollution Control Branch, Oceans and Coastal Protection Division, U.S. Environmental Protection Agency, 4504F, Ariel Rios, 1200 Penn. Ave., NW, Washington, DC 20460. In the

alternative, EPA will accept comments electronically. Comments should be sent to *woodley.james@epa.gov.* EPA will print electronic comments in hard-copy paper form for the official administrative record.

FOR FURTHER INFORMATION CONTACT:

James C. Woodley, Oceans and Coastal Protection Division, U.S. Environmental Protection Agency, 4504F, Ariel Rios, 1200 Penn. Ave., NW, Washington, DC 20460, (202) 260–1952.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are State, local, and tribal governments.

Title: Establishing No-Discharge Zones Under Clean Water Act section 312 (OMB Control Number 2040–0187; EPA ICR Number 1791.03) expiring 10/31/2000.

Abstract: (A) Sewage No-discharge Zones: The need for EPA to obtain information for the establishment of no-discharge zones (NDZs) for vessel sewage in State waters stems from CWA sections 312(f)(3), (f)(4)(A), and (f)(4)(B), and subsequent regulations at 40 CFR 140.4(a-c). No-discharge zones are established to provide State and local governments with additional protection of waters from treated or untreated vessel sewage. There are 3 ways in which NDZs for vessel sewage can be established. This ICR discusses the information requirements associated with the establishment of NDZs for vessel sewage. The responses to this collection of information are required to obtain the benefit of a sewage NDZ (see 33 U.S.C. 1322). The information collection activities discussed in this ICR do not require the submission of any confidential information.

(B) UNDS No-discharge Zones: Under section 312(n) of the Clean Water Act (''Uniform National Discharge Standards for Vessels of the Armed Forces'' or ''UNDS'') no-discharge zones (''NDZs'') for discharges from Armed Forces vessels may be established by either State prohibition or EPA prohibition following the procedures in 40 CFR part 1700. UNDS also provides that the Governor of any State may petition EPA and the Secretary of Defense to review any determination or standard promulgated under the UNDS program if there is significant new information that could reasonably result in a change to the determination or standard. This ICR discusses the information that will be required from a State if it decides to establish a NDZ by State prohibition or apply for a NDZ by EPA prohibition, and the information that will be required from a State if it decides to submit a petition for review. The responses to this collection of information are required to obtain the benefit of an UNDS NDZ or a review of an UNDS determination or standard (see 33 U.S.C. 1322(n)). The information collection activities discussed in this ICR do not require the submission of any confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Table 1 shows the annual respondent burdens for establishing sewage no-discharge zones as 1335 total hours. The average burden per respondent per year is 111.25 hours. Table 2 shows the annual respondent burdens for establishing UNDS no-discharge zones and petitioning for review of an UNDS determination or standard (957.50 hours total). The average burden per respondent per year is 160 hours. Table 3 shows the annual respondent burdens for all of CWA section 312 (2292.5 hours total). The average burden per respondent per year is 127 hours. The estimates include time for gathering information, and preparing and submitting requests. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 5, 2000.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

TABLE 1.—SEWAGE NDZ TOTAL ESTIMATED RESPONDENT (STATE AGENCY) BURDEN AND COST SUMMARY

	Number of respondents	Number of activities/year per respondent	Total number of hours per year	Total labor cost per year ($)	Total annual capital costs ($)	Total annual O&M costs ($)
Sewage No-Discharge Zone by State Prohibition [40 CFR 140.4(a)]	8	1	873	29,032.00	0.00	1200.00
Sewage No-Discharge Zone by EPA Prohibition [40 CFR 140.4(b)]	2	1	231	7,410.00	0.00	300.00
Drinking Water No-Discharge Zone [40 CFR 140.4(c)]	2	1	231	7,410.00	0.00	300.00
Total	12		1335	43,852.00	0.00	1800.00

TABLE 2.—UNDS TOTAL ESTIMATED RESPONDENT (STATE AGENCY) BURDEN AND COST SUMMARY

	Number of respondents	Number of activities/ year per respondent	Total number of hours per year	Total labor cost per year ($)	Total annual capital costs ($)	Total annual O&M costs ($)
UNDS No-Discharge Zone by State Prohibition [40 CFR 1700.9]	4	1	717.00	23,815.12	0.00	600.00
UNDS No-Discharge Zone by EPA Prohibition [40 CFR 1700.10]	1	1	194.25	6,477.58	0.00	150.00
UNDS Petition for Review [40 CFR 1700.12]	1	1	46.25	1,578.27	0.00	150.00
Total	6	.....	957.50	31,870.97	0.00	900.00

TABLE 3.—TOTAL CWA SECTION 312 ESTIMATED RESPONDENT (STATE AGENCY) BURDEN AND COST SUMMARY

	Number of respondents	Number of activities per year	Total number of hours per year	Total labor cost per year ($)	Total annual capital costs ($)	Total annual O&M costs ($)
Total	18	18	2292.5	75,722.97	0.00	2700

[FR Doc. 00–12647 Filed 5–18–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00292; FRL–6558–1]

Chemical-Specific Rules, TSCA Section 8(a); Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): Chemical-Specific Rules, TSCA Section 8(a) (EPA ICR No. 1198.06, OMB No. 2070–0067). This ICR involves a collection activity that is currently approved and scheduled to expire on August 31, 2000. The information collected under this ICR helps EPA evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use, or disposal of identified chemical substances and mixtures. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPPTS–00292 and administrative record number AR–225, must be received on or before July 18, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00292 and administrative record number AR–225 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Keith Cronin, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–8157; fax number: (202) 260–1096; e-mail address: cronin.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process or import, or propose to manufacture, process or import, chemical substances and mixtures. Potentially affected categories and entities may include, but are not limited to:

Type of business	SIC codes
Industrial organic chemicals	2819
Adhesives and sealants	2891
Paints and allied products	2851
Textile goods	2899
Petroleum products	5172

This table 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 this table could also be affected. The Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. 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/. 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/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 4081 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPPTS–00292 and administrative record number AR–225. 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 TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the 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 OPPTS–00292 and administrative record number AR–225 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00292 and administrative record number AR–225. Electronic comments may also be filed online at many Federal Depository Libraries.

B. 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 technical person identified under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider when 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. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record 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.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Chemical-Specific Rules, TSCA Section 8(a).

ICR numbers: EPA ICR No. 1198.06, OMB No. 2070–0067.

ICR status: This ICR is currently scheduled to expire on August 31, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: TSCA section 8(a) authorizes the Administrator of EPA to promulgate rules that require persons who manufacture, import or process chemical substances and mixtures, or who propose to manufacture, import, or process chemical substances and mixtures, to maintain such records and submit such reports to EPA as may be

reasonably required. Any chemical covered by TSCA for which EPA or another Federal Agency has a reasonable need for information and which cannot be satisfied via other sources is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, byproducts of chemical production, existing data on deaths and environmental effects, exposure data, and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use, or disposal of identified chemical substances and mixtures. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities and other members of the public will also have access to this information for their own use.

Responses to the collection of information are mandatory (see 40 CFR part 704). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average about 69 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 4.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 275.

Estimated total annual burden costs: $0.

VI. Are There Changes in the Estimates from the Last Approval?

There are no changes in the burden estimates since the last approval of this ICR.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 11, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–12648 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6607–3]

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 May 08, 2000

Through May 12, 2000 Pursuant to 40 CFR 1506.9.

EIS No. 000139, Draft EIS, NPS, CA, NV, Legislative EIS—Timbisha Shoshone Tribal Homeland, To Establish a Permanent Tribal Land Base and Related Cooperative Activities, The Transfer of Federal Land and Acquisition of Private Land, Death Valley National Park, Saline Valley, CA and Lida Ranch near Lida, NV, Due: July 19, 2000, Contact: Alan Schmierer (415) 427–1441.

EIS No. 000140, Final EIS, BLM, WY, Horse Creek Coal Lease Application (Federal Coal Lease Application WYW–141435), Implementation, Campbell and Converse Counties, WY, Due: June 19, 2000, Contact: Nancy Doelger (307) 261–7627.

EIS No. 000141, Draft EIS, AFS, Forest Service Roadless Area Conservation, Implementation, Proposal to Protect Roadless Areas, In addition, the Agency is proposing special consideration for the Tongass National Forest, Due: July 03, 2000, Contact: Scott Conroy (703) 605–5299.

EIS No. 000142, Draft EIS, FHW, NV, Reno Railroad Corridor, Implementation of the Freight Railroad Grade Separation Improvements in the Central Portion of the City of Reno, Washoe County, NV, Due: July 03, 2000, Contact: John T. Price (775) 687–1204.

EIS No. 000143, Final EIS, UAF, FL, Tyndall Air Force Base, Implementation, Proposed Conversion of Two F–15 Fighter Squadrons to F–22 Fighter Squadons, FL, Due: June 19, 2000, Contact: Herman Bell (850) 283–8572.

EIS No. 000144, Final EIS, SFW, CA, High Desert Power Project, Construction and Operation, A Combined-Cycle Natural Gas-Fueled Electrical Generation Power Planet, Approval of Incidental Take Permit Authorization under Sections 7 and 10 of the Federal ESA, San Bernardino County, CA, Due: June 19, 2000, Contact: George Walker (760) 255–8852.

EIS No. 000145, Draft Supplement, NOA, FL, Florida Keys National Marine Sanctury (FKNMS), Comprehensive Management Plan, Updated Information, Proposal to Establish a No-Take Ecological Reserve in the Tortugas Region, FL, Due: July 31, 2000, Contact: Billy D. Causey (305) 743–2437.

Amended Notices

EIS No. 000101, Draft EIS, FAA, NC, Piedmont Triad International Airport, Construction and Operation, Runway 5L/23R and New Overnight Express Air Cargo Sorting and Distribution Facility, and Associated Developments, Funding, NPDES and COE Section 404 Permit, City of Greensboro, Guilford County, NC, Due: June 07, 2000, Contact: Donna

M. Meyer (404) 305–7150. Revision of FR notice published on 04/14/2000: CEQ Comment Date corrected from 05/30/2000 to 06/07/2000.

EIS No. 000135, Draft Supplement, NPS, MS, Natchez Trace Parkway, Update Information on the Construction of Section 3P13 (Old Agency Road), City of Ridgeland, Madison County, MS, Due: July 12, 2000, Contact: Wendall Simpson (601) 680–4005.

Published FR 05–12–00 Correction to Title.

Dated: May 16, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–12680 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6607–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 01, 2000 Through May 05, 2000 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 April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–FAA–B51019–RI Rating EC2, T. F. Green Airport Project, To Implement the Part 150 Noise Abatement Procedures in a Safe and Efficient Manner, Warwick County, RI.

Summary: EPA expressed concerns regarding the analysis of community noise impacts and mitigation measures described in the DEIS.

ERP No. D–FHW–E40308–TN Rating EC2, TN–374 (North Parkway) Project, Construction from TN13 to TN 76 in Clarksville, Funding, US Coast Guard and COE Section 404 Permits, Montgomery County, TN.

Summary: EPA expressed environmental concerns regarding purpose and need and potential wetland impacts. EPA requested clarification of these issues.

ERP No. D–FHW–F40388–WI Rating EC2, US–14/61 Westby—Virogua Bypass Corridor Study, Transportation Improvements, Funding and COE Section 404 Permit, Cities of Virogua and Westby, Vernon County, WI.

Summary: EPA expressed concern that the document did not provide information on how this project relates to plans for the Highway 14 and 61 corridors.

ERP No. D–FHW–H40167–MO Rating EC2, US 65 Improvements, from County Road 65–122 South to Route EE Intersection south of Buffalo, COE Section 404 Permit, Dallas County, MO.

Summary: EPA expressed concerns regarding possible detrimental impacts to drinking water supplies; lack of cumulative and indirect impacts analysis; and a lack of maps detailing information addressed in the various sections of the DEIS.

ERP No. D–FRC–K03023–00 Rating EC2, Southern Trails Pipeline Project (CP99–163–000), Conversion of an Existing Crude Oil Pipeline (known as the ARCO Four Corners Pipeline Line 90 System), Construction and Operation, CA, AZ, UT and NM.

Summary: EPA identified some concerns and additional analysis needs, particularly in the area of socioeconomics and the treatment of environmental justice.

ERP No. D–FTA–F54012–OH Rating EC2, Bera/I–X Center Red Line Extension Project, Southwest Corridor Major Investment, Transit Improvements, Funding, Cuyahoga County, OH.

Summary: EPA expressed concerns because of the lack of discussion pertaining to avoidance, minimization and mitigation of wetlands and the insufficiency of the content and format of noise and vibration analysis.

ERP No. D–USN–K11033–CA Rating EC2, El Toro Marine Corps Air Station Disposal and Reuse, Implementation, Orange County, CA.

Summary: EPA expressed concern that re-use activities could lead to exceedences of applicable air quality standards, could result in increased water pollution, or could harm wildlife. EPA recommended that the Navy identify mitigation to protect wetlands, develop a restoration alternative, and consider an environmental management system (EMS) to mitigate risks.

ERP No. DA–IBR–J35005–00 Rating EC2, Animas-La Plata Project (ALP Project), Municipal and Industrial Water Supply, Reservoir Construction in Ridges Basin, Implementation and Water Acquisition Funding, Additional Information concerning Project Alternatives Developed in 1996 through 1997, CO NM.

Summary: EPA requested that additional information be provided on how the various environmental impacts of the alternatives are being compared and details of the proposed wetland and habitat mitigation plan.

ERP No. DS–DOD–A11075–00 Rating LO, National Missile Defense Deployment (NMD) System, Upgraded Early Warning Radar Supplement (UEWR), To Addresses Interior Replacement of Electronic Hardware and Computer Software, Affected Areas Clear Air Force Station (AFS), Denali Borough, AK; Beale Air Force Base (AFB), Yuba County, CA; and Cape Cod AFS, Barnstable County, MA.

Summary: EPA had no objection to this project.

Final EISs

ERP No. F–BOP–E80002–SC South Carolina—Federal Correctional Institution, Construct and Operate, Possible Sites: Andrew, Bennettsville, Oliver and Salters, SC.

Summary: EPA expressed environmental concerns regarding potential wetlands impacts.

ERP No. F–FAA–B51021–MA Provincetown Municipal Airport Safety and Operational Enhancement Project, Improvements (1) Firefighter Equipment Garage; (2) General Aviation Parking Apron Expansion; (3) Runaway Safety Areas, and (4) a Runaway Extension, COE Section 404 Permit, Cape Cod National Seashore, Barnstable County, MA.

Summary: EPA has no objections to the recommended actions in the FEIS but asked to be actively involved in any NEPA reevaluation associated with any future runway extension project at the airport.

ERP No. F–FHW–H50001–MO MO–19 Missouri River Replacement Bridge Project, Construction and Operation, US Coast Guard and COE Section 404 Permits, Gasconade and Montgomery Counties, MO.

Summary: EPA urged FHWA/MoDOT to condition the Record of Decision for the selection of the 5–W1 alternative pending completion of Fish and Wildlife Service surveys for three endangered species.

ERP No. F–FHW–K40225–CA Marin US–101 High Occupancy Vehicle (HOV) Gap Closure Project, Construction from US 101 I–580 on US–101 from Lucky Drive to North San Pedro Road and I–580 from Irene Street to US–101, Funding, COE Section 404 and Bridge Permits, Marin County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–K40238–CA Downtown Sacramento—Folsom Corridor, Improvement of Transit Services, US 50/Folsom Boulevard,

Funding and COE Section 404 Permit, Transportation Systems Management (TSM) and Light Rail Transit (LRT), City and County of Sacramento, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–K54023–CA Vasona Corridor Light Rail Transit Project, Extension of existing Light Rail Transit (LRT), in portion of the Cities of San Jose, Campbell and Los Gatos, Santa Clara County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–IBR–K39054–CA Groundwater Replenishment System, Implementation to Repurifying Water from Orange County Water District (OCWD) Orange County Sanitation District (OCSD), Funding and COE Section 404 Permit, Orange County, CA.

Summary: EPA continues to express concern regarding (1) potential emergency response procedures and contingency plans, (2) how the injection process would improve the effectiveness of the saltwater intrusion barrier, and (3) a preliminary monitoring plan to be implemented by the project operators.

ERP No. F–SFW–L64046–WA Little Pend Oreille National Wildlife Refuge, Implementation, Comprehensive Conservation Plan, Stevens and Pend Oreille Counties, WA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–TVA–E09805–TN Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Construction and Operation of Combustion Turbines (CTs), Haywood County, TN.

Summary: EPA expressed concern with the proposal to develop new power plants proposed for greenfields as opposed to brownfields or the expansion/repowering of existing plants. EPA also expressed concern that the project would likely induce growth with associated impacts. EPA recommended that TVA continue to coordinate with local community leaders regarding environmental justice issues.

ERP No. F–USN–K11083–CA Hunters Point (Former) Naval Shipyard Disposal and Reuse, Implementation, City of San Francisco, San Francisco County, CA.

Summary: EPA continues to object to the FEIS based upon inadequate mitigation on potential impacts to the environmental justice community at Hunters Point.

ERP No. FS–UAF–A11074–00 Evolved Expendable Launch Vehicle (EELV) Program, Development, Operation and Deployment, Proposed Launch Locations are Cape Canaveral Air Station (AS), Florida and Vandenberg Air Force Base (AFB), California, Federal Permits and Licenses, FL and CA.

Summary: EPA had no objection to the Final document.

Dated: May 16, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–12681 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42212; FRL–6559–9]

Priority-Setting Workshop for the Endocrine Disruptor Screening Program; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice invites public participation in a workshop to discuss the development of a priority-setting system for the selection of chemicals for testing in the Endocrine Disruptor Screening Program (EDSP). The Agency's 1998 Proposed Statement of Policy for the EDSP contains a set of principles and a general strategy for setting priorities for testing. The Agency has developed a draft version of a priority-setting system and seeks public input on the further design and implementation of the system. The workshop will also provide an overall update and invite general comment on other aspects of the EDSP, including the status of the standardization and validation efforts and the approach for pesticide active ingredients.

DATES: The meeting will be held on Monday, June 5, 2000, from 10 a.m. to 5 p.m.; on June 6 from 9 a.m. to 5 p.m.; and on June 7 from 9 a.m. to 4 p.m. Your request to participate in the meeting must be received by EPA on or before May 31, 2000.

ADDRESSES: The meeting will be held at Crystal City Hilton, 2399 Jefferson Davis Hwy., Arlington VA, (703) 418–6800. Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket control number OPPTS–42212 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: For information related to the overall program status of the EDSP: Gary Timm, telephone number: (202) 260–1859, e-mail: timm.gary@epa.gov or Anthony Maciorowski, telephone number: (202) 260–3048, e-mail: maciorowski.anthony@epa.gov, Office of Science Coordination and Policy (7101), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

For information on pesticide activities under the EDSP: Penny Fenner-Crisp, telephone number: (703) 605–0654, e-mail: fenner-crisp.penelope@epa.gov, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

For information on the Endocrine Disruptor Priority-Setting Database (EDPSD): Jim Darr, telephone number: (202) 260–3441, e-mail: darr.james@epa.gov or Patrick Kennedy, telephone number: (202) 260–3916, e-mail: kennedy.patrick@epa.gov, Economics, Exposure, and Technology Division (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who manufacture, import, or use chemical substances that are addressed by the EDPSD. The general public may also have an interest in the design and implementation of the EDPSD and in other aspects of the Endocrine Disruptor Screening Program covered at the workshop. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. 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/.

The EDPSD can be downloaded on or after May 22, 2000, from http://www.ergweb.com/endocrine.

B. In person. The Agency has established an official record for this meeting under docket control number OPPTS–42212. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the EDPSD, 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, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. Please indicate if you would like to make oral comments at the meeting so that adequate time can be reserved on the agenda. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–42212 in the subject line on the first page of your request.

A. By mail. You may submit a written request to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

B. In person or by courier. You may deliver a written request to: OPPT Document Control Office (DOC) in the East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DOC is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DOC is (202) 260–7093.

C. Electronically. You may submit your request electronically by e-mail to: ''oppt.ncic@epa.gov.'' Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. All comments in electronic form must be identified by docket control number OPPTS–42212. You may also file a request online at many Federal Depository Libraries.

IV. Background Information on the Workshop

The Agency described the major elements of a proposed EDSP and the Agency's plan for implementation in a December 28, 1998, **Federal Register** notice (63 FR 42208) (FRL–6052–9). The EDSP has five major components:

1. Sorting, in which chemicals are classified according to the availability of information on each chemical's endocrine disrupting potential.
2. Priority Setting, in which EPA will determine the priority order for entry into Tier 1 Screening.
3. Tier 1 Screening, a battery of *in vitro* and *in vivo* assays designed to identify those chemicals that are not likely to interact with the estrogen, androgen, or thyroid hormone systems.
4. Tier 2 Testing, a battery of assays designed to determine whether a chemical may have an effect in humans similar to that of naturally occurring hormones and to identify, characterize, and quantify those effects for estrogen, androgen, and thyroid hormone effects.
5. Hazard Assessment, a weight-of-evidence evaluation of Tier 1 and Tier 2 results.

It is expected that the Sorting step will result in a relatively small number of chemicals proceeding directly to Tier 2 Testing or to Hazard Assessment and that the vast majority of chemicals will be placed in Priority Setting for Tier 1 Screening. The universe of chemicals of concern to EPA as potential endocrine disruptors is estimated to number more than 87,000 and includes pesticides, commercial chemicals, cosmetic ingredients, food additives, nutritional supplements, and certain mixtures. The Agency's initial priority-setting efforts are focusing on two groups of chemicals:

1. Pesticide active ingredients (~900 chemicals).
2. High production volume chemicals used as inert ingredients in pesticides (HPV Inerts, ~620 chemicals).

The EDPSD is being developed to help set Tier 1 priorities. At present, the EDPSD contains data on potential endocrine-related toxicity for only HPV Inerts. The Agency plans to incorporate predictions of toxicity based on quantitative structure-activity relations (QSAR) into the EDPSD when appropriate QSAR models are agreed upon. Incorporation of QSAR data will allow the EDPSD to rank a much larger number of chemicals on both effects and exposure factors. The Agency plans to hold a workshop on the use of QSAR in the EDSP later this year. Hazard and exposure data on pesticide active ingredients may be included in future versions of the EDPSD as a means of increasing the accessibility of these data, but there are no near-term plans to use the EDPSD to set testing priorities for pesticide active ingredients. The EDPSD will undergo a formal peer review after implementation of final decisions regarding its scope and content.

The EDPSD utilizes a ''compartment-based priority-setting strategy'' that builds upon distinct compartments of exposure- and effects-related information and criteria as well as a category of specially targeted priorities. The EDPSD presently contains the following compartments:

Exposure Data Compartments

Human Biological Monitoring Data
Ecological Biological Monitoring Data
Chemicals in Food and Drinking Water
Chemicals in Consumer/Cosmetic Products
Occupational Exposure Chemicals
Surface Water Monitoring Data
Indoor Air Monitoring Data
Outdoor Air Monitoring Data
Sediments/Soil Monitoring Data
Superfund Data
Environmental Releases/Environmental Fate
Production/Import Volumes/Environmental Fate
Exposure Multi-Hit Compartment

Effects Data Compartments

Epidemiological and Clinical Data on Endocrine-Related Effects
Reproductive/Developmental Toxicity in Laboratory Animals
Chronic/Subchronic Toxicity in Laboratory Animals
Carcinogenicity in Endocrine Target Tissues in Laboratory Animals
Ecotoxicity Effects
Effects Multi-Hit Compartment

Combined Compartments

Rank in Human Biological Monitoring x Highest Rank in Any Health Effects Compartment
Highest Rank in Any Other Human Exposure Compartment x Highest Rank in Any Health Effect Compartment
Rank in Ecological Biological Monitoring Compartment x Highest Rank in a Related Ecotoxicity Effects Compartment

Highest Rank in Any Other Ecological Exposure Compartment x Highest Rank in a Related Ecotoxicity Effects Compartment

Specially Targeted Priorities

Mixtures
Naturally Occurring Non-Steroidal Estrogens
Nominations

V. Purpose and Structure of the Workshop

The first day of the workshop will provide an overview of the EDSP, including a discussion of the Agency's overall approach to priority setting, how pesticide active ingredients are being addressed differently than other chemicals, the current status of standardization and validation activities, and the projected time lines for chemical selection and testing. The second and third days of the workshop will focus on the EDPSD. The Agency held a workshop in January 1999, to discuss the basic design of the EDPSD. The EDPSD is now a functional database and the Agency seeks comment on the specific hazard and exposure data elements included in the database, the ranking algorithms, and the priority lists that result from various ranking options.

The workshop will be structured around discussion of the specific issues listed in the agenda by invited participants. A limited amount of time will be allotted for additional comment by other meeting attendees. Participants may also submit written comments during or after the meeting. Please submit comments no later than 30 days following the workshop. Comments should be sent to the docket address listed in Unit III. and should reference the docket control number OPPTS–42212.

VI. Agenda

Monday, June 5 Overview of the Endocrine Disruptor Screening Program

10:00 a.m. Welcome
10:15 a.m. Overview of the Endocrine Disruptor Screening Program
10:45 a.m. Standardization and Validation Activities
11:00 a.m. Overview of Priority Setting
11:15 a.m. Questions
11:30 a.m. OPP Activities to Prioritize Pesticide Active Ingredients
12:00 noon Questions on Prioritization of Active Ingredients
12:15 p.m. Lunch
1:30 p.m. Public Comments on the Endocrine Disruptor Screening Program, Standardization/Validation Activities, or the OPP Actives Approach
3:00 p.m. Break
3:15 p.m. Demo of EDPSD version 2
5:00 p.m. End of Demo

Tuesday, June 6 Panel Discussion of the Priority Setting Database (Exposure and Effects)

9:00 a.m. Overview of the Current Status of the EDPSD
9:15 a.m. Completeness of Data Sources used in Exposure Compartments
10:30 a.m. Break
10:45 a.m. Ranking Algorithms Used in Exposure Compartments
12:00 noon Lunch
1:30 p.m Quality of the Data in Exposure Compartments
2:30 p.m. Break
2:45 p.m. Completeness of Data Sources used in Effects Compartments
4:00 p.m. Ranking Algorithms Used in Effects Compartments
5:00 p.m. End of day

Wednesday, June 7 Panel Discussion of the Priority Setting Database (Effects, Combined Exposure and Effects Compartments, and Weights)

9:00 a.m. Quality of the Data in Effects Compartments
10:00 a.m. Definition and Ranking Procedure of the Combined Compartments
10:45 a.m. Break
11:00 a.m. Discussion of Database Default Weights and Ranked List of HPV/Inerts
12:00 noon Lunch
1:30 p.m. Continue Discussion of Database Default Weights and Ranked List of HPV/Inerts
3:00 p.m. Public Comments on EDPSD
4:00 p.m. End of Workshop

The overall objective of the panel discussions is to address the key issues that bear upon the ability of the EDPSD to accomplish its intended purpose of setting Tier 1 priorities. These issues include:

Are the exposure and effects data sources adequate? Are any important data sources missing?

Are the compartment definitions clear? Should any compartments be added? Should any existing compartments be split or combined?

Does the ranking algorithm for each compartment make sense, e.g., rank based on average concentration in monitoring compartments, rank based on lowest observed adverse effect level (LOAEL) in effects compartments?

Certain compartments have a lot of ties in their rankings. How should you break ties in rankings in the chemical selection process, e.g., if you want to pick the top 10 chemicals from a given compartment and there are 15 chemicals tied at rank #6, what do you do?

With respect to the EPA default scenario: Do the overall category weightings make sense, i.e., cumulative weights for exposure vs. effects vs. combined compartments? Do the cumulative weights for human health vs. ecological concerns make sense? Do the individual compartment weights make sense? Suggested alternatives?

Is the EDPSD sufficiently transparent in terms of its operation and documentation, i.e., is the basis of the ranking readily understandable to the user?

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides.

Dated: May 15, 2000.

Stephen L. Johnson,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–12632 Filed 5–16–00; 1:33 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34225; FRL–6588–7]

Organophosphate Pesticide; Availability of Preliminary Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of the EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary human health and ecological risk assessments and related documents for diazinon. This notice also starts a 60-day public comment period for the preliminary risk assessments. Comments and data are to be limited to issues directly associated with the organophosphate pesticide, diazinon, and its preliminary risk assessments. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments may be appropriate. These documents reflect only the work and analysis conducted

as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments and data on these assessments, identified by docket control number OPP–34225, must be received on or before July 18, 2000.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify the docket control number OPP–34225 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the preliminary risk assessments for diazinon, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may 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/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the preliminary risk assessments for the one organophosphate pesticide may also be accessed at http: www.epa.gov/pesticides/op.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34225. The official record consists of the documents specifically referenced in this action, 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.

C. How and to Whom Do I Submit Comments?

You may submit comments and data through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34225 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 Hwy., 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 OPP–34225. 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 listed 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. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. 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 is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA, as amended by the FQPA. The Agency's preliminary human health and ecological risk assessments for one organophosphate pesticide are available in the individual organophosphate pesticide docket: Diazinon.

Included in the individual organophosphate pesticide docket is the Agency's preliminary risk assessments. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the one organophosphate pesticide listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for the one organophosphate pesticide. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessments, these risk assessments and registrant responses will be placed in the organophosphate pesticide docket for diazinon. A notice of availability for subsequent assessments will appear in the **Federal Register**.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and data and input to the Agency on the preliminary risk assessments for the chemical specified in this notice. Such comments and data and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemicals. Comments and data should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment and data on other science issues associated with the organophosphate pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and data should be submitted by July 18, 2000 at the address given under Unit I. Comments and data will become part of the Agency record for this organophosphate pesticide.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 16, 2000.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–12676 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–943; FRL–6558–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals 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 certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–943, must be received on or before June 19, 2000.

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–943 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; e-mail address: miller.joanne@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	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–943. 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–943 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, Ariel Rios Bldg., 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–943. Electronic comments may also be filed online at many Federal Depository Libraries.

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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 amendment of the regulation for residues of glufosinate-ammonium, a pesticide chemical, in or on food commodities derived from cotton under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this request contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not evaluated 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.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 2000.

James Jones,

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 summary identifies an analytical method available to EPA for the detection and measurement of the residues of glufosinate-ammonium in or on cotton commodities.

Aventis CropScience USA

PP 0F6140

EPA has received a pesticide petition (PP 0F6140) from Aventis CropScience USA, PO Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, 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 180.473(a)(1) by establishing tolerances for residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the raw agricultural commodities derived from cotton: undelinted seed at 3.5 parts per million (ppm) and gin byproducts at 12.0 ppm. Aventis CropScience also proposes to amend 40 CFR part 180.473(c) by establishing tolerances for residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites, 3-methylphosphinico-propionic acid, and 2-acetamido-4-methylphosphinico-butanoic acid expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the raw agricultural commodities derived from transgenic cotton tolerant to glufosinate-ammonium: Undelinted seed at 3.5 ppm and gin byproducts at 12.0 ppm. 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

1. *Plant metabolism*. The metabolism of glufosinate-ammonium in plants has been investigated and is understood. The crop residue profile following selective use of glufosinate-ammonium on transgenic crops is different from that found in conventional crops. The crop residue observed after non-selective use is the metabolite 3-methylphosphinico-propionic acid which is found only in trace amounts. The principal residue identified in the metabolism studies after selective use of glufosinate-ammonium on transgenic crops is the acetylated derivative of parent material, 2-acetamido-4-methylphosphinico-butanoic acid with lesser amounts of 3-methylphosphinico-propionic acid observed.

2. *Analytical method.* The enforcement analytical method utilizes gas chromatography for detecting and measuring levels of glufosinate-ammonium and metabolites with a general limit of quantification of 0.05 ppm. This method allows detection of residues at or above the proposed tolerances.

3. *Magnitude of residues*. Field residue trials were conducted across the five major regions of cotton production in the U.S. Two different treatment regimes were examined to represent use patterns which are the most likely to result in the highest residues. Glufosinate-ammonium derived residues did not exceed 3.4 ppm in undelinted cotton seed and 11.6 ppm in cotton gin byproducts (trash) when sampled at 70 days or more after the last treatment. No significant concentration of the residues occurred in the processed cotton commodities meal and hull and in refined oil the residues were less than the limit of quantitation (LOQ) of the analytical method. Thus, tolerances are not being proposed for the processed commodities from cotton.

B. Toxicological Profile

1. *Acute toxicity*. Glufosinate-ammonium has been classified as toxicity category III for acute oral, dermal and inhalation toxicity. It is toxicity category III for eye irritation. It is not a dermal irritant (toxicity category IV) nor is it a dermal sensitizer. The oral LD_{50} is 2 gram/kilogram (g/kg) in male rats and 1.62 g/kg in female rats.

2. *Genotoxicity*. Based on results of a complete genotoxicity database, there is no evidence of mutagenic activity in a battery of studies, including: *Salmonella* spp., *E. coli*, *in vitro* mammalian cell gene mutation assays, mammalian cell chromosome aberration assays, *in vivo* mouse bone marrow micronucleus assays, and unscheduled DNA synthesis assays.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study, groups of 20 pregnant female Wistar rats were administered glufosinate-ammonium by gavage at doses of 0, 0.5, 2.24 10, 50 and 250 mg/kg/day from days 7 to 16 of pregnancy. The no observed adverse effect level (NOAEL) for maternal toxicity is 10 mg/kg/day; the lowest observed adverse effect level (LOAEL) is 50 mg/kg/day based on vaginal bleeding and hyperactivity in dams. In the fetus, the NOAEL is 50 mg/kg/day, based on dilated renal pelvis observations at the LOAEL of 250 mg/kg/day.

In a developmental toxicity study, groups of 15 pregnant female Himalayan rabbits were administered glufosinate-ammonium by gavage at doses of 0, 2.0, 6.3 or 20.0 millgrams/kilogram/day (mg/kg/day) from days 7 to 19 of pregnancy. In maternal animals, decreases in food consumption and body weight gain were observed at the 20 mg/kg/day dose level. The NOAEL for both maternal and developmental toxicity was 6.3 mg/kg/day.

In a multi-generation reproduction study, glufosinate-ammonium was administered to groups of 30 male and 30 female Wistar/Han rats in the diet at concentrations of 0, 40, 120 or 360 ppm. The LOAEL for systemic toxicity is 120 ppm based on increased kidney weights in both sexes and generations. The systemic toxicity NOAEL is 40 ppm. The LOAEL for reproductive/developmental toxicity is 360 ppm based on decreased numbers of viable pups in all generations. The NOAEL is 120 ppm.

4. *Subchronic toxicity*. In a sub-chronic oral toxicity study, glufosinate-ammonium was administered to 10 NMRI mice/sex/ dose in the diet at levels of 0, 80, 320 or 1,280 ppm (equivalent to 0, 12, 48, or 192 mg/kg/day) for 13 weeks. Significant ($p < 0.05$) increases were observed in serum aspartate aminotransferase and in alkaline phosphatase in high-dose (192 mg/kg/day) males. Also observed were increases in absolute and relative liver weights in mid-(48 mg/kg/day) and high-dose males. The NOAEL is 12 mg/kg/day, the LOAEL is 48 mg/kg/day based on the changes in clinical biochemistry and liver weights.

5. *Chronic toxicity*. In a combined chronic toxicity/oncogenicity study, glufosinate-ammonium was administered to 50 Wistar rats/sex/dose in the diet for 130 weeks at dose levels of 0, 40, 140, or 500 ppm (mean compound intake in males was 0, 1.9, 6.8, and 24.4 mg/kg/day and for females was 0, 2.4, 8.2 and 28.7 mg/kg/day, respectively). A dose-related increase in mortality was noted in females at 140 and 500 ppm, whereas in males increased absolute and relative kidney weights were noted at 140 ppm and 500 ppm. The NOAEL was considered to be 40 ppm. No treatment-related oncogenic response was noted.

In an oncogenicity study, glufosinate-ammonium was administered to 50 NMRI mice/sex/dose in the diet at dose levels of 0, 80, 160 (males only) or 320 (females only) ppm for 104 weeks. The NOAEL for systemic toxicity is 80 ppm (10.82/16.19 mg/kg/day in males/females (M/F)), and the LOAEL is 160/320 ppm (22.60/63.96 mg/kg/day in M/F), based on increased mortality in males, increased glucose levels in males and females, and changes in glutathione levels in males. No increase in tumor incidence was found in any treatment group.

In a chronic feeding study, glufosinate-ammonium technical was fed to male and female beagle dogs for 12 months in the diet at levels of 2.0, 5.0 or 8.5 mg/kg/day. The NOAEL is 5.0 mg/kg/day based on clinical signs of toxicity, reduced weight gain and mortality 8.5 mg/kg/day.

In a rat oncogenicity study, glufosinate-ammonium was administered to Wistar rats (60/sex/group) for up to 24 months at 0, 1,000, 5,000, or 10,000 ppm (equivalent to 0, 45.4, 228.9, or 466.3 mg/kg/day in males and 0, 57.1, 281.5, or 579.3 mg/kg/day in females). The LOAEL for chronic toxicity is 5,000 ppm (equivalent to 228.9 mg/kg/day for male rats and 281.5 mg/kg/day for females), based on increased incidences of retinal atrophy. The chronic NOAEL is 1,000 ppm. Under the conditions of this study, there was no evidence of carcinogenic potential. Dosing was considered adequate based on the increased incidence of retinal atrophy.

6. *Animal metabolism*. Studies conducted in rats using ^{14}C-glufosinate-ammonium have shown that the compound is poorly absorbed (5-10%) after oral administration and is rapidly eliminated primarily as the parent compound. The highest residue levels were found in liver and kidney tissues.

The metabolic profile and the quantitative distribution of metabolites was very similar in both goat and hen. The vast majority of the dose was excreted, primarily as parent compound. The very limited residues found in edible tissues, milk and eggs were comprised principally of glufosinate and 3-methylphosphinico-

propionic acid (Hoe 061517), with lesser amounts of *N*-acetyl-L-glufosinate (Hoe 099730) and 2-methylohosphinico-acetic acid (Hoe 064619).

7. *Metabolite toxicology.* Additional testing has been conducted with the major metabolites, Hoe 061517 and Hoe 099730, as well as the L-isomer of glufosinate-ammonium, identified as Hoe 058192. Based on sub-chronic and developmental toxicity study results, a profile of similar or less toxicity compared to the parent compound, glufosinate-ammonium, was observed.

8. *Endocrine disruption.* No special studies have been conducted to investigate the potential of glufosinate-ammonium to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in any of the toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances have been established (40 CFR part 180.473) for the combined residues of glufosinate-ammonium and metabolites in or on a variety of raw agricultural commodities. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicity studies. EPA, therefore, has no, established an acute reference dose (RfD) for the general population including infants and children. An acute RfD of 0.063 mg/kg/day was established, however, for the females 13+ subgroup. An acute analysis was conducted for the sub-population of females 13+. Chronic dietary analysis was conducted for the usual populations.

i. *Food.* An acute dietary analysis was conducted using the Dietary Exposure Evaluation Model (DEEM) software and the 1994-1996 CSFII consumption data base. The analysis assumed tolerance level residues for all commodities and 100% of crop treated. This Tier One analysis resulted in an exposure of 0.007432 mg/kg bw/day (95th percentile) for the female 13+ sub-population (the only population of concern) representing 35% utilization of the acute reference dose (RfD).

Chronic dietary analysis was conducted to estimate exposure to potential glufosinate-ammonium residues in or on registered and proposed commodities. The DEEM software and the 1994-1996 USDA food consumption data were used. Tolerance level residues were assumed for all commodities and conservative percent crop treated values were incorporated for major crops (25% corn, 15% soybean, 10% potatoes, 20% cotton), whereas 100% of the crop was assumed to be treated for all other registered or pending uses. Chronic dietary exposure estimates from residues of glufosinate-ammonium for the US Population utilized approximately 25% of the chronic RfD. The sub-population with the highest exposure was children 1-6 utilizing approximately 67% of the chronic RfD. This analysis was based on highly conservative assumptions. The Agency has no concerns with RfD utilization up to 100%.

ii. *Drinking water.* US EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water assessment. The models screening concentrations in ground water (SCI-GROW) and EPA's Pesticide Root Zone Model (PRZM)-EXAMS were used to estimate the concentration of glufosinate-ammonium which might occur in water. The acute drinking water level of comparison (DWLOC) for females 13+ is 408 parts per billion (ppb). In comparison, the acute drinking water estimated concentrations (DWEC) calculated by Generic expected environmental concentration (GENEEC) is 45 ppb, nearly an order of magnitude below the DWLOC.

The chronic DWLOC calculated for adults is 184 ppb and that for children/toddlers is 24 ppb. The chronic DWEC calculated using a worst case scenario is 11 ppb (GENEEC). Thus, the drinking water estimated concentration represents only 11% of the DWLOC for adults and 46% of that for children/toddlers. The DWLOC are based on highly conservative dietary (food) exposures and are expected to be much higher in real world situations reducing further the percent utilization of the DWLOC even more favorable.

2. *Non-dietary exposure.* Glufosinate-ammonium is currently registered for use on the following non-food sites: areas around ornamentals, shade trees, Christmas trees, shrubs, walks, driveways, flower beds, farmstead buildings, in shelter belts, and along fences. It is also registered for use as a post-emergent herbicide on farmsteads, areas associated with airports, commercial plants, storage and lumber yards, highways, educational facilities, fence lines, ditch banks, dry ditches, schools, parking lots, tank farms, pumping stations, parks, utility rights-of-way, roadsides, railroads, and other public areas and similar industrial and non-food crop areas. It is also registered for lawn renovation uses.

The EPA has determined that there are no acute or chronic non-dietary exposure scenarios. Further, the Agency has determined that it is not appropriate to aggregate short- and intermediate-term non-dietary exposure with dietary exposures in risk assessments because the end-points are different.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has indicated that, at this time, the Agency does not have available data to determine whether glufosinate-ammonium has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glufosinate-ammonium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that glufosinate-ammonium has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the registered and proposed uses of glufosinate-ammonium will utilize at most 25% of the chronic RfD for the US Population. The actual exposure is likely to be much less as more realistic data and models are developed. Exposures below 100% of the RfD are generally assumed to be of no concern because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health.

The acute population of concern, female 13+ utilizes 35% of the acute RfD. This is a Tier One highly conservative assessment and actual exposure is likely to be far less. DWLOC based on dietary exposures are greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all.

EPA has concluded that it is not appropriate to aggregate non-dietary exposures with dietary exposures in a risk assessment because the toxicity end-points are different.

Therefore, there is a reasonable certainty that no harm will occur to the

US Population from aggregate exposure (food, drinking water and nonresidential) to residues of glufosinate-ammonium and metabolites.

2. *Infants and children.* The toxicological data base is sufficient for evaluating prenatal and postnatal toxicity for glufosinate-ammonium. There are no prenatal or postnatal susceptibility concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproduction study. Based on clinical signs of neurological toxicity in short and intermediate dermal toxicity studies with rats, EPA has determined that an added FQPA safety factor of 3x is appropriate of assessing the risk of glufosinate-ammonium derived residues in crop commodities.

Using the conservative assumptions described in the exposure section above, the percent of the chronic reference dose that will be used for exposure to residues of glufosinate-ammonium in food for children 1-6 (the most highly exposed sub group) is 67%. Infants utilize 43% of the chronic RfD. As in the adult situation, DWLOC are higher than the worst case drinking water estimated concentrations and are expected to use well below 100% of the RfD, if they occur at all.

Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of glufosinate-ammonium.

F. International Tolerances

Maximum residue limits (Codex MRLs) for glufosinate-ammonium and metabolites in or on cotton commodities have not been established by the Codex Alimentarius Commission.

[FR Doc. 00–12651 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–912A; FRL–6559–1]

Amended Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amended filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–912A, must be received on or before June 19, 2000.

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** section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–912A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@.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	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 in the **FOR FURTHER INFORMATION CONTACT** section.

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–912A. 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–912A 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 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–912A. 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 in the **FOR FURTHER INFORMATION CONTACT** section.

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. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. 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?

A Notice of Filing (NOF) for trifloxystrobin was first published in the **Federal Register** on August 17, 1998 (63 FR 43937) (FRL–6018–2) . Since that time, EPA has received an amended pesticide petition as follows proposing the establishment of regulations for residues of trifloxystrobin 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 supports granting of the petition. Additional data may be needed before EPA rules on the petition. The chronic and acute dietary risk numbers are lower than the ones in the initial NOF. For this reason, the Agency has assigned a 15-day comment period for this notice.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries 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 represent the views of the petitioner. 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.

Amended Petition

PP 9F05070

In the **Federal Register** of January 19, 2000 (65 FR 2949) (FRL–6485–8), EPA published a notice that it had received a pesticide petition (PP 9F05070) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing tolerances for the fungicide trifloxystrobin. EPA has received an amendment to PP 9F05070 from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for the combined residues of trifloxystrobin and its metabolite, CGA–321113, in or on the raw agricultural commodities almond nutmeat at 0.04 parts per million (ppm); almond hulls at 3.0 ppm; hops dried cones at 11.0 ppm; sugar beet roots at 0.1 ppm; sugar beet tops at 4.0 ppm; sugar beet dried pulp at 0.4 ppm; sugar beet molasses at 0.2 ppm; potato tubers at 0.04 ppm; fruiting vegetables at 0.5 ppm; wheat grain at 0.05 ppm; wheat forage at 0.3 ppm; wheat hay at 0.2; wheat straw at 5.0 ppm; wheat bran 0.15 ppm; and asperated grain fractions at 5.0 ppm. The tolerances proposed in this amendment will not increase the overall risk of the chemical. 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.

[FR Doc. 00–12652 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181077; FRL–6559–4]

Thiamethoxam; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Mississippi Department of Agriculture and Commerce to use the pesticide thiamethoxam (CAS No. 153719–23–4) to treat up to 1,000,000 acres of cotton to control cotton aphids. The Applicant proposes the use of a new chemical which has not been registered by the EPA; this would also be a first food use of this pesticide. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket control number OPP–181077, must be received on or before June 5, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181077 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 308–9362; fax number: 703 308–5433; e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in this document. 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'' 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 OPP–181077. 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.

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 OPP–181077 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, Ariel Rios Bldg., 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 Hwy., 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 OPP–181077. 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?

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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 listed 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. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. 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?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Mississippi Department of Agriculture and Commerce has requested the Administrator to issue a specific exemption for the use of thiamethoxam on cotton to control cotton aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that cotton aphid has developed resistance to most currently labeled and recommended insecticides in Mississippi. It is claimed that laboratory assays, field experiments, and field experience indicate that insecticides currently recommended for cotton aphid control are variable in effectiveness to the extent that agricultural consultants and cotton producers consider them to be unreliable. Studies suggest aphids may be initially controlled with registered alternatives such as dicrotophos, endosulfan, methomyl and imidacloprid, but that populations resurge rapidly following application. Aphids are naturally controlled by the fungal disease *Neozygites fresenii* once aphid populations have reached high infestation levels, but it is often difficult to predict when disease epizootics will occur. Recently, participation in the Boll Weevil Eradication Program has resulted in greater risk of yield threatening outbreaks of cotton aphids. Because of the intensive use of malathion for eradication of the boll weevil, the early years of eradication effort are considered to be years of increased risk of secondary pest outbreak; survey data collected in Mississippi in 1998 support this claim. The Applicant estimates that in the event of a severe aphid outbreak yield losses as high as 50 lbs per acre could be sustained using currently available products. It is claimed that yield losses using thiamethoxam under similar conditions would be around 10 lbs. per acre. These yield losses would result in a projected difference in net returns to the producer of $25 per acre, in the event of heavy, sustained aphid infestations.

The Applicant proposes to make no more than two applications of the product Centric, containing 25% of the active ingredient thiamethoxam, to a maximum of 1,000,000 acres of cotton in Mississippi, between June 15 and September 15, 2000; a maximum of 94,000 lbs. a.i. (375,000 lbs. of product) would be used under this exemption.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing ''use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA'', and also '' a first food use of a chemical.'' The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Mississippi Department of Agriculture and Commerce.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 10, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–12650 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6702–8]

South Bay Asbestos Superfund Site; Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9600 *et seq.,* notice is hereby given that a proposed prospective purchaser agreement associated with the South Bay Asbestos Superfund Site was executed by the United States Environmental Protection Agency (''EPA)'') on May 5, 2000. The proposed prospective purchaser agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against WCSJ LLC (the ''Purchaser''). The subject property is the Highway 237 Disposal Site (formerly known as the Marshland Landfill). The purchaser intends to develop 45 acres for commercial use, to be known as the Legacy Terrace Development, and 23 acres will be preserved and maintained as open space. The proposed settlement would require the purchaser to pay EPA a one-time payment of $250,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the effected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before June 19, 2000.

Availability: The proposed prospective purchaser agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Kara Christenson, Assistant Regional Counsel (ORC–2), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference ''WCSJ LLC, South Bay Asbestos Area Superfund Site,'' and ''Docket No. 2000–07'' and should be addressed to Kara Christenson at the above address.

FOR FURTHER INFORMATION CONTACT: Kara Christenson, Assistant Regional Counsel (ORC–2), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: christenson.kara@epa. gov; phone: (415) 744–1330.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. 00–12645 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83—Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before July 18, 2000.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports

1. *Report title:* Monthly Survey of Industrial Electricity Use.

Agency form number: FR 2009.

OMB control number: 7100–0057.

Frequency: Monthly.

Reporters: FR 2009a/c: Electric utility companies; FR 2009b: Cogenerators.

Annual reporting hours: FR 2009a/c: 2,196 hours; FR 2009c: 1,188 hours.

Estimated average hours per response: FR 2009a/c: 1 hour; FR 2009b: 30 minutes.

Number of respondents: FR 2009a/c: 183; FR 2009b: 198. Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, 353 *et seq.*, and 461) and individual respondent data are given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The survey collects information on the volume of electric power delivered during the month to classes of industrial customers. Currently, there are two versions of the survey: the FR 2009a, collects information from electric utilities, the FR 2009b collects information from manufacturing and mining facilities that generate electric power for their own use.

Current Actions: During the next two years the industrial output index will be revised to reflect the new North American Industry Classification System (NAICS). The published series will be categorized under the NAICS codes instead of the current Standard Industrial Classification (SIC) codes. To facilitate this transition process, the Federal Reserve will ask utilities to reclassify their customers using the new codes. The FR 2009c has been created in the NAICS format for use by respondents that have made the

transition from SIC to NAICS codes. The FR 2009a would be completed by only the respondents that choose to report SIC codes. This approach would not impose any added burden on the respondents. The Federal Reserve also proposes to eliminate the FR 2009a after the two-year transition period.

2. *Report title:* The Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates.

Agency form number: FR Y–8.

OMB control number: 7100–0126.

Frequency: Quarterly.

Reporters: Bank holding companies, financial holding companies.

Annual reporting hours: 169,027 hours.

Estimated average hours per response: 7.2 hours.

Number of respondents: 5,869.

Small businesses are not affected.

General description of report: This information collection is authorized by section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) and section 225.5(b) of Regulation Y (12 CFR 225.5(b)) and is given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4) and (8)).

Abstract: The FR Y–8 collects information on the movement of funds between a domestic bank holding company and its subsidiaries in order to identify broad categories of intercompany transactions and balances that may affect the financial condition of the subsidiary bank. The report also collects information on income recognized by subsidiary banks from other bank holding company members as well as information on credit extended by subsidiary banks to other bank holding company members. Domestic top-tier bank holding companies with assets of $300 million or more are required to file the FR Y–8 on a semiannual basis (June and December). Also, interim reporting is currently required within ten calendar days of certain large asset transfers. The Federal Reserve proposes to delete the current information on the FR Y–8 and collect fourteen items of information on Section 23A covered transactions.

Current actions: On September 21, 1999, a **Federal Register** notice (64 FR 51121) was issued for public comment to completely revise the FR Y–8 to enhance the Federal Reserve's ability to monitor bank exposures to affiliates and to ensure compliance with section 23A of the Federal Reserve Act. Specifically, the initial proposal would have required bank holding companies to report quarterly, for each of their subsidiary banks, four items of information on covered transactions under section 23A. Domestic financial top-tier bank holding companies would be required to provide information on an individual-bank-basis for each of their insured depository institutions. The interim report would be eliminated. After this proposal was issued, the enactment of the Gramm-Leach-Bliley Act (GLBA) of 1999 increased the importance of section 23A of the Federal Reserve Act and revised the requirements of section 23A. These changes required revisions to the initial proposal.

The GLBA expands the coverage of section 23A to include a new entity, the financial subsidiary, as an affiliate of the insured depository institution. In addition, GLBA applied additional section 23A limits to certain transactions between insured depository institutions, their affiliates, and their financial subsidiaries that engage in the new banking powers. The revised FR Y–8 report will retain the four items initially proposed. However, the Federal Reserve also proposes to collect additional items that would be completed only by bank holding companies that have insured depository institutions that own financial subsidiaries. These additional items are necessary to adequately assess the different section 23A limits that apply to institutions with and without financial subsidiaries.

Based on the revisions to section 23A, the Federal Reserve proposes that all bank holding companies, including financial holding companies, report for their insured depository institutions the following four items, which were part of the original proposal: For all covered transactions subject to section 23A's collateral requirements, holding companies would report for each of their insured depository institutions (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date. For covered transactions *not* subject to the collateral requirements, holding companies would likewise report for each of their insured depository institutions (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date. All transactions between insured depository institutions and financial subsidiaries would be excluded from these four items.

In addition, holding companies engaged in new powers through financial subsidiaries would report ten additional items on covered transactions between the insured depository institution and financial subsidiaries and between the affiliates of the insured depository institution and the financial subsidiaries. For all covered transactions subject to section 23A's collateral requirements between the insured depository institution and financial subsidiaries, holding companies would report for each of their insured depository institutions (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date. For all covered transactions not subject to section 23A's collateral requirements between the insured depository institution and financial subsidiaries, holding companies would report for each of their insured depository institutions (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date. For purchase of, or investment in, securities issued by the financial subsidiaries of the insured depository institution by the insured depository institution, the holding company would report the outstanding amount of (a) equity securities as of the report date and (b) debt securities as of the report date. For purchase of, or investment in, securities issued by the financial subsidiaries of the insured depository institution by the affiliates of the insured depository institution, the financial holding company would report the outstanding amount of (a) equity securities as of the report date and (b) debt securities as of the report date. For loans and other extensions of credit by affiliates of the insured depository institution to the financial subsidiaries of the insured depository institution, the holding company would report (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date.

In order to monitor the amount of covered transactions that an insured depository institution has with financial subsidiaries, the Federal Reserve believes that it is necessary to distinguish those covered transactions from covered transactions the insured depository institution has with other affiliates of the holding company. The additional items on investments in and extensions of credit to financial subsidiaries will provide the information needed to determine whether the insured depository institution is evading the limits on

transactions with their financial subsidiaries.

The comment period ended on November 22, 1999, and the Federal Reserve received public comments from twelve bank holding companies on the initially proposed revisions to the FR Y–8. Respondents suggested the following four alternatives for reducing burden: Collect the proposed items on the commercial bank or bank holding company quarterly financial statements or through the examination process, eliminate the reporting of the maximum aggregate amounts outstanding during the quarter, exempt institutions from reporting based upon an asset size, and exempt institutions with no affiliates or covered transactions from reporting.

In response to public comments received in 1999 on the initially proposed revisions, the Federal Reserve also proposes to add a declaration page and two check boxes to the reporting form to reduce reporting burden. The proposed declaration page and check boxes will alleviate reporting burden by exempting certain insured depository institutions from completing all of the proposed report items.

Section 23A of the Federal Reserve Act is one of the most important statutes protecting the federal safety net by limiting exposures of the insured depository institutions to affiliates. GLBA has elevated the importance of Section 23A and the need to collect information to monitor bank exposures to affiliates. The Federal Reserve strongly believes that a separate report collected on an individual insured depository institution basis for all insured depository institutions that are owned by the bank holding company is necessary to monitor compliance with section 23A. The information requested at the end of each reporting period as well as the maximum amount during the period should be available and not significantly burdensome to report because insured depository institutions already should, on an ongoing basis, be continuously monitoring their section 23A covered transaction exposures to ensure compliance with the statute.

The proposed revised report would become effective with the September 30, 2000, reporting date.

3. *Report title:* Daily Advance Report of Deposits.

Agency form number: FR 2000.

OMB control number: 7100–0087.

Frequency: Weekly.

Reporters: Depository institutions.

Annual reporting hours: 24,960 hours.

Estimated average hours per response: 36 minutes.

Number of respondents: 160. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This advance report is commonly referred to as the Markstat D. The Markstat D report collects selected deposit and vault cash data for the most recent reporting week from a sample of large commercial banks and thrifts before such data become available for the universe of all FR 2900 weekly reporters. At present, ten data items (a subset of those on the FR 2900) are collected on the report. The advance report is used in the construction of preliminary estimates of the monetary aggregates for the week just ending.

Current actions: The Federal Reserve proposes dropping three items from the FR 2000 and reducing the authorized panel size from 186 to 160 institutions. The elimination of the three reporting items and the reduction of the authorized panel size would reduce reporting burden by 15,662 hours.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report titles:* Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans; Quarterly Report of Credit Card Plans.

Agency form numbers: FR 2835; FR 2835a.

OMB control number: 7100–0085.

Frequency: Quarterly.

Reporters: Commercial banks.

Annual reporting hours: FR 2835: 90 hours; FR 2835a: 200 hours.

Estimated average hours per response: FR 2835: 9 minutes; FR 2835a: 30 minutes.

Number of respondents: FR 2835: 150; FR 2835a: 100. Small businesses are not affected.

General description of report: These information collections are voluntary (12 U.S.C. 248(a)(2)). The FR 2835a individual respondent data are given confidential treatment (5 U.S.C. 552 (b)(4)), the FR 2835 data however, is not given confidential treatment.

Abstract: The FR 2835 collects the most common interest rate charged at a sample of 150 commercial banks on two types of consumer loans made in a given week each quarter: new auto loans and other loans for consumer goods and personal expenditures. The data are reported for the calendar week beginning on the first Monday of each survey month (February, May, August, and November).

The FR 2835a collects information on two measures of credit card interest rates from a sample of 100 commercial banks (authorized panel size), selected to include banks with $1 billion or more in credit card receivables, and a representative group of smaller issuers. The data are representative of interest rates paid by consumers on bank credit cards because the panel includes virtually all large issuers and an appropriate sample of other issuers.

2. *Report title:* Report of Changes in Foreign Investments (Made Pursuant to Regulation K).

Agency form number: FR 2064.

OMB control number: 7100–0109.

Frequency: Event generated.

Reporters: Member banks, Edge and agreement corporations, and bank holding companies.

Annual reporting hours: 750 hours.

Estimated average hours per response: 30 minutes.

Number of respondents: 50. Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 602, 625 and 1844) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: Member banks, Edge and agreement corporations, and bank holding companies are required to file the FR 2064 to record changes in their international investments. The FR 2064 report is event generated and is filed no later than the last day of the month following the month in which the change occurred. The Federal Reserve uses the information to monitor investments in the international operations of U.S. banking organizations and to fulfill its supervisory responsibility under Regulation K.

3. *Report title:* Report of Transaction Accounts, Other Deposits, and Vault Cash; Report of Certain Eurocurrency Transactions.

Agency form number: FR 2900; FR 2950/2951.

OMB control number: 7100–0087.

Frequency: Weekly, quarterly.

Reporters: Depository institutions.

Annual reporting hours: 984,138 hours.

Estimated average hours per response: FR 2900: 3.50; FR 2950/2951: 1.00.

Number of respondents: FR 2900: 4,813 weekly, and 5,880 quarterly; FR 2950/2951: 497 weekly, and 2 quarterly. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 248(a), 461, 603, and 615, and 3105(b)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2900 report collects information on deposits and related items from depository institutions that have transaction accounts or

nonpersonal time deposits and that are not fully exempt from reserve requirements (''nonexempt institutions''). The FR 2950/2951 collects information on Eurocurrency transactions from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches. The Federal Reserve proposes to raise the deposit cutoff used to determine weekly versus quarterly FR 2900 reporting (the ''nonexempt cutoff'') above its indexed level of $84.5 million to $95 million. These mandatory reports are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.

4. *Report title:* Annual Report of Total Deposits and Reservable Liabilities.

Agency form number: FR 2910a.

OMB control number: 7100–0175.

Frequency: Annual.

Reporters: Depository institutions.

Annual reporting hours: 2,734 hours.

Estimated average hours per response: 30 minutes.

Number of respondents: 5,468. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germaine Depository Institutions Act of 1982. This mandatory report is used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.

5. *Report title:* Allocation of Low Reserve Tranche and Reservable Liabilities Exemption.

Agency form number: FR 2930/2930a.

OMB control number: 7100–0088.

Frequency: Annually, and on occasion.

Reporters: Depository institutions.

Annual reporting hours: 64 hours.

Estimated average hours per response: 15 minutes.

Number of respondents: 255. Small businesses are affected.

General description of report: This information collection is mandatory: FR 2930 (12 U.S.C. 248(a), 461, 603, and 615) and FR 2930a (12 U.S.C. 248(a) and 461). It is also given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2930 and the FR 2930a provide information on the allocation of the low reserve tranche and reservable liabilities exemption for depository institutions having offices (or groups of offices) that submit separate FR 2900 deposits reports. The data collected on these reports are needed for the calculation of required reserves.

6. *Report title:* Report of Foreign (Non-U.S.) Currency Deposits.

Agency form number: FR 2915.

OMB control number: 7100–0237.

Frequency: Quarterly.

Reporters: Depository institutions.

Annual reporting hours: 366 hours.

Estimated average hours per response: 30 minutes.

Number of respondents: 183. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 248(a)(2), and 3105(b)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2915 collects weekly averages of the amounts outstanding for foreign (non-U.S.) currency deposits held at U.S. offices of depository institutions, converted to U.S. dollars and included on the FR 2900 (OMB No. 7100–0087), the principal deposits report that is used for the calculation of required reserves and for the construction of the monetary aggregates. Foreign currency deposits are subject to reserve requirements and, therefore, are included in the FR 2900. However, foreign currency deposits are not included in the monetary aggregates. The FR 2915 data are used to back foreign currency deposits out of the FR 2900 data for construction and interpretation of the monetary aggregates. The FR 2915 data are also used to monitor the volume of foreign currency deposits.

Proposal To Approve Under OMB Delegated Authority the Discontinuation of the Following Reports

1. *Report title:* Quarterly Gasoline Company Report.

Agency form number: FR 2580.

OMB control number: 7100–0009.

Frequency: Quarterly.

Reporters: Gasoline companies.

Annual reporting hours: 4 hours.

Estimated average hours per response: 9 minutes.

Number of respondents: 7. Small businesses are not affected.

Abstract: The FR 2580 collects outstanding balances on retail credit card accounts at gasoline companies. The number of FR 2580 reporters has declined over time as the industry structure has changed. Initially, the data were collected from the universe of approximately thirty gasoline companies; subsequently, some smaller companies withdrew from the sample or were merged into other companies. In recent years some major companies have entered into ''co-branding'' arrangements with banks and have significantly reduced, or eliminated, their own credit card portfolios. The Federal Reserve recommends discontinuing the FR 2580 primarily because the number of respondents has dwindled. The decrease in reporting is due in part to the purchase of some of the gasoline companies' receivables by depository institutions in recent years. Because of the difficulty in maintaining a meaningful sample and because of the small fraction of consumer credit that these receivables represent, the Federal Reserve does not believe it is useful to continue the report.

2. *Report title:* Quarterly Report of Selected Deposits, Vault Cash, and Reserve Liabilities.

Agency form number: FR 2910q.

OMB control number: 7100–0175.

Frequency: Quarterly.

Reporters: Depository institutions.

Annual reporting hours: 3,936 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 492. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germaine Depository Institutions Act of 1982. This report is used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates. The Federal Reserve proposes eliminating the exempt deposit cutoff and discontinuing this report associated with that cutoff. The Federal Reserve believes that, for exempt institutions, the quarterly reports of condition are adequate for quarterly benchmarking of the monetary aggregates. The Federal Reserve also believes that by shifting the current FR 2910q reporters to the annual, two-item FR 2910a, the Board will be able to adequately monitor compliance with Regulation D. The shift in reporting frequency of the almost 500 FR 2910q

respondents to the FR 2910a would reduce reporting burden by 3,690 hours.

Board of Governors of the Federal Reserve System, May 15, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–12589 Filed 5–18–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHS Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Antioch Holding Company, Antioch, Illinois; to acquire 24.99 percent of the voting shares of Lakes Region Bancorp, Inc, Third Lake, Illinois, and thereby indirectly acquire Anchor Bank, Third Lake, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034;

1. Valley Capital Corporation, Greenwood, Mississippi; to merge with State Capital Corporation, Brookhaven, Mississippi, and thereby indirectly acquire State Bank and Trust Company, Brookhaven, Mississippi.

Board of Governors of the Federal Reserve System, May 15, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–12588 Filed 5–18–00; 8:45 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, May 24, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–12744 Filed 5–17–00; 10:54 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1278]

Draft Guidance for Industry on Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment.'' The draft guidance is intended to provide recommendations to industry on the development of drug products for the treatment of female sexual dysfunction (FSD).

DATES: Submit written comments on the draft guidance by July 18, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry can be obtained on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lana L. Pauls, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4260.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment.'' The draft guidance provides recommendations for sponsors designing clinical trials in support of new drug applications for the treatment of FSD. It includes recommendations on the appropriate definition of the patient population to be studied, inclusion and exclusion criteria, the use of scales and questionnaires to assess FSD, and

primary endpoints for trials of drug products.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the development of drugs for the treatment of FSD. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 12, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–12594 Filed 5–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3034–N]

Medicare Program; Meeting of the Executive Committee of the Medicare Coverage Advisory Committee—June 6, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Executive Committee (the Committee) of the Medicare Coverage Advisory Committee (MCAC). The Committee will hear reports from the Medical and Surgical Procedures Panel meeting of April 12 and 13, 2000, during which biofeedback and pelvic floor electrical stimulation in the treatment of urinary incontinence were deliberated. The Committee will also discuss presentations from interested persons regarding procedural aspects of future public meetings of the medical specialty panels of the MCAC. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES:

The Meeting: June 6, 2000, from 8 a.m. until 3 p.m., E.D.T.

Deadline for Presentations and Comments: May 17, 2000, 5 p.m., E.D.T.

Special Accommodations: Persons attending the meeting who are hearing impaired and require sign language interpretation, or have a condition that requires other special assistance or accommodations, are asked to notify the Executive Secretary by May 25, 2000.

ADDRESSES:

The Meeting: The meeting will be held at the Baltimore Convention Center, One West Pratt Street, Baltimore, Maryland 21201.

Presentations and Comments: Submit formal presentations and written comments to Constance A. Conrad, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

Website: You may access up-to-date information on this meeting at www.hcfa.gov/quality/8b.htm.

Hotline: You may access up-to-date information on this meeting on the HCFA Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Constance A. Conrad, Executive Secretary, 410–786–4631.

SUPPLEMENTARY INFORMATION: On August 13, 1999, we published a notice (64 FR 44231) to describe the MCAC, which provides advice and recommendations to us about clinical issues.

Current Panel Members

Harold C. Sox, MD (Chairperson); Thomas V. Holohan; Leslie P. Francis; John H. Ferguson; Robert L. Murray; Alan M. Garber; Michael D. Maves; Frank J. Papatheofanis; Ronald M. Davis; Daisy Alford-Smith; Joe W. Johnson; Robert H. Brook; Linda A. Bergthold; Randel E. Richner.

Meeting Topic

The Committee will hear reports from the Medical and Surgical Procedures Panel meeting of April 12 and 13, 2000, during which biofeedback and pelvic floor electrical stimulation in the treatment of urinary incontinence. The Committee will also hear and discuss presentations from interested persons regarding procedural aspects of future public meetings of the medical specialty panels of the MCAC.

Procedure and Agenda

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 1 hour. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations you must notify the For Further Information Contact, and submit the following by the Deadline for Presentations and Comments date listed in the **DATES** section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of the time required to make the presentation. We will request that you declare at the meeting whether you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public presentation, we will make a presentation to the Committee. After our presentation, the Committee will deliberate openly. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. Prior to the review of the Medical Specialty Panel recommendation, the Committee will allow approximately a 30-minute open public session for any attendee to address issues specific to the topic. After the open session, the members will vote and the Committee will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 11, 2000.

Jeffrey L. Kang,

Director Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 00–12686 Filed 5–18–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1136–N]

Medicare Program; June 5, 2000, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for June 5, 2000, from 9 a.m. until 5 p.m., E.D.T.

ADDRESSES: The meeting will be held in the Multipurpose Room/Auditorium, first Floor, Health Care Financing Administration Building, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, (202) 690–7874. News media representatives should contact the HCFA Press Office, (202) 690–6145. For additional information and updates on committee activities, please refer to the HCFA Advisory Committees Information Line 1–(877)–449–5659 toll free or (410)–786–9379 local or via the Internet at http://www.hcfa.gov/fac.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members are invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term. The Council held its first meeting on May 11, 1992.

The current members are: Jerold M. Aronson; Richard Bronfman; Joseph Heyman; Sandral Hullett; Stephen A. Imbeau; Jerilynn S. Kaibel; Angelyn L. Moultrie; Derrick K. Latos; Dale Lervick; Sandra B. Reed; Amilu Rothhammer; Maisie Tam; Victor Vela; Kenneth M. Viste, Jr.; and Douglas L. Wood. The Council Chairperson is Derrick L. Latos.

At this meeting, council members will be updated on Physician Regulatory Issues Team (PRIT); Physician Service Plan (PSP); Advance Beneficiary Notices (ABN); and the Chief Financial Officer (CFO) audit and the error rate, including analysis, claims review, and educational effort. The agenda will provide for discussion and comment on the updates and following topics:

- Office of Financial Management Program Integrity Customer Service Plan (evaluation and improvement of program integrity customer service to providers).
- Private Fee for Service Medicare+Choice and how to educate physicians about this new option.

For additional information and clarification on the topics listed, call the contact person listed above.

Individual physicians or medical organizations that represent physicians that wish to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, May 23, 2000, to be placed on the schedule. Testimony is limited to listed agenda issues, and the number of oral presentations may be limited by the time constraints. A written copy of the presenter's oral remarks should be submitted to the Executive Director no later than 12 noon, May 23, 2000, for distribution to the Council members for review before the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and the Council members.

The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired and/or other special accommodation, should contact John Lanigan at (202) 690–7418 at least 10 days before the meeting.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and sections 10(a) and 14(a)(1)(A) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 16, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–12660 Filed 5–18–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–20]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–937–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the

homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the agency cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interests as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington DC 20332–8020; (202) 767–4184; ARMY: Mr. Jeff Holste, Military Programs, U.S. Army Corps of Engineers, Installation Support Center, Planning & Real Property Branch, Attn: CEMP–IP, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; (These are not toll-free numbers).

Dated: May 11, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program: Federal Register Report for 5/19/00

Suitable/Available Properties

Land (by State)

Nebraska

0.22 acres
Offutt AFB
Sarpy Co: NE 68113–
Landholding Agency: Air Force
Property Number: 18200020009
Status: Unutilized
Comment: small

Unsuitable Properties

Buildings (by State)

Alabama

Bldgs. 3365, 3366
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200020001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 3553–3555
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 3610, 3611
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 3640–3643
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number 21200020004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3657
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number 21200020005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5100
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5204
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5658
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5671
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5672
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020010
Status: Unutilized
Reasons: Secured Area

Bldg. 6109
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 6212, 6262
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 6300
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 6603
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7108
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7385
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7549
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 7551, 7552
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 7555, 7557, 7558
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 7581, 7588
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7595
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7603
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7846
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 8017
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 8973
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898
Landholding Agency: Army
Property Number: 21200020025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Alaska

Bldg. 7192
Elmendorf AFB
Anchorage Co: AK 99506–3240
Landholding Agency: Air Force
Property Number: 18200020001
Status: Unutilized
Reason: Secured Area

Bldg. 7231
Elmendorf AFB
Anchorage Co: AK 99506–3240
Landholding Agency: Air Force
Property Number: 18200020002
Status: Unutilized
Reason: Secured Area

Bldg. 14427
Elmendorf AFB
Anchorage Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200020003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area

Bldg. 14487
Elmendorf AFB
Anchorage Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200020004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area

Arizona

Bldg. 13440
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200020026
Status: Unutilized
Reason: Extensive deterioration

Bldg. 13556
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200020027
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. S–21
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200020028
Status: Unutilized
Reason: Secured Area

Bldg. S–25
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200020029
Status: Unutilized
Reason: Secured Area

Bldg. S–402
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200020030
Status: Unutilized
Reason: Secured Area

Florida

Bldg. 72905
Cape Canaveral AFS
Brevard Co: FL 32907–
Landholding Agency: Air Force
Property Number: 18200020006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 62644
Cape Canaveral AFS
Brevard Co: FL 32907–
Landholding Agency: Air Force
Property Number: 18200020007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Georgia

Bldg. P–8665
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200020031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2304, 2313
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200020032
Status: Unutilized
Reason: Extensive deterioration

Hawaii

Bldgs. 16, 18, 20
Kokee AFS
Kauai Co: HI 00000–
Landholding Agency: Air Force
Property Number: 18200020005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Schofield Barracks
S–701, 712, 713, 734, 735
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200020033
Status: Unutilized
Reason: Extensive deterioration

25 Bldgs.
Schofield Barracks
S703–708, 714–727, 737–741
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200020034
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs.
Aliamanu Military
Reservation
Honolulu Co: HI 96818–
Location: 701, 731, 732, 900, 905, 936, 977, 1476, 1487, 1857, 1901

Landholding Agency: Army
Property Number: 21200020035
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs.
Aliamanu Military
Reservation
Honolulu Co: HI 96818–
Location: 1100, 1133, 1209, 1320, 1400, 1409, 1458, 1609, 1636, 1910, 1931, 2123, 2124
Landholding Agency: Army
Property Number: 21200020036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2138
Aliamanu Military
Reservation
Honolulu Co: HI 96818–
Landholding Agency: Army
Property Number: 21200020037
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Aliamanu Military
Reservation
Honolulu Co: HI 96818–
Location: 1001, 1002, 2137, 2139
Landholding Agency: Army
Property Number: 21200020038
Status: Unutilized
Reason: Extensive deterioration

Kansas

Bldg. P–941
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020039
Stauts: Unutilized
Reason: Secured Area

Louisiana

Bldg. 5969 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21200020040
Stauts: Unutilized
Reason: Floodway

Maryland

Bldg. 392
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020041
Stauts: Unutilized
Reason: Extensive deterioration

Bldg. 546
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020042
Stauts: Unutilized
Reason: Extensive deterioration

Bldg. 563
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020043
Stauts: Unutilized
Reason: Extensive deterioration

Bldg. 582
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020044
Stauts: Unutilized
Reason: Extensive deterioration

Bldg. 605
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020045
Status: Unutilized
Reason: Extensive deterioration

Bldg. 617
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020046
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 2501, 2508
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020047
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2835
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020048
Status: Unutilized
Reason: Extensive deterioration

Bldg. E3543
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200020049
Status: Unutilized
Reason: Extensive deterioration

Bldg. 05452
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200020050
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 150
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020051
Status: Unutilized
Reason: Extensive deterioration

Detached Garage 132
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020052
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. CB–1
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020053
Status: Unutilized
Reason: Secured Area

Bldgs. S–1, S–2
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020054
Status: Unutilized
Reason: Secured Area

Bldgs. S–3, S–4
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020055
Status: Unutilized
Reason: Secured Area

Bldgs. S–9, S–11
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020056
Status: Unutilized
Reason: Secured Area

Bldgs. 23T, 25T, 27T, 28T
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020057
Status: Unutilized
Reason: Secured Area

Bldg. 31W
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020058
Status: Unutilized
Reason: Secured Area

Bldg. 32T
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020059
Status: Unutilized
Reason: Secured Area

Bldgs. 35M, 35W
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020060
Status: Unutilized
Reason: Secured Area

Bldg. 39M
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020061
Status: Unutilized
Reason: Secured Area

Bldgs. 44T, 46T, 47T
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020062
Status: Unutilized
Reason: Secured Area

Bldgs. 50W, 52W
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020063
Status: Unutilized
Reason: Secured Area

Bldg. 53D
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020064
Status: Unutilized
Reason: Secured Area

Bldg. 82G
Longhorn AAP

Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020065
Status: Unutilized
Reason: Secured Area

Bldgs. P112, P116, P118, P120
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020066
Status: Unutilized
Reason: Secured Area

Bldgs. 201, 206
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020067
Status: Unutilized
Reason: Secured Area

Bldgs. 213–216
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020068
Status: Unutilized
Reason: Secured Area

Bldgs. 401, 413A, 414
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020069
Status: Unutilized
Reason: Secured Area

Bldgs. 713, 713B, 716, 717
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020070
Status: Unutilized
Reason: Secured Area

Bldgs. 812, 813, 814
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020071
Status: Unutilized
Reason: Secured Area

Bldgs. 823, 824
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020072
Status: Unutilized
Reason: Secured Area

Virginia

Bldg. SS0310
Fort A.P. Hill
Bowling Green Co; Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020073
Status: Unutilized
Reason: Extensive deterioration

Bldg. TT1279
Fort A.P. Hill
Bowling Green Co; Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020074
Status: Unutilized
Reason: Extensive deterioration

Bldg. TT1280
Fort A.P. Hill
Bowling Green Co; Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020075
Status: Unutilized
Reason: Extensive deterioration

Bldg. TT1281
Fort A.P. Hill
Bowling Green Co; Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020076
Status: Unutilized
Reason: Extensive deterioration

Bldg. TT1304
Fort A.P. Hill
Bowling Green Co; Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020077
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2477
Fort Belvoir
Ft. Belvoir Co: VA 22060–5301
Landholding Agency: Army
Property Number: 21200020078
Status: Unutilized
Reason: Extensive deterioration

Bldg. C3677–00
Radford AAP
Radford Co: VA 24141–
Landholding Agency: Army
Property Number: 21200020079
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 5504–00
Radford AAP
Radford Co: VA 24141–
Landholding Agency: Army
Property Number: 21200020080
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 7503–00
Radford AAP
Radford Co: VA 24141–
Landholding Agency: Army
Property Number: 21200020081
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. T–12050
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 21200020082
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

Bldg. 0423–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020083
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 0931–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020084
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1800–1
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020085
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 1805–1, 1805–2, 1852–1
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020086
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1994–0, 1995–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020087
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 3502–0, 3566–1
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020088
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 4524–4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020089
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 6536–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020090
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6662–0, 6666–0, 6669–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020091
Status: Unutilized
Reasons: Secured Area

Bldgs. 6706–2, 6712–0, 6724–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020092
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6731–2, –3, –4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020093
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6732–0, 6732–1, 6736–0, 6738–0, 6738–1
Landholding Agency: Army

Property Number: 21200020094
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6826–2, 6850–1, 6863–0, 6881–0, 6882–1
Landholding Agency: Army
Property Number: 21200020095
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6953–1, 6955–1, 6956–1, 6957–1
Landholding Agency: Army
Property Number: 21200020096
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

12 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 1725–1 thru 7, 1725–13 thru 17
Landholding Agency: Army
Property Number: 21200020097
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1810–1 thru 4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020098
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1825–1 thru 4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020099
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1875–1 thru 4
Badger AAP
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 21200020100
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

13 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 1996–1 thru 10, 1996–19 thru 21
Landholding Agency: Army
Property Number: 21200020101
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2002–0, 3002–0, 4002–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020102
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2003–0, 3003–0, 4003–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020103
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2005–0, 3005–0, 4005–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020104
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2007–0, 3007–0, 4007–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020105
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2008–0, 3008–0, 4008–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020106
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2011–0, 3011–0, 4011–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020107
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2012–0, 3012–0, 4012–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020108
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2013–0, 3013–0, 4013–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020109
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 8002–0, 8003–0, 8004–0, 8006–0
Landholding Agency: Army
Property Number: 21200020110
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0420–01, 02, 03
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020111
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0712–17, 18, 19
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020112
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0923–01, 02, 05, 06, 08
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020113
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

29 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 1600–01 thru 18, 1600–31 thru 39, 41, 42
Landholding Agency: Army
Property Number: 21200020114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1650–36, thru 42
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2014–0, 3014–0, 4014–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020116
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2019–0, 3019–0, 4019–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020117
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2020–0, 3020–0, 4020–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020118
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2022–0, 3022–0, 4022–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020119
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2024–0, 3024–0, 4024–0, 2025–0, 3025–0, 4025–0
Landholding Agency: Army
Property Number: 21200020120
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2026–0, 3026–0, 4026–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020121
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2035–0, 3035–0, 4035–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020122
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2043–0, 3043–0, 4043–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number 21200020123
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2046–0, 3046–0, 4046–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020124
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2500–0, 3500–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020125
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2501–0, 3501–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020126
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

7 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2506–0, 3506–0, 4506–0, 2508–1, 2508–2, 3508–1, 3508–2
Landholding Agency: Army
Property Number: 21200020127
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

13 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2510–1 thru 3, 3510–1 thru 3, 2513–1 thru 4, 3513–1 thru 3
Landholding Agency: Army
Property Number: 21200020128
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2517–1, 2517–2, 3517–1, 3517–2, 3517–3
Landholding Agency: Army
Property Number: 21200020129
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2546–1 thru 4, 2555–0, 3555–0
Landholding Agency: Army
Property Number: 21200020130
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 3044–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020131
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 3502–1, 3502–2
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020132
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 3516–1, 2, 3
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020133
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 4524–1, 2, 3
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020134
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

22 Bldgs.
Badger APP
Baraboo Co: Sauk WI 53913–
Location: 6513–1, 6513–6 thru 10, 6513–13 thru 24, 6513–30, 6513–43, 6513–44, 6513–46
Landholding Agency: Army
Property Number: 21200020135
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6529–0, 6586–1
Badger APP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020136
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6529–0, 6586–1
Badger APP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020137
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6672–1, 6672–2
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020138
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6702–3, 6702–4, 6704–3, 6704–4
Landholding Agency: Army
Property Number: 21200020139
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6705–3, 6705–4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020140
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

15 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6709–2, 6709–5, thru 13, 6709–17 thru 19, 6709–21, 6709–27
Landholding Agency: Army
Property Number: 21200020141
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

11 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6804–2 thru 7, 6804–9 thru 13
Landholding Agency: Army
Property Number: 21200020142
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

20 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6807–1 thru 5, 6807–7 thru 10, 6807–12 thru 15, 6807–17, 6807–19 thru 21, 6807–24, 6807–54, 6807–56
Landholding Agency: Army
Property Number: 21200020143
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6808–1, 4, 6, 8
Landholding Agency: Army
Property Number: 21200020144
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

20 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6810–1 thru 3, 6810–5, 6810–6, 6810–8, 6810–10 thru 16, 33 thru 38
Landholding Agency: Army
Property Number: 21200020145
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

7 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–

Location: 6812–1 thru 7
Landholding Agency: Army
Property Number: 21200020146
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6814–1 thru 5
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020147
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6817–1 thru 4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020148
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6828–1, 2, 8
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020149
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6829–1, 2
Badger AAJP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020150
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6837–1, 2
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020151
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6868–1, 2, 3, 7, 8
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020152
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 8000–1, 2, 3
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020153
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

28 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 9062–01 thru 18, 25, 28, 9063–01 thru 05, 11, 12, 15
Landholding Agency: Army
Property Number: 21200020154
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

45 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: Steam Pressure Reducing Station
Landholding Agency: Army
Property Number: 21200020155
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable Properties

Land (by State)

North Carolina

0.52 acres
Summerall TACAN Annex
Seymour Johnson AFB
Wayne Co: NC 27530–
Landholding Agency: Air Force
Property Number: 18200020008
Status: Unutilized
Reason: Within airport runway clear zone

[FR Doc. 00–12299 Filed 5–18–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Environmental Impact Statement for the Proposed Issuance of an Incidental Take Permit for High Desert Power Project, Victorville, San Bernardino County, CA

AGENCY: Fish and Wildlife Service, Interior (Lead Agency); Bureau of Land Management, Interior, Air Force, Corps of Engineers, Army (Cooperating Agencies).

ACTION: Notice of availability of a final environmental impact statement.

SUMMARY: This notice advises the public of the availability of the Final Environmental Impact Statement on the application to incidentally take the threatened Desert Tortoise (*Gopherus agassizii*) and the Mohave ground squirrel (*Spermophilis mohavensis*), a species listed as threatened by the State of California. The High Desert Power Project Limited Liability Company (Applicant) has applied to the Fish and Wildlife Service (Service) for a 50-year incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act Regulation (40 CFR 1506.6).

DATES: A Record of Decision and permit decision will occur no sooner than 30 days from this notice.

ADDRESSES: Copies of the incidental take permit application materials and Final Environmental Impact Statement are available for review at the following government offices and libraries:

Government Offices—Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003, (805) 644–1766; and the Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, California 92311, (760) 252–6000.

Libraries—California State Library, Information and Reference Center, 914 Capital Mall, Room 301, Sacramento, California 95814, (916) 654–0261; San Bernardino County Library, Adelanto Branch, 11744 Bartlett Avenue, Adelanto, California 92301, (760) 246–5661; and the San Bernardino County Library, Victorville Branch, 15011 Circle Drive, Victorville, California 92392, (760) 245–4222.

FOR FURTHER INFORMATION CONTACT: Mr. George Walker, Fish and Wildlife Service Biologist, Barstow, California, at (760) 255–8852.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). Under limited circumstances, the Service, however, may issue permits to authorize ''incidental take'' of listed animal species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing permits for endangered and threatened species, respectively, are at 50 CFR 17.32 and 17.22.

The High Desert Power Project Limited Liability Company seeks an incidental take permit for the threatened desert tortoise, and for the Mohave ground squirrel should it be listed under the Act during the term of the permit. Take of these species would be incidental to the High Desert Power Project. The Applicant proposes to construct, operate and maintain a 680- to 830-megawatt natural gas-fueled electricity generation power plant on a 25-acre site located in the northeast corner of the Southern California Logistics Airport, formerly a part of George Air Force Base, in the City of Victorville, San Bernardino County, California. The Applicant proposes to use an additional 24-acre area for construction staging. The proposed project also includes the construction, operation and maintenance of 7 water injection/extraction wells within the Mojave River watershed; 2 water supply pipelines (one approximately 2.5 miles in length and the other approximately

6.5 miles in length); 2 natural gas supply pipelines (one approximately 3.5 miles in length and the other approximately 32 miles in length); and a 7-mile-long electrical transmission line.

Construction of the Power Project and associated facilities would result in short-term, long-term, and permanent disturbances to desert tortoise and Mohave ground squirrel habitat. The Power Project would disturb approximately 630.2 acres of habitat, with approximately 244.1 acres of short-term disturbance and 386.1 acres of long-term and/or permanent disturbance.

The Applicant proposes to minimize and/or mitigate for impacts associated with the Power Project, in part, by conducting pre-construction surveys of proposed work areas and construction zones, and by developing an employee and contractor education program that would describe allowable practices when constructing in desert tortoise and Mohave ground squirrel habitat area. The Applicant would revegetate habitat disturbed during construction, operation, maintenance, and/or decommissioning activities in accordance with an approved plan. As compensation for impacts to habitat on private land, the Applicant would ensure the protection in perpetuity of 1,242.8 acres of off-site mitigation lands or habitat credits, having habitat value for both desert tortoises and Mohave ground squirrels that is at least as great as the value of the habitat being impacted. The number of compensation acres was developed based on an agency-approved formula which assesses the categories of previous and potential disturbance, the condition and classification of the impacted habitat, and potential impacts to adjacent habitat. To mitigate for impacts to desert tortoise and Mohave ground squirrel associated with construction and operation of this gas pipeline, the Applicant proposes that funding for restoration activities may be provided either in lieu of or in combination with the purchase of compensation lands or habitat credits.

In addition to issuance of an incidental take permit by the Service, High Desert Power Project Limited Liability Company has requested other federal authorizations for the proposed project. The company seeks Nationwide Permit No. 12 authorizations by the Army Corps of Engineers, pursuant to Section 404 of the Clean Water Act, for pipeline crossings of waters of the United States. The company also seeks a right-of-way grant from the Bureau of Land Management pursuant to Section 28 of the Mineral Leasing Act of 1920, to authorize construction, operation and maintenance of the 32-mile natural gas pipeline. The U.S. Air Force has Federal land management authority over the lands located within the former George Air Force Base. The High Desert Power Project Limited Liability Company and Victor Valley Economic Development Authority have jointly requested that the Air Force act to supplement its prior environmental record and to authorize specifically the uses of the former George Air Force Base lands proposed for the High Desert Power Project by way of an addendum to an existing lease agreement between the Air Force and Victor Valley Economic Development Authority. Additionally, the High Desert Power Project Limited Liability Company has requested that the Air Force grant easements authorizing the use of certain Federal lands adjacent to the former George Air Force Base for the construction, operation and maintenance of linear features of the High Desert Power Project.

On December 30, 1998, a notice was published in the **Federal Register** (63 FR 71940) announcing that the Service would take the lead in preparing an Environmental Impact Statement addressing the Federal actions associated with the High Desert Power Project. The Bureau of Land Management, U.S. Air Force and the Army Corps of Engineers may use this Environmental Impact Statement as the basis for their separate Federal decisions.

The Draft Environmental Impact Statement analyzed the potential environmental impacts that may result from the Federal actions requested in support of the proposed development of the High Desert Power Project, and identified various alternatives, including the No Action Alternative (no incidental take permit), the Combined Cycle Power Plant with Dry Cooling Alternative, and various alternatives proposing the power plant be located in different locations. Several of these alternatives would reduce the amount of habitat disturbance and levels of take of threatened and endangered species compared to the Proposed Project Alternative but would have potentially greater adverse effects on other resources such as air quality, land use, views, and geological hazards. Five comment letters, totaling 16 individual comments, were received on the Draft Environmental Impact Statement. A response to each comment has been included in Final Environmental Impact Statement.

The analysis provided in the Final Environmental Impact Statement is intended to accomplish the following: inform the public of the proposed action; address public comments received on the Draft Environmental Impact Statement; disclose the direct, indirect, and cumulative environmental effects of the proposed actions; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–12348 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY]

Notice for Publication; F–19155–4 Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1613(e), will be issued to Doyon, Limited. The lands involved are in the vicinity of Fort Yukon, Alaska.

Fairbanks Meridian, Alaska

T. 18 N., R. 14 E.,
Secs. 29 and 32, those lands formerly within Native allotment F–14713 Parcel B.

Containing approximately 40 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News Miner.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599, (907) 271–5960.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until June 19, 2000 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

E, shall be deemed to have waived their rights.

Stephanie Clusiau,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 00–12611 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–$$–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–09–0777–42]

Amendment to the Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of the BLM-administered public lands within the West Mojave Management Planning area on Friday, June 9, 2000, from 7:30 a.m to 4 p.m., and meet in formal session on Saturday, June 10, from 8 a.m. to 5 p.m. The Saturday meeting will be held at the Kerr-McGee Center, located at 100 West California Avenue, Ridgecrest, California. To reach the Center, turn west onto California from China Lake Boulevard and follow the road to the Center.

The Council and interested members of the public will assemble for the field tour at the Best Western China Lake Inn parking lot at 7:15 a.m. and depart at 7:30 a.m. Tour stops will include the Desert Tortoise Natural Area, the Rand Mountains, and the Jawbone Canyon Off-Highway Vehicle Recreation Area. Members of the public are welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch.

The Council will meet in formal session on Saturday. Discussions will focus on issues being addressed in the West Mojave Coordinated Management Plan. Council members also will hear a presentation and accept public comment on the development of BLM's National Off-Highway Vehicle Management Strategy. The presentation is scheduled to begin at 10:15 a.m.

The national strategy will be developed with substantial input from off-highway vehicle (OHV) user groups, environmental organizations, State and local agencies, and the general public. The strategy will address land-management issues prompted by the growing popularity of OHV recreation. The strategy will recognize the interests of OHV users while protecting environmental sensitive areas on BLM-managed public lands.

BLM will accept written and oral comments at the June 10 meeting. The Council Chair will determine the time allotment for each speaker, based on the number of people who register to comment. Written comments also may be submitted to Mark Conley, BLM OHV Coordinator, Bureau of Land Management, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the beginning of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez at (909) 697–5220, BLM California Desert District External Affairs.

Dated: May 15, 2000.

Tim Salt,

District Manager.

[FR Doc. 00–12610 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–00–1020–XU: GPO–0210]

Notice of Correction; John Day/Snake Resource Advisory Council Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Meeting of John Day/Snake Resource Advisory Council: Enterprise, Oregon, May 23 & 24, 2000.

SUMMARY: Correction to the second day meeting location published May 3, 2000 in the **Federal Register.** On May 24, 2000 the meeting will be held next door to Wallowa-Whitman National Forest office, 88401 Hwy 82, at the Best Western Rama Inn conference room, Enterprise, Oregon from 8:00 a.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Juan Palma, Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, Telephone (541) 473–3144.

Juan Palma,

District Manager.

[FR Doc. 00–12596 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore Advisory Commission Two Hundred and Twenty-Eight Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 U.S.C. App 1, section 10), that a meeting of the Cape Code National Seashore Advisory Commission will be held on Friday, June 2, 2000.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Code National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting—March 17, 2000
3. Report of Officers
4. Subcommittee Reports
   Personal Watercraft Subcommittee
   Nickerson Fellowship Committee
5. Superintendent's Report:
   Highlands Center
   News from Washington
   Fort Hill burn results
   Penniman House renovations
   Horseshoe Crabs
   USGS Water Study
6. Old Business
   Advisory Committee Handbook
7. New Business
8. Agenda and date for next meeting
9. Public comment
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least

seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: May 8, 1999.

Maria Burks,

Deputy Superintendent.

[FR Doc. 00–12317 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA–846–850 (Final)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, Japan, Mexico, Romania, and South Africa

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Carr (202–205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On May 3, 2000, the Department of Commerce notified the Commission of its final determinations with regard to Japan and South Africa. The Commission must make its final determinations in antidumping investigations within 45 days after notification of Commerce's final determinations, or in this case by June 16, 2000. The Commission is revising its schedule to conform with this statutory deadline.

The Commission's new schedule for these investigations is as follows: the Commission will make its final release of information on May 31, 2000; and final party comments are due on June 5, 2000.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: May 16, 2000.

By order of the Commission.

Donna R. Koehnke

Secretary.

[FR Doc. 00–12679 Filed 5–18–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 731–TA–762 (Remand)]

Static Random Access Memory Semiconductors From Taiwan; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the second remand of its final antidumping investigation No. 731–TA–762 (Final) for reconsideration in light of the order of the Court of International Trade.

EFFECTIVE DATE: May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Diane Mazur, Office of Investigations, telephone 202–205–3184, or Michael Diehl, Esq., Office of the General Counsel, telephone 202–205–3095, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

In April 1998, the Commission, by a one-to-one vote, determined that the domestic industry producing static random access memory semiconductors (SRAMS) was materially injured by subject imports from Taiwan. On June 30, 1999, the Court of International Trade (CIT) remanded the determination to the Commission with instructions to explain how it ensured that it did not attribute the price depressing effects from other known factors to the subject imports. In September 1999, the Commission submitted Chairman Bragg's remand views as its ''Views on Remand'' in response to the order, again finding material injury to the domestic industry. On April 11, 2000, Judge Pogue remanded the Commission's remand determination for further explanation of certain matters including whether the Commission properly relied on several lost revenue allegations. On April 26, 2000, the CIT granted a consent motion setting the due date for the submission of the Commission's remand views to the CIT to Monday, June 26, 2000.

Scheduling the Vote

The Commission will vote on the remand determination at a public meeting to be held on Monday, June 12, 2000. The meeting is tentatively scheduled for 2:00 p.m.

Reopening the Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation for the limited purpose of gathering information regarding those lost revenue allegations discussed by the court. The Commission is not reopening the record for any other purpose, except to receive any comments from the parties on new information gathered regarding the lost revenue allegations.

Participation in These Proceedings

Only those persons who were interested parties to the original administrative proceedings (i.e., persons listed on the Commission Secretary'' service list) may participate in these remand proceedings.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order (''APO'') in effect in the original investigation on May 24, 2000. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice or reopening the record on remand in the **Federal Register**. Applications must be filed for any persons on the Judicial Protective Order in the related CIT case,

but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Written Submissions

The parties will be permitted to submit comments not to exceed 10 pages, double-spaced and single sided, on stationery measuring 8½ x 11 inches, addressing the accuracy, reliability, or probative value of new information gathered in the remand investigation regarding the lost revenue allegations. Any material in these comments that does not address these limited issues will be stricken from the record. The due date for the party comments is June 7, 2000.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of section 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with section 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: May 15, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–12678 Filed 5–18–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this date 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.

New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued under the Davis-Bacon and Related Acts'' are listed by Volume and States:

Volume IV

Michigan:
MI000089 (May 19, 2000)
MI000090 (May 19, 2000)
MI000091 (May 19, 2000)
MI000092 (May 19, 2000)
MI000093 (May 19, 2000)
MI000094 (May 19, 2000)
MI000095 (May 19, 2000)
MI000096 (May 19, 2000)
MI000097 (May 19, 2000)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine:
ME000015 (Feb. 11, 2000)
ME000022 (Feb. 11, 2000)
ME000031 (Feb. 11, 2000)
ME000032 (Feb. 11, 2000)
ME000034 (Feb. 11, 2000)
ME000035 (Feb. 11, 2000)
ME000036 (Feb. 11, 2000)
ME000037 (Feb. 11, 2000)
ME000038 (Feb. 11, 2000)
New York:
NY000007 (Feb. 11, 2000)

Volume II

Pennsylvania:
PA000006 (Feb. 11, 2000)
PA000014 (Feb. 11, 2000)
PA000015 (Feb. 11, 2000)
PA000028 (Feb. 11, 2000)
Florida:
FL000015 (Feb. 11, 2000)
FL000017 (Feb. 11, 2000)
FL000046 (Feb. 11, 2000)
Kentucky:
KY000025 (Feb. 11, 2000)

Volume IV

Michigan:

MI000001 (Feb. 11, 2000)
MI000002 (Feb. 11, 2000)
MI000003 (Feb. 11, 2000)
MI000004 (Feb. 11, 2000)
MI000005 (Feb. 11, 2000)
MI000007 (Feb. 11, 2000)
MI000030 (Feb. 11, 2000)
MI000031 (Feb. 11, 2000)
MI000046 (Feb. 11, 2000)
MI000047 (Feb. 11, 2000)
MI000049 (Feb. 11, 2000)
MI000063 (Feb. 11, 2000)
MI000064 (Feb. 11, 2000)
MI000066 (Feb. 11, 2000)
MI000067 (Feb. 11, 2000)
MI000068 (Feb. 11, 2000)
MI000069 (Feb. 11, 2000)
MI000070 (Feb. 11, 2000)
MI000071 (Feb. 11, 2000)
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MI000079 (Feb. 11, 2000)
MI000080 (Feb. 11, 2000)
MI000083 (Feb. 11, 2000)
MI000084 (Feb. 11, 2000)
MI000086 (Feb. 11, 2000)

Minnesota:
MN000003 (Feb. 11, 2000)
MN000005 (Feb. 11, 2000)
MN000007 (Feb. 11, 2000)
MN000008 (Feb. 11, 2000)
MN000012 (Feb. 11, 2000)
MN000015 (Feb. 11, 2000)
MN000027 (Feb. 11, 2000)
MN000031 (Feb. 11, 2000)
MN000043 (Feb. 11, 2000)
MN000045 (Feb. 11, 2000)
MN000047 (Feb. 11, 2000)
MN000049 (Feb. 11, 2000)
MN000056 (Feb. 11, 2000)
MN000058 (Feb. 11, 2000)
MN000059 (Feb. 11, 2000)
MN000061 (Feb. 11, 2000)

Ohio:
OH000001 (Feb. 11, 2000)
OH000002 (Feb. 11, 2000)
OH000003 (Feb. 11, 2000)
OH000008 (Feb. 11, 2000)
OH000013 (Feb. 11, 2000)
OH000018 (Feb. 11, 2000)
OH000024 (Feb. 11, 2000)
OH000026 (Feb. 11, 2000)
OH000029 (Feb. 11, 2000)
OH000032 (Feb. 11, 2000)
OH000035 (Feb. 11, 2000)

Volume V

Arkansas:
AR000008 (Feb. 11, 2000)
AR000023 (Feb. 11, 2000)
AR000027 (Feb. 11, 2000)

Kansas:
KS000006 (Feb. 11, 2000)
KS000007 (Feb. 11, 2000)
KS000008 (Feb. 11, 2000)
KS000012 (Feb. 11, 2000)
KS000016 (Feb. 11, 2000)
KS000018 (Feb. 11, 2000)
KS000019 (Feb. 11, 2000)
KS000020 (Feb. 11, 2000)
KS000021 (Feb. 11, 2000)
KS000022 (Feb. 11, 2000)
KS000023 (Feb. 11, 2000)
KS000026 (Feb. 11, 2000)
KS000069 (Feb. 11, 2000)

Missouri:
MO000001 (Feb. 11, 2000)

Texas:
TX000109 (Feb. 11, 2000)

Volume VI

Oregon:
OR000001 (Feb. 11, 2000)

Washington:
WA000008 (Feb. 11, 2000)

Volume VII

Hawaii:
HI000001 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 11th day of May, 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–12372 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Annual Refiling Survey (ARS) forms. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 18, 2000.

ADDRESSES: Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Standard Industrial Classification (SIC) system was replaced by the North American Industry Classification System (NAICS) in 1997 as the standard for industrial classification. As a result of this change, the Bureau of Labor Statistics (BLS) converted its data from an SIC-basis to a NAICS-basis over a three-year period. This included converting SIC codes for business establishments on the Bureau's sampling frame to 1997 NAICS codes. Forms were designed to gather information necessary for converting

SIC codes to NAICS codes from respondents. A revision of NAICS to be implemented in 2002 will affect industries in mining, construction, manufacturing, wholesale trade, retail trade, and Internet services. These previously approved ARS forms will be used to convert SIC codes to the new 2002 NAICS codes.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Action

The forms are the Annual Refiling Survey (ARS) forms that the BLS currently uses to gather industrial and geographical data on business establishments. They are specifically designed to gather information necessary to convert SIC codes to NAICS codes. This is a revision of the previously approved ARS forms to implement the NAICS 2002 revision.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Annual Refiling Survey.

OMB Number: 1220–0032.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal government; State, local, or tribal government.

Total Respondents: 1,700,150.

Frequency: Annually.

Total Responses: 1,700,150.

Form	Total responses	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
3023–NVS	1,573,500	Once	1,573,500	.083	130,601
3023–NVM	15,650	Once	15,650	.75	11,738
3023–NCA	111,000	Once	111,000	.167	18,537
3023–NAX	.....	Once	.....	.083	.....
Totals	1,700,150	.....	1,700,150	.....	160,870

The BLS is not expected to use the 3023–NAX form in the NAICS 2002 conversion, but its approval also is requested.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this noticed will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 12th day of May 2000.

Karen A. Krein,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–12667 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Ground Control Plan

ACTION: Extension.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before July 18, 2000.

ADDRESSES: Written comments shall be mailed to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Each operator of a surface coal mine is required under 30 CFR 77.1000 to establish and follow a ground control plan that is consistent with prudent engineering design and which will ensure safe working conditions. The plans are based on the type of strata expected to be encountered, the height and angle of highwalls and spoil banks, and the equipment to be used at the mine. Ground control plans are required by 30 CFR 77.1000–1 to be filed with the MSHA District Manager in the district in which the mine is located. The plans are reviewed by MSHA to ensure that highwalls and spoil banks are maintained in safe condition through the use of sound engineering design.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting

comments concerning the proposed extension of the information collection related to the Ground Control Plan. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act Submissions (http://www.msha.gov/regspwork.htm)'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

MSHA is seeking to continue the requirement for mine operators to submit ground control plans to ensure that highwalls and spoil banks are maintained in safe condition so that a safe working environment is provided for miners.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Ground Control Plan.

OMB Number: 1219–0026.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 77.1000 and 77–1000–1.

Total Respondents: 159.

Frequency: On occasion.

Total Responses: 159.

Average Time per Response: 8 hours.

Estimated Total Burden Hours: 1,404.

Estimated Total Burden Cost: $204.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 15, 2000.

Theresa M. O'Malley,

Program Analysis Officer, Office of Program Evaluation and Information Resources.

[FR Doc. 00–12665 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information has been approved the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 for the Voluntary Fiduciary Correction Program (VFC Program). This notice announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Address comments on the VFC Program in writing to: VFC Program, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5702, 200 Constitution Avenue, NW, Washington, DC 20210. Written comments may also be sent by Internet to: vfc-program@pwba.dol.gov.

For general questions regarding the VFC Program, contact the appropriate PWBA Regional Office listed in Appendix C of the VFC Program (65 FR 14179), or Jeffrey A. Monhart, Investigator, Office of Enforcement, Pension and Welfare Benefits Administration ((202) 219–8820). For comments on the VFC Program, contact Elizabeth A. Goodman, Pension Law Specialist, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration ((202) 219–8671).

Address comments on the information collection request (ICR) and requests for copies of the ICR to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782. These telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION: On March 15, 2000, PWBA published a notice concerning its adoption of a Voluntary Fiduciary Correction Program (65 FR 14164), which allows certain persons to correct possible fiduciary breaches of Part 4 of Title I of ERISA, and to avoid potential civil actions initiated by the Department of Labor under the Employee Retirement Income Security Act of 1974 (ERISA), and the assessment of civil penalties under section 502(1) of ERISA. Although written comments on the VFC Program were accepted through May 15, 2000, the Department submitted the information collection request (ICR) included in the VFC Program to OMB using emergency procedures, and requested approval by April 14, 2000. The information collection provisions of the VFC Program generally require that documentation of the correction of a fiduciary breach be supplied to the Department.

On April 14, 2000, OMB approved the ICR under emergency provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320. The approval will expire on September 30, 2000. The control number assigned to this ICR by OMB is 1210–0118. PWBA will take any comments received into consideration in finalizing the VFC Program and in preparing the application for continuing approval of the ICR, which will be submitted to OMB prior to the expiration of the emergency approval.

Dated: May 15, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–12664 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 for the Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1). This notice announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Individuals with questions about the Form EFAST–1 or who need assistance in completing the Form EFAST–1 may call the EFAST Help Desk at (202) 219–8770. This is not a toll-free number. The Form EFAST–1 and instructions are available for viewing and downloading via the Department of Labor's Internet site (www.efast.dol.gov). Copies of the Form EFAST–1 and instructions may also be obtained by calling PWBA's Publication Hotline at 1–800–998–7542.

Address requests for copies of the information collection request (ICR) to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC, 20210. Telephone: (202) 219–4782. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 9, 2000, PWBA published a notice concerning the submission of the proposed Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (65 FR 12577) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320. The Department submitted the information collection request included in Form EFAST–1 to OMB using emergency procedures and requested approval by March 24, 2000. On April 11, 2000, OMB approved the ICR under emergency provisions of the Paperwork Reduction Act of 1995. The approval will expire on August 31, 2000. The control number assigned to this ICR by OMB is 1210–0117.

The Form EFAST–1 that was available on PWBA's Internet website has now been revised to include the OMB control number. In addition , as a result of a comment receive by the Department, the Department has also made minor revisions to the Form EFAST–1 and the instructions. Additional issues raised in the comment will be reviewed with other comments received by the close of the comment period on May 8, 2000 as a part of the application for continuing approval of the ICR that will be submitted to OMB prior to the expiration of the emergency approval.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. Accordingly, persons who wish to complete the Form EFAST–1 should obtain a copy of the Form EFAST–1 displaying the OMB contol number and including the recent revisions.

Dated: May 15, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–12666 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Medical Child Support Working Group

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the date of the ninth meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The ninth meeting of the MCSWG will be held on Thursday, June 8th, 2000, from 10:30 a.m. to approximately 12:30 p.m.

ADDRESSES: The meeting will be held in the 6th Floor Auditorium of the Aerospace Building, 901 D St. SW, Washington, DC. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**. However, it is expected this will be the last meeting.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of a meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (P.L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act ; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

Agenda

The agenda for this meeting includes review and approval of the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting the MCSWG formed four (4) subcommittees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next three meetings (August, 1999, October, 1999, and November, 1999), the subcommittees presented their draft recommendations to the full MCSWG for further discussion and consideration. At the January, 2000, meeting the MCSWG discussed the recommendations to be contained in the report to the Secretaries. At the March, 2000, meeting the MCSWG reviewed for approval the draft report. At this meeting, the MCSWG will review and approve the final report.

Public Participation

Members of the public wishing to present oral statements to the MSCWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DOL, these documents will be available at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DOL should be directed to Ms. Ellen Goodwin, Pension and Welfare Benefits Administration, Department of Labor (telephone (202) 219–7222, ext. 2722). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Signed at Washington, DC, this 16th day of May, 2000.

Leslie Kramerich,

Acting Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 00–12663 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–29–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

May 15, 2000.

TIME AND DATE: 10 a.m., Monday, May 15, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street NW, Washington, DC.

STATUS: Closed pursuant to 5 U.S.C. § 552b(c)(10)).

MATTERS TO BE CONSIDERED: It was determined by unanimous vote of a quorum of the Commission that the Commission consider and act upon the following in closed session:

1. *Eagle Energy, Inc.* v. *Secretary of Labor (MSHA) and FMSHRC,* 4th Cir. No. 00–1073, FMSHRC Docket No. WEVA 98–39.

No earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen: (202) 653–5629, (202) 708–9300 for TDD Relay, 1–800–877–8339 for toll-free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–12757 Filed 5–17–00; 1:30 pm]

BILLING CODE 6735–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its regular monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees.

DATES: The meeting will begin at 10:30 a.m. on Wednesday, June 7, 2000.

ADDRESSES: The meeting will be held at The Centennial Inn, Armenia White Room, 96 Pleasant Street, Concord, New Hampshire (I–93 Exit 14).

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: May 15, 2000.

Kenneth M. Becker,

Executive Director.

[FR Doc. 00–12612 Filed 5–18–00; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331 License No. DPR–49]

IES Utilities Inc., et al., (Duane Arnold Energy Center); Order Approving Transfer of Operating Authority and Conforming Amendment

I.

IES Utilities Inc. (the licensee), Central Iowa Power Cooperative (CIPCO), and the Corn Belt Power Cooperative (Corn Belt) are the holders of Facility Operating License No. DPR–49, which authorizes operation of the Duane Arnold Energy Center (DAEC or the facility). The facility is located near the town of Palo in Linn County, Iowa. The license authorizes IES Utilities Inc., to possess, use, and operate DAEC and authorizes CIPCO and Corn Belt to possess the facility.

II.

By application dated November 24, 1999, the Commission was informed that IES Utilities Inc., entered into operating service agreements with Nuclear Management Company, LLC (NMC). The application was supplemented by submittals dated February 4 and March 17, 2000. The initial application and the supplements are hereinafter referred to as ''the application'' unless otherwise indicated. Under the proposed transaction, NMC will be designated as the exclusive licensee authorized to use and operate DAEC in accordance with the terms and conditions of the license. The transaction involves no change in plant ownership. The licensee requested approval of the proposed transfer of operating authority under the DAEC facility operating license to NMC. The application also requested a conforming amendment to reflect the transfer. The proposed amendment would add NMC to the license as the licensee authorized to use and operate DAEC, and delete references to IES Utilities Inc. as the operator.

According to the application for approval filed by IES Utilities Inc., NMC would become the licensee authorized to use and operate DAEC following approval of the proposed license transfer. NMC will assume exclusive responsibility for the operation and maintenance of DAEC. Ownership of DAEC will not be affected by the proposed transfer of operating authority. The plant owners will retain their current ownership interests. NMC will not own any portion of DAEC. Likewise, the plant owners' entitlement to capacity and energy from DAEC will not be affected by the transfer of operating authority. No physical changes to the DAEC facility were proposed in the application.

Approval of the transfer of operating authority under the facility operating license and conforming license amendment was requested by IES Utilities Inc., pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 4, 2000 (65 FR 5703). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by IES Utilities Inc., and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the license, and that the transfer of the operating authority under the license to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated May 15, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the transfer of operating authority under the license as described herein to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, IES Utilities Inc., and NMC shall inform the Director of the Office of Nuclear Reactor Regulation, in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 7 business days before the date of closing. If the transfer is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfer of operating authority for DAEC, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

It is further ordered that consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject transfer of operating authority is approved. The amendment shall be issued and made effective when the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplements dated February 4 and March 17, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 15th day of May 2000.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–12617 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282, 50–306, 72–10; License No. DPR–42, License No. DPR–60, License No. SNM–2506]

Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation); Order Approving Transfers of Operating Authority and Conforming Amendments

I.

Northern States Power Company (NSP or the licensee) is the holder of Facility Operating Licenses Nos. DPR–42 and DPR–60, which authorize operation of Prairie Island Nuclear Generating Plant, Units 1 and 2 (Prairie Island or the facility), and Materials License No. SNM–2506, which authorizes operation of the Prairie Island Independent Spent Fuel Storage Installation (Prairie Island ISFSI). The facility and the Prairie Island ISFSI are located at the licensee's site in Goodhue County, Minnesota. The operating licenses authorize NSP to

possess, use, and operate Prairie Island. The materials license authorizes NSP to receive, acquire, and possess power reactor spent fuel at the Prairie Island ISFSI.

II.

By application dated November 24, 1999, as supplemented February 2, 2000, NSP informed the Commission that NSP entered into operating service agreements with Nuclear Management Company, LLC (NMC). The initial application and the supplement are hereinafter collectively referred to as ''the application,'' unless otherwise indicated. Under the proposed transaction, NMC will be designated as the exclusive licensee authorized to use and operate Prairie Island and the Prairie Island ISFSI in accordance with the terms and conditions of the licenses. The transaction involves no change in ownership. The licensee requested approval of the proposed transfer of operating authority under the Prairie Island facility operating licenses and materials license to NMC. The application also requested conforming amendments to reflect the transfer. The proposed amendments would add NMC to the licenses as the licensee authorized to use and operate Prairie Island and the Prairie Island ISFSI and delete references to NSP as the operator.

According to the application for approval filed by NSP, NMC would become the licensee authorized to use and operate Prairie Island and the Prairie Island ISFSI following approval of the proposed license transfers. NMC will assume exclusive responsibility for the operation and maintenance of Prairie Island and the Prairie Island ISFSI. Ownership of Prairie Island and the Prairie Island ISFSI will not be affected by the proposed transfers of operating authority. NSP will retain ownership of the facility and the Prairie Island ISFSI. NMC will not own any portion of Prairie Island or the Prairie Island ISFSI. Likewise, NSP's entitlement to capacity and energy from Prairie Island will not be affected by the transfer of operating authority. No physical changes to Prairie Island or the Prairie Island ISFSI were proposed in the application.

Approval of the transfer of operating authority under the facility operating licenses and conforming license amendments was requested by NSP pursuant to 10 CFR 50.80 and 50.90, and approval of the transfer of the materials license and conforming amendment was requested by NSP pursuant to 10 CFR 72.50 and 72.56. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 15, 2000 (65 FR 7574). Pursuant to such notice, Carol Overland, an individual, North American Water Office, an environmental organization, and the Prairie Island Indian Community filed hearing requests. The Commission presently has the matter under consideration.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Pursuant to 10 CFR 72.50, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the application by NSP, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the licenses, and that the transfer of the operating authority under the licenses to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility and the Prairie Island ISFSI will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing finding are supported by a safety evaluation dated May 15, 2000.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the transfer of operating authority under the licenses, as described herein, to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, NSP and NMC shall inform the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards, in writing of such receipt within 5 business days, and of the date of the closing of the transfers no later than 7 business days prior to the date of closing. If the transfers are not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfers of operating authority for Prairie Island, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of licensees under 10 CFR 140 of the Commission's regulations.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfer of operating authority are approved. The amendments shall be issued and made effective at the time the proposed transfers are completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplement dated February 2, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 15th day of May 2000.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–12613 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263, License No. DPR–22]

Northern States Power Company (Monticello Nuclear Generating Plant, Unit No. 1); Order Approving Transfer of License and Conforming Amendment

I.

Northern States Power Company (NSP or the licensee) is the holder of Facility Operating License No. DPR–22, which authorizes operation of Monticello Nuclear Generating Plant, Unit No. 1 (Monticello or the facility). The facility is located in Wright County at the licensee's site in Wright and Sherburne Counties, Minnesota. The license authorizes NSP to possess, use, and operate Monticello.

II.

By application dated October 29, 1999, as supplemented March 14 and April 25, 2000, the Commission was informed that NSP entered into an agreement on March 24, 1999, to merge with New Century Energies, Inc. (NCE). The initial application and the supplements are hereinafter collectively referred to as ''the application,'' unless otherwise indicated. Under the proposed transaction, NCE will be merged with and into NSP, which will be renamed Xcel Energy, Inc. (Xcel). At the time of the merger, NSP will transfer all of its existing electric and natural gas utility facilities and operations currently conducted directly by NSP to a newly formed utility operating company subsidiary (referred to herein as ''New NSP'') of Xcel. The licensee requested approval of the proposed transfer of the Monticello facility operating license to New NSP. The application also requested approval of a conforming amendment to reflect the transfer. The proposed amendment would add a footnote to the license to reflect the transfer from NSP to New NSP, which will be known as Northern States Power Company, the same name now used by NSP.

According to the application for approval filed by NSP, the facility would be transferred to New NSP after approval of the proposed license transfer and New NSP would become responsible for the operation, maintenance, and eventual decommissioning of Monticello. No physical changes to the Monticello facility or operational changes were proposed in the application.

Approval of the transfer of the facility operating license and conforming license amendment was requested by NSP pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 10, 2000 (65 FR 6641). Pursuant to such notice, Carol Overland, an individual, and North American Water Office, an environmental organization, filed hearing requests. The Commission currently has the matter under consideration.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by NSP and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that New NSP is qualified to hold the license and that the transfer of the license to New NSP is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations; and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated May 12, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the license, as described herein, to New NSP is approved, subject to the following conditions:

(1) New NSP shall, prior to completion of the subject transfer, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that New NSP has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) New NSP shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from New NSP to its parent, Xcel Energy, Inc., or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of New NSP's consolidated net utility plant, as recorded on its books of account.

(3) After receipt of all required regulatory approvals of the transfer of Monticello to New NSP, NSP shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the date of the closing of the transfer of Monticello no later than 7 business days before the date of closing. If the transfer of the license is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated October 29, 1999, supplements dated March 14 and April 25, 2000, and the safety evaluation dated May 12, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 12th day of May 2000.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–12618 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

In the Matter of Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation); Order Approving Transfer of Licenses and Conforming Amendments

[Docket Nos. 50–282, 50–306, 72–10, License No. DPR–42, License No. DPR–60, License No. SNM–2506]

I.

Northern States Power Company (NSP or the licensee) is the holder of Facility Operating Licenses Nos. DPR–42 and DPR–60, which authorize operation of Prairie Island Nuclear Generating Plant, Units 1 and 2 (Prairie Island or the facility), and Materials License No. SNM–2506, which authorizes operation of the Prairie Island Independent Spent Fuel Storage Installation (Prairie Island ISFSI). The facilities are located at the licensee's site in Goodhue County, Minnesota. The operating licenses authorize NSP to possess, use, and operate Prairie Island. The materials license authorizes NSP to receive, acquire, and possess power reactor spent fuel at the Prairie Island ISFSI.

II.

By application dated October 29, 1999, as supplemented March 14 and April 25, 2000, the Commission was informed that NSP entered into an agreement on March 24, 1999, to merge with New Century Energies, Inc. (NCE). The initial application and the supplements are hereinafter collectively referred to as ''the application,'' unless otherwise indicated. Under the proposed transaction, NCE will be merged with and into NSP, which will be renamed Xcel Energy, Inc. (Xcel). At the time of the merger, NSP will transfer all of its existing electric and natural gas utility facilities and operations currently conducted directly by NSP to a newly formed utility operating company subsidiary (referred to herein as ''New NSP'') of Xcel. The licensee requested approval of the proposed transfer of the Prairie Island facility operating licenses and the Prairie Island ISFSI materials license to New NSP. The application also requested conforming amendments to reflect the transfer. The proposed amendments would add a footnote to the licenses to reflect the transfer from NSP to New NSP, which will be known as Northern States Power Company, the same name now used by NSP.

According to the application for approval filed by NSP, the facility and the Prairie Island ISFSI would be transferred to New NSP following approval of the proposed license transfers, and New NSP would become responsible for the operation, maintenance, and eventual decommissioning of Prairie Island and the Prairie Island ISFSI. No physical changes to the facilities or operational changes were proposed in the application.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by NSP pursuant to 10 CFR 50.80 and 50.90, and approval of the transfer of the materials license and conforming amendment was requested by NSP pursuant to 10 CFR 72.50 and 72.56. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 10, 2000 (65 FR 6642). Pursuant to such notice, Carol Overland, an individual, and North American Water Office, an environmental organization, filed hearing requests. The Commission presently has the matter under consideration.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Pursuant to 10 CFR 72.50, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the application by NSP, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that New NSP is qualified to hold the licenses, and that the transfer of the licenses to New NSP is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility and the Prairie Island ISFSI will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated .

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80 and 10 CFR 72.50, *It Is Hereby Ordered* that the transfer of the licenses, as described herein, to New NSP is approved, subject to the following conditions:

(1) New NSP shall, prior to completion of the subject transfers, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that New NSP has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) New NSP shall provide the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Materials Safety and Safeguards a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from New NSP to its parent, Xcel Energy, Inc., or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of New NSP's consolidated net utility plant, as recorded on its books of account.

(3) After receipt of all required regulatory approvals of the transfer of Prairie Island and the Prairie Island ISFSI to New NSP, NSP shall inform the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards, in writing of such receipt within 5 business days, and of the date of the closing of the transfer of Prairie Island and the Prairie Island ISFSI no later than 7 business days prior to the date of closing. If the transfer of the licenses is not completed by April 1, 2001, this Order shall become null and

void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated October 29, 1999, supplements dated March 14 and April 25, 2000, and the safety evaluation dated May 12, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 12th day of May 2000.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–12619 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Northern States Power Company (Monticello Nuclear Generating Plant, Unit No. 1); Order Approving Transfer of Operating Authority and Conforming Amendment

[Docket No. 50–263; License No. DPR–22]

I.

Northern States Power Company (NSP or the licensee) is the holder of Facility Operating License No. DPR–22, which authorizes operation of Monticello Nuclear Generating Plant, Unit No. 1 (Monticello or the facility). The facility is located in Wright County at the licensee's site in Wright and Sherburne Counties, Minnesota. The license authorizes NSP to possess, use, and operate Monticello.

II.

By application dated November 24, 1999, as supplemented February 2, 2000, NSP informed the Commission that NSP entered into operating service agreements with Nuclear Management Company, LLC (NMC). The initial application and the supplement are hereinafter collectively referred to as ''the application,'' unless otherwise indicated. Under the proposed transaction, NMC will be designated as the exclusive licensee authorized to use and operate Monticello in accordance with the terms and conditions of the license. The transaction involves no change in plant ownership. The licensee requested approval of the proposed transfer of operating authority under the Monticello facility operating license to NMC. The application also requested a conforming amendment to reflect the transfer. The proposed amendment would add NMC to the license as the licensee authorized to use and operate Monticello and delete references to NSP as the operator.

According to the application for approval filed by NSP, NMC would become the licensee authorized to use and operate Monticello following approval of the proposed license transfer. NMC will assume exclusive responsibility for the operation and maintenance of Monticello. Ownership of Monticello will not be affected by the proposed transfer of operating authority. NSP will retain its current ownership interest. NMC will not own any portion of Monticello. Likewise, NSP's entitlement to capacity and energy from Monticello will not be affected by the transfer of operating authority. No physical changes to the Monticello facility were proposed in the application.

Approval of the transfer of operating authority under the facility operating license and conforming license amendment was requested by NSP pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 15, 2000 (65 FR 7574). Pursuant to such notice, Carol Overland, an individual, and North American Water Office, an environmental organization, filed hearing requests. The Commission presently has the matter under consideration.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by NSP, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the license, and that the transfer of the operating authority under the license to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated .

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of operating authority under the license, as described herein, to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, NSP and NMC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the date of the closing of the transfer of Monticello no later than 7 business days prior to the date of closing. If the transfer is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfer of operating authority for Monticello, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of

licensees under 10 CFR Part 140 of the Commission's regulations.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject transfer of operating authority is approved. The amendment shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplement dated February 2, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 15th day of May 2000.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–12620 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266, 50–301, 72–005; License Nos. DPR–24, DPR–27]

Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 and 2); Order Approving Transfer of Operating Authority and Conforming Amendments

I.

Wisconsin Electric Power Company (WEPCo or the licensee) is the holder of Facility Operating Licenses Nos. DPR–24 and DPR–27, which authorize operation of the Point Beach Nuclear Plant, Units 1 and 2 (Point Beach or the facility). The facility is located at the licensee's site in the town of Two Creeks, Manitowac County, Wisconsin. The licenses authorize WEPCo to possess, use, and operate Point Beach.

II.

By application dated November 24, 1999, as supplemented January 31, 2000, the Commission was informed that WEPCo entered into operating service agreements with Nuclear Management Company, LLC (NMC). The initial application and the supplement are hereinafter referred to as ''the application,'' unless otherwise indicated. Under the proposed transaction, NMC will be designated as the licensee authorized to use and operate Point Beach in accordance with the terms and conditions of the licenses. The transaction involves no change in plant ownership. The licensee requested approval of the proposed transfer of operating authority under the Point Beach facility operating licenses to NMC. The application also requested conforming amendments to reflect the transfer. The proposed amendments would add NMC to the licenses and reflect that NMC is exclusively authorized to use and operate Point Beach. As a result of the transfer of licenses with respect to operating authority thereunder and conforming license amendments, NMC will also become and act as the general licensee for the Independent Spent Fuel Storage Installation (ISFSI) at Point Beach pursuant to 10 CFR 72.210.

According to the application for approval filed by WEPCo, NMC would become the licensee authorized to use and operate Point Beach following approval of the proposed license transfers. NMC will assume exclusive responsibility for the operation and maintenance of Point Beach. Ownership of Point Beach will not be affected by the proposed transfer of operating authority. WEPCo will retain its current ownership interest. NMC will not own any portion of Point Beach. Likewise, WEPCo's entitlement to capacity and energy from Point Beach will not be affected by the transfer of operating authority. No physical changes to the Point Beach facility were proposed in the application.

Approval of the transfer of operating authority under the facility operating licenses and conforming license amendments was requested by WEPCo pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 4, 2000 (65 FR 5705). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer or control of the license, unless the Commission shall give its consent in writing. Upon review of the information in application by WEPCo, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the licenses, and that the transfer of the operating authority under the licenses to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated May 15, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the transfer of operating authority under the licenses, as described herein, to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, WEPCo and NMC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of closing. If the transfer is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfer of operating authority for Point Beach, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfer of operating authority is approved. The amendments shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplement dated January 31, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 15th day of May 2000.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–12614 Filed 5–18–00; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305; License No. DPR–43]

Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company; (Kewaunee Nuclear Power Plant, Unit No. 1); Order Approving Transfer of Operating Authority and Conforming Amendment

I.

Wisconsin Public Service Corporation (WPSC), Wisconsin Power and Light Company (WP&L), and Madison Gas and Electric Company (MGE) (the licensees), are the holders of Facility Operating License No. DPR–43, which authorizes operation of Kewaunee Nuclear Power Plant, Unit No. 1 (Kewaunee or the facility). The facility is located at the licensees' site in Kewaunee County, Wisconsin. The license authorizes the licensees to possess, use, and operate Kewaunee.

II.

By application dated November 24, 1999, as supplemented December 7, 1999, and February 8, 2000, the Commission was informed that WPSC, on behalf of itself and WP&L and MGE, entered into operating service agreements with Nuclear Management Company, LLC (NMC). The initial application and the supplements are hereinafter referred to as ''the application'' unless otherwise indicated. Under the proposed transaction, NMC will be designated as the exclusive licensee authorized to use and operate Kewaunee in accordance with the terms and conditions of the license. The transaction involves no change in plant ownership. WPSC requested approval of the proposed transfer of operating authority under the Kewaunee facility operating license to NMC. The application also requested a conforming amendment to reflect the transfer. The proposed amendment would add NMC to the license as the licensee authorized to use and operate Kewaunee, and make changes to the license to reflect that the current licensees no longer have operating authority.

According to the application for approval filed by WPSC, NMC would become the licensee authorized to use and operate Kewaunee following approval of the proposed license transfer. NMC will assume exclusive responsibility for the operation and maintenance of Kewaunee. Ownership of Kewaunee will not be affected by the proposed transfer of operating authority. WPSC, WP&L, and MGE will retain their current ownership interest. NMC will not own any portion of Kewaunee. Likewise, the licensees' entitlement to capacity and energy from Kewaunee will not be affected by the transfer of operating authority. No physical changes to the Kewaunee facility were proposed in the application.

Approval of the transfer of operating authority under the facility operating license and conforming license amendment was requested by WPSC pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 4, 2000 (65 FR 5706). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by WPSC, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the license and that the transfer of the operating authority under the license to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated May 15, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the transfer of operating authority under the license as described herein to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, WPSC and NMC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 7 business days before the date of closing. If the transfer is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfer of operating authority of Kewaunee, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

It is further ordered that consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as

indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject transfer of operating authority is approved. The amendment shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplements dated December 7, 1999, and February 8, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 15th day of May 2000.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–12616 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 6, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 6, 2000–1:00 p.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, *etc.,* that may have occurred.

Dated: May 15, 2000.

Richard K. Major,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–12622 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission'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.

Revision 3 of Regulatory Guide 1.8, ''Qualification and Training of Personnel for Nuclear Power Plants,'' provides current guidance on qualifications and training for nuclear power plant personnel that is acceptable to the NRC staff. This regulatory guide endorses ANSI/ANS–3.1–1993, ''Selection, Qualification, and Training of Personnel for Nuclear Power Plants,'' with certain clarifications, additions, and exceptions.

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. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Recently published regulatory guides are available on the NRC's web site at <*WWW.NRC.GOV*> in the Reference Library under Regulatory Guides. Regulatory guides are also available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289. Issued guides may also be purchased may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. 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 3rd day of May 2000.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 00–12615 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Applicantion to Withdraw from Listing and Registration; (Audiovox Corporation, Class A Common Stock, $.01 Par Value) File No. 1–09532

May 12, 2000.

Audiovox Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the security described above (''Security'' from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company has undertaken to transfer trading in its Security from the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

Amex to the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq''), which it considers to be the preeminent marketplace from the securities of companies in its market segment. The Company has registered its Security pursuant to Section 12(g) of the Act [3] by filing a Registration Statement on Form 8–A with the Commission on January 11, 2000. The Security subsequently became designated for quotation and began trading on the Nasdaq National Market, and was simultaneously suspended from trading on the Amex, on January 13, 2000.

The Company has stated that it has complied with the Rules of the Amex governing the withdrawal of its Security from listing and registration on the Exchange, and that the Amex in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's trading and designation for quotation on the Nasdaq National Market or its registration under Section 12(g) of the Act. [4]

Any interested person may, on or before June 5, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, fracts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–12598 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78*l*(g).

[4] *Id.*

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27176]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 12, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 6, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 6, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/permitted to become effective.

Energy East, Corp., et al. (70–9609)

Energy East Corporation (''Energy East''), a New York corporation and a public utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission [1] and its subsidiaries, New York State Electric & Gas Corporation (''NYSEG''); Energy East Enterprises, Inc. (''Energy East Enterprises''); and Maine Natural Gas, L.L.C. (''Maine Natural Gas''), each located at One Canterbury Green, Stamford, Connecticut 06904; Connecticut Energy Corporation (''Connecticut Energy''), and its utility subsidiary, The Southern Connecticut Gas Company (''Southern Connecticut Gas''), each located at 855 Main Street, Bridgeport, CT 06604; CMP Group, Inc. (''CMP Group''), a Maine corporation and a public utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission [2] and CMP Group's utility subsidiaries, Central Maine Power Company (''Central Maine Power''); Maine Electric Power Company, Inc. (''MEPCo''); and NORVARCO, each located at 83 Edison Drive, Augusta, ME 04336; CTG Resources, Inc. (''CTG Resources''), a Connecticut corporation and a public utility holding company exempt from registration under section 3(a)(1) by rule 2 under the Act and CTG Resourses' utility subsidiary Connecticut Natural Gas Corporation (''Connecticut Natural Gas''), each located at 100 Columbus Boulevard, Hartford, CT 06103; and Berkshire Energy Resources (''Berkshire'') a Massachusetts corporation and a public utility holding company exempt from registration under section 3(a)(2) by rule 2 under the Act and Berkshire's utility subsidiary, The Berkshire Gas Company (''Berkshire Gas''), each located at 115 Chesire Road, Pittsfield, MA 01201 (collectively, ''Applicants'') [3] have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12, 13(b), 32, 33 and 34 of the Act and rules 42, 43, 45, 46, 52, 53, 54, 58 and 80–92 under the Act.

Upon completion of the Mergers, Energy East would own interests in the following eight public utility companies, each of which would be wholly owned by companies within the Energy East system, unless otherwise indicated: (1) NYSEG; (2) Southern Connecticut Gas; (3) Main Natural Gas (formerly CMP Natural Gas, L.L.C.); [4] Central Maine Power, (5) MEPCo; [5] (6) NORVARCO; (7) Connecticut Natural

[1] Holding Co. Act Release No. 27128 (Feb. 2, 2000).

[2] Holding Co. Act Release No. 26977 (Feb. 12, 1999).

[3] Two related application-declarations (collectively, ''Merger Applications'') seeking approvals required to complete the proposed acquisitions (''Mergers'') by Energy East of Connecticut Energy (S.E.C. File No. 70–9545), CMP Group, CTG Resources and Berkshire (S.E.C. File No. 70–9569) have been filed. The Commission authorize the acquisition of Connecticut Energy, Holding Co. Act Release No. 27128 (Feb. 2, 2000). A notice of the 70–9569 merger filing was issued, Holding Co. Act Release No. 27171 (April 21, 2000).

[4] Maine Natural Gas is a joint venture between New England Gas Development Corp. (holding a 19% interest), a wholly owned subsidiary of CMP Group, and Energy East Enterprises, a Maine corporation (holding an 81% interest), a wholly owned subsidiary of Energy East and a public utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission, Holding Co. Act Release No. 26977 (Feb. 12, 1999).

[5] Central Maine Power owns 78.3% voting interest of MEPCo with the remaining interests owned by two other Maine utilities.

Gas; and (8) Berkshire Gas (collectively, ''Utility Subsidiaries'').[6]

As explained more fully in the Merger Applications, Applicants propose Connecticut Energy, CMP Group, CTG Resources and Berkshire will remain in existence as first tier subsidiaries of Energy East following the Mergers. In addition, Energy East currently owns Energy East Enterprises which is a public utility holding company by virtue of the 81% interest it holds in Maine Natural Gas (collectively, ''Intermediate Holding Companies'').

Upon completion of the Merger, Energy East will also own approximately 41 other subsidiary companies that are not public utility companies under the Act (collectively, ''Nonutility Subsidiaries'').[7] Among the Nonutility Subsidiaries is Energy East Management Corporation (''EE Management''). A separate application-declaration has been filed with the Commission by Energy East in connection with EE Management assuming the role of providing management, administrative and corporate support services to the companies in the Energy East System.[8]

Collectively, the Utility Subsidiaries, the Intermediate Holding Companies and the Nonutility Subsidiaries are referred to as the ''Subsidiaries.'' The term ''Subsidiaries'' shall also include entities that become subsidiaries of Energy East after the consummation of the Mergers.

Applicants state that the cash portion of the consideration to be paid in the Mergers will be financed in part by the issuance of approximately $500 million of unsecured debt (''Acquisition Debt''). Energy East requests authority to maintain in place the Acquisition Debt and to refinance such Acquisition Debt. Applicants request approval for a program of external financing, credit support arrangements, and other related proposals for the period commencing on the effective date of an order issued under this filing and ending March 31, 2003 (''Authorization Period''). As described more fully below, Applicants propose to enter into numerous types of financing transactions to meet Energy East's capital requirements immediately following the Mergers and to plan future financing. Applicants seek authorization and approval of the Commission with respect to: (1) Ongoing financing activities of Energy East and its subsidiaries; (2) intrasystem extension of credit; (3) the creation or acquisition of nonutility subsidiaries; (4) the payment of dividends out of capital and unearned surplus; and (5) other related matters pertaining to Energy East and its Subsidiaries.

1. General Terms and Conditions of Financing

Financings by each Applicant will be subject to the following limitations: (1) The effective cost of money on short-term debt authorized in this proceeding will not exceed the competitive market rates available at the time of issuance to companies with comparable credit ratings with respect to debt having similar maturities; the obligations incurred in connection with any short-term financing with respect to Utility Subsidiaries will bear interest at a rate that will not exceed 300 basis points over the comparable term London Interbank Offered Rate (''LIBOR''); (2) maturity of long-term indebtedness will not exceed 50 years; (3) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale, or distribution of a security is estimated not to exceed 5% of the principal amount of the financing; and (4) Energy East's common equity will be at least 30% of its pro forma consolidated capitalization.

As explained more fully below, Energy East requests authority to issue and sell from time to time common stock, preferred stock, and unsecured debentures having maturities of up to 50 years (''Debentures'') in an aggregate amount not to exceed $2.5 billion, and unsecured short-term indebtedness having maturities of one year or less (''Short-Term Debt'') in an aggregate principal amount at any time outstanding not to exceed $750 million, provided that the aggregate principal amount of all indebtedness (including Acquisition Debt, Debentures and Short-Term Debt), of Energy East at any time outstanding shall not exceed $1.5 billion (''Energy East Debt Limitation '').

Applicants state that the proceeds from the financing will be used for general corporate purposes, including: (1) Financing, in part, investments by and capital expenditures of Energy East and its Subsidiaries, including, the funding of future investments in exempt wholesale generators (''EWGs''), foreign utility companies (''FUCOs''), companies engaged or formed to engage in activities permitted by rule 58 (''Rule 58 Subsidiaries''), and exempt telecommunications companies (''ETCs''); (2) the repayment, redemption, refunding or purchase by Energy East or any Subsidiary of any of its own securities under rule 42; and (3) financing working capital requirements of Energy East and its Subsidiaries.

2. Energy East External Financing

Energy East requests authority to issue and sell from time to time during the Authorization Period, commons stock, preferred stock, and Debentures in an aggregate amount not to exceed $2.5 billion and up to $750 million of Short-Term Debt at any time outstanding subject to the terms and conditions discussed below.

a. Common Stock

Energy East requests authorization to issue and sell from time to time common stock during the Authorization Period, either: (1) Through underwritten public offering; (2) in private placements; (3) under its dividend reinvestment plan and stock-based management incentive and employee benefit plans; or (4) in exchange for securities or assets being acquired from other companies. Energy East also proposes to issue and sell common stock or options, warrants, or other stocks purchase rights that are exercisable for common stock and issue common stock upon the exercise of such options, warrants, or other stock purchase rights. Energy East states that it may also buy back shares of common stock during the Authorization Period in accordance with rule 42.

Energy East also requests authorization to issue and/or sell shares of common stock under its existing stock plans and similar plans or plan funding arrangements later adopted, and to engage in other sales of its treasury shares for general business purposes, without any additional prior Commission order. Energy East seeks authority for the issuance and sale of its shares in accordance with its dividend reinvestment plan under the authorization and within the limitations set forth in this application-declaration.

Energy East requests authorization to issue common stock in consideration for an acquisition by Energy East or a Nonutility Subsidiary of securities or assets of a business, the acquisition of which has been approved by the Commission in this proceeding (see item 11 below) or is exempt under the Act or the rules (specifically, rule 58).

b. Preferred Stock

Energy East requests authorization to issue and sell preferred stock from time to time during the Authorization Period. The dividends payable on any series of preferred stock, as well as all other terms and conditions and any associated

[6] A description of the Utility Subsidiaries may be found in the notice in S.E.C. File No. 70–9569, Holding Co. Act Release No. 27171 (April 21, 2000).

[7] A listing and description of the Nonutility Subsidiaries may be found in the notice in S.E.C. File No. 70–9569, Holding Co. Act Release No. 27171 (April 21, 2000).

[8] See S.E.C. File No. 70–9675.

placement, underwriting or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable purchase agreement or underwriting agreement setting forth the terms; provided, that the dividend rate on any series of preferred stock would not exceed the rate generally obtainable at the time of issuance for preferred securities having the same or reasonably similar terms and conditions issued by utility holding companies of reasonably comparable credit quality, as determined by competitive capital markets.

c. Short-Term Debt

Energy East requests authorization to have outstanding at any one time during the Authorization Period, up to $750 million of unsecured Short-Term Debt, in aggregate principal amount, subject to the Energy East Debt Limitation. The effective cost of money on short-Term Debt authorized in this proceeding will not exceed the competitive market rates available at the time of issuance to companies with comparable credit ratings with respect to debt having similar maturities.

Energy East states that it may also establish bank lines in an aggregate principal amount not to exceed the $750 million limitation. Loans under these lines will have maturities not more than one year from the date of each borrowing. Energy East further states that it may engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

d. Debentures

Energy East requests authorization to issue and sell from time to time during the Authorization Period Debentures in one or more series, subject to the Energy East Debt Limitation. The Debentures: (1) May be convertible into any other securities of Energy East; (2) will have maturities ranging from one to 50 years; (3) may be subject to optional and/or mandatory redemption, in whole or in part, at par, or at various premiums about the principal amount; (4) may be entitled to mandatory or optional sinking fund provisions; (5) may provide for reset of the coupon under a remarketing arrangement; and (6) may be called from existing investors by a third party. In addition, Energy East states that it may have the right to defer the payment of interest on the Debentures of one or more series (which may be fixed, floating or ''multi-modal'' debentures, *i.e.,* debentures where the interest is periodically reset for each reset period). The Debentures would be issued under an indenture to be entered into between Energy East and a national bank, as trustee. Energy East states that it will not issue any Debentures that are not at the time of original issuance rated at least investment grade by a nationally recognized statistical rating organization, without further Commission authorization.

e. Other Securities

Energy East states that it may find it necessary or desirable to issue and sell other types of securities during the Authorization Period in addition to those specifically enumerated in the application-declaration. Energy East requests that the Commission reserve jurisdiction over the issuance of additional types of securities and the amounts, subject to the Energy East Debt Limitation. Energy East states it will file a post-effective amendment in this proceeding which will describe the general terms and amounts of each security and request a supplemental order of the Commission authorizing the issuance of that security by Energy East.

3. Utility Subsidiary Financing

a. Short-Term Debt of the Utility Subsidiaries

The Utility Subsidiaries request authority to issue and sell from time to time during the Authorization Period securities, to the extent they are not otherwise exempt under rule 52(a), with maturities of one year or less, up to the following aggregate principal amounts: NYSEG $275,000,000; Maine Natural Gas $50,000,000; Central Maine Power $150,000,000; MEPCo $30,000,000; NORVARCO $30,000,000; Southern Connecticut Gas $100,000,000; Connecticut Natural Gas $100,000,000; and Berkshire Gas $50,000,000.

Applicants state that subject to these limitations, the Utility Subsidiaries may engage in short-term financing as they deem appropriate in light of their needs and market conditions at the time of issuance. Short-term securities could include, without limitation, commercial paper sold in established commercial paper markets in a manner similar to Energy East, notes to banks under bank lines of credit and debt securities issued under their respective indentures and note programs. The obligations incurred in connection with any short-term security will bear interest at a rate which is not greater than 300 basis points over LIBOR.

4. Short-Term Debt of Intermediate Holding Companies

Each of the Intermediate Holding Companies requests authority to issue, sell and have outstanding at any one time during the Authorization Period debt securities with maturities of one year or less in the following aggregate principal amounts: CMP Group $30,000,000; Connecticut Energy $30,000,000; CTG Resources $30,000,000; Berkshire $30,000,000; and Energy East Enterprises $30,000,000.

Applicants state that subject to such limitations, the Intermediate Holding Companies may engage in short-term financing as they deem appropriate in light of their needs and market conditions at the time of issuance. This short-term financing could include, without limitation, commercial paper sold in established commercial paper markets in a manner similar to Energy East, bank lines and debt securities issued under their respective indentures and note programs. The obligations incurred in connection with any short term financing will bear interest at a rate which is not greater than 300 basis points over LIBOR.

5. Nonutility Subsidiary Financing

The Nonutility Subsidiaries request that the Commission reserve jurisdiction over the issuance by any Nonutility Subsidiary of any securities where the exemption under rule 52(b) would not apply. Energy East states that it will file a post-effective amendment in this proceeding which will describe the general terms of each non-exempt security and their amounts and request a supplemental order of the Commission authorizing the issuance of that security.

Where the Nonutility Subsidiary making the borrowing is not wholly owned by Energy East, directly or indirectly, Applicants request authorization for Energy East or a Nonutility Subsidiary, to make loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital.

6. Guaranties

a. Energy East Guaranties

Energy East requests authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support to or on behalf of subsidiaries (collectively, ''Energy East Guaranties'') as may be appropriate to enable each Subsidiary to operate in the ordinary course of business, in an aggregate principal amount not exceed $1 billion outstanding at any one time, provided,

that the amount of any Energy East Guaranties in respect of obligations of any EWG, FUCO or Rule 58 Subsidiary shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable.

b. Nonutility Subsidiary Guaranties

Nonutility Subsidiaries request authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support to or on behalf of other Nonutility Subsidiaries (collectively, ''Nonutility Subsidiary Guaranties'') in an aggregate principal amount not to exceed $700 million outstanding at any one time, exclusive of any guaranties and other forms of credit support that are exempt under rule 45(b) and rule 52, provided, that the amount of any Nonutility Subsidiary Guaranties in respect of obligations of any Rule 58 Subsidiary shall also be subject to the limitations of rule 58(a)(1).

c. Intermediate Holding Company Guaranties

Each Intermediate Holding Company requests authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support to or on behalf of their respective subsidiary companies (collectively, ''Intermediate Holding Company Guaranties'') as may be appropriate to enable such companies to operate in the ordinary course of business, in an aggregate principal amount not to exceed $30 million outstanding at any one time, provided, that the amount of any Intermediate Holding Company Subsidiary Guaranties in respect of obligations of any Rule 53 Subsidiary shall also be subject to the limitations of rule 58(a)(1).

7. Hedging Transactions

a. Interest Rate Hedges

Energy East, and to the extent not exempt under rule 52, the Subsidiaries, request authority to enter into interest rate hedging transactions (''Interest Rate Hedges'') with respect to outstanding indebtedness of such companies in order to manage and minimize interest rate costs. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's, are equal to or grater than BBB, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff and Phelps. Interest Rate Hedges would involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations.

b. Anticipatory Hedges

Energy East and the Subsidiaries request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''). Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the interest rate risk associated with any new issuance through: (1) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a ''Forward Sale''); (2) the purchase of put options on U.S. Treasury obligations (a ''Put Options Purchase''); (3) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (a ''Zero Cost Collar''); (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars.

The Applicants state they will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with all interest rate hedges and anticipatory hedges.

8. Changes in Capital Stock in Subsidiaries

Energy East, on behalf of the Subsidiaries, requests authorization to change the terms of the authorized capital stock capitalization of any wholly owned Subsidiary or Intermediate Holding Company, by an amount deemed appropriate by Energy East or other intermediate parent company. If that authority were granted, a Subsidiary would be able to change the par value, or change between par and no-par stock, without additional Commission approval. Any action of this type by a Utility Subsidiary would be subject to, and would be taken only upon receipt of, necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

9. Financing Subsidiaries

Energy East and the Subsidiaries request authorization to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships, or other entities (''Financing Subsidiaries'') created specifically for the purpose of facilitating the financing of the authorized and exempt activities of Energy East and the Subsidiaries. The Financing Subsidiaries would issue long-term debt or equity securities, including monthly income preferred securities, to third parties and transfer the proceeds of these financings by the Financing Subsidiaries to Energy East or to a Subsidiary.

Applicants state that, if the direct parent company of a Financing Subsidiary is authorized in this proceeding or any subsequent proceeding to issue long-term debt or similar types of equity securities, then the amount of those securities issued by its Financing Subsidiary would count against the limitation applicable to its parent for those securities. In these cases, however, the guaranty by the parent of that security issued by its Financing Subsidiary would not count against the limitations on Energy East Guaranties or Intermediate Holding Company Guaranties or Nonutility Subsidiary Guaranties. If the parent is not authorized in this or in a subsequent proceeding to issue similar types of securities, the amount of any guaranty not exempt under rules 45(b)(7) and 52 that is entered into by the parent company with respect to securities issued by its Financing Subsidiary would count against the limitation on Energy East Guaranties, Intermediate Holding Company Guaranties or Nonutility Subsidiary Guaranties. Energy East requests that the Commission reserve jurisdiction over any transfer of proceeds of financing by any Financing Subsidiary to Energy East pending completion of the record.

10. Intermediate Subsidiaries

Energy East requests authorization to acquire, directly or indirectly, the securities of one or more intermediate subsidiaries (''Intermediate Subsidiaries'' are those subsidiaries organized for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs or FUCOs, Rule 58 Subsidiaries, ETCs or other Nonutility Subsidiaries (as authorized in this proceeding or in a separate proceeding), provided that Intermediate Subsidiaries may also engage in development activities (''Development Activities'')

and administrative activities (''Administrative Activities''), relating to these subsidiaries). To the extent these transactions are not exempt from the Act or otherwise authorized, or permitted by rule, regulation or order of the Commission, Energy East requests authority for Intermediate Subsidiaries to provide management, administrative, project development and operating services to these entities. Applicants state that these services may be rendered at fair market prices to the extent they qualify for any of the exceptions from the ''at cost'' standard requested in item 12, below.

Applicants request authority for the Intermediate Subsidiaries to expend up to $100 million during the Authorization Period on Development Activities. Applicants state that Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses.

Applicants state that Energy East may determine from time to time to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to such investments, under one or more Intermediate Subsidiaries. To the extent that these transactions are not otherwise exempt under the Act or rules, Energy East requests authorization to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries, Energy East's ownership interests in existing and future Nonutility Subsidiaries.

11. Investments in Energy-Related Assets

Nonutility Subsidiaries request authorization to acquire or construct in one or more transactions during the Authorization Period, nonutility energy assets in the United States, including, natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, ''Energy-Related Assets'') that would be incidental to the energy marketing, brokering and trading operations of Energy East Subsidiaries. Nonutility Subsidiaries request authorization to invest up to $500 million (''Investment Limitation'') during the Authorization Period in Energy-Related Assets or in the equity securities of existing of new companies substantially all of whose physical properties consist or will consist of Energy-Related Assets. These Energy-Related Assets may be acquired for cash or in exchange for common stock or other securities of Energy East or a Nonutility Subsidiary of Energy East or any combination of the same.

12. Exemption from Section 13(b)

Energy East's Nonutility Subsidiaries request authorization to provide services to sell goods to each other at fair market prices determined without regard to cost, and thus, request an exemption (to the extent rule 90(d) does not apply) under section 13(b) from the cost standards of rules 90 and 91 as applicable to these transactions, in any case in which the Nonutility Subsidiary purchasing these goods or services is:

(1) A FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(2) An EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission (''FERC''), provided that the purchaser is not one of the Utility Subsidiaries;

(3) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA'') that sells electricity exclusively (a) at rates negotiated at arms' length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (b) to an electric utility company (other than a Utility Subsidiary) at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(4) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser is not one of the Utility Subsidiaries; or

(5) A Rule 58 Subsidiary that (a) is partially owned by Energy East, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary or EE Management (or any other entity that Energy East may form whose activities and operations are primarily related to the provision of goods and services to Utility Subsidiaries of EE Management), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (1) through (4) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

13. Activities of Rule 58 Subsidiaries Within and Outside the United States

Energy East, on behalf of any current or future Rule 58 Subsidiaries, requests authorization to engage in business activities, permitted by rule 58, including energy marketing, energy management services and consulting services, both within and outside the United States. Energy East requests that the Commission: (1) Reserve jurisdiction over energy marketing activities outside the United States and Canada pending completion of the record in this proceeding; (2) authorize Energy East and its direct and indirect subsidiaries to provide energy management and consulting services anywhere outside the United States; and (3) reserve jurisdiction over other activities of Rule 58 Subsidiaries outside the United States, pending completion of the record.

14. Payment of Dividends

a. Energy East, the Intermediate Holding Companies and the Utility Subsidiaries

Energy East, Intermediate Holding Companies and their respective Utility Subsidiaries request authorization to pay dividends out of capital and unearned surplus in an amount up to the retained earnings of such companies prior to the Mergers. In addition, after the Mergers are completed, each of these companies requests authorization to pay dividends out of earnings before amortization of goodwill, for the duration of the goodwill amortization period.

b. Nonutility Subsidiaries

Energy East requests authorization, on behalf of itself and each of its current and future non-exempt Nonutility Subsidiaries, that these companies be permitted to pay dividends with respect to the securities of these companies, through the Authorization Period, out of capital and unearned surplus.

15. Tax Allocation Agreement

Applicants request the Commission approve an agreement for the allocation of consolidated tax among Energy East and the Subsidiaries (''Tax Allocation Agreement''). Approval is necessary because the proposed Tax Allocation Agreement may provide for the retention by Energy East of certain payments for tax losses incurred, rather than allocate these losses to Subsidiaries without payment, as rule 45(c)(5) would otherwise require. Applicants state that Energy East or its finance subsidiary will create tax deductions chiefly in the form of deductions for interest expense on the Acquisition Debt that are non-recourse to the Subsidiaries.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–12599 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Rogers Corporation, Capital Stock, $1 Par Value, and Rights To Purchase Capital Stock, $1 Par Value) File No. 1–04347

May 12, 2000.

Rogers Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw the securities described above (''Securities'') from listing and registration on the Pacific Exchange, Inc. (''PCX'').[3]

The Company is seeking to withdraw its Securities from listing and registration on the PCX in conjunction with the commencement of their trading on the New York Stock Exchange, Inc. (''NYSE''). The Company hopes that, with an NYSE listing, it will be able to realize a broader market base for its Securities than it has had through the PCX.

Subsequent to the filing of the Company's Registration Statements on Form 8–A with the Commission, which became effective on April 6, 2000, trading in the Securities commenced on the NYSE at the opening of business on April 18, 2000. In making the determination to withdraw its Securities from listing and registration on the PCX in conjunction with the new listing and registration on the NYSE, the Company hopes to avoid both the costs associated with maintaining multiple listings and a potential fragmentation of the market for its Securities.

The Company has stated that it has complied with the rules of the PCX governing the withdrawal of its Securities, and that the PCX has in turn indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Securities from listing and registration on the PCX and shall have no effect upon the Securities' continued listing and registration on the NYSE. By reason of section 12(b) of the Act [4] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under section 13 of the Act.[5]

Any interested person may, on or before June 5, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–12597 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] The Company previously filed an application with the Commission to withdraw its Securities from listing and registration on the American Stock Exchange LLC. The Commission has already solicited public comment on this prior application. *See* Securities Exchange Act Release No. 42744 (May 2, 2000), 65 FR 26646 (May 8, 2000).

[4] 15 U.S.C. 78*l*(b).

[5] 15 U.S.C. 78m.

[6] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24453; 812–11980]

Lifetime Achievement Fund, Inc., et al.; Notice of Application

May 12, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a fund of funds relying on section 12(d)(1)(F) of the Act to charge a sales load in excess of 1½ percent.

APPLICANTS: Lifetime Achievement Fund, Inc. (the ''Fund''), Manarin Investment Counsel, Ltd. (the ''Adviser'') and Manarin Securities Corporation (the ''Distributor'').

FILING DATES: The application was filed on February 17, 2000. Applicants have agreed to file an amendment 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 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 June 6, 2000, 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, N.W., Washington, D.C. 20549–0609; Applicants, c/o Charles H. Richter, Lifetime Achievement Fund, Inc., 11605 West Dodge Road, Omaha, NE 68154.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, 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, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is a Maryland corporation and is registered under the Act as an open-end management investment company. The Fund intends to invest all or substantially all of its assets in the shares of various other registered investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(F) of the Act. The Adviser is registered under the Investment Advisers Act of 1940 and acts as investment adviser to the Fund. The Distributor is the principal underwriter to the Fund. Applicants request relief to permit the Fund to charge a sales load in excess of the limit in section 12(d)(1)(F)(ii) of the Act.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquiring company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(F) of the Act provides that Section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

4. Applicants request an order under section 12(d)(1)(J) exempting them from the sales load limitation in section 12(d)(1)(F)(ii). Applicants agree, as a condition to the requested order that any sales charges, distribution related fees, and service fees relating to the shares of the Fund, when aggregated with any sales charges, distribution related fees and service fees paid by the Fund relating to its acquisition, holding or disposition of shares of the Underlying Funds will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers Inc. (''NASD'') Conduct Rules.

Applicants' Conditions

1. The Fund will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution related fees, and service fees relating to the shares of the Fund, when aggregated with any sales charges, distribution related fees and service fees paid by the Fund relating to its acquisition, holding or disposition of shares of the Underlying Funds will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

3. No Underlying Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act except to the extent that such Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

4. Before approving any advisory contract under section 15 of the Act, the Board of the Fund, including a majority of the Board who are not ''interested persons'' (as defined in section 2(a)(19) of the Act), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Fund advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–12600 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 22, 2000.

An open meeting will be held on Tuesday, May 23, 2000 at 9:00 a.m. in Room 1C30.

The subject matter of the open meeting scheduled for Tuesday, May 23, 2000 at 9 a.m. will be:

The Commission's Division of Investment Management will conduct a roundtable discussing several issues relating to investment advisers. The roundtable will bring together investment advisers, legal counsel to advisers, representatives from state regulatory bodies, representatives from the NASD, and others to discuss these issues and offer their recommendations. For further information, please contact Cynthia M. Fornelli at (202) 942–0720, or J. David Fielder at (202) 942–0530.

A closed meeting will be held on Wednesday, May 24, 2000 at 11:00 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)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled Wednesday, May 24, 2000 will be:

Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further

information and to ascertain that, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 16, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–12687 Filed 5–16–00; 4:07 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42779; File No. SR–OPRA–00–04]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

May 12, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 9, 2000, the Options Price Reporting Authority (''OPRA'')[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed OPRA Plan amendment would extend the current temporary capacity allocation plan for peak usage periods through the close of trading on May 25, 2000, to minimize the likelihood that during this period the total number of messages generated by the OPRA participant exchanges will exceed the processor's (*i.e.,* Securities Industry Automation Corporation (''SIAC'')) aggregate message handling capacity. In addition, to accommodate the anticipated entry into OPRA of the International Securities Exchange (''ISE''), the amendment has been modified to reallocate OPRA systems capacity during peak usage periods among the options exchanges to include ISE. If, as expected, the ISE becomes a participant in OPRA, the amendment, as modified, would proportionally reduce the existing allocations to the Amex, CBOE, PCX, and Phlx, based on each OPRA participant's relative share of total OPRA systems capacity, to allocate systems capacity to the ISE. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed OPRA Plan amendment, as modified, and to grant accelerated approval to the proposed OPRA Plan amendment, as modified, on a temporary basis, for 120 days.

I. Description and Purpose of the Amendment

As discussed above, OPRA proposes to extend the temporary period during which the message handling capacity of its processor is allocated among the participant exchanges, currently scheduled to end on May 13, 2000,[3] for an additional twelve days, through the close of trading on May 25, 2000. Through May 25, 2000, the processor's aggregate message-handling capacity, estimated by the processor to be 3,540 messages per second,[4] will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange: 1,024 messages per second
Chicago Board Options Exchange: 1,366 messages per second
Pacific Exchange: 635 messages per second
Philadelphia Stock Exchange: 515 messages per second

ISE is scheduled to begin trading on May 26, 2000[5] and is expected prior to that date to become a participant in OPRA. To date, the OPRA participants have been unable to agree to a method by which to allocate existing capacity to ISE. Because there has been no increase in overall OPRA systems capacity that would accommodate ISE's capacity needs, the 60 messages per second that ISE has requested for its first month of operation will have to be allocated to ISE by reducing the other OPRA participants current allocation levels. To facilitate the allocation of existing capacity to ISE, the Commission is modifying the proposed OPRA Plan amendment to provide for a promotional distribution of capacity to ISE based on each OPRA participant's relative share of total OPRA system capacity if, as expected, ISE becomes a participant in OPRA.

Specifically, the proposed allocation plan, which will be in effect on a temporary basis for 120 days, would operate as follows during peak usage periods:

- The existing allocation scheme would remain in place through May 25, 2000.
- Assuming, as anticipated, that ISE is a participant in OPRA, from May 26 until June 25, 2000, ISE would be allocated 55 messages per second,[6] with the other exchanges' existing allocation reduced proportionally. To provide ISE with a capacity allocation of 55 messages per second during its first month of operation, the following allocation among the exchanges would result: 1,008 messages per second to the Amex (a reduction of 16 messages per second); 1,345 messages per second to the CBOE (a reduction of 21 messages per second); 625 messages per second to the PCX (a reduction of 10 messages per second); 507 messages per second to the Phlx (a reduction of 8 messages per second); and 55 messages per second to ISE.
- Assuming, as anticipated, that ISE is a participant in OPRA, beginning June 26, 2000, ISE's allocation would be increased by 55 messages per second every 30 days for as long as this Order is in effect (*i.e.,* 110, 165, and 220 messages per second for ISE's second, third, and fourth months of operation, respectively). The same proportional reduction in the current level of capacity allocated to the existing markets would provide the additional allocation for ISE.

In the event that additional capacity becomes available to the OPRA system

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges that agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''PHLX'').

[3] The Commission approved three consecutive temporary capacity allocation plans that were proposed by OPRA Participants. *See* Securities Exchange Act Release Nos. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (order approving File No. SR–OPRA–00–01); 42362 (January 28, 2000), 65 FR 5919 (February 7, 2000) (order approving File No. SR–OPRA–00–02); and 42493 (March 3, 2000), 65 FR12597 (March 9, 2000) (order approving File No. SR–OPRA–00–03). In addition, the Commission has sought public comment on two alternative formulas for allocating OPRA systems capacity during peak usage periods. *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4–434).

[4] The proposed OPRA Plan amendment incorrectly referred to 3,518 messages per second. It had been modified here pursuant to OPRA's verbal request. Telephone conversation between Joseph Corrigan, Executive Director, OPRA, and Deborah Flynn, Senior Special Counsel, Division of Market Regulation, Commission, on May 9, 2000.

[5] ISE was registered as a national securities exchange for options trading on February 24, 2000. *See* Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[6] Although ISE initially requested from OPRA a capacity allocation during peak periods of 60 messages per second, the Commission is allocating 55 messages per second to it during its first month of operation. The Commission believes that the ISE, like the other options exchanges, will need to undertake efforts to encourage its market makers to quote as efficiency as possible to stay within the 55 messages per second cap.

during the 120 days that this order is in effect, and the OPRA participants fail to agree to a new allocation plan to reflect the higher capacity available, the additional capacity would be distributed in the same proportions as allocated under this Order. If, at any time, the OPRA participants submit to the Commission a proposed OPRA Plan amendment that is consistent with the Act, the Commission will act to replace and supersede this temporary order with that proposal.

II. Implementation of the Plan Amendment

OPRA believes the proposed extension of the temporary capacity allocation program through May 25, 2000, is needed to avoid delays and queues in the dissemination of options market information. The availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities, is necessary to achieve the objective of Section 11(A)(a)(1)(C)(iii) of the Act.[7] Accordingly, OPRA requests that the Commission permit the extension of the proposed allocation program to be put into effect summarily upon publication of notice of this filing, pursuant to paragraph (c)(4) of Rule 11Aa3–2 under the Act.[8] Based on a finding by the Commission that such action, as modified for the reasons described in Section IV below, is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those 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 the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–04 and should be submitted by June 9, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

After careful review, the Commission finds that the proposed OPRA Plan amendment, as modified, is consistent with the requirements of the Act and the rules and regulations thereunder.[9] Specifically, the Commission believes that the proposed amendment, as modified, which allocated the limited capacity of the OPRA system among the options markets during peak usage periods, is consistent with Rule 11Aa3–2 under the Act[10] in that it will contribute to the maintenance of fair and orderly markets and remove impediments to, and perfect the mechanisms of, a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit, and at times surpasses, OPRA's systems capacity. OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the second quarter of this year, at the earliest. Consequently, the Commission is concerned that, absent a program to allocate systems capacity among the options markets that is put in place immediately, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the option markets. The Commission believes that the agreed-upon extension of the current allocation plan is a reasonable means for addressing potential strains on capacity that may occur between now and May 25, 2000.

The Commission believes that the reallocation of OPRA systems capacity to provide an allocation to ISE is appropriate if, as expected, the ISE becomes a participant in OPRA, particularly in light of the temporary nature of the allocation plan, which will be in effect for no more than 120 days. In fact, several factors make it likely that this temporary plan will be superceded prior to its expiration date. First, if at any time the OPRA participant exchanges files with the Commission a capacity allocation plan for peak usage periods that is consistent with the Act, the Commission will act to substitute that proposal for this plan. Second, the Commission recently requested comment on its proposed amendment to the OPRA Plan to adopt an objective capacity allocation formula.[11] The Commission notes that the comment period on that proposal expires on June 9, 2000. Approving this interim measure on a temporary basis will permit the comment letters received by the Commission to be carefully considered before deciding whether to take final action on the proposal. Finally, the enhancements to the OPRA system are expected to increase systems capacity from 3,540 messages per second to 8,000 messages per second. That increase will create incentives for the OPRA participants to reevaluate this capacity allocation plan and submit to the Commission a modified capacity allocation plan consistent with the Act.

The Commission further believes that the proposed amendment to the OPRA Plan to reallocate OPRA system capacity among the options exchanges, including ISE, on a temporary basis is necessary to accommodate ISE's entry into the market. The Commission rarely invokes its authority to modify proposed amendments to national market system plans, but believes that exigent circumstances including, the inability of the OPRA participants to agree to an allocation that includes ISE, the potential harm to investors should queuing occur, and the desirability of permitting ISE to begin trading, mandate the Commission's action. Specifically, the Commission finds that it is necessary and appropriate to approve the proposed allocation plan, as modified,[12] to be in effect for no more than 120 days, to ensure that all potential barriers to entry are removed prior to ISE's commencement of trading.

The Commission finds good cause to accelerate the proposed OPRA Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register.** The Commission notes that the proposed OPRA Plan amendment is intended to allocate OPRA system capacity for a short period of time, 120 days, to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message

[7] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[8] 17 CFR 240.11 Aa3–2(c)(4).

[9] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 240.11Aa3–2.

[11] *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4–434).

[12] The Commission has authority to approve any proposed National Market System Plan amendment ''with such changes or subject to such conditions as the Commission may deem necessary or appropriate,'' and to do so by order.

traffic. The Commission believes that approving the proposed capacity allocation will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate, and possibly implement, other quote mitigation strategies. In addition, the limited time frame of this capacity allocation program provides the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed OPRA Plan amendment, as modified, is appropriate and consistent with Section 11A of the Act.[13]

V. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act,[14] that the proposed OPRA Plan amendment, as modified, (SR–OPRA–00–04) is approved on an accelerated basis until September 9, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–12601 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42782; File No. SR–DTC–00–03]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to Establishing a Depository Link With SIS SegaInterSettle AG

May 15, 2000.

On February 22, 2000, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–00–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 9, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

Under the rule change, DTC will establish a free-of-payment omnibus account at SIS SegaInterSettle AG (''SIS'') in order to create a one-way DTC–SIS link. The link will permit, but will not require, DTC to hold in its account at SIS positions in issues that are eligible at both DTC and SIS. The interface will enable DTC participants to more efficiently move and position their inventory through book-entry movements from one depository's books to the other's.[3]

Establishment of the link will enable a DTC participant to settle a cross-border transaction with an SIS counterparty by making a free-of-payment book-entry delivery from DTC's omnibus account at SIS to the SIS participant's account at SIS. Conversely, an SIS participant will be able to settle a cross-border transaction with a DTC participant by making a free-of-payment book-entry delivery from the SIS participant's account at SIS to the DTC omnibus account at SIS (while identifying the DTC participant to which the delivered securities should be credited). The receiving DTC participant then will be able to redeliver the securities on either a free-of-payment or versus-payment basis to any other DTC participant within DTC.

SIS will make SIS's custody and depository services (such as income collection, maturity presentments, and reorganization processing) available to DTC for securities held in DTC's account at SIS in accordance with SIS procedures. Whether DTC holds its underlying inventory in Switzerland or in the U.S., DTC services to DTC participants will be the same as are currently provided.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. For the reasons set forth below, the Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act.

The Commission believes that the link between DTC and SIS should promote the prompt and accurate clearance and settlement of securities transactions. The central purpose of the link is to facilitate the efficient processing of cross-border securities transactions between DTC participants and SIS participants. By opening an omnibus account at SIS, DTC will enable its participants to substitute efficient book-entry movements for inefficient physical movements of securities certificates from SIS to DTC. The link should reduce much of the time, expense, costs, and risks associated with physically moving certificates from SIS and redepositing them at DTC.

The Commission also believes that DTC has established the link with SIS in a manner that is consistent with its safeguarding obligations under the Act. In order to assure itself that the linking with SIS is safe and prudent, DTC completed an extensive review of such things as: (1) SIS's operational controls, financial strength, technology capabilities, and audit arrangements; (2) Swiss regulation of SIS; and (3) application and effect of Swiss and U.S. laws as they pertain to the link.

Accordingly, the Commission finds that the link satisfies DTC's obligations to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–00–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–12628 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

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[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2.

[15] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42482, (March 1, 2000), 65 FR 12602.

[3] With respect to global share issues of issuers such as UBS, DTC expects to hold the bulk of its positions at DTC so that DTC's position will be reflected on the books of U.S. transfer agents.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3315]

Secretary of State's Advisory Committee on Private International Law; Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations

AGENCY: Office of the Legal Adviser, U.S. Department of State.

Section 459A of the Social Security Act (42 U.S.C. 659A) authorizes the Secretary of State with the concurrence of the Secretary of Health and Human Services to declare foreign countries or their political subdivisions to be reciprocating countries for the purpose of the enforcement of family support obligations if the country has established or has undertaken to establish procedures for the establishment and enforcement of duties of support for residents of the United States. These procedures must be in substantial conformity with mandatory elements set out in the statute: procedures for the establishment of paternity and support orders for children and custodial parents; a system for the enforcement of orders, including procedures for the collection and distribution of payments under such orders; providing administrative and legal services without cost to the U.S. applicant; and the designation of an agency to serve as a central authority.

Once such a declaration is made, support agencies in jurisdictions of the United States participating in the program established by Title IV–D of the Social Security Act (the IV–D program) must provide enforcement services under that program to such reciprocating countries as if the request for service came from a U.S. state.

The declarations authorized by the statute may be made ''in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis.'' The Secretary of State has authorized either the Legal Adviser or the Assistant Secretary for Consular Affairs to make such a declaration after consultation with the other.

As of this date, the following countries have been designated foreign reciprocating countries by such a declaration and a corresponding declaration from the foreign country.

Country	Effective date
Ireland	September 10, 1997.
Slovak Republic	February 1, 1998.
The Canadian Province of Nova Scotia.	May 14, 1999.
Poland	June 14, 1999.
British Columbia	April 21, 2000.
Manitoba	April 21, 2000.

Information

Each of these countries has designated a Central Authority to facilitate enforcement and ensure compliance with the standards of the statute. Information relating to these agreements, the designated Central Authorities, and the procedures for processing requests may be obtained from the United States Central Authority in the Department of Health and Human Services by contacting Stephen Grant, International Child Support Officer, Office of Child Support Enforcement (OCSE), 370 L'Enfant Promenade SW, 4 Aerospace Building, Washington, DC 20447, phone (202) 260–5943, fax (202) 401–5539, email ''sgrant@acf.dhhs.gov''.

Questions regarding this notice, the status of negotiations and agreements may be obtained by contacting the office of the Assistant Legal Adviser for Private International Law, South Building, Suite 203, 2430 E Street, NW, Washington, DC 20037–2800; phone (202) 776–8420, fax (202) 776–8482, ''email pildb@his.com'' or (415) 703–5890, fax (415) 703–1234.

The statute also permits individual states to establish or continue existing reciprocal arrangements with foreign countries when there has been no federal declaration. Many states have such arrangements with additional countries not yet the subject of a federal declaration. Information as to these arrangements may be obtained from the individual state IV–D Agency.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law, Department of State.

[FR Doc. 00–12661 Filed 5–18–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on May 25, 2000, at 10 a.m.

ADDRESSES: The meeting will be held in Room 318, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Committee to be held on May 25, 2000. The agenda for this meeting will include reports from the Airplane Performance Working Group and the All-Weather Operations Working Group, and discussion of a new task, Extended Range Operations of Airplanes (ETOPS). Attendance is open to the interested public but may be limited by the space available. The Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements of the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

If you are in need of assistance or require a reasonable accommodation for this event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on May 16, 2000.

Gregory L. Michael,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–12683 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on Transportation Improvements Within the Proposed North/South Central and Southeast Corridors in Austin, Texas

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Capital Metropolitan Transportation Authority (CMTA) is issuing this notice to advise interested agencies and the public that an environmental impact statement is being prepared in accordance with the National Environmental Policy Act (NEPA) for transportation improvements in the proposed North/South Central and Southeast Corridors in Austin, Texas. Due to tremendous growth in the Austin Metropolitan Area over the past decade, major north-south freeways and arterials serving three major employment centers are severely congested. In 1997, 50% of commuters used north/south freeways daily. Additionally, the Austin metropolitan area has exceeded the Environmental Protection Agency (EPA) standards for ozone over the past three years and risks non-attainment designation in 2000. The proposed project will provide alternative means of travel for commuters to their destination, reduce congestion and vehicular emissions, and improve air quality in the region.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to Surinder Marwah, Project Manager by June 23, 2000. *Scoping Meetings:* Three public scoping meetings will be held at the following locations and dates. Scoping material will be available at the meeting or in advance of the meeting by contacting Sam Archer, Capital Metro, at (512) 389–7546. A court reporter will be available to record comments and a sign language interpreter will be available for the hearing impaired. A TDD number (512) 389–3230 is also available for the hearing impaired. The buildings are accessible to people with disabilities.

Public Scoping

Tuesday, June 6, 2000, from 7:00 P.M. to 9:00 P.M., Winters Bldg.—Public Hearing Room, Texas Dept. of Human Services (Winters Building), 701 West 51st Street, Austin, Texas

Wednesday, June 7, 2000, from 7:00 P.M. to 9:00 P.M., South Austin Multipurpose Center, 2508 Durwood St., Austin, Texas

Thursday, June 8, 2000, from 7:00 P.M. to 9:00 P.M., Austin History Center Reception Room, 9th and Guadalupe, Austin, Texas

Interagency Scoping

Monday, June 5, 2000 from 1 P.M. to 3 P.M., Capital Metro, 2910 East 5th Street, Austin, Texas 78702

ADDRESSES: Written comments on the project scope should be sent to Surinder Marwah, Project Manager, Capital Metro, 2910 East 5th Street, Austin, Texas 78702. Telephone (512) 369–6047, Fax (512) 369–6072.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Balleza, Federal Transit Administration, Region VI, 819 Taylor Street, Suite 8A36, Fort Worth, Texas 76102; Telephone (817) 978–0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

The Federal Transit Administration (FTA) in cooperation with the Capital Metropolitan Transportation Authority (Capital Metro), intends to prepare an Environmental Impact Statement (EIS) for the proposed North/South Central and Southeast Corridors in Austin, Texas. The public is invited to participate in developing the analysis approach, alignment alternatives to be evaluated, and the mode and technologies to be considered. Project comments may be made at the public scoping meetings or in writing. See the ''Scoping Meeting''' section above for locations and times.

II. Description of Corridor and Its Transportation Needs

The proposed North/South Central Corridor would provide service from Ben White Boulevard, through the central business district (CBD) to north Austin at McNeil Road. The proposed Southeast Corridor would provide service from the CBD to Pleasant Valley/Martin Luther King (MLK) Boulevard. Combined, the initial phase would be approximately 20 miles long and encompass approximately 26 stations, including park and ride lots. A portion of the proposed project would operate along the existing railroad right-of-way (ROW) owned by Capital Metro from McNeil Road in north Austin to Lamar Boulevard at Airport Road, then operate in the street through the CBD to Ben White Boulevard in south Austin, and in street from the CBD to IH–35 and then along existing railroad ROW to Pleasant Valley/MLK Blvd. The proposed alignment would provide access to three major activity centers in Austin, the University of Texas at Austin, the State Capitol Complex, and the CBD.

The Austin Metropolitan Area is one of the fastest growing regions in the United States. Between 1990 and 1997, the population increased almost 30% (U.S. Census). The Capital Area Metropolitan Planning Organization (CAMPO) estimates the population will exceed 1.9 million by year 2025. In 1997, 50% of commuters used north/south freeways daily (CAMPO). The current north-south freeways (IH–35 and Loop 1/Mopac Expressway) will have to increase capacity significantly to meet future demand.

Additionally, the Austin metropolitan area has exceeded the Environmental Protection Agency (EPA) standards for ozone over the past three years and risks non-attainment designation in 2000. The Texas Natural Resource Conservation Commission has attributed vehicular emissions as the single largest cause of air pollutants in the region.

Area residents particularly minority, elderly, or low-income individuals often rely on transit for their transportation needs. Regional employment also has continued to grow, particularly in the high-tech industry. The emergence of new activity centers along the proposed corridor within the last fifteen years has created new commuting patterns and additional demands on transportation facilities.

III. Alternatives

The transportation alternatives proposed for consideration in this project area include:

No-Action—which involves no change to transportation services or facilities in the corridor beyond already committed projects;

Enhanced Bus/Transportation System Management (TSM)—alternative which consists of low to medium cost improvements to the facilities and operation of the Capital Metro bus system in addition to the currently planned transit improvements in the corridors, and

Build Alternative—Build alternatives (including line, station locations and support facilities), including light rail and bus rapid transit transportation modes generally following the existing railroad right-of-way (ROW) owned by Capital Metro from McNeil Road in north Austin to Lamar Blvd. At Airport Road, then operate in the street through the CBD to Ben White Blvd. in south Austin, and in street from the CBD to

IH–35 and then along existing railroad ROW to Pleasant Valley/MLK Blvd.

IV. Probable Effects

The FTA and Capital Metro will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: land use and neighborhood protection, traffic and parking, visual, noise and vibration, safety, aesthetics, storm water management, archaeological, historic, cultural and ecological resources. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and potentially contaminated sites will also be studied. Displacements and relocations, ecosystems, water resources, hazardous waste, parklands, and energy impacts will be assessed. The impacts will be evaluated for the construction period and for the long-term operation of each alternative. Measures to avoid, minimize or mitigate any significant adverse impacts will be developed.

V. FTA Procedures

In accordance with the federal transportation planning regulations (23 CFR Part 450), the Draft EIS will be prepared to include an evaluation of the social, economic, and environmental impacts and benefits of the alternatives. The DEIS will consider the public and agency comments received and Capital Metro in coordination with CAMPO and other affected agencies, will select the preferred alternative. Then Capital Metro, as the local lead agency, will continue with the preparation of the Final EIS (FEIS). Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: May 16, 2000.

Blas M. Uribe,

Deputy Regional Administrator.

[FR Doc. 00–12637 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on Transit Improvements in Los Angeles

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (MTA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transportation improvements in Los Angeles County, California. In addition, the MTA will be jointly issuing an Environmental Impact Report (EIR), pursuant to the California Environmental Quality Act (CEQA). The purposes of the project are to improve east-west travel options in the San Fernando Valley and to provide a connection to other portions of a regional rail and bus network. The options being considered include Transportation Systems Management (TSM) and Bus Rapid Transit (BRT). The latter alternative would be focused on the former Southern Pacific (SP) Burbank/Chandler railroad right-of-way.

In the course of this study, FTA expects the MTA and the Southern California Association of Governments, which is responsible for transportation planning in metropolitan Los Angeles, to establish priorities for the proposed transit improvement in the San Fernando Valley and the myriad of other competing projects and transit needs in the region. This prioritization of proposed projects and other transit needs will involve, among other considerations, the development of a financial plan that identifies for each capital need the non-Federal funds to be used along with the proposed Federal funding.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to the address below by June 23, 2000.

Scoping Meeting Dates: Scoping workshops will be held on: May 24, 2000 at Sherman Oaks Women's Club from 6:00 p.m. until 8:00 p.m., and on May 25, 2000 at the Conference Room at Kaiser Permanente, Woodland Hills from 6:00 p.m. until 8:00 p.m. See the **ADDRESSES** below. The public is invited to arrive at any time. There will be no formal presentations; both workshops will be held in an open house format.

ADDRESSES: *Written comments* on the project scope should be sent to Kevin Michel, Transportation Planning Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop 99–22–5, Los Angeles, California, 90012–2952. All comments received will be forwarded to the FTA.

The scoping workshops will be held at the following locations: Sherman Oaks Woman's Club, 4808 Kester Avenue, Sherman Oaks, California, 91403 and at Kaiser Permanente, 5601 DeSoto Avenue, Woodland Hills, California 91367. Both locations are accessible to persons with disabilities. Spanish-speaking MTA staff will be present. If hearing-impaired services will be needed, please notify Mr. Michel at the MTA address above, or call TTY (800) 252–9040. Other questions about the scoping workshops may be directed by voice telephone to Mr. Michel at (213) 922–2854.

FOR FURTHER INFORMATION CONTACT: Ervin Poka or Ray Tellis, Federal Transit Administration/Federal Highway Administration Metropolitan Office, Telephone (213) 202–3950.

SUPPLEMENTARY INFORMATION: The FTA, in cooperation with the MTA, will prepare an Environmental Impact Statement (EIS) for a proposed public transit project in the San Fernando Valley, Los Angeles County California, to be implemented in an east-west corridor extending from the Metro Red Line station located in North Hollywood (scheduled to open on June 24, 2000) westward to Warner Center, a distance of approximately 14 miles. The purposes of the project are to improve east-west travel options in the San Fernando Valley and to provide a connection to other portions of the regional rail and bus network that is being planned and operated by the MTA.

FTA and MTA invite interested individuals, organizations, and federal, state, and local agencies to participate in defining the alternatives and environmental factors to be evaluated in the EIS/EIR. Scoping comments regarding these matters may be made at the workshops on the dates and at the locations indicated above. During scoping, comments should focus on identifying specific social, economic or environmental concerns to be evaluated and suggesting alternatives that should be considered during the EIS/EIR process. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments of that nature should be communicated after the draft EIS/EIR has been completed and publicized.

Scoping packets describing the proposed action will be sent to appropriate Federal, State and local agencies, and to other parties who are known to have shown an interest in the project.

Background: Transit planning for the San Fernando Valley has been underway since 1980, when Los Angeles County voters approved a ½ cent sales tax measure to fund regional rail improvements. In 1988, studies were conducted to identify alternatives, and in 1990 and 1992, the MTA

completed an EIR and ''Subsequent EIR'' for the study corridor. These studies and environmental documents led to the identification of a preferred rail alignment along the existing Southern Pacific Burbank/Chandler Branch, following Chandler Boulevard, Oxnard Street, Victory Boulevard. and Topham Street, which the MTA subsequently purchased in 1990. Environmental documents meeting California standards were certified in 1990 and 1992, addressing alternatives along both the SP Burbank/Chandler Branch and the Ventura Freeway median alignments. In 1994 the MTA Board of Directors endorsed the SP Burbank/Chandler Branch alignment.

An alternatives screening report and major investment study was prepared in 1995/96. The report evaluated the relative cost-effectiveness of a broad range of project alternatives, including all the previously studied rail transit options. In 1997 a Draft EIS was in preparation when the MTA began a financial and organizational restructuring which put several rail projects, including rail planning for the San Fernando Valley, on hold.

As part of the restructuring, the MTA and other regional agencies studied the feasibility of building non-rail (bus) transit enhancements in previous rail corridors. In addition, the MTA board directed staff to proceed with a Bus Rapid Transit demonstration project. One of the demonstration lines is on Ventura Boulevard in the San Fernando Valley.

Description of the Study Area: The study corridor extends from the North Hollywood Red Line station (currently under construction), located at Lankershim Boulevard and Chandler Boulevard, west across the entire San Fernando Valley to the vicinity of the Warner Center Transit Hub. The length of the corridor is approximately 14 miles.

Alternatives: A range of alternatives is being considered as part of the EIS/EIR. These include the following:

No Build: This alternative would include the transit system primarily as it exists today, augmented by those additional projects for which a funding commitment has been made or which are reasonably expected to be in place by 2020. The Red Line would terminate at the North Hollywood station. Highway and HOV projects would be provided on a number of freeways. Existing bus headways would be maintained and the Rapid Bus Demonstration project on Ventura Boulevard would be implemented.

Transportation Systems Management/ Best Bus: This alternative would not require major investment for capital cost items, but would rather focus its efforts on maximizing the efficiency of existing facilities and expanding and improving the existing bus system. Headways on routes covered by the TSM would be significantly reduced. TSM improvements would include various projects to enhance the performance of bus transit on major arterials where bus service frequencies would be increased.

Bus Rapid Transit Alternatives: Buses would run along an exclusive roadway built within the SP Burbank/Chandler ROW between the North Hollywood Metro Red Line Station on the east and the Transit Hub in Warner Center. Stations would be placed approximately every mile along the 14-mile route, at major cross streets and trip destinations. Buses would be given priority at signals. Headways within the busway would vary between five and two and one-half minutes during peak periods, and the existing Valley bus network would be integrated with the busway. In addition to the busway, enough space is available for a parallel bikeway along the corridor.

The corridor is being considered in two phases. If funding is limited, a segment of the full project busway between Woodman Avenue and Balboa Boulevard would be constructed as an initial phase, or Minimum Operable Segment. This first phase would include five stations. Buses would run on-street along Oxnard Street and Victory Boulevard to complete their runs from North Hollywood to Warner Center, and provide cross-Valley service.

Probable Effects: The FTA and MTA will evaluate all significant environmental, social and economic impacts of the alternatives analyzed in the draft EIS/EIR. Potential impact categories which will be evaluated include: Land Use and Development; Economic and Fiscal Impacts; Displacement and Relocation; Traffic Circulation and Parking; Community and Neighborhood Impacts; Environmental Justice; Visual and Aesthetic Impacts; Air Quality; Noise and Vibration; Geotechnical Considerations; Water Resources; Natural Resources; Energy; Safety and Security; Cultural Resources; Community Facilities and Parklands; and Construction Impacts. The impacts will be evaluated both for the construction period and the long-term period of operation. Measures to mitigate adverse impacts will also be addressed.

FTA Procedures: The EIS process will be performed in accordance with Federal Transit Laws and FTA's regulations and guidelines for preparing an Environmental Impact Statement. The impacts of the project will be assessed, and, if necessary, the scope of the project will be revised or refined to minimize and mitigate any adverse impacts. After its publication, the draft EIS will be available for public review and comment. At least one public hearing will be held. On the basis of the draft EIS and comments received, the project will be revised or further refined as necessary and the final EIS prepared.

Date Issued: May 15, 2000.

Leslie Rogers,

Regional Administrator.

[FR Doc. 00–12639 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Mid-City/Westside Transit Corridor in Los Angeles, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), as the Federal lead agency, and the Los Angeles County Metropolitan Transportation Authority (MTA), as the local lead agency, are issuing this notice to advise interested agencies and the public that a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR), referred to as an EIS/EIR, is being prepared for transit improvements in the Mid-City/Westside Transit Corridor in Los Angeles, California in accordance with the National Environmental Policy Act (NEPA) of 1969 and the California Environmental Quality Act (CEQA). The EIS/EIR replaces the previous NEPA reviews by FTA and MTA of transit improvements in the Mid-City corridor, the most recent being ''Los Angeles Rail Rapid Transit Project—Metro Rail Final Supplemental EIS/EIR for the Mid-City Segment from Wilshire/Western to Pico/ San Vicente,'' August, 1992. The Mid-City extension of Metro Rail was suspended by the MTA Board of Directors in January 1998. The present EIS/EIR will study alternatives and extensions to the suspended subway in the Mid-City corridor and beyond to Santa Monica. In the course of this study, FTA expects the MTA and the Southern California Association of Governments, which is responsible for transportation planning in metropolitan Los Angeles, to establish priorities for the proposed transit improvements in

the Mid-City corridor and the myriad of other competing projects and transit needs in the region. This prioritization of proposed projects and other transit needs will involve, among other considerations, the development of a financial plan that identifies for each capital need the non-Federal funds to be used along with the proposed Federal funding.

FTA and MTA seek comments by interested parties and agencies on the scope of the Mid-City/Westside EIS/EIR. The date and location of public scoping meetings are provided below. The closing date for receiving comments on the scope of the EIS/EIR, and the address to which written comments should be sent, are also provided herein.

DATES: *Comment Due Date:* Written comments on the scope of the study should be sent, by June 23, 2000, to Mr. David Mieger of the Los Angeles County Metropolitan Transportation Authority at the address given below in **ADDRESSES.**

Scoping Meeting Dates: Please refer to **ADDRESSES** below for the dates, times, and locations of the public scoping meetings.

ADDRESSES: *For Written Comments:* Written comments on the scope of the EIS/EIR should be sent by June 23, 2000, to Mr. David Mieger, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop 99–22–5, Los Angeles, California 90012. Written comments may also be turned in at the scoping meetings.

For Scoping Meetings: Public scoping meetings for the EIS/EIR will be held at the following locations at the dates and times indicated:

- Tuesday, May 23, 2000, Peterson Automotive Museum, 6060 Wilshire Boulevard, Los Angeles, CA 90036 (5 p.m.–8 p.m.)
- Wednesday, May 31, 2000, Veteran's Administration Hospital of West Los Angeles, 11301 Wilshire Boulevard, Los Angeles, CA 90038 (5 p.m.–8 p.m.)
- Tuesday, June 6, 2000, Ken Edwards Center, 1527 4th Street, Santa Monica, CA (5 p.m.–8 p.m.)
- Wednesday, June 7, 2000, California African-American Museum, 600 State Drive, Exposition Park, Los Angeles, CA 90037 (5 p.m.–8 p.m.)
- Thursday, June 8, 2000, Veteran's Memorial Complex, 4117 Overland Avenue, Culver City, CA 90232 (5 p.m.–8 p.m.)

The scoping meetings will be held in an ''open house'' format with MTA representatives available to discuss the project alternatives throughout the time periods given. Informational displays and written material will also be available. Comments may be submitted in writing at the public scoping meetings. All locations are accessible to persons with disabilities. Spanish-speaking MTA staff will be present. If hearing-impaired services will be needed, please notify Mr. David Mieger at the MTA address above, or call TTY (800) 252–9040. Other questions about the scoping workshops may be directed by voice telephone to Mr. Mieger at (213) 922–3040 or e-mail at miegerd@mta.net.

For MIS Review: A Major Investment Study (MIS) of the transportation needs in the Mid-City/Westside Corridor, dated February, 2000, and related environmental studies are available for review at the MTA Library at One Gateway Plaza, 15th Floor; Los Angeles, CA 90012 during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ervin Poka or Ray Tellis, Federal Transit Administration/Federal Highway Administration Los Angeles Metropolitan Office. Phone: (213) 202–3950.

SUPPLEMENTARY INFORMATION: The EIS/EIR will present a comparative analysis of the environmental impacts, transportation benefits, and costs of reasonable transit alternatives in the Mid-City/Westside Corridor and will determine the appropriate mitigation measures for adverse impacts.

Scoping: The initial set of alternatives for the Mid-City/Westside Corridor were defined through a Major Investment Study (MIS) completed in February 2000 by the MTA, in accordance with USDOT regulations. Additional alternatives that may emerge from the scoping process will be considered.

FTA and MTA invite interested individuals, organizations, and public agencies to attend the scoping meetings and participate in identifying the scope and content of the EIS/EIR, including any significant environmental, social, or economic issues associated with the alternatives. The public is invited to comment specifically on the alternatives to be addressed, the transit modes and technologies to be evaluated, the alignments and termination points to be considered, the environmental, social, and economic impacts to be analyzed, and the evaluation approach to be used to select a preferred alternative. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are less costly or less environmentally damaging, while meeting the identified transportation and other needs in the Mid-City/Westside Corridor. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS/EIR has been issued for public review.

An information packet describing the purpose of the project, the location, the proposed alternatives, and the impact areas to be evaluated is being mailed to affected Federal, State, and local agencies. Others may request these scoping materials by contacting Mr. David Mieger at (213) 922–3040 or by writing to him at his address above. If you wish to be placed on the project mailing list, please call the Project Hotline at 310–366–6443.

Description of Study Area and Project Need: The Mid-City/Westside Corridor is approximately bounded on the north by Sunset Boulevard, on the east by Hill Street, on the south by Manchester Boulevard, and on the west by the Pacific Ocean. The projected trip-making increase and resulting congestion would occur because of expected population growth, from 1.5 million persons in 1994 to 1.9 million in 2020, and of expected employment growth, from one million jobs in 1994 to 1.2 million jobs in 2020. The purposes of the project are to improve east-west travel options in the Mid-City/Westside areas of Los Angeles and to provide a connection to the previously completed Metro Rail Red Line and other portions of the regional rail and bus network.

Alternatives: In order to address current and long-range traffic congestion in the Mid-City and Westside areas of the Los Angeles Basin, the MTA has examined a wide range of east-west transit alternatives, including Bus Rapid Transit, Light Rail Transit such as the Blue Line to Long Beach, and Heavy Rail Transit such as the Red Line to Hollywood. In accordance with the intent of the MIS process, the MIS, in conjunction with the guidance provided by the MTA Board of Directors, resulted in a set of refined alternatives to be evaluated in detail in the EIS/EIR. These alternatives are: (1) No Build; (2) Transportation System Management; (3) Wilshire Bus Rapid Transit (BRT); (4) Exposition BRT; (5) Exposition Light Rail Transit (LRT); (6) Phased length combinations of Wilshire BRT and Exposition BRT or LRT; (7) Any additional alternatives that may result from the scoping process. Alignments for BRT extend from the Metro Red Line in downtown Los Angeles to downtown Santa Monica and include Wilshire Boulevard and the former Exposition railroad right-of-way. An alignment for LRT extends from downtown Los

Angeles to downtown Santa Monica along the Exposition railroad right-of-way. The TSM Alternative is not specific to an alignment but would rather improve service levels of existing bus service in the general Westside Corridor. Additionally, a No Build Alternative will evaluate the impacts of doing nothing to improve transit service during the twenty year planning timeframe of the project, beyond those improvements already scheduled and funded.

Probable Effects: The FTA and MTA will evaluate all significant environmental, social and economic impacts of the alternatives in the Draft EIS/EIR. Potential impact categories which will be evaluated include: Land Use and Development; Economic Impacts; Displacement and Relocation; Traffic Circulation and Parking; Community and Neighborhood Impacts; Environmental Justice; Visual and Aesthetic Impacts; Air Quality; Noise and Vibration; Geotechnical Considerations; Water Resources; Natural Resources; Energy; Safety and Security; Cultural Resources; Community Facilities and Parklands; and Construction Impacts. The impacts will be evaluated both for the construction period and the long-term period of operation. Measures to mitigate adverse impacts will also be addressed.

FTA Procedures: After the scope of the EIS/EIR evaluation has been determined, FTA and MTA will conduct the analyses and interagency coordination necessary to prepare a Draft EIS/EIR. The Draft EIS/EIR will be made available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS/EIR and comments received, MTA will select a Locally Preferred Alternative. If FTA approves of advancing the Locally Preferred Alternative into Preliminary Engineering (PE), the Final EIS/EIR responding to comments received and incorporating the results of PE, would then be prepared and released.

Issued on: May 15, 2000.

Leslie T. Rogers,

Regional Administrator.

[FR Doc. 00–12638 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33870]

Eastern Alabama Railroad, Inc.—Acquisition Exemption—CSX Transportation, Inc.

Eastern Alabama Railroad, Inc. (EARY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate a rail line owned by CSX Transportation, Inc.[1] The rail line extends from milepost LAM 453.58, at Gannt's Junction, to milepost LAM 479.94, at Talladega, a distance of 26.36 miles in Talladega County, AL.

The transaction is expected to be consummated on or after May 17, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33870, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW, Eighth Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 12, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–12566 Filed 5–18–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 8, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 19, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1251.

Regulation Project Number: PS–5–91 Final.

Type of Review: Extension.

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

Description: Section 1.613A–3(e)(6)(I) of the regulations requires each partner to separately keep records of the partner's share of the adjusted basis of partnership oil and gas property.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,500,000.

Estimated Burden Hours Per Recordkeeper: 2 minutes.

Estimated Total Recordkeeping Burden: 49,950 hours.

OMB Number: 1545–1545.

Regulation Project Number: REG–107644–97 Final.

Type of Review: Extension.

Title: Permitted Elimination of Preretirement Optional Forms of Benefits.

Description: The regulation permits an amendment to a qualified plan that eliminates certain Preretirement optional forms of benefit.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 135,000.

Estimated Burden Hours Per Recordkeeper: 22 minutes.

Estimated Total Recordkeeping Burden: 48,800 hours.

OMB Number: 1545–1685.

Regulation Project Number: REG–103735–00 NPRM and Temporary.

Type of Review: Extension.

Title: Tax Shelter Disclosure Statements.

Description: The regulations provide guidance on the filing requirement under section 6011 for certain corporate taxpayers engaged in transactions producing tax savings in excess of certain dollar thresholds.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 50.

[1] EARY represents that it has operated the rail line, as the assignee of a lease with option to purchase, since 1992 following its acquisition of the Natchez Trace Railroad's properties. *See Eastern Alabama Railway, Inc.—Acquisition and Operation Exemption—Natchez Trace Railroad,* Finance Docket No. 32044 (ICC served Apr. 16, 1992).

Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 25 hours.

OMB Number: 1545–1686.

Regulation Project Number: REG–103736–00 NPRM and Temporary.

Type of Review: Extension.

Title: Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters.

Description: The regulations provide guidance on the requirement under section 6112 to maintain a list of investors in potentially abusive tax shelters.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 50.

Estimated Burden Hours Per Recordkeeper: 2 hours, 2 minutes.

Estimated Total Recordkeeping Burden: 102 hours.

OMB Number: 1545–1687.

Regulation Project Number: REG–110311–98 NPRM and Temporary.

Type of Review: Extension.

Title: Corporate Tax Shelter Registration.

Description: The regulations provide the guidance required to activate the registration requirements of IRC § 6707 for confidential tax shelters described in IRC § 6111(d).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 4.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–12602 Filed 5–18–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 10, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 19, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0025.

Form Number: IRS Form 851.

Type of Review: Revision.

Title: Affiliations Schedule.

Description: Form 851 is filed by the parent corporation for itself and the affiliated corporations in the affiliated group of corporations that files a consolidated return (Form 1120). Form 851 is attached to Form 1120. This information is used to identify the members of the affiliated group, the tax paid by each, and to determine that each corporation qualifies as a member of the affiliated group as defined in section 1504.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 4,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—10 hr., 46 min.

Learning about the law or the form—53 min.

Preparing and sending the form to the IRS—1 hr., 7 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 51,040 hours.

OMB Number: 1545–0745.

Regulation Project Number: LR–27–83 Temporary and LR–54–85 Temporary.

Type of Review: Extension.

Title: Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks (LR–27–83); and Excise Tax on Heavy Trucks, Truck Trailers and Semi-Trailers, and Tractors; Reporting and Recordkeeping Requirements (LR–54–85).

Description: LR–27–83 requires sellers of trucks, trailers and semi-trailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–85 requires that if the sale is to be treated as exempt, the seller and the purchaser must be registered and the purchaser must give the seller a resale certificate.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 4,100.

Estimated Burden Hours Per Recordkeeper: 1 hour, 1 minute.

Estimated Total Recordkeeping Burden: 4,140 hours.

OMB Number: 1545–1021.

Form Number: IRS Form 8594.

Type of Review: Extension.

Title: Asset Acquisition Statement.

Description: Form 8594 is used by the buyer and seller of assets to which goodwill or going concern value can attach to report the allocation of the purchase price among the transferred assets.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—8 hr., 51 min.

Learning about the law or the form—1 hr., 23 min.

Preparing and sending the form to the IRS—1 hr., 35 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 236,600 hours.

OMB Number: 1545–1086.

Form Number: IRS Form 8725.

Type of Review: Extension.

Title: Excise Tax on Greenmail.

Description: Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under section 5881. IRS uses the information to verify that the correct amount of tax has been paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 12.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 30 min.

Learning about the law or the form—42 min.

Preparing and sending the form to the IRS—49 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 84 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–12603 Filed 5–18–00; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 65, No. 98
Friday, May 19, 2000

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.

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS99-1]

Appraisal Subcommittee; Appraiser Regulation; Disclosure of Information

Correction

In rule document 99–33476 beginning on page 72494, in the issue of Tuesday, December 28, 1999, make the following correction:

§ 1102.306 [Corrected]

On page 72498, in the first column, §1102.306 paragraph ''(a)(2)(ii)'' should read ''(a)(2)(iv)''

[FR Doc. C9–33476 Filed 5–18–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,

May 19, 2000

Part II

Department of the Treasury

Office of the Comptroller of the Currency

Office of the Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 35, 207, 346, 533

Disclosure and Reporting of CRA-Related Agreements; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 35

[Docket No. 00–11]

RIN 1557–AB85

FEDERAL RESERVE SYSTEM

12 CFR Part 207

[Regulation G; Docket No. R–1069]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

RIN 3064–AC33

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 533

[Docket No. 2000–44]

RIN 1550–AB32

Disclosure and Reporting of CRA-Related Agreements

AGENCIES: Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, the agencies) are requesting comment on a proposed rule that implements provisions of the recently enacted Gramm-Leach-Bliley Act (the GLB Act or the Act). These provisions require nongovernmental entities or persons, insured depository institutions, and affiliates of insured depository institutions that are parties to certain agreements that are in fulfillment of the Community Reinvestment Act of 1977 to make the agreements available to the public and the appropriate agency and file annual reports concerning the agreements with the appropriate agency. These provisions are contained in section 711 of the Act and are codified as section 48 of the Federal Deposit Insurance Act (FDI Act).

The rule identifies the types of written agreements that are covered by section 711 of the GLB Act (referred to as covered agreements) and defines many of the terms used in the statute. The rule also describes how the parties to a covered agreement must make the agreement available to the public and the appropriate agencies and explains the type of information that must be included in the annual report filed by a party to a covered agreement.

The agencies solicit comments on all aspects of the proposed rule, including the specific areas discussed below. The agencies will issue a final rule after considering comments received.

DATES: Comments must be received on or before July 21, 2000.

ADDRESSES:

OCC: Comments should be addressed to Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third floor, Washington, DC 20219, Attention: Docket No. 00–11. In addition, comments may be sent by facsimile transmission to fax number (202) 874–5274 or by Internet mail to regs.comments@occ.treas.gov. Comments will be available for public inspection and photocopying at the same location.

Board: Comments directed to the Board should refer to Docket No. R–1069 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. and, outside those hours, to the security control room. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in room MP–500 of the Martin Building between 9:00 a.m. and 5 p.m. on weekdays.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Comments may be submitted electronically over the Internet at *www.fdic.gov.* Further information concerning this option may be found below at the ''FDIC's Electronic Public Comment Site.'' Comments also may be mailed electronically to comments@fdic.gov.

OTS: Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 2000–44. Hand deliver comments to Public Reference Room, 1700 G Street, NW, lower level, from 9 a.m. to 5 p.m. on business days. Send facsimile transmissions to FAX number (202) 906–7755 or (202) 906–6959 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW, from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael S. Bylsma, Director, Community and Consumer Law (202) 874–5750; or Karen O. Solomon, Director, Legislative and Regulatory Activities (202) 874–5090.

Board: Scott G. Alvarez, Associate General Counsel (202) 452–3583, Kieran J. Fallon, Senior Counsel (202) 452–5270, or Andrew Miller, Senior Attorney (202) 452–3428, Legal Division; Glenn E. Loney, Deputy Director (202) 452–3585, or James H. Mann, Attorney (202) 452–3667, Division of Consumer and Community Affairs; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (''TDD'') *only,* contact Janice Simms at (202) 452–4984.

FDIC: Deanna S. Caldwell, Community Affairs Officer (202) 736–0141; A. Ann Johnson, Counsel, Regulation and Legislation Section (202) 898–3573; or Joan M. Bateman, Review Examiner (202) 736–0187.

OTS: Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; Karen Osterloh, Assistant Chief Counsel, (202) 906–6639; or Richard R. Riese, Director, Compliance Policy, (202) 906–6134, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Proposed Rule

Section 711 of the GLB Act (Pub. L. 106–102, 113 Stat. 1338 (1999)) added a new section 48 to the FDI Act (12 U.S.C. 1831y) entitled ''CRA Sunshine Requirements.'' Section 711 applies to written agreements that (1) are made in

fulfillment of the Community Reinvestment Act of 1977 (CRA),[1] (2) involve funds or other resources of an insured depository institution or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an insured depository institution or affiliate of an insured depository institution and a nongovernmental entity or person. Section 711 does not, however, cover any agreement with a nongovernmental entity or person that has not had a CRA contact with the insured depository institution or affiliate or a banking agency, such as agreements entered into by entities or persons that solicit charitable contributions or other funds without regard to the CRA. Under section 711, the parties to a covered agreement must make the agreement available to the public and the appropriate agency. The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt and use of funds or other resources under the agreement.

The proposed rule defines various terms necessary for determining which agreements are covered agreements and provides guidance for determining when a CRA contact has been made for purposes of identifying the parties whose agreements are covered by the rule. The proposed rule also describes the manner and scope of the Act's disclosure and annual reporting requirements.

Section 711 and the proposed rule apply only to agreements that are in writing. To be covered, a written agreement may be an understanding or agreement and need not be a legally binding contract.

Importantly, section 711 applies only to written agreements that are ''made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act.'' Section 711 defines ''fulfillment'' of the CRA as a ''list of factors'' that the appropriate agency determines have a material impact on the agency's decision to approve or disapprove an application for a deposit facility under the CRA or to assign a CRA examination rating. The agencies propose to adopt for this purpose the list of factors identified by the agencies in the CRA regulations jointly issued by the agencies (CRA Regulations).[2] These factors include providing the types of loans considered in evaluating CRA performance, providing community development services, making CRA qualified investments, fulfilling a CRA strategic plan, providing retail banking services as described in the CRA Regulations, and providing or refraining from providing comments or testimony to an agency concerning the CRA performance of an insured depository institution.

The GLB Act exempts specific types of agreements from coverage, even if these agreements would otherwise meet the definition of a covered agreement. In particular, the Act and the proposed rule do not apply to any individual mortgage loan. The Act and proposed rule also do not apply to any specific contract or commitment for any type of loan or extension of credit to individuals, businesses, farms or other entities if the funds are loaned at rates that are not substantially below market rates and the purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

In addition, as noted above, the Act exempts from coverage any agreement with a nongovernmental entity or person that has not commented on, testified about, or discussed with the insured depository institution, or otherwise contacted the institution, concerning the CRA. The proposed rule adopts the exemption as written in the statute and includes several examples of contacts that would be exempt under this provision as well as contacts that would not qualify for this exemption. An example of a contact that would qualify for this exemption is the dissemination of a similar fundraising letter to insured depository institutions and other businesses in the community encouraging all businesses in the community to meet their obligation to assist in making the community a better place to live and work. A CRA contact would be made, and a related agreement would not be exempt under this provision, if the entity or person had, for example, submitted comments to an agency concerning the CRA performance of the insured depository institution, contacted the institution or any affiliate about providing (or refraining from providing) CRA-related comments to an agency concerning the institution, or contacted the institution or any affiliate about the CRA performance of the institution.

The GLB Act requires those agreements that are covered by section 711, and that are not exempt, to be made available to the public and the appropriate agency. Section 711 provides that these disclosure obligations apply only to covered agreements entered into after November 12, 1999. Section 711 also requires that the agencies' rules for ensuring compliance with the Act's requirements not impose undue burden on the parties. Accordingly, the rule proposes to require disclosure of covered agreements and to define the scope of annual reports in a manner that fulfills the requirements of section 711 while at the same time adopting simple procedures that reduce duplicative reporting and rely on existing reports prepared by the parties for their own use or to fulfill other requirements.

The rule proposes that each party to a covered agreement be allowed to fulfill the public disclosure requirement of section 711 by making the agreement available to any member of the public on request, and allows each party to recover reasonable copying and mailing costs in responding to these requests. An insured depository institution may fulfill its public disclosure obligation by placing a copy of the agreement in the institution's CRA public file and making it available in the same manner as other information in the CRA public file.

The proposed rule also requires that each insured depository institution or affiliate that enters into a covered agreement file a complete copy of the agreement with the appropriate agency within 30 days of entering into the agreement. To avoid duplication of efforts and reduce burden, the rule would allow a nongovernmental entity or person to fulfill its obligation to make a covered agreement available to the appropriate agency by providing a copy to the agency upon the agency's request.

In addition to making covered agreements available, the GLB Act requires that annual reports be filed regarding resources provided and used under the agreement. These annual reporting obligations apply only to covered agreements entered into on or after May 12, 2000. For nongovernmental entities or persons, the type of information required to be included in an annual report depends on how the entity or person used the funds or resources received under the covered agreement. If a nongovernmental entity or person allocates and uses the funds or resources received under a covered agreement for a specific purpose, the person's annual report would have to provide a description of the specific purpose and state the amount used for the specific purpose. If the entity or person uses the funds or resources received under the covered agreement for other or general purposes (*e.g.,* general operating expenses), the rule proposes that the annual report provide

[1] 12 U.S.C. 2901 *et seq.*

[2] *See* 12 CFR 25.21–25.29 (OCC); 12 CFR 228.21–228.29 (Board); 12 CFR 345.21–345.29 (FDIC); 12 CFR 563e.21–563e.29 (OTS).

the detailed, itemized list described in section 711 of how such funds were used during the year. This list involves disclosure of the total amount of resources used by the person or entity for compensation of officers, directors, and employees; administrative expenses; travel expenses; entertainment expenses; consulting and professional fees; and other expenses or uses.

In keeping with section 711, the proposed rule includes a number of provisions designed to reduce the potential reporting burden of nongovernmental entities or persons. For example, the rule requires a nongovernmental entity or person to file an annual report only for a year in which the entity or person has received funds under a covered agreement. In addition, the annual report filed by a nongovernmental entity or person may consist of, or incorporate, a report that the entity or person has prepared for other purposes—such as a Federal or state tax return or annual financial statements—if the report provides the information required by the rule. To facilitate the use of reports that are prepared for other purposes, the rule would allow parties to file their annual reports on either a fiscal year or calendar year basis. If a nongovernmental entity or person is a party to five or more covered agreements, the entity or person may file a single, consolidated annual report relating to all of the agreements. Furthermore, a nongovernmental entity or person may fulfill its annual reporting requirements by sending its annual reports to the insured depository institution or affiliate that is a party to the agreement with a request that the institution or affiliate file the reports with the appropriate agency.

Under the GLB Act, the annual report filed by an insured depository institution or affiliate generally must include information on the amount, terms and conditions of any payments, fees, or loans provided by the institution or affiliate under the covered agreement, as well as payments, fees or loans received by the institution or affiliate under the agreement. The annual report of an insured depository institution or affiliate also must provide aggregate data on any loans, investments, or services provided under the covered agreement by each party to the agreement. The rule includes these requirements. The rule would allow an insured depository institution or affiliate that is a party to 5 or more covered agreements to file a single, consolidated annual report for all of the agreements. In addition, if an insured depository institution and affiliate are parties to the same covered agreement, the institution and affiliate may file a consolidated annual report for the agreement.

Section 711 does not authorize any agency to enforce the provisions of any covered agreement, and the proposed rule adopts this provision. The GLB Act, however, provides that a covered agreement may become unenforceable if the appropriate agency determines that a nongovernmental entity or person that is a party to the agreement has willfully failed to comply in a material way with the Act's disclosure and reporting requirements and the entity or person, after receiving notice, fails to comply with the Act after a reasonable period of time. The proposed rule includes this provision and clarifies that, in these circumstances, the covered agreement becomes unenforceable only by the nongovernmental entity or person that has willfully and materially failed to comply with section 711.

The Act requires the agencies to consult and coordinate with each other in drafting the proposed rule to assure, to the extent possible, that the regulations of each agency are consistent and comparable. The agencies have gone beyond these requirements and have developed the proposed rule on an interagency basis. The agencies believe the adoption of a uniform rule should assist the public in complying with the requirements of the Act. Furthermore, as required by the Act, the agencies have sought to ensure that the proposed rule does not place an undue burden on the parties to covered agreements and protects proprietary and confidential information to the maximum extent consistent with the language and purpose of the Act.

The agencies request comment on all aspects of the proposed rule, including the specific provisions and issues highlighted in this preamble, and will incorporate comments received into the final rule as appropriate. The agencies recognize that insured depository institutions, affiliates, and nongovernmental entities and persons can not identify agreements that are covered by section 711 until, in particular, the agencies adopt the list of factors that are considered to be in ''fulfillment'' of the CRA. Accordingly, the agencies propose to act expeditiously to adopt a rule in final form following conclusion of the comment period. Once a final rule is adopted, the parties to covered agreements will be expected promptly to disclose any agreement that is covered by section 711 and was entered into after November 12, 1999, and file an annual report for any covered agreement entered into on or after May 12, 2000, in accordance with the requirements of the final rule. The agencies request comment on how the parties to covered agreements entered into after these dates, but before issuance of the final rule, should be required to comply with the requirements of the final rule.

II. Detailed Explanation of Proposed Rule

This section provides a more detailed discussion of the proposed rule and includes examples that are designed to assist users in understanding the scope and application of the proposed rule. The examples included in the preamble are not exclusive. The agencies request comment on whether the examples included in the preamble are useful and whether additional examples would prove helpful. The proposed rule includes examples only of situations that would and would not constitute a CRA contact by a nongovernmental entity or person. These examples relating to CRA contact are part of the rule. The agencies request comment on whether examples illustrating other parts of the rule should be incorporated into the text of the regulation.

In keeping with the goal of consistency among the agencies' rules and to facilitate compliance, the proposed rule uses the term ''insured depository institution'' rather than ''bank'' or ''savings association.'' As discussed below, the rule identifies the specific agency or agencies with whom a covered agreement and its related annual reports should be filed, and the agency or agencies that would be considered a relevant supervisory agency for a covered agreement.

For ease of reference, the rule and the remaining portions of this preamble refer to a ''nongovernmental entity or person'' as a ''person.'' [3] The terms ''nongovernmental entity or person'' and ''person,'' as well as several other terms used in the rule, are defined in section ____.8 of the proposed rule. The rule generally defines a nongovernmental entity or person to mean any company or individual other than the Federal government, a state, local or tribal government, or an insured depository institution or affiliate. The agencies request comment on whether users would find it more helpful to have this section of definitions at the beginning of the rule.

The following description applies to each agency's proposed rule. Since the

[3] The OTS rule, however, refers to a ''nongovernmental entity or person'' as a ''NGEP.''

rule of each agency will be codified at a different part of the Code of Federal Regulations, the following description references the proposed rule using only the proposed rule's section numbers.

A. Definition of Covered Agreement

Section ____.2 of the proposed rule defines which agreements are covered by the rule and the term ''fulfillment of the CRA.'' The Act's exemptions from the definition of a covered agreement also are set forth in section ____.2.

1. Covered Agreements

The proposed rule defines a covered agreement as any contract, arrangement, or understanding that meets all of the following four criteria:

- The agreement is in writing;
- The agreement is made pursuant to, or in connection with, the fulfillment of the CRA, as defined in section ____.2(c) of the proposed rule;
- The parties to the agreement include (1) an insured depository institution or an affiliate of an insured depository institution, and (2) a person; and
- The agreement provides for the insured depository institution or affiliate to provide cash payments, grants, or other consideration (other than loans) having an aggregate value of more than $10,000 in any calendar year, or to make loans in an aggregate principal amount of more than $50,000 in any calendar year.

The proposed rule clarifies that an agreement may be a covered agreement even if the agreement is not legally binding on the parties. Under the proposed rule, an exchange of written correspondence reflecting a mutual agreement or a written agreement that lacks the consideration necessary for it to be a legally binding contract would constitute a covered agreement if the agreement meets the four criteria discussed above. Moreover, to be covered, an agreement may be with an insured depository institution or any affiliate of an insured depository institution, including a bank holding company or a nonbank affiliate.

The following examples illustrate when a written contract, arrangement or understanding may exist under the rule. The proposed rule does not attempt to specifically define what constitutes a ''contract,'' ''arrangement,'' or ''understanding.''

Example 1: An organization sends a letter to an insured depository institution requesting that the institution provide a $15,000 grant to the organization. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written understanding. This written understanding would be a covered agreement under the proposed rule if the agreement is made pursuant to, or in connection with, the fulfillment of the CRA and the agreement is not otherwise exempt under section ____.2(b).

Example 2: An organization issues a general, written solicitation for charitable contributions to businesses in its local community. An insured depository institution makes a $20,000 charitable contribution by check to the organization in response to the solicitation. The insured depository institution does not have any written contract, arrangement or understanding with the organization concerning the donation. The general request for funds and the check are not themselves a contract, arrangement or understanding. Since there is no other written agreement between the insured depository institution and the organization, there is no covered agreement between the entities.

Example 3: A bank holding company unilaterally issues a press release announcing that its subsidiary banks have established a goal of making $100 million of community development grants in low-and moderate-income (LMI) neighborhoods over the next 5 years. The unilateral pledge is not a contract, arrangement or understanding entered into with a person and, therefore, is not a covered agreement.

Example 4: An association of community groups and an affiliate of an insured depository institution orally agree that the affiliate will seek to make $100,000 in grants available to the organization's constituent members over the next year. The oral agreement is not reduced to writing. Oral agreements are not within the scope of the statute and, accordingly, the agreement is not a covered agreement.

The agencies invite comment on whether the rule should define the terms ''contract,'' ''arrangement'' and ''understanding'' and, if so, what those definitions should be. The agencies also request comment on whether any of the examples provided above should be modified or amended, and whether additional examples would be useful.

2. Exemptions for Certain Agreements

Section 711 specifically exempts certain types of agreements from coverage even if they otherwise meet the definition of a covered agreement. Section ____.2(b) of the proposed rule implements these exemptions.

a. Qualifying Loans

The first statutory exemption is for any individual mortgage loan. Under this exemption, any mortgage loan made by an insured depository institution or affiliate to any individual or entity is exempt from the requirements of section 711. This exemption is available for any mortgage loan, regardless of the identity of the borrower, the type of real estate securing the loan, or the rate charged on the loan.

The statute also exempts from coverage ''any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if the funds are loaned at rates [that are] not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to other parties.'' [4] Under the statute, this exemption is available for any type of loan to any individual or entity if the loan meets the market rate and re-lending restrictions of the statute.

The agencies request comment on the application of this exemption to agreements that involve a commitment to make one or more loans or extensions of credit that meet the market rate and re-lending restrictions of the statute. In particular, comment is requested on whether this exemption provides an exemption only for a specific commitment to make a loan or extension or credit. Under this interpretation, the exemption would be available for a commitment by an insured depository institution or affiliate to provide a specific loan or extension of credit to one or more individuals or entities that is on market terms and not for purposes of re-lending, such as a loan commitment typically made in the course of providing a line of credit to a small business. The agencies also request comment on whether this exemption includes an exemption for a commitment to make multiple loans that meet the Act's restrictions. Under this interpretation, a commitment to make any number or amount of loans that meet the Act's restrictions over a period of time would be exempt from coverage. The agencies request comment on which interpretation of the exemption is more consistent with the language and purposes of the Act.

To be entirely exempt under the proposed rule, an agreement must be exclusively a loan, extension of credit or loan commitment that meets the requirements of the exemption. However, as discussed further below, if an agreement includes a loan, extension of credit or loan commitment that meets the rule's requirements to be exempt and also provides for the insured depository institution or affiliate to provide other funds or resources, the value of the exempt loan, extension of credit or loan commitment may be excluded in determining whether the

[4] 12 U.S.C. 1831y(e)(1)(B)(ii).

agreement is in fulfillment of the CRA and meets the Act's dollar thresholds.[5]

The following examples illustrate these provisions of the proposed rule:

Example 1: An insured depository institution provides a $1 million mortgage loan to an organization pursuant to a written agreement. The agreement is an individual mortgage loan and is exempt from coverage under the rule, regardless of the interest rate on the loan or whether the purpose of the loan was for re-lending.

Example 2: An affiliate of an insured depository institution provides a $500,000 working capital loan to a small business pursuant to a written agreement. The loan is made on market terms and the purposes of the loan do not include re-lending. The agreement is exempt from coverage under the rule.

Example 3: An insured depository institution enters into a written agreement with a community development organization to make $250 million in small business loans in the community over the next five years. The loans would be made on market terms and not for purposes of re-lending. Each small business loan made by the insured depository institution pursuant to the agreement is exempt from coverage. The agreement by the insured depository institution with the association, however, is not a commitment to make a specific loan or extension of credit and would not be exempt under one interpretation of the exemption. This commitment to make loans would be exempt under the other interpretation of the exemption.

Example 4: A business organization receives a mortgage loan from an affiliate of an insured depository institution pursuant to a written agreement. The agreement also provides that the affiliate will make a $12,000 investment in a local community development corporation the following month. The agreement is not an exempt agreement under the rule because it is not exclusively a mortgage loan. Although the mortgage loan may be excluded when considering if the agreement meets the Act's dollar thresholds, the agreement would meet these thresholds because it provides for the affiliate to make other payments in excess of $10,000 in a calendar year.

The agencies request comment on these exemptions. In particular, comment is invited on whether a mortgage loan includes any loan secured by real estate, or only a loan that is secured by real estate and made for the purchase or improvement of the real estate or for the refinancing of such a loan. Comment also is invited on whether the agencies should define when loans are made at ''substantially below market rates'' and, if so, what that definition should be. For example, should the agencies provide that the relevant market rate for a loan is the rate that would be charged on a comparable transaction (*e.g.,* a construction loan, permanent financing, a small business loan, or an unsecured consumer loan) with a comparable person (*e.g.,* a person with similar financial resources and credit history) that is not a party to the agreement? In addition, should the agencies provide a formula for determining whether a loan bears a rate that is substantially below the market rate? Such a formula could provide, for example, that a rate is substantially below the market rate if it is more than a specified percentage (*e.g.,* 10 percent) or number of basis points (*e.g.,* 200 basis points) below the rate that would be charged in a comparable transaction.

The agencies also request comment on whether the rule should provide guidance on when a loan is made ''for purposes of re-lending'' and what constitutes ''re-lending'' under the rule. For example, should the rule provide that the purposes of a loan are determined by reference to the underlying loan documents or by whom the documents refer to as the lender?

b. Agreements With Persons Who Have Not Made a CRA Contact

Section 711 also exempts from coverage any agreement entered into by an insured depository institution or affiliate with a person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA. This provision broadly exempts from all of the provisions of section 711 any agreement by an insured depository institution or affiliate with a person that has not had a contact concerning the CRA (CRA contact). The Conference Report for the Act indicates that a wide range of organizations that solicit funds without regard to the CRA may benefit from this exemption, including civil rights groups, community groups providing housing or other services in low-income neighborhoods, the American Legion, and community theater groups.[6]

The proposed rule adopts the exemptive language contained in section 711. In addition, the proposed rule provides examples of actions by a person that would constitute a CRA contact under the rule and examples of actions that would not constitute a CRA contact under the rule. These examples are intended to illustrate different types of actions that are or are not CRA contacts based on the wording and purpose of the exemption and the scope of the statutory exemption. These examples are not exclusive. For ease of reference, the proposed rule divides the examples of actions that constitute a CRA contact into two categories: contacts with an agency and contacts with an insured depository institution or affiliate.

As discussed below, the agencies request comment on various aspects of this exemption. In particular, the agencies invite comment on whether the rule should provide a more detailed definition of the exemption. The agencies also request comment on whether the examples provided are appropriate and useful and, if so, whether other examples should be included or areas addressed with examples.

CRA Contact with an Agency. As a general matter, a person has made a CRA contact if the person submits written or oral comments or testimony to an agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate.[7] If a person had this type of contact with an agency and subsequently enters into an agreement with the insured depository institution or any affiliate of the insured depository institution that meets the requirements of section 711, the agreement is not exempt.

''Comments'' and ''testimony'' refer to any type of written submission or oral statement by a person to an agency. The terms include the submission of written materials to an agency in connection with an application by an insured depository institution or company for a deposit facility or an examination of an insured depository institution under the CRA, and oral statements made by a person to an agency during a public or private meeting held concerning a transaction or CRA examination.

The rule provides two examples of contacts with an agency that would *not* constitute a CRA contact. The first example involves a person that provides written or oral comments or testimony to an agency in response to a direct request by the agency for comments or testimony from that person. In such circumstances, the contact would result due to an action by the agency and imposing the rule's requirements on the person might impede the agency's ability to obtain necessary or useful information. This example of a direct request for comments or testimony does not apply, however, to comments or

[5] The agencies note, however, that if the other consideration is provided to reduce the effective interest rate paid on the loan or extension of credit to a rate that is substantially below the market rate, the loan or extension of credit would not itself be exempt from coverage.

[6] *See* H.R. Conf. Rep. No. 106–434 at 179 (1999).

[7] As discussed further below, a contact concerning the performance of a ''CRA affiliate'' of an insured depository institution is considered to be a contact concerning the CRA performance of the insured depository institution.

testimony that are provided in response to a general invitation by an agency for public comments (*e.g.,* a *Federal Register* notification) in connection with a CRA performance evaluation or an application for a deposit facility.

The second example provides that a person does not make a CRA contact with an agency by making a statement concerning an insured depository institution at a widely attended conference or seminar on a general topic, even if representatives of an agency were in attendance at the conference or seminar when the statement was made. A public or private meeting or hearing relating to one or more insured depository institutions or a transaction to acquire a deposit facility is not considered a widely attended conference or seminar on a general topic.

CRA Contact with Insured Depository Institution or Affiliate. Contacts by a person with an insured depository institution or affiliate will not cause an agreement to become subject to the requirements of section 711 unless the contact is a CRA contact. The rule provides several examples of the types of contacts with an insured depository institution or affiliate that are CRA contacts and that would make the exemption unavailable.

The first example involves a contact with an insured depository institution or affiliate about providing (or refraining from providing) written or oral comments or testimony to an agency concerning the record of performance or future performance under the CRA of the insured depository institution.

The second example involves a contact with an insured depository institution or affiliate about providing (or refraining from providing) written comments to the institution that would have to be included in the institution's CRA public file. Under the agencies' CRA Regulations, a written comment generally must be placed in an institution's CRA public file if it specifically relates to the institution's performance in helping to meet community credit needs.[8] Because this information is intended for consideration by the agencies in the course of a CRA examination or evaluation of an application for a deposit facility, the submission of comments for inclusion in an institution's CRA public file is considered a CRA contact.

The third example involves a contact with an insured depository institution or affiliate concerning the CRA rating of the insured depository institution, or the CRA record of performance of the insured depository institution.

The fourth example involves a contact with an insured depository institution or affiliate concerning actions that should be taken to improve the CRA performance of the insured depository institution.

The fifth example involves a contact with an insured depository institution or affiliate concerning any obligation or responsibility that the insured depository institution may have to meet the banking needs of its community. In this example, the contact occurs while the insured depository institution or an affiliate of the institution has an application for a deposit facility pending before an agency or is undergoing a publicly announced CRA performance examination.

If a person has one of the contacts described above and subsequently enters into a covered agreement with the insured depository institution or any affiliate of the insured depository institution, the agreement is not exempt under the rule. The rule and the examples do not contemplate that a discussion or contact must include any particular words or phrases, such as ''Community Reinvestment Act,'' ''CRA'' or ''CRA rating'' in order to be a CRA contact. Instead, the substance and context of the discussion or contact are the controlling factors.

Under the examples included in the rule, a person would *not* have a CRA contact by sending a similar fundraising letter to an insured depository institution or affiliate and other businesses in the community encouraging all businesses in the community to meet their obligation to assist in making the local community a better place to live and work. In addition, a person would not make a CRA contact by sending a general offering circular to financial institutions offering to sell a portfolio of loans and having discussions with a particular insured depository institution concerning the loan portfolio if no reference to the CRA or the institution's CRA performance is made in the offering circular or in the parties' discussions.[9] A person also would not make a CRA contact with an insured depository institution or affiliate by making a statement concerning the institution or affiliate before a widely attended conference or seminar on a general topic, even if representatives of the institution or affiliate were in attendance at the conference or seminar when the statement was made.

The agencies request comment on whether the rule should more specifically define the terms of the exemption for persons that have not made a CRA contact or more specifically define when a CRA contact has occurred and, if so, how a CRA contact should be defined. The agencies also request comment on the examples of a CRA contact included in the rule, including whether any of the examples should be amended or deleted or whether additional examples should be provided. For example, the agencies request comment on whether a CRA contact under the Act includes a general discussion about the CRA that does not involve any discussion of the performance of an insured depository institution under the CRA or obligation of the institution to serve the banking needs of its community.

In addition, the agencies request comment on whether the rule can and should be limited to exclude from the scope of CRA contacts discussions with an insured depository institution or affiliate concerning whether particular loans, services, investments or community development activities are generally eligible for consideration by an agency under the CRA Regulations. The marketing of products and services to insured depository institutions frequently may include a general statement of whether the product or service is eligible for credit under the CRA. If the rule were limited in this manner, then the situation described in section ____.2(b)(2)(iii)(D) of the rule would not be a CRA contact even if the offering circular included a statement that the loans included in the loan pool were of the type that could be considered by an agency under the CRA Regulations. A discussion of whether or how loans, services, investments or activities would impact a particular institution's CRA rating or performance would, however, continue to be considered a CRA contact.

The agencies also request comment on whether the rule can and should be limited to cover only contacts that involve providing CRA-related comments or testimony to an agency or discussions with an insured depository institution or affiliate about providing (or refraining from providing) such comments or testimony to an agency. If the rule was limited in this fashion, the actions described in section ____.2(b)(2)(ii)(B)(*3*), (*4*) and (*5*) would not constitute a CRA contact because

[8] *See* 12 CFR 25.43(a)(1) (OCC); 12 CFR 228.43(a)(1) (Board); 12 CFR 345.43(a)(1) (FDIC); 12 CFR 563e.43(a)(1) (OTS).

[9] A CRA contact would occur under the proposed rule, however, if the offering materials indicated that the loans in the mortgage pool would receive favorable consideration by the agencies under the CRA, or if the parties discussed how the transaction would improve the institution's CRA performance.

the person did not submit CRA-related comments or testimony to an agency or discuss with or contact the insured depository institution or any affiliate about providing (or refraining from providing) CRA-related comments or testimony to an agency.

Additionally, the agencies request comment on whether there should be a temporal relationship between a CRA contact and when an agreement is made. In this regard, under the proposed rule, a covered agreement entered into in 2001 between an insured depository institution and a person would not be exempt if the person had submitted a comment to an agency concerning the CRA performance of the institution several years earlier. Section 711, however, appears to have been intended to apply to agreements that result from, or were influenced by, a CRA contact. Where a CRA contact occurs a significant period of time before the negotiation of an agreement, however, there may be no link or influence between the CRA contact and the agreement. Furthermore, the passage of time may make it difficult for the parties to a covered agreement to determine or effectively track whether a CRA contact occurred at all.

For these reasons, the agencies specifically request comment on whether the rule should require that a CRA contact occur within a specified period, such as two years (or a shorter or longer period), before the parties entered into the agreement. Similarly, the agencies request comment on whether a CRA contact should include a contact that occurs after the parties enter into an agreement, such as within 90 days after the beginning of the term of the agreement, at any time during the term of the agreement, or some other period of time. For example, if a person provides comments or testimony to an agency concerning the CRA performance of an insured depository institution after entering into an agreement with the institution, would the person's actions suggest that the agreement and the comments or testimony were linked?

The agencies also request comment on how the rule and the exemption discussed above should apply in circumstances where a covered agreement involves several parties and a CRA contact has been made by or concerning only one of the parties. For example, how should the rule apply where several nongovernmental entities or persons enter into a covered agreement with an insured depository institution and only one of the entities or persons has made a CRA contact? Similarly, how should the rule apply where a nongovernmental entity or person has a CRA contact concerning one insured depository institution and subsequently enters into a covered agreement jointly with the institution and several other unaffiliated insured depository institutions? In addition, how should the rule and exemption apply where a person has a CRA contact with an agency but the relevant insured depository institution or affiliate does not know the contact occurred?

c. Request for Comment on Additional Exemptions

The agencies recognize that the language of section 711 and, accordingly, the types of agreements captured under the proposed rule are broad. The agencies are concerned that, in light of this breadth, certain agreements that were not intended to be covered by the Act may be considered covered agreements under the proposed rule. For example, supervisory experience suggests that insured depository institutions enter into a wide variety of contracts in their normal day-to-day operations that, directly or indirectly, relate to activities considered by the agencies in connection with a CRA evaluation. During the negotiation of these contracts and as an incident to the underlying business transaction, the parties may discuss whether the activities contemplated by the contract are viewed favorably under the agencies' CRA Regulations, involve loans within the institution's CRA assessment area, or would otherwise improve the institution's CRA performance. These types of contacts would be CRA contacts under the proposed rule and a related business agreement would be covered if the agreement was in fulfillment of the CRA and met the other criteria to be a covered agreement.

The Act grants the Board the ability to determine, by regulation, that specific types of contacts are exempt and, consequently, that a related agreement is not covered by section 711. The agencies specifically invite comment on whether and how the Board should exercise its exemptive authority in this area, including whether there are particular types of CRA contacts that occur and that, given their context and purpose, do not implicate the concerns of the Act. For example, if the proposed definition of CRA contact is retained in the final rule, should the Board exercise its discretion in this area to provide an exemption for CRA contacts that occur in connection with the purchase of loans by an insured depository institution or affiliate on an arm's length basis in the secondary market even where the negotiation of the agreement included a general discussion of the effect of the transaction on the CRA performance of the insured depository institution? Are there other types of contacts that occur in connection with the ordinary day-to-day business of an insured depository institution or affiliate that should be exempted from coverage because, for example, the CRA contact does not involve any coercive aspect or was initiated by the insured depository institution? If so, how could such an exemption or exemptions be framed narrowly to exclude only those types of contacts (and related agreements) that are not within the intended scope of the Act?

3. Fulfillment of the CRA

Under the GLB Act, a written agreement is a covered agreement only if it is ''made pursuant to, or in connection with the fulfillment of the Community Reinvestment Act of 1977.'' [10] The Act defines ''fulfillment'' of the CRA to mean ''a list of factors that the appropriate Federal banking agency determines have a material impact on the agency's decision to (A) approve or disapprove an application for a deposit facility [under the CRA]; or (B) to assign a rating to an insured depository institution [under the CRA].'' [11]

The Conference Report for the GLB Act indicates that the list of factors should include ''a full enumeration of the relevant factors that [an] agency reviews and considers in examining the performance of an insured financial institution in connection with the CRA, including any and all items a regulator would attach importance to in determining the evaluation under the [CRA] of the performance of a financial institution.'' [12] The agencies' CRA Regulations set forth the criteria that the agencies consider in evaluating the CRA performance of an insured depository institution for purposes of assigning a CRA rating to an institution and evaluating an application by an institution or company for a deposit facility under the CRA.[13] These regulations permit the agencies to consider broadly the lending, investment and service activities of an insured depository institution in evaluating the institution's performance under the CRA.

For these reasons, the proposed rule would define the list of factors for purposes of section 711 generally by

[10] 12 U.S.C. 1831y(e)(1)(A).

[11] *Id.* at 1831y(e)(2).

[12] H.R. Conf. Rep. No. 106–434 at 179 (1999).

[13] *See* 12 CFR 25.21–25.29 (OCC); 12 CFR 228.21–228.29 (Board); 12 CFR 345.21–345.29 (FDIC); 12 CFR 563e.21–563e.29 (OTS).

reference to the criteria enumerated in Subpart B of the CRA Regulations jointly issued by the agencies. These criteria reflect the factors that the agencies previously have determined have a material impact on an agency's assignment of a CRA rating and assessment of the CRA factor in decisions to approve or disapprove an application for a deposit facility. These factors are summarized in the proposed rule as follows:

(1) Home purchase, home improvement, small business, small farm, community development, and consumer lending as described in the lending test portion of the CRA Regulations, including loan purchases, loan commitments, and letters of credit;

(2) Making investments, deposits, or grants, or acquiring membership shares that have as their primary purpose community development, as described in the investment test portion of the CRA Regulations;

(3) Delivering retail banking services, as described in the service test portion of the CRA Regulations;

(4) Providing community development services, as described in the service test portion of the CRA Regulations;

(5) For a wholesale or limited-purpose insured depository institution, community development lending, qualified investments, and community development services, as described in the community development test portion of the CRA Regulations for wholesale or limited-purpose insured depository institutions;

(6) For small insured depository institutions, the lending and other activities described in the small insured depository institution performance standard of the CRA Regulations; [14]

(7) For an insured depository institution whose CRA performance is evaluated on the basis of a strategic plan, any element of that plan as described in the strategic plan portion of the CRA Regulations;

(8) Providing or refraining from providing written or oral comments or testimony to any agency concerning the record of performance or future performance under the CRA of an insured depository institution that is a party to the agreement or an affiliate of a party to the agreement; and

(9) Providing or refraining from providing written comments to an insured depository institution that is a party to the agreement or an affiliate of a party to the agreement that would have to be included in the institution's CRA public file.

An activity is within the factors enumerated in paragraphs (1) through (7) if it would be considered by the agencies under the relevant performance test or standard in the CRA Regulations.[15] These activities may be conducted by an insured depository institution that is a party to the agreement or an affiliate of a party to the agreement.[16] In addition, an agreement would be considered in fulfillment of the CRA if any of these activities is performed by a nongovernmental entity or person that is a party to the agreement and an insured depository institution receives favorable consideration for the activities under the CRA.

The proposed rule's list of factors also includes providing (or refraining from providing) CRA-related comments or testimony to an agency or written comments to an insured depository institution that must be included in the institution's CRA public file. The agencies' CRA Regulations generally require the agencies to consider comments received from the public or included in an insured depository institution's CRA public file when evaluating the CRA performance of the institution.[17] The CRA Regulations also require an agency to consider written or oral comments submitted to the agency when acting on applications for a deposit facility.[18] Accordingly, such comments and testimony are among the factors that may have a material impact on an agency's decision to assign a CRA rating or evaluation under the CRA of an application for a deposit facility.

While the level of activity that will have a material effect on a CRA rating or an application decision varies with the circumstances involving the particular insured depository institution, the GLB Act by its terms requires that the agencies identify the list of *factors* that have a material impact on an agency's decision to assign a CRA rating or to approve an application for a deposit facility under the CRA. The Act does not appear to incorporate a quantitative threshold for the agencies to use in defining the list of factors that are material to such a decision. Instead, the GLB Act explicitly sets a threshold dollar level for the minimum amount of activities that must be performed in order for an agreement to be covered by section 711. As discussed below, these value thresholds are $10,000 in cash payments, grants or other consideration and $50,000 in loans. For these reasons, the proposed rule provides that an agreement is in fulfillment of the CRA if it pertains to a ''factor'' that the agencies determine is ''material'' to an institution's rating or application—such as the institution's lending—rather than to a level of performance that the agencies determine is material to the CRA evaluation of that insured depository institution.

The agencies request comment on this reading of section 711 and on whether the list of factors properly identifies the ''factors'' that are material to a CRA evaluation. The agencies also request comment on whether the agencies have interpreted the statutory mandate to identify the ''list of factors that * * * have a material impact'' on an agency's decision to assign a CRA rating and to approve or disapprove an application under the CRA in a manner consistent with the language and purposes of section 711. In particular, comment is invited on whether the proposed list of factors that are considered to be in fulfillment of the CRA can and should be expanded, restricted, or altered consistent with the language and purpose of the Act. For example, although the agencies consider an insured depository institution's lending in all geographic areas and to borrowers of all income ranges for certain purposes in evaluating the institution's CRA performance, can and should the rule's

[14] The terms wholesale insured depository institution, limited-purpose insured depository institution, and small insured depository institution refer to a wholesale, limited-purpose or small bank or savings association as defined in Subpart A of the relevant agency's CRA Regulations. *See* 12 CFR 25.12(o), (t) and (w) (OCC); 12 CFR 228.12(o), (t), and (w) (Board); 12 CFR 345.12(o), (t), and (w) (FDIC); and 12 CFR 563e.12(n), (s), and (v) (OTS). An agreement that involves the performance of activities by a wholesale, limited-purpose or small insured depository institution is in fulfillment of the CRA only if the agreement involves the performance of one of the activities within the scope of the relevant performance test or standard for the particular type of institution.

[15] Thus, for example, an agreement that relates to the consumer lending activities of an insured depository institution would be considered to be in fulfillment of the CRA if the institution's consumer lending activities were considered by the appropriate agency at the institution's most recent CRA examination. Under the CRA Regulations, an institution's consumer lending activities are considered in certain circumstances by an agency if such lending constitutes a substantial majority of the institution's business or the institution has elected to have its consumer lending activities considered by the appropriate agency. *See* 12 CFR 25.22(a) (OCC); 12 CFR 228.22(d) (Board); 12 CFR 345.22(a) (FDIC); 12 CFR 563.22(a) (OTS).

[16] As discussed further below, a ''CRA affiliate'' of an insured depository institution is viewed as part of the insured depository institution. Accordingly, activities performed by a CRA affiliate of an insured depository institution are considered to be performed by the insured depository institution.

[17] *See* 12 CFR 25.21(b)(6) and 25.43(a)(1) (OCC); 12 CFR 228.21(b)(6) and 228.43(a)(1) (Board); 12 CFR 345.21(b)(6) and 345.43(a)(1) (FDIC); 12 CFR 563e.21(b)(6) and 563e.43(a)(1) (OTS).

[18] *See* 12 CFR 25.29(c) (OCC); 12 CFR 228.29(b) (Board); 12 CFR 345.29(c) (FDIC); 12 CFR 563e.29(c) (OTS).

list of factors focus on those types of lending (and other activities) that are reasonably likely to receive favorable consideration under the CRA Regulations, such as certain types of lending in LMI areas or to LMI borrowers?

The terms of a written agreement generally determine whether the contract, arrangement or understanding is in fulfillment of the CRA. However, the parties to a written agreement may not evade coverage under the Act by reaching an oral understanding that a party will submit (or refrain from submitting) oral or written CRA-related comments or testimony to an agency or written comments to an insured depository institution that would have to be included in the institution's CRA public file and excluding this understanding from the terms of the written agreement. In addition, if an agreement includes a loan, extension of credit or loan commitment that, if done separately, would be exempt from coverage and also provides for the insured depository institution or affiliate to provide other funds or resources, the parties may exclude the exempt loan, extension of credit or loan commitment when determining if the agreement is in fulfillment of the CRA.

The following are examples of agreements that would be in fulfillment of the CRA under the proposed rule. Unlike the examples of CRA contacts, these examples are not included in the proposed rule. Each example illustrates *only* the fulfillment criteria of the rule and assumes that the agreement meets the other requirements necessary to be considered a covered agreement. In this regard, even if an agreement is in fulfillment of the CRA, it may still be exempt from coverage under the rule if it is an exempt loan or loan commitment, or if the person that is a party to the agreement has not had a CRA contact.

Example 1: An insured depository institution enters into an agreement with a local business organization that provides for the institution to make $500,000 in small business loans to third parties in the institution's assessment area in the next two years. The agreement is in fulfillment of the CRA because an institution's small business lending activity is considered as part of the lending test under the CRA Regulations. The agreement might still be exempt from coverage depending on the scope of the exemption for loan commitments.

Example 2: An insured depository institution enters into an agreement with a development corporation to invest $1 million in a project the purpose of which is the revitalization of an LMI neighborhood within the institution's assessment area. The agreement is in fulfillment of the CRA because the investment is a qualified investment under the CRA Regulations and would be considered as part of the investment test under the CRA Regulations.

Example 3: An insured depository institution enters into an agreement with a supermarket chain that provides for the institution to open a branch in certain of the chain's stores. The agreement is in fulfillment of the CRA because an institution's record of opening and closing branches is evaluated in the context of the distribution of its branches as part of the service test under the CRA Regulations.

Example 4: An insured depository institution enters into a written agreement with an organization to provide the organization with a $25,000 donation to assist in covering the organization's general operating expenses. A representative of the organization orally agrees that, in return for the contribution, the organization will submit a comment to or testify before the appropriate agency in support of the institution's recently announced proposal to merge with another insured depository institution. The written agreement is in fulfillment of the CRA because the organization orally agreed in connection with the agreement to provide comments or testimony to an agency concerning the CRA record of performance of the institution.

The following are examples of agreements that would not be in fulfillment of the CRA under the proposed rule:

Example 5: An insured depository institution enters into an agreement with a local theater company for the institution to make a $20,000 charitable donation to the company for each of the next five years. The agreement is not in fulfillment of the CRA because the donation does not have community development as its primary purpose and, thus, would not be considered a qualified investment under the CRA Regulations.

Example 6: An insured depository institution enters into an agreement with a neighborhood association to donate 100 hours of employee time to the organization's annual effort to clean up the neighborhood. The agreement is not in fulfillment of the CRA because the services are not considered community development services or other qualifying services under the CRA Regulations.

The agencies note that the proposed rule's list of factors does not include performance of activities designed to ensure compliance with Federal laws that prohibit discriminatory or other illegal credit practices, such as the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Although the agencies consider evidence of these practices in evaluating an insured depository institution's performance under the CRA, the agencies are concerned that including such activities in the list of factors could have an unintended and detrimental impact on compliance and enforcement of the fair lending laws.[19] The agencies specifically request comment on whether this view is correct, or whether the list of factors should be expanded to include activities designed to ensure compliance with the fair lending laws.

Comment also is solicited on whether the list of factors should be expanded to include other activities. For example, the proposed rule's list of factors does not specifically include the provision of advisory or consulting services concerning CRA-related activities. Should the rule include a reference to these or other activities?

4. Value

A written agreement is a covered agreement only if it calls for an insured depository institution or affiliate to provide to one or more persons cash payments, grants, or other consideration of more than $10,000 in any calendar year, or to make loans that have an aggregate principal amount of more than $50,000 in any calendar year. The statutory threshold is based on the total value of payments and loans provided under the agreement and does not require that these payments or loans be made to a party to the agreement.[20] Accordingly, under the proposed rule, all cash payments, grants, consideration or loans provided by an insured depository institution or affiliate under the agreement, including amounts provided to individuals or entities that are not parties to the agreement, would be considered in determining whether an agreement meets the rule's dollar thresholds. However, if an agreement includes a loan, extension of credit or loan commitment that, if done separately, would be exempt from coverage and also provides for the institution or affiliate to provide other funds or resources, the parties may exclude the exempt loan, extension of credit or loan commitment when determining if the agreement meets the dollar thresholds of the rule. *See* discussion under II.A.2.a. above concerning qualifying loans.

Under the proposal, an agreement that provides for payments to be made in any calendar year in excess of the dollar thresholds established by the statute is a covered agreement for its entire term. The agencies believe that using a calendar year period for these calculations should facilitate

[19] For example, a requirement that an insured depository institution publicly disclose an agreement to use ''mystery shoppers'' to test the institution's compliance with the fair lending laws or to settle a fair lending complaint could deter the institution from entering into such agreements.

[20] *See* 12 U.S.C. 1831y(e)(1)(A)(i).

compliance with the rule by providing all parties to a covered agreement a uniform basis for determining whether the agreement is covered by the rule and because the terms of an agreement may not coincide with the parties' fiscal years. The agencies invite comment on whether another 12-month period would provide a more appropriate basis for these calculations.

The following are examples of the value provisions of the proposed rule. These examples illustrate only the application of the dollar thresholds of the proposed rule.

Example 1: An insured depository institution enters into an agreement with a small business investment company pursuant to which the institution will invest $25,000 in the company. The agreement meets the dollar threshold criterion to be a covered agreement because the institution will provide more than $10,000 in funds (other than loans) under the agreement.

Example 2: An insured depository institution and a community organization enter into a written agreement pursuant to which the institution will invest $1 million in a state-sponsored investment fund that supports affordable housing initiatives for LMI individuals. The community organization will not receive any funds or other resources from the insured depository institution or its affiliates under the agreement. The agreement meets the dollar threshold criterion for a covered agreement under the proposed rule.

Example 3: An affiliate of an insured depository institution provides a $100,000 loan to an association of small businesses pursuant to a written agreement. The loan is on market terms and not for purposes of re-lending. The agreement also provides for the affiliate to make a $5,000 grant to the local chamber of commerce's small business incubator. Because the loan is made on market terms and not for purposes of re-lending, the loan would be an exempt agreement under the proposed rule if it were a separate agreement. Accordingly, the value of the loan may be excluded in determining the value of the agreement. After excluding the loan, the agreement would not meet the dollar criterion of the rule.

Example 4: An insured depository institution and a community development corporation enter into a written agreement that requires an affiliate of the insured depository institution to provide the organization with a grant of $5,000 in 2000, $8,000 in 2001, and $11,000 in 2002. The agreement exceeds the dollar threshold criterion of the rule because the agreement provides for payments in excess of $10,000 during 2002. Assuming the agreement meets the other requirements of the rule and is not otherwise exempt, the agreement is a covered agreement for its entire term.

The agencies request comment on how the dollar thresholds in the statute should be applied in situations where an agreement does not have a specific term or does not specify a timetable for the disbursement of funds or resources under the agreement. For example, if an agreement provides that an insured depository institution will make $40,000 in grants over a 5-year period, but does not specify the years in which the grants will be made, should the rule create a presumption that the entire sum ($40,000) is provided in the first year of the agreement or assume that the value is paid in equal yearly installments of $8,000? An alternative approach would rely on how the payments are actually made under the agreement. Under this alternative approach, if the payments under the agreement actually exceeded $10,000 in a calendar year, the agreement would then become a covered agreement.

The agencies also invite comment on whether the rule should provide guidance on how to determine the value of an agreement that does not specify the amount of payments, grants, loans or other consideration to be provided under the agreement, such as an agreement for an insured depository institution to open a branch or to begin offering a new loan product.

5. Related Agreements Considered a Single Agreement

In two circumstances, section 711 of the GLB Act requires that separate agreements or contracts be aggregated for purposes of determining whether the agreements—taken as a whole—meet the definition of a covered agreement.[21] Section ____.3 of the rule implements these requirements. If separate agreements are considered a single agreement under section ____.3, the combined agreement must still meet the criteria to be a covered agreement to be covered by the rule. Loans, extensions of credit and loan commitments that are specifically excluded from the definition of covered agreement under ____.2(b) of the rule are not required to be aggregated with other agreements.

a. Agreements Entered Into by the Same Parties

Section ____.3(a) provides that all written contracts, arrangements, or understandings that are entered into by an insured depository institution or affiliate of an insured depository institution will be considered to be part of a single agreement if the contracts, arrangements, or understandings are entered into with the same person within a 12-month period and each agreement is in fulfillment of the CRA. This aggregation rule applies to all written agreements entered into during the 12-month period by the same person on the one hand, and any part of the same organization, including an insured depository institution and any of its affiliates, on the other hand.

Example 1: In April, an insured depository institution enters into a written agreement with Community Development Organization, Inc. pursuant to which the institution makes an $8,000 investment in the organization. In November of the same year, an affiliate of the insured depository institution and Community Development Organization, Inc. enter into a written agreement under which the affiliate makes an additional $8,000 investment in the organization. For purposes of this example, both investments are assumed to be qualified investments under the CRA Regulations and considered in the evaluation of the institution's CRA performance. The separate agreements must be aggregated under the rule and the combined agreement meets the $10,000 dollar threshold of the rule. Accordingly, the agreements are jointly considered a covered agreement.

Example 2: In September, an insured depository institution orally agrees to donate $15,000 of computer equipment to a local housing organization. In December, the institution and organization enter into a written agreement for the institution to make a $5,000 CRA qualified investment in local housing project that is eligible for low-income housing tax credits. The agreements do not need to be aggregated under the rule because the September agreement was not in writing.

Example 3: In February, an insured depository institution enters into a written agreement with Partnership A for the institution to make a $9,000 grant to Partnership A for the purpose of rehabilitating affordable-housing units. In August of the same year, an affiliate of the insured depository institution enters into a written agreement with Partnership A under which the affiliate makes a payment of $9,000 so that its employees may have access to the child care center operated by Partnership A. The August agreement is not in fulfillment of the CRA. Accordingly, the two agreements would not be aggregated under the rule.

b. Substantively Related Contracts

Section 711 requires the aggregation of separate but ''substantively related contracts'' even where the contracts are entered into with different persons.[22] Unlike the aggregation rule discussed above, the rule aggregating ''substantively related contracts'' applies only to separate, written contracts and does not apply to other types of written arrangements or understandings.

The rule defines written contracts entered into by an insured depository institution or any of its affiliates as ''substantively related'' if the contracts were negotiated in a coordinated

[21] *See* 12 U.S.C.1831y(e)(1) and (2).

[22] *See* 12 U.S.C. 1831y(e)(1)(A)(ii).

fashion. The rule does not require that the separate contracts each be in fulfillment of the CRA or that the parties to the contracts (other than the banking organization) be the same. Thus, the rule prevents parties from evading the disclosure and reporting obligations of the statute by separating out from an agreement payments or grants that may not themselves be in fulfillment of the CRA.

Example 1: Two housing organizations jointly approach an insured depository institution to obtain funding. A representative of the insured depository institution meets with both organizations at the same time to discuss their funding needs. The institution enters into a written contract with one organization to provide it with $9,000 for the purpose of rehabilitating affordable housing units. The institution enters into a separate written contract with the other organization to provide the organization with an unrestricted grant of $9,000. Because the contracts were negotiated in a coordinated fashion, the contracts must be aggregated under the rule. When aggregated, the contracts would meet the statute's $10,000 dollar threshold and each contract would be a covered agreement.

Example 2: A bank holding company announces its intention to acquire an insured depository institution. A Florida-based group and a California-based group independently approach the bank holding company to seek funding for specific projects and separately negotiate written contracts with the bank holding company. The contracts would not be aggregated under the rule, and each contract would be a covered agreement only if that contract on its own met the requirements of the rule.

The agencies request comment on the aggregation rules included in section ____.3, including the proposed definition of ''substantively related contracts'' and whether there are alternative definitions that would achieve the purposes of the statute. The agencies also request comment on how these aggregation rules should apply when a CRA contact has not occurred prior to one of the agreements or was made by only one of the persons that is a party to the agreements. For example, when a single person enters into two agreements with an insured depository institution during a 12-month period, but engages in a CRA contact between the first and second agreement, should the first agreement be excluded from aggregation because a CRA contact had not occurred at the time it was entered into? Alternatively, should the agreements be aggregated because a CRA contact occurred prior to the second agreement and the agreements otherwise meet the requirements for aggregation under the rule? Similarly, should substantively related contracts entered into by separate persons be aggregated under the rule only if each person had engaged in a CRA contact?

6. CRA Affiliate Treated as Insured Depository Institution

The CRA Regulations provide that an insured depository institution, at its election, may request that an agency consider certain activities conducted by an affiliate in evaluating the CRA performance of the insured depository institution.[23] In these circumstances, the selected activities of the affiliate are viewed as activities of the insured depository institution.

The proposed rule generally considers a contact concerning this type of affiliate, referred to as a ''CRA affiliate,'' of an insured depository institution to be the equivalent of a contact concerning an insured depository institution (*see* section ____.2(b)(2)). Similarly, an agreement is considered to be in fulfillment of the CRA if it concerns the performance of any of the activities listed in section ____.2(c) by a ''CRA affiliate'' of an insured depository institution (*see* section ____.2(c)).

The proposed rule defines a ''CRA affiliate'' as any company that is an affiliate of an insured depository institution and whose activities were considered by an agency in assessing the CRA performance of the institution at the institution's most recent CRA examination.[24] Under the rule, a company is considered a CRA affiliate only to the extent its activities were taken into account in the CRA evaluation of an affiliated insured depository institution.

Example 1: A person submits a written comment to an agency concerning the lending performance under the CRA of a mortgage company that is affiliated with an insured depository institution. The insured depository institution elected, in accordance with the agencies' CRA Regulations, to have the lending activities of the mortgage company considered in the institution's most recent CRA performance evaluation. The mortgage affiliate, therefore, is considered a CRA affiliate with respect to its lending activities. Accordingly, the agreement is in fulfillment of the CRA for purposes of section 711 and the person has engaged in a CRA contact under section ____.2(b)(2) because the selected activities of a CRA affiliate and contacts with an agency regarding a CRA affiliate are considered activities of and contacts concerning an insured depository institution.

Example 2: An affiliate of an insured depository institution engages in mortgage lending and provides credit counseling services. The insured depository institution elected to have only the mortgage lending activities of the affiliate considered in its most recent CRA performance evaluation. The affiliate and a community group enter into an agreement that provides for the affiliate to provide credit counseling services in the local community. The agreement is not in fulfillment of the CRA because the affiliate is not considered a CRA affiliate with respect to its credit counseling activities.

To assist persons in complying with the rule, section ____.2(e) of the proposed rule requires that an insured depository institution or affiliate inform the other parties to a covered agreement if the agreement concerns the activities of a CRA affiliate. The institution or affiliate must provide this notification not later than the time the agreement is entered into if the affiliate is a CRA affiliate at that time.

Because the status of an affiliate of an insured depository institution may change, an agreement that concerns the activities of an affiliate may become a covered agreement *after* the date the parties enter into the agreement. For example, a person may enter into an agreement that concerns the lending activities of a newly formed affiliate. If an insured depository institution subsequently elects to have the lending activities of the new affiliate considered during its next CRA performance examination, the affiliate would become a CRA affiliate. In such circumstances, the proposed rule requires the insured depository institution or affiliate to inform the other parties to the agreement that the affiliate has become a CRA affiliate within a reasonable period of time after the change of status occurs.

Where an agreement concerns the activities of an affiliate that becomes a CRA affiliate, the agreement would be in fulfillment of the CRA only once the affiliate becomes a CRA affiliate. If the agreement met the other requirements of the rule, the agreement would become a covered agreement at that time. Section ____.2(e) clarifies that in these circumstances the parties to the agreement have no disclosure or reporting obligations under the rule until the agreement becomes a covered agreement. In applying the disclosure and reporting requirements of the rule, the agreement would be considered to have been entered into on the date it became a covered agreement.

The agencies request comment on the proposed rule's treatment of CRA affiliates, including whether the

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[23] *See* CRA lending test (12 CFR 25.22(c), 228.22(c), 345.22(c) and 563e.22(c)); CRA investment test (12 CFR 25.23(c), 228.23(c), 345.23(c) and 563e.23(c)); CRA service test (12 CFR 25.24(c), 228.24(c), 345.24(c) and 563e.24(c)); CRA community development test for wholesale and limited-purpose institutions (12 CFR 25.25(d), 228.25(d), 345.25(d) and 5632.25(d)); and CRA strategic plans (12 CFR 25.27(c), 228.27(c), 245.27(c) and 563e.27(c)).

[24] *See* Proposed Rule, section ____.8(c).

requirement that an insured depository institution or affiliate inform the other parties when an agreement concerns a CRA affiliate is useful and practicable. The agencies also request comment on whether the rule should provide a similar notice procedure for agreements that involve an activity of an insured depository institution, such as consumer lending, that the institution elects for the first time to be considered under the CRA during the term of the agreement. [25] In addition, the agencies request comment on whether there is an appropriate and less burdensome way for the rule to determine whether an affiliate is a CRA affiliate at the time the parties enter into an agreement.

B. Disclosure of Covered Agreements

Section 711 requires that each party to a covered agreement fully disclose the agreement in its entirety and make the full text of the agreement available to the public and the appropriate agency with supervisory responsibility over the relevant insured depository institution.

1. Disclosure to the Public

The proposed rule requires that each party to a covered agreement make a complete copy of the agreement available to any member of the public upon request. The rule would permit an insured depository institution to fulfill its public disclosure obligation by placing a copy of a covered agreement in the institution's CRA public file and making it available in accordance with the procedures set forth in the CRA Regulations relating to public files. [26]

A party may make a covered agreement available to any individual or entity that requests the agreement by mailing it to the requestor, and the proposal would specifically permit the party to charge the requestor for the costs of copying and mailing the agreement, so long as the fees are reasonable. The proposal does not otherwise specify or require a party to employ any particular method in responding to requests from the public for a covered agreement. For example, a party also could make an agreement available to an individual or entity with access to the Internet by posting the agreement on a publicly accessible website or to members of the public within a local geographic area by making the agreement available for inspection at an office within that area.

The proposed rule provides that a party's obligation to make a covered agreement available to the public terminates 12 months after the end of the term of the covered agreement. The agencies believe that this time period would permit interested members of the public adequate time to obtain a covered agreement from the parties, while not placing an undue recordkeeping burden on the parties to covered agreements. Members of the public would continue to be able to obtain copies of a covered agreement from the relevant supervisory agency under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) after this 12-month period.

The agencies request comment on all aspects of the proposed rule's public disclosure requirements. Comment is sought on whether the rule should include illustrative examples of how a party may make an agreement available to a member of the public and, if so, whether there are additional methods (other than those discussed above) that should be allowed for making an agreement available to the public. For example, should the rule explicitly allow a person to arrange for another entity or individual to make the person's covered agreements available to the public, or allow a party to recover reasonable fees for searching its records for a covered agreement? Comment also is requested on whether affiliates of insured depository institutions should be permitted to disclose an agreement to the public by placing the agreement in the CRA public file of an affiliated insured depository institution. In addition, comment is invited on whether it is reasonable, appropriate and consistent with the statute to rely on access to covered agreements through the agencies for public disclosure requests made more than 12 months after the term of the agreement and whether this period should be longer or shorter.

2. Filing of Covered Agreement by Insured Depository Institutions With Agencies

The rule requires each insured depository institution and affiliate that is a party to a covered agreement to provide a complete copy of the agreement to each relevant supervisory agency (as defined below) within 30 days after the parties enter into the agreement. If two or more insured depository institutions or affiliates are parties to the same agreement, the institutions and affiliates may jointly file a copy of the agreement with the relevant supervisory agencies.

3. Persons Must Make Covered Agreements Available to Agency

Section 711 requires each party to a covered agreement to make the agreement available to the appropriate agency. Because the relevant supervisory agencies would receive a copy of any covered agreement from the insured depository institution or affiliate that is a party to the agreement, the rule provides that a nongovernmental entity or person may fulfill its statutory obligation in this area by providing, upon request from the relevant supervisory agency, a complete copy of the agreement to the agency. The copy must be provided to the agency within 30 days of the agency's request. As with disclosure to the public, the rule provides that a person's obligation to make an agreement available to an agency terminates 12 months after the end of the term of the agreement.

The agencies believe this procedure will reduce regulatory burden and avoid duplicative filings. At the same time, this procedure requires persons to make copies of covered agreements available to the agencies consistent with the statute.

4. Relevant Supervisory Agency

The Act requires that parties to a covered agreement make the agreement available to, and file annual reports with, the appropriate Federal banking agency with supervisory responsibility over the relevant insured depository institution. The proposed rule uses the term ''relevant supervisory agency'' to identify the appropriate agency for a particular covered agreement. Under the rule, the ''relevant supervisory agency'' is—

- The OCC in the case where—
  * The parties to the agreement include a national bank or subsidiary of a national bank; or
  * A national bank or subsidiary or CRA affiliate of a national bank provides funds or resources under the agreement;
- The Board in the case where—
  * The parties to the agreement include a state member bank, subsidiary of a state member bank, bank holding company, or subsidiary of a bank holding company (other than an insured depository institution or subsidiary thereof); or
  * A state member bank or subsidiary or CRA affiliate of a state member bank provides funds or resources under the agreement;
- The FDIC in the case where—
  * The parties to the agreement

[25] *See* footnote 15 above.

[26] *See* 12 CFR 25.43 (OCC); 12 CFR 228.43 (Board); 12 CFR 345.43 (FDIC); 12 CFR 563e.43 (OTS).

include a state nonmember bank or subsidiary of a state nonmember bank; or

* A state nonmember bank or subsidiary or CRA affiliate of a state nonmember bank provides funds or resources under the agreement; or

• The OTS in the case where—

* The parties to the agreement include a savings association, subsidiary of a savings association, savings and loan holding company or subsidiary of a savings and loan holding company; or

* A savings association or subsidiary or CRA affiliate of a savings association provides funds or resources under the agreement.

The agencies believe this definition will ensure that a covered agreement and its related annual reports are filed with the agency or agencies that have supervisory authority over the insured depository institution or affiliate that is involved with the agreement, either as a party or as a source of funds or resources paid under the agreement.

More than one agency may be the relevant supervisory agency with respect to a single covered agreement. For example, if a national bank, state nonmember bank, and a savings association provide funds pursuant to a covered agreement entered into by their parent bank holding company, the OCC, FDIC, OTS, and Board would each be a relevant supervisory agency for the agreement. The agencies solicit comment on the proposed rule's definition of ''relevant supervisory agency,'' including whether there are alternative definitions that might reduce the filing burdens of parties while ensuring the appropriate agencies receive the filings contemplated by the Act.

5. Treatment of Confidential or Proprietary Information

Covered agreements may contain confidential or proprietary information the disclosure of which may cause competitive or other harm to one or more of the parties to the agreement. Section 711 of the Act directs the agencies to ensure that the implementing regulations ''do not impose an undue burden on the parties [to a covered agreement] and that proprietary and confidential information is protected.'' [27] This provision must be read in harmony with other provisions of section 711 that require that a covered agreement ''shall be in its entirety fully disclosed, and the full text thereof made available * * * to the public.'' Other provisions of section 711 require the reporting of the terms and value of covered agreements, the identity of the parties to the agreement, and the uses of funds and resources provided under covered agreements.

In light of these provisions, and in order to ensure the uniform disclosure of covered agreements under the Act by the parties and the agencies, the proposed rule would allow a party to a covered agreement to request a determination from the relevant supervisory agency whether the agency could withhold specific portions of the agreement from public disclosure. In considering these requests, the agencies will apply the procedures and standards of the Freedom of Information Act (5 U.S.C. 552 *et seq.*) (FOIA), which governs public access to all records of an agency, including documents filed with the agency by third parties. If the relevant supervisory agency determines that it could withhold specific portions of the covered agreement from public disclosure under FOIA, the proposed rule would permit the parties to the agreement to also withhold those specific portions of the agreement from any copies of the agreement directly made available to the public. A party could withhold from public disclosure only those limited portions of a covered agreement determined to be exempt from public disclosure under FOIA by the relevant supervisory agency.

In applying the standards under FOIA, the agencies note that section 711 may require disclosure of some types of information that an agency might normally be able to withhold from disclosure under FOIA. In light of the directive of section 711, the agencies may not be able to withhold under FOIA—or permit a party to withhold from public disclosure—many of the provisions contained in a covered agreement. For example, the agencies might not be able to permit a party to withhold the amount of payments or loans to be made under the agreement, the persons receiving such payments or loans, and the terms of any such payments or loans. It may be possible that only limited types of information could be withheld from public disclosure under the proposed rule. Such information might include, for example, individual account numbers or information detailing a particular institution's proprietary underwriting criteria.

The agencies welcome comment on whether covered agreements are likely to contain confidential or proprietary information the disclosure of which would harm the parties to the agreement given the definition of covered agreements. The agencies also request comment on whether, and if so to what degree, such information may be withheld from public disclosure under section 711. If covered agreements typically contain particular types of information that may properly be withheld from public disclosure under section 711, should the rule specify these types of information and allow the parties to withhold this information without seeking prior agency review or in lieu of the agency review process? The agencies also invite comment on whether the proposed agency review process is useful and practicable and whether there are alternative or additional procedures that the agencies can and should implement under section 711 to protect confidential and proprietary information. The agencies also invite comment on whether the rule should specifically permit a party that has requested agency review of a covered agreement to delay disclosing the agreement to the public until the agency rules on the request.

6. Disclosure Limited to Covered Agreements Entered Into After November 12, 1999

The proposed rule's disclosure obligations apply only to covered agreements entered into after November 12, 1999, the effective date of section 711 of the GLB Act. Under the rule, a written modification, amendment, renewal, or extension of an agreement creates a new agreement. Thus, if an agreement entered into before November 12, 1999, is modified, amended, renewed or extended after that date, the parties must disclose the entire new agreement if it otherwise meets the criteria to be a covered agreement. Disclosure is not required if the pre-November 12, 1999, agreement expressly provided for the renewal or extension and established the terms of the agreement during the renewal or extension period.

Example: An insured depository institution and a community organization enter into a written agreement in January 1999 that calls for the institution to place an ATM in the local community by December 2000. In September 2000, the parties enter into a written modification of the agreement that calls for the institution to establish a full-service branch rather than an ATM. If the modified agreement meets the criteria to be a covered agreement, the modified agreement must be disclosed in accordance with the rule.

C. Annual Reports

The Act requires each person, insured depository institution, or affiliate of an insured depository institution that is a party to a covered agreement to file a report relating to the covered agreement.

[27] 12 U.S.C. 1831y(h)(2)(A).

These annual reporting obligations apply only to covered agreements entered into on or after May 12, 2000.[28]

1. No Report Required by Person That Does Not Receive Funds or Resources

The proposed rule requires that each party to a covered agreement file an annual report for the fiscal years during the term of the agreement. The rule does not, however, require a nongovernmental entity or person to file an annual report with respect to a particular covered agreement for any fiscal year during which the person did not receive any funds under the covered agreement. The agencies believe that requiring an annual report in such circumstances would not further the purpose of the statute because the person would not have received any funds or resources under the agreement during the fiscal year. Under the proposed rule, however, each insured depository institution and affiliate that is a party to a covered agreement must file an annual report each year during the term of the agreement. The agencies request comment on whether this reporting exemption for persons is appropriate.

Example 1: A savings association and a community development organization that rehabilitates affordable housing in the association's assessment area enter into a covered agreement pursuant to which the association will invest $100,000 in the organization over three years. The investment will be used to support a rehabilitation project that is expected to take three years to complete. If the savings association provides the full $100,000 in the first year of the agreement, the organization must file an annual report with the OTS for the fiscal year in which it received the $100,000. The organization is not required to file an annual report with the OTS for its subsequent fiscal years during the term of the agreement.

Example 2: A state non-member bank enters into a covered agreement with a community organization to make $1 million in community development grants in the community over the next two years. The community organization will not receive any funds or other resources under the agreement (including under the grants as they are made). The agreement is a covered agreement and must be made available to the public and the FDIC. In addition, the state non-member bank must file annual reports concerning grants made and actions taken under the agreement. The community organization is not required, however, to file any annual reports concerning the agreement because the organization receives no funds or resources under the agreement.

Example 3: An insured depository institution and an organization enter into a written agreement pursuant to which the institution commits to make $10 million in small business loans in the local community over the next three years. The loans would be made at market rates and would not be for purposes of re-lending. The organization would not receive any funds or resources under the agreement, including under the loans as they are made. Even if a commitment by an insured depository institution to make multiple loans on market terms and not for purposes of re-lending is a covered agreement (*see* Part I.A.2 above), the organization would not have to file any annual report concerning the agreement because it would receive no funds or resources under the agreement. Under the proposed rule, the institution would have to file an annual report during the term of the agreement indicating the aggregate amount and number of loans made during the year under the agreement. Each individual loan made pursuant to the commitment would be exempt from coverage and, accordingly, each borrower would have no reporting obligation under the rule.

2. Contents of Annual Report Filed by Persons

Section 711 requires that the annual report filed by a nongovernmental entity or person provide a detailed, itemized accounting of how the person used any funds or resources received under the covered agreement during the previous year. The proposed rule would allow this detailed accounting to be provided in two ways: a description of the specific purpose or purposes for which the funds were used, or a segmentation of funds used for general purposes in a pre-defined list of expense categories.

a. Specific Purpose Funds and Resources

The first reporting method applies to funds or other resources that a person receives under a covered agreement and allocates and uses for a specific purpose. Specific purpose funds or resources are those that a person targets and uses for a distinct program, the purchase of a distinct asset, or the payment of a distinct expense. For example, a person would use this reporting method if, pursuant to the terms of the covered agreement or otherwise, the person specifically allocated and used the funds received under a covered agreement for a particular loan program, to purchase computers, to sponsor a particular seminar, or to pay the salary of a particular person. A specific purpose must be a purpose that is more limited than the categories of expenses enumerated below for the reporting of general purpose funds. In other words, funds or resources are not allocated or used for a specific purpose if they are allocated or used for general operational expenses, to support the organization's general activities in the community, or to cover general compensation, administrative, travel, entertainment, consulting or professional expenses.

Under the proposed rule, funds or resources allocated and used for a specific purpose must be segregated in the annual report from funds used for general purposes. For funds received under a covered agreement and allocated and used for a specific purpose, a person's annual report must provide the following information: (1) A description of each specific purpose for which the funds or resources were used during the fiscal year; and (2) the amount of funds or resources used for each specific purpose during the fiscal year.

Example 1*:* An organization receives $15,000 from an insured depository institution under a covered agreement. The organization allocates and uses the $15,000 to sponsor a seminar on affordable housing initiatives. The organization's annual report for the fiscal year would report that it received $15,000, that it used the $15,000 to sponsor the seminar, and provide a brief description of the seminar.

Example 2*:* A community group receives $50,000 from an insured depository institution under a covered agreement. During its fiscal year, the community group specifically allocates and uses $45,000 of the funds to purchase computer equipment and the remaining $5,000 is used for general operating expenses. The group's annual report for the fiscal year must state that the group received $50,000 under the agreement during the fiscal year and that $45,000 was used to purchase computer equipment. In addition, the annual report must provide the detailed, itemized list of expenses described below because some funds were used for general purposes.

b. All Other Funds and Resources

Funds or other resources received under a covered agreement may be used for general purposes or unspecified purposes. The second reporting method addresses funds or resources that are received under a covered agreement and that are not allocated and used for a specific purpose. Under this method, the reporting person must provide a detailed, itemized list of how the reporting person has used its funds during the fiscal year. This list must include, at a minimum, the amount of funds used during the fiscal year for—

- Compensation of officers, directors, and employees;
- Administrative expenses;
- Travel expenses;
- Entertainment expenses;
- Payment of consulting and professional fees; and
- Other expenses and uses.

The annual report may reflect the total amount of funds from all sources that

[28] See the discussion above concerning the treatment of agreements entered into prior to May 12, 2000, that are modified, amended, renewed, or extended after that date.

the person used during the fiscal year for the types of expenses listed above. The annual report must, however, specify the total amount of funds that the person received under the covered agreement and that were used for general or unspecified purposes. The agencies may determine from this information the proportion of general purpose funds received under the covered agreement that were used for each category of expenses listed above.

Example*:* In March, a person receives an unrestricted grant of $15,000 under a covered agreement. The person includes the funds in its general operating budget and does not allocate and use the funds for a specific purpose. The person's annual report for the fiscal year must state that the person received $15,000 of general purpose funds. The annual report also must indicate the total amount of funds and resources that the person used during the fiscal year for compensation, administrative expenses, travel expenses, entertainment expenses, consulting and professional fees, and other expenses and uses.

c. Use of Other Reports

As noted above, section 711 directs the agencies to ensure that regulations implementing that section ''do not impose an undue burden on the parties.'' The legislative history also indicates that the agencies should allow reporting parties to use reports prepared for other purposes to fulfill the annual reporting requirements.[29] Accordingly, the proposed rule does not require that a person's annual report be prepared on a special form or in a particular format. Instead, the rule provides that a person's annual report may consist of or incorporate reports or documents that the person has prepared for public, internal or other purposes so long as the documents filed with the relevant supervisory agency contain all of the information required by the rule. For example, a person's annual report may consist of a Federal or state tax return, a report prepared for the person's members or shareholders, or the person's financial statements if such documents provide the information required by the rule.

In this regard, the agencies have reviewed several tax forms commonly filed by tax-exempt nonprofit organizations. Internal Revenue Form 990, which is the Federal tax return form for certain tax-exempt nonprofit organizations, requires the filing organization to provide information that is at least as detailed, and in some cases more detailed, than the list of expenses contained in section 711. In particular, Form 990 requires a tax-exempt organization to separately state the amount that the organization spent during the tax year on compensation of officers, directors, trustees and key employees; salaries and wages of other employees; professional fundraising fees; accounting fees; legal fees; supplies; telephone; postage and shipping; occupancy; printing and publications; travel; conferences, conventions and meetings; and an itemized list of other uses. Since these categories of expenses include and are more specific than the list of expenses required to be provided for general purpose funds, a person may use a properly completed Form 990 to fulfill the rule's reporting requirements for general purpose funds. Other forms or reports also may be used, separately or in combination, to fulfill the rule's reporting requirements so long as they contain, in total, the information required by the rule.

d. Consolidated Annual Reports Permitted

The GLB Act requires the agencies to permit persons that are parties to a large number of covered agreements to file a consolidated annual report relating to all of the covered agreements.[30] Accordingly, section ____.5 of the proposed rule permits a person that is a party to 5 or more covered agreements to file a single consolidated report covering all of the person's covered agreements. A person's consolidated report must identify the person filing the report and each agreement covered by the report. All other information required by the rule may be provided on an aggregate basis for all agreements covered by the annual report. Any consolidated report must be filed with all of the relevant supervisory agencies for the covered agreements included in the report.

Example: A community development organization is a party to six separate covered agreements with six unaffiliated insured depository institutions. Under each agreement, the organization receives $15,000 to fund the rehabilitation of a specific low-income housing project identified in the agreement. The organization allocates and uses all of the funds for the specified purpose. If the organization elects to file a consolidated annual report, the consolidated report must (1) identify the organization and the six covered agreements, (2) state that the organization received $90,000 under the agreements, and (3) state that the person allocated and used the $90,000 to fund the rehabilitation project and provide a description of the project.

e. Specific Request for Comments

The agencies invite comment on all aspects of the proposed rule's annual reporting requirements for nongovernmental entities and persons. The agencies also specifically request comment on the following:

- Are the rule's reporting requirements for specific purpose funds and resources reasonable and appropriate? Would the proposed rule limit the burden associated with reporting funds or resources received for a specific purpose? Should the regulation provide additional guidance as to when a person has allocated and used funds or resources for a specific purpose or allow, rather than require, a person to use this reporting method when it allocates and uses funds for a specific purpose?
- Should the detailed, itemized list of uses contained in the proposed rule be expanded to include other categories of uses or expenses, such as grants or loans made, or services provided, to others?
- Are there additional information items that should be included in annual reports? For example, should a person be required to state in each annual report the aggregate amount of funds or resources that the person has received to date under the covered agreement?
- Should the agencies permit a person to file a consolidated annual report if the person is a party to 2 or more covered agreements?
- Where a covered agreement provides for an institution or affiliate to take several actions including making a specific loan that, if agreed to separately, would be exempt from coverage under the rule, can and should the agencies allow the person's annual report to exclude information concerning the loan that would otherwise be exempt under the rule?
- Are there additional ways that the agencies could reduce the reporting burden on persons consistent with the language and purposes of the Act? For example, should the agencies issue optional sample reporting forms that might be used by a person, insured depository institution or affiliate?

3. Contents of Annual Report of Insured Depository Institutions and Affiliates

The annual reporting requirements for insured depository institutions and affiliates are largely specified in section 711. The annual report for an insured depository institution or affiliate must identify the entity filing the report and identify the covered agreement to which the annual report relates. In addition, the annual report must provide—

- The aggregate amount of payments, fees and loans (listed separately)

[29] *See* H.R. Conf. Rep. No. 106–434 at 179 (1999).

[30] *See* 12 U.S.C. 1831y(h)(2)(B).

provided by the insured depository institution or affiliate under the agreement to any other party during the fiscal year;

• The aggregate amount of payments, fees and loans (listed separately) received by the insured depository institution or affiliate under the agreement from any other party during the fiscal year;

• A description of the terms and conditions of any payments, fees, or loans provided to, or received from, another party under the agreement; and

• The aggregate amount and number of loans, amount and number of investments, and amount of services provided under the covered agreement to any person that is *not* a party to the agreement—

* By the insured depository institution or affiliate; and

* By *any other* party to the agreement, unless such information is not known to the insured depository institution or affiliate or will be contained in an annual report filed by a person.

These informational requirements track those established by the statute.

The rule would allow an insured depository institution and an affiliate that are parties to the same covered agreement to file a single, consolidated report for the agreement. In addition, to reduce burden, the proposed rule would allow an insured depository institution or affiliate that is a party to 5 or more covered agreements to file a single consolidated report relating to all of the agreements.

The agencies request comment on whether an insured depository institution or affiliate should be permitted to file a consolidated report if it is a party to 2 or more covered agreements, and whether the rule can and should allow an insured depository institution or affiliate to not file an annual report for any fiscal year in which the institution or affiliate did not provide or receive any payments, fees or loans under the agreement. The agencies invite comment on whether the rule should provide additional guidance concerning the level of detail required to be provided in the annual report of an insured depository institution or affiliate, and whether there are additional ways the agencies could reduce the reporting burden of insured depository institutions and affiliates consistent with the Act. For example, are there ways the agencies could reduce the reporting burden for agreements that involve loans that are themselves exempt from coverage?

4. When and Where Must Annual Reports Be Filed

The proposed rule provides that each party to a covered agreement must prepare and file an annual report with the relevant supervisory agency for the fiscal year in which the party enters into the agreement and each subsequent fiscal year during the term of the covered agreement.[31] The agencies have adopted a fiscal year reporting period to allow the parties to coordinate preparation of their annual reports with other documents or reports that typically are prepared on a fiscal year basis, such as income tax returns and financial statements. However, to provide parties with maximum flexibility, the rule also permits a party to elect to use the calendar year as their fiscal year for purposes of the rule.[32] The agencies request comment on whether providing the option of fiscal year or calendar year reporting would reduce regulatory burden or whether the rule should require reporting on a calendar year basis. In addition, the agencies request comment on whether a person should be required to file an annual report after the end of a covered agreement's term if, by that time, the person has not completely used all the funds or resources received under the agreement.

Each party to a covered agreement must file its annual report for a fiscal year with each relevant supervisory agency within 6 months of the end of the party's fiscal year. Under section 711 and the rule, a person may fulfill this filing requirement by providing its annual report to the insured depository institution or affiliate that is a party to the agreement within 5 months of the end of the person's fiscal year with instructions for the institution or affiliate to file the report with all of the relevant supervisory agencies on behalf of the person. An insured depository institution or affiliate that receives an annual report from a person in this manner must forward it to the relevant supervisory agencies within 30 days.

This method of filing allows the annual reports of a person and an insured depository institution or affiliate that relate to the same covered agreement to be filed together. It also reduces the likelihood that annual reports will be filed with the wrong agency because the insured depository institution or affiliate will know its relevant supervisory agency while the nongovernmental entity or person may not.

The agencies invite comment on the filing requirements of the rule. In particular, the agencies request comment on whether the 5- and 6-month filing windows will provide the parties sufficient time to prepare their annual reports and whether there are additional ways that the agencies might reduce the filing burdens of parties consistent with the Act.

D. Compliance Provisions

Section 711 specifically provides that nothing in that section authorizes the agencies to enforce the provisions of any covered agreement. The proposed rule incorporates this provision. (*See* section ____.7(e)) This is consistent with the long-standing policy of the agencies that CRA-related agreements entered into between insured depository institutions (or their affiliates) and persons are private matters between the parties and are not enforced by the agencies.

The agencies may enforce compliance by insured depository institutions and affiliates with the disclosure and reporting requirements of section 711 using the cease and desist and other enforcement powers granted in section 8 of the FDI Act.[33] Section 8 of the FDI Act, however, applies only to insured depository institutions, affiliates and institution-affiliated parties, as defined in the FDI Act. The provisions of section 8 of the FDI Act, therefore, generally do not apply to nongovernmental entities or persons that are parties to a covered agreement. Section 711 instead includes special compliance provisions applicable to nongovernmental entities or persons that are party to a covered agreement.[34]

Under these provisions, the material and willful failure of a person to comply with section 711 may cause the related covered agreement to be unenforceable. In particular, under the Act, if the appropriate agency determines that a person has willfully failed to comply with section 711 in a material way, and the person does not comply with the law after receiving notice and a reasonable period of time, the agreement thereafter is unenforceable by operation of section 711. The Act specifically provides that inadvertent or *de minimis*

[31] As discussed in II.C.1. above, the proposed rule would not require a nongovernmental entity or person to file an annual report during the term of a covered agreement if the entity or person did not receive any funds or resources under the agreement in that fiscal year.

[32] *See* Proposed Rule section __.8(f). The rule also provides that the ''fiscal year'' for an individual or entity that does not have a fiscal year is the calendar year.

[33] *See* 12 U.S.C. 1818.

[34] Other Federal statutes outside the banking laws also may provide for penalties if an insured depository institution, affiliate, or person fails to comply with the disclosure and reporting requirements of the Act. *See* 18 U.S.C. 1001.

reporting errors will not subject the filing party to any penalty. The rule requires the agencies to provide a person written notice and an opportunity to respond before determining the person has not complied with the rule, and allows the person at least 90 days to correct a willful and material violation. The agencies request comment on whether this written notice should be sent to all the parties to the agreement.

The rule also clarifies that, in these circumstances, the agreement becomes unenforceable only by the party that has willfully and materially failed to comply with the rule. Any other party to the agreement may continue to enforce the agreement against the noncomplying party. The agencies believe this construction is the most consistent reading of the language and purpose of the Act. The agencies note that an alternative construction could encourage persons to violate the statute in an attempt to avoid performance under a legally binding contract, thereby frustrating the purpose of the statute. If the insured depository institution or affiliate elects not to enforce the covered agreement against the noncomplying person, the appropriate agency may assist the institution or affiliate in identifying a successor person to assume the responsibilities of the person under a covered agreement that has become unenforceable.

Section 711 also provides that, if an individual diverts funds or resources received under a covered agreement for his or her personal financial gain and contrary to the purposes of the agreement, the appropriate agency may order the individual to disgorge the funds and/or prohibit the individual from being a party to any covered agreement for up to 10 years. As noted above, the Act specifically provides that it does not authorize the agencies to enforce any provision of a covered agreement. If, however, a court or other body of competent jurisdiction determines that an individual has diverted funds or resources for personal financial gain and contrary to the purposes of the agreement, the agencies may take one of the actions specified in the statute.

E. Other Definitions and Rule of Construction

Section ____.8 of the proposed rule defines other terms used in the rule. Because section 711 amended the FDI Act, the rule provides that the terms ''insured depository institution,'' ''control,'' ''Federal banking agency'' and ''appropriate Federal banking agency'' have the same meaning as in the FDI Act.[35]

1. ''Person'' and ''Nongovernmental Entity or Person''

Section 711 of the GLB Act applies only to agreements entered into by a ''nongovernmental entity or person'' with an insured depository institution or affiliate. For ease of reference, the rule uses the term ''person'' instead of the phrase ''nongovernmental entity or person.'' (The OTS rule, however, refers to a ''nongovernmental entity or person'' as a ''NGEP.'') As a general matter, the rule defines a ''person'' to mean any individual or entity other than the U.S. government, a state government, a unit of local government, an Indian tribe, or any department, agency, or instrumentality of such a governmental entity. A ''person'' does not include a federally chartered public corporation that receives federal funds appropriated specifically for that corporation. A nongovernmental entity that is affiliated with, or receives funding from, such a federally chartered public corporation, however, would be considered a ''person'' under the rule, unless the entity independently qualified for an exclusion.

The proposal also would not treat insured depository institutions and their affiliates as persons. Section 711 appears to draw a distinction between insured depository institutions (and their affiliates) and nongovernmental entities and persons and imposes separate obligations on insured depository institutions (and their affiliates) and nongovernmental entities or persons.

The agencies request comment on the proposed definition of ''nongovernmental entity or person,'' including whether specific types of entities should be added or removed from the list of entities and individuals excluded from the definition of the term.

2. Affiliate and Control

The term ''affiliate'' is defined in the FDI Act by reference to the Bank Holding Company Act. Under the Bank Holding Company Act, an affiliate is any company that controls, is controlled by, or is under common control with another company. A company generally is considered to control another entity if it owns or controls 25 percent or more of any class of the other entity's voting securities.

The proposed rule creates a special rule of construction that would apply in situations where an insured depository institution has filed an application with an agency to become affiliated or merge with another entity. In such circumstances, a person may have a CRA contact and enter into an agreement with the acquiring insured depository institution (or holding company thereof) concerning the CRA performance of the target institution. The agencies believe these types of contacts constitute a CRA contact under section 711 and that any agreement resulting from such contact is a covered agreement if it otherwise meets the requirements of section 711. Accordingly, the rule provides that an insured depository institution is deemed to be an affiliate of any company that would be under common control or merged with the institution pursuant to a transaction that is pending before an agency. This rule of construction applies only where the agency application is pending at both the time an agreement is entered into and the time when a triggering CRA contact occurs.

Example: A bank holding company files an application with the Board to acquire control of an additional insured depository institution. While the application is pending, an organization contacts the bank holding company to discuss perceived deficiencies in the CRA performance record of the insured depository institution to be acquired. The bank holding company and the organization enter into a written agreement that provides for the target institution to increase its level of community development grants by $1 million per year for the next three years. The target institution would be considered an ''affiliate'' of the bank holding company under the proposed rule. Accordingly, the agreement would be a covered agreement because the organization had a CRA contact with the holding company concerning the CRA record of performance of an affiliated insured depository institution.

3. Term of agreement

Under the rule, the duration of a party's obligation to make a covered agreement publicly available and to file annual reports concerning the agreement is based on the term of the covered agreement. As a general matter, the term of an agreement ends on the agreement's termination date established by the parties. Agreements that do not establish a termination date are deemed for purposes of the proposed rule to terminate on the last date on which any party makes any payments or provides any loan or other

[35] The agencies note that the definition of ''insured depository institution'' in the FDI Act includes special-purpose insured depository institutions that are not subject to the CRA. *See, e.g.*, 12 CFR 228.11(c)(3). An agreement that relates to the activities of a special-purpose insured depository institution, however, would not be in fulfillment of the CRA and, thus, would not be a covered agreement under the rule.

resources under the agreement. The rule gives the agencies discretion, in appropriate circumstances, to determine that the term of such an agreement is a shorter or longer period. The appropriate agency could exercise this discretion, for example, where a one-time grant is made to a person late in a year with the clear expectation that the funds would be used in the next year. In such circumstances, the agency could require the person to file an annual report for the next year.

III. Placement of Proposed Rule

The agencies propose to implement section 711 by adding a new part to their regulations.[36] These new parts would be separate from the agencies' CRA Regulations. The agencies believe this placement is appropriate because section 711 of the GLB Act amended the FDI Act, and not the CRA, and is independent of the CRA and the CRA Regulations. The agencies note, however, that because section 711 concerns CRA-related agreements, the proposed rule includes several cross-references to the CRA Regulations. The agencies request comment on whether users would find it more convenient if the proposed rule was incorporated into the agencies' existing CRA Regulations and, if so, how the agencies could make clear that the rule does not in any way affect the CRA.

IV. Regulatory Flexibility Act Analysis

OCC: In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the OCC is publishing the following initial regulatory flexibility analysis with this proposed rulemaking.

The proposed rule would implement provisions of section 711 of the GLB Act. A description of the reasons why action by the OCC is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the **SUPPLEMENTARY INFORMATION**.

The proposed rule includes reporting requirements that would apply to all insured depository institutions, including national banks, affiliates of insured depository institutions, including national bank subsidiaries, and persons that enter into covered agreements (as defined by the proposed rule). The proposed rule requires insured depository institutions, affiliates, and persons that enter into a covered agreement to make the agreement available to members of the public and to the appropriate agency, and to file an annual report with the appropriate agency concerning the disbursement and use of funds under the agreement.

These reporting provisions are required by section 711 of the GLB Act and apply regardless of the size of the insured depository institution, affiliate, or person. Section 711 does not authorize the OCC to provide an exemption for covered agreements based on the size of any entity within the scope of its provisions. The Act, however, directs the OCC and the other agencies to ensure that the proposed rule does not impose an undue burden on the parties to covered agreements. The proposed rule includes several provisions, described in detail in the **SUPPLEMENTARY INFORMATION** that are designed to limit the potential impact of the proposed rule on insured depository institutions, affiliates and persons or entities of any size. For example, the rule gives entities and persons flexibility in determining how to make a covered agreement available to the public. In addition, the proposed rule would allow persons to use reports that have been prepared for other purposes, such as tax returns and financial statements, to fulfill the annual reporting requirement. The rule also allows an insured depository institution, affiliate, or person that is a party to 5 or more covered agreements to prepare a single, consolidated annual report relating to all of the agreements.

As noted above, the proposed rule applies to insured depository institutions, affiliates, and persons that enter into covered agreements. These agreements are entered into by private parties, are not enforced by the OCC and, to date, have not been required to be disclosed to the OCC. In addition, the OCC and the other agencies have specifically requested comment on the scope of the proposed rule and will issue a final rule after review of public comments. Accordingly, the OCC cannot estimate at this time the total number of national banks or their subsidiaries that would be subject to the requirements of the rule and the number of such entities that would be considered small entities. Similarly, the OCC cannot estimate at this time the total number of persons that may enter into a covered agreement with these entities, and therefore be subject to the requirements of the rule.

The OCC specifically seeks comment on the likely burden that the proposed rule would impose on national banks and other entities within the OCC's supervisory jurisdiction that are subject to it and on persons who enter into covered agreements with those entities.

Board: In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this proposed rulemaking. The proposed rule would implement provisions of section 711 of the GLB Act. A description of the reasons why action by the Board is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary material provided above.

The proposed rule includes reporting requirements that would apply to all insured depository institutions, affiliates of insured depository institutions, and persons that enter into covered agreements (as defined by the proposed rule). The proposed rule requires insured depository institutions, affiliates, and persons that enter into a covered agreement to make the agreement available to members of the public and to the appropriate agency, and to file an annual report with the appropriate agency concerning the disbursement and use of funds under the agreement.

These reporting provisions are required by section 711 of the GLB Act and would apply regardless of the size of the insured depository institution, affiliate, or person. The Act does not authorize the Board to provide an exemption for covered agreements based on the size of the insured depository institution, affiliate or person that enters into the agreement.

The Act, however, directs the Board and the other agencies to ensure that the proposed rule does not impose an undue burden on the parties to covered agreements and the proposed rule includes several provisions that are designed to limit the potential impact of the proposed rule on insured depository institutions, affiliates and persons, including small institutions, affiliates and persons. For example, the rule gives entities and persons flexibility in determining how to make a covered agreement available to the public. In addition, the proposed rule would allow persons to use reports that have been prepared for other purposes, such as tax returns and financial statements, to fulfill the annual reporting requirement. The rule also allows insured depository institutions, affiliates, and persons that are a party to 5 or more covered agreements to prepare a single, consolidated annual report relating to all of the agreements.

As noted above, the proposed rule applies only to insured depository institutions, affiliates, and persons that

[36] *See* 12 CFR Part 35 (OCC); 12 CFR Part 207 (Board); 12 CFR Part 346 (FDIC); and 12 CFR Part 533 (OTS).

enter into covered agreements. These agreements are entered into by private parties, are not enforced by the Board and, to date, have not been required to be disclosed to the Board. In addition, the Board and the other agencies have specifically requested comment on the scope of the proposed rule and will issue a final rule after review of public comments. Accordingly, the Board cannot estimate at this time the total number of state member banks, bank holding companies, and nonbank subsidiaries of a bank holding company that would be subject to the requirements of the rule and the number of such entities that would be considered small entities. Similarly, the Board cannot estimate at this time the total number of persons that may enter into a covered agreement with the types of entities listed above and, thereby, be subject to the requirements of the rule or the number of such persons that would be considered small entities.

The Board specifically seeks comment on the likely burden that the proposed rule would impose on insured depository institutions and affiliates within the Board's supervisory jurisdiction and on persons who enter into covered agreements with such entities.

FDIC: Consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the FDIC is required to publish an initial regulatory flexibility analysis relating to the proposed rule. The proposed rule would implement provisions of section 711 of the GLB Act and would apply to all insured depository institutions, affiliates of insured depository institutions, and persons that enter into the types of covered agreements described in section 711 and in the proposed rule.

Material contained in the Supplementary Information section of this document contains statements about the legal basis for and objectives of the FDIC in proposing this rule. The GLB Act incorporates disclosure and reporting requirements applicable to all insured depository institutions, affiliates, and persons that enter into covered agreements. Insured depository institutions, affiliates, and persons must make the covered agreements available to the general public and to the appropriate supervisory agency. They must also file an annual report with the appropriate supervisory agency describing the disbursement, receipt, and use of the funds under the agreement. The GLB Act does not provide exemptions for the reporting or disclosure requirements based on the size of the insured depository institution, affiliate, or person; similarly the GLB Act does not authorize the FDIC to provide for exemptions.

Because the GLB Act requires the agencies to ensure that the proposed rule does not impose an undue burden on the parties to a covered agreement, the proposed rule contains provisions that limit the potential impact on insured depository institutions, affiliates, and persons. For example, the proposed rule provides flexibility to entities and persons regarding the way a covered agreement is made available to the public. Insured depository institutions are permitted to disclose covered agreements to the public by placing it in their CRA public files, and parties may satisfy their obligation to make covered agreements available to the public, in part, by posting the agreement on a publicly available Internet website. Although the GLB Act states that parties to a covered agreement must make the agreement available to an agency, the proposed rule requires a person that is a party to an agreement to disclose the covered agreement to an agency upon the agency's request for a copy of the agreement. In addition, the proposed rule would allow persons to use reports that have been prepared for other purposes, such as tax returns and financial statements, to fulfill the annual reporting requirement. Recognizing that many tax returns and financial statements are based on fiscal year reporting periods, the proposed regulation permits either a fiscal or calendar year reporting period so that parties may coordinate their required annual report with other reports or filings. The rule also would permit insured depository institutions, affiliates, and persons that are parties to 5 or more covered agreements to file a single, consolidated report relating to all of the agreements and would allow insured depository institutions and affiliates that are parties to the same covered agreement to file a single consolidated report. Finally, the proposed rule does not require annual reports to be prepared on a special form or in a particular format. All of these provisions were developed to minimize the impact and burden the proposed rule would have on parties to a covered agreement.

Before passage of the GLB Act, parties to covered agreements were not required to disclose the agreements to the FDIC; therefore, at this time, the FDIC cannot estimate the total number of insured state non-member banks, affiliates of state non-member banks, or persons that would be subject to the requirements of the proposed rule. Similarly, the FDIC cannot predict which parties to covered agreements may be classified as small businesses or entities. Although the FDIC and the other agencies have requested comment on the scope of the proposed rules, presently, the FDIC cannot determine whether the proposed rule would have a significant economic impact on a substantial number of small entities. The FDIC requests comment on the likely significance of the economic impact the proposed rule would impose on FDIC-supervised banks and affiliates and on persons who enter into a covered agreement.

OTS: The Regulatory Flexibility Act requires federal agencies to either prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. OTS cannot, at this time, determine whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.

A description of the reasons why OTS is considering this action and a statement of the objectives of, and legal basis for, this proposed rule, are contained in the supplementary materials provided above.

A. Small Entities to Which the Proposed Rule Would Apply

The proposed rule would apply to the following types of entities if they are a party to a covered agreement: (1) Savings associations; (2) certain affiliates of savings associations; [37] and (3) nongovernmental entities or persons that enter into covered agreements with savings associations or affiliates of savings associations. The proposed rule would apply regardless of the size of the savings association, affiliate, or persons.

OTS is unable to estimate how many covered agreements exist, how many savings associations, affiliates of savings associations, or persons are parties to such covered agreements, or how many parties to covered agreements are ''small businesses'' or ''small organizations'' under the Regulatory Flexibility Act. To date, parties to such agreements have not had to disclose or report the agreements to OTS. Generally, neither OTS nor any other Federal agency is a party to covered agreements. Finally, OTS does not enforce such agreements. Thus, OTS does not have information about these agreements.

OTS has very limited information that would assist in an estimate. According

[37] OTS's rule applies to the following affiliates: savings and loan holding companies and companies that are controlled by savings associations or savings and loan holding companies.

to December 31, 1999 data, OTS calculates that of the approximately 1,100 savings associations, a maximum of 486 are small savings associations. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million. 13 CFR 121.201, Division H (1999). OTS also calculates that these 486 savings associations hold approximately 100 subordinate organizations that could possibly qualify as small entities. OTS further calculates that a maximum of 205 savings and loan holding companies could possibly qualify as small entities. OTS does not have data on how many of these subordinate organizations or holding companies may actually qualify as small entities. Nor does OTS have data on how many other affiliates of savings associations exist (*e.g.,* companies that are under common control with a savings association), how many of these affiliates are affiliates of small savings associations, or how many of these affiliates are themselves small entities. OTS does not know how many persons have entered into covered agreements with savings associations or affiliates of savings associations or how many of these persons are small entities.

OTS specifically seeks comment on the number and size of savings associations, affiliates of savings associations, and persons that are parties to covered agreements. OTS also seeks comment on how many covered agreements may currently exist and approximately how many will be entered into each year in the future.

B. Requirements of the Proposed Rule

As described more fully in the supplementary material provided above, the proposed rule contains new disclosure and reporting requirements. Most of the requirements are mandated by section 711 of the GLB Act. The GLB Act, however, directs the Federal banking agencies to ensure that the regulations prescribed by the agency do not impose an undue burden on the parties.

The primary requirements under the proposed rule involve disclosure and reporting of covered agreements. The proposal would require each party to a covered agreement to disclose the agreement to the public by making a complete copy available to any individual or entity upon request. It would also require each savings association or affiliate that is a party to the covered agreement to provide a copy to each relevant supervisory agency (as defined in the proposal) and would require each person that is a party to provide a copy to each relevant supervisory agency upon request.

To minimize the disclosure burden, the proposal would:

- Terminate the public disclosure requirement and the requirement for a person to provide a copy to the relevant supervisory agencies upon request 12 months after the end of the term of the covered agreement;
- Not mandate any particular method for disclosing the agreement to the public;
- Allow each party to charge reasonable copying and mailing fees when it discloses an agreement to the public;
- Allow a savings association to publicly disclose by placing a copy of the covered agreement in its CRA public file and making it available under the public file procedures;
- Require a person to provide a copy to the relevant supervisory agencies only if the agency requests a copy; and
- Allow two or more insured depository institutions or affiliates that are parties to a covered agreement to jointly file with each relevant supervisory agency.

The proposal would require each party to a covered agreement to file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement. To minimize the reporting burden, the proposal would:

- Not mandate any particular form for the annual report;
- Allow each party to report on its own fiscal year basis;
- Exempt a person from filing a report for a fiscal year if the person does not receive any funds or resources during that year;
- Provide simplified reporting procedures for persons that allocate and use funds or other resources under a covered agreement for a specific purpose;
- Allow a person's report to consist of, or incorporate, reports prepared for other purposes, such as tax forms and financial statements;
- Permit a savings association, affiliate, or person that is a party to five or more covered agreements to file a single consolidated annual report covering all of the covered agreements, aggregating certain information;
- Allow a savings association and its affiliates that are parties to the same covered agreement to file a single consolidated report; and
- Allow a person to file its report with the insured depository institution or affiliate that is a party to the agreement (rather than with the relevant supervisory agency).

It is possible that savings associations, affiliates, and persons have already established recordkeeping and other policies and practices that would already enable them to partly or fully meet the requirements of this proposed rule. To the extent that existing practices and available resources are insufficient, parties to covered agreements would need professional skills to comply with this proposed rule. To disclose covered agreements, parties may need clerical and computer personnel. To prepare required reports, parties may need personnel with these skills, as well as personnel skilled in financial and legal matters. Some degree of personnel training may be necessary, such as to enable employees to determine when they enter into covered agreements, and how to retain, record, and compile information about agreements to disclose and report them.

OTS does not have a practicable or reliable basis for quantifying the costs of this proposed rule, or of any alternatives to the rule. The requirements are too new for those subject to the law to have learned what the law requires and decide how to proceed. OTS cannot predict how savings associations, affiliates, and persons would comply with the proposed rule. For example, OTS cannot assess the extent to which savings associations, affiliates, and persons would avoid entering into covered agreements as a result of a final rule.

Rather than merely guess at the regulatory burden of this proposed rule, OTS solicits comment on these burdens and on ways to minimize the burdens, consistent with the GLB Act.

C. Significant Alternatives

The requirements in the proposed rule parallel those in the GLB Act. The proposed rule would clarify the statutory requirements in some areas and restate the requirements in a more understandable manner in other areas. It would not impose any substantially different requirements.

Congress has decided that ''each'' insured depository institution, affiliate, or person that is a party to a covered agreement must disclose and report the agreement. The GLB Act does not expressly authorize OTS to exempt small savings associations, affiliates, or persons from these requirements. OTS does not interpret the statute to permit such an exemption.

The supplementary material provided above describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include:

• Limiting the types of agreements that are covered by the rule (*e.g.,* defining ''CRA contacts,'' ''fulfillment of CRA,'' and the calculation of value more narrowly, or defining the statutory exemptions for certain types of loans, extensions of credit and commitments more broadly);

• Simplifying the procedures for parties to delete proprietary and confidential information;

• Limiting which parties to an agreement must comply with the disclosure and reporting requirements in multi-party agreements (*e.g.,* not applying the requirements to parties that have not made CRA contacts, have not been the subject of CRA contacts, or do not know that CRA contacts have occurred); and

• Providing more flexible reporting requirements (*e.g.,* allowing parties to two or more agreements to use consolidated reporting procedures, permitting affiliated persons that are parties to the same covered agreement to file a consolidated report, allowing persons to elect to report on specific purpose funds or resources under the itemized reporting procedures, and exempting savings associations and affiliates from filing a report for a fiscal year if the savings association or affiliate has not had transactions to report).

OTS requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate.

D. Other Matters

These proposed requirements do not appear to duplicate or overlap with any other Federal rules. To the extent that required information is already contained in reports prepared for other purposes, the proposed rule allows a person's report to consist of, or incorporate, these existing reports.

OTS lacks sufficient information about the contents of covered agreements, however, to conclude whether the proposed requirements conflict with other Federal rules. One area of potential conflict is the rule's requirement to make a ''complete copy'' of a covered agreement available to the public and to the relevant supervisory agencies. OTS solicits specific comment on whether covered agreements contain information that savings associations, affiliates, or persons may be barred from disclosing under other Federal rules (*e.g.,* private customer information), or may be permitted to refrain from disclosing to the public or a Federal banking agency under other Federal rules (*e.g.,* proprietary information). OTS also generally seeks comment on any Federal rules that may duplicate, overlap, or conflict with the proposal.

V. Executive Order 12866 Determination

OCC: The Comptroller of the Currency has determined that this proposed rule does not constitute a significant regulatory action for the purpose of Executive Order 12866. Reporting and disclosure are mandated by section 711 of the GLB Act. The proposed rule closely follows the requirements of that statute. As described in the **SUPPLEMENTARY INFORMATION,** however, the proposal also contains regulatory options designed to minimize costs and burdens, where feasible and consistent with the statute. The OCC invites national banks and the public to provide specific cost estimates and related data that would contribute to the accuracy of the OCC's evaluations of the costs of the requirements in the rule.

OTS: OTS has determined that this proposed rule does not constitute a significant regulatory action for the purpose of Executive Order 12866. Reporting and disclosure are mandated by section 711 of the GLB Act. Many of the proposed provisions closely follow the requirements of this section. OTS has exercised its discretion, to the extent possible, to propose regulatory options to minimize costs and burdens. Nevertheless, OTS acknowledges that the rule would impose costs on insured depository institutions, affiliates, and nongovernmental entities or persons by requiring these entities to disclose and report on agreements. Therefore, OTS invites the thrift industry and the public to provide any cost estimates and related data that they think would be useful to the agency in evaluating the overall costs of the rule.

VI. Paperwork Reduction Act

The information collection and reporting requirements of the proposed rule are described in II. above. In summary, the proposed rule requires persons, insured depository institutions, and affiliates of insured depository institutions that are parties to covered agreements (as defined by the proposed rule) to make the agreements available to the public and the relevant supervisory agencies and to file annual reports relating to the agreements with the relevant supervisory agencies. These reporting and disclosure requirements are required under Title VII of the GLB Act (Pub. L. 106–102, 113 Stat. 1465 (1999)), which adds new section 48 to the Federal Deposit Insurance Act (12 U.S.C. 1831y).

The proposed rule requires each person, insured depository institution, and affiliate of an insured depository institution that is a party to a covered agreement to make a complete copy of the agreement available to the public on request at any time during the term of the agreement and 12 months after the term of the agreement (proposed ____.4(b)). Accordingly, each party must retain a copy of the agreement for that period. Any party to a covered agreement may request that the relevant supervisory agency determine whether certain portions of the agreement may be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) prior to making the agreement available to the public (proposed ____.4(b)(1)(ii)).

An insured depository institution or affiliate of an insured depository institution that enters into a covered agreement must file a copy of the agreement with the supervisory agency within 30 days of entering into the agreement (proposed ____.4(c)(2)(i)). A person must make the agreement available to the relevant supervisory agency upon request (proposed ____.4(c)(1)).

The proposed rule also requires each person, insured depository institution, or affiliate of an insured depository institution that is a party to a covered agreement to file an annual report that relates to the agreement for each fiscal year during the term of the agreement with the relevant supervisory agency of the insured depository institution or affiliate that is a party to the agreement (proposed ____.5(b)). The annual report of a person must include (1) the name and address of the person filing the report, (2) the names of the parties to the agreement, and (3) the amount of funds or resources received during the fiscal year (proposed ____.5(d)). The annual report of an insured depository institution or affiliate must include (1) the name and principal place of business of the institution or affiliate, (2) sufficient information to identify the covered agreement for which the annual report is being filed, and (3) information on payments and other resources provided or received under the agreement (proposed ____.5(e)). The proposed rule allows a person to send its annual report either to the relevant supervisory agency of each insured depository institution or affiliate that is a party to the agreement or to an insured depository institution or affiliate that is a party to the agreement. The insured depository institution or affiliate must send the annual report of a person to the relevant supervisory agency within 30 days of receiving the report (proposed ____.5(f)(2)(ii)).

Finally, an insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate (as defined in ——.8(c)) is required to notify each person that is a party to the agreement that the agreement concerns a CRA affiliate (proposed ____.2(d)).

The agencies request public comment on all aspects of the collections of information contained in this proposed rule, including how burdensome it would be for persons, insured depository institutions, and affiliates to comply with each of the reporting and disclosure requirements of the proposed rule.

The estimated total annual reporting and disclosure burden of the proposed rule will depend on the number of covered agreements. The agreements that trigger the disclosure and reporting requirements of the proposed rule, however, are entered into by private parties on a voluntary basis, are not enforced by the agencies and, to date, have not been required to be disclosed to the agencies. As a result, the agencies cannot accurately estimate at this time the total number of insured depository institutions, affiliates or persons that are parties to covered agreements or the total number of covered agreements that may be subject to the disclosure and reporting requirements of the rule. The agencies also are unable to identify a reasonable proxy for estimating the number of covered agreements. Solely for purposes of complying with the requirements of the Paperwork Reduction Act, each agency has computed the estimate of annual paperwork burden assuming that 50 percent of the insured depository institutions it regulates are parties to one covered agreement. In addition, the agencies have assumed that one person is a party to each of these agreements. The agencies specifically request comment on these assumptions, the total number of persons, insured depository institutions, and affiliates that may be parties to covered agreements, and the total number of covered agreements that may be subject to the disclosure and reporting requirements of the rule.

The agencies also invite comment on:

(1) Whether the collections of information contained in the notice of proposed rulemaking are necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

The agencies will revisit these estimates when they have more information on the scope of the rule and the number of potential respondents and covered agreements. The revised estimates will also reflect all comments received concerning the burden estimates. Respondents/recordkeepers are not required to respond to these collections of information unless the agencies display a currently valid Office of Management and Budget (OMB) control number. The agencies are currently requesting their respective control numbers for these information collections from OMB.

OCC: The collection of information requirements contained in the Regulation will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collections of information should be sent to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Attention: 1557–to be assigned, Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–to be assigned), Washington, DC 20503.

The potential respondents include national banks, subsidiaries of national banks, and nongovernmental entities or persons.

Estimated number of financial institution respondents: 1,200.

Estimated number of nongovernmental entity or person respondents: 1,200.

Estimated average annual burden hours for all disclosure and reporting requirements of the proposed rule per financial institution respondent per agreement: 6 hours.

Estimated burden hours for all disclosure and reporting requirements of the proposed rule per nongovernmental entity or person per agreement: 4 hours.

Estimated total annual reporting and disclosure burden: 12,000 hours.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320, appendix A.1), the Board reviewed the Regulation under the authority delegated to the Board by the OMB. Comments on the collections of information should be sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with a copy to the Office of Management and Budget, Paperwork Reduction Project (7100–to be assigned), Washington, DC 20503.

The potential respondents are state member banks, bank holding companies, affiliates of bank holding companies other than savings associations, national banks, insured nonmember banks, and subsidiaries of such associations and banks, and nongovernmental entities or persons.

Estimated number of financial institution respondents: 507.

Estimated number of nongovernmental entity or person respondents: 507.

Estimated average annual burden hours for all disclosure and reporting requirements of the proposed rule per financial institution respondent per agreement: 6 hours.

Estimated burden hours for all disclosure and reporting requirements of the proposed rule per nongovernmental entity or person per agreement: 4 hours.

Estimated total annual reporting and disclosure burden: 5,070 hours.

FDIC: The collections of information contained in the Regulation will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The FDIC will use any comments received to develop its new burden estimates. Comments on the collections of information should be sent to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, F–4080, 550 17th Street, NW, Washington, DC 20429, with a copy to the Office of Management and Budget, Paperwork Reduction Project (3064–to be assigned), Washington, DC 20503.

The potential respondents are insured nonmember banks, subsidiaries of insured nonmember banks, and nongovernmental entities or persons.

Estimated number of financial institution respondents: 2,850.

Estimated number of nongovernmental entity or person respondents: 2,850.

Estimated average annual burden hours for all disclosure and reporting requirements of the proposed rule per financial institution respondent per agreement: 6 hours.

Estimated burden hours for all disclosure and reporting requirements of the proposed rule per nongovernmental entity or person per agreement: 4 hours.

Estimated total annual reporting and disclosure burden: 28,500 hours.

OTS: The collection of information requirements contained in the Regulation will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OTS will use any comments received to develop its new burden estimates. Comments on the collection of information should be sent to the Dissemination Branch (1550-to be assigned), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1550-to be assigned), Washington, DC 20503.

The potential respondents are savings and loan holding companies, savings associations, companies controlled by savings and loan holding companies and savings associations, and nongovernmental entities or persons.

Estimated number of financial institution respondents: 552.

Estimated number of nongovernmental entity or person respondents: 552.

Estimated average annual burden hours for all disclosure and reporting requirements of the proposed rule per financial institution respondent per agreement: 6 hours.

Estimated burden hours for all disclosure and reporting requirements of the proposed rule per nongovernmental entity or person per agreement: 4 hours.

Estimated total annual reporting and disclosure burden: 5,520 hours.

VII. Solicitation of Comments Regarding the 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 invite comments about how to make the proposed rule easier to understand, including answers to the following questions:

(1) Have the agencies organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If so, which language requires clarification?

(4) Would a different format (with respect to the grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

The agencies also solicit comment about whether it would be appropriate and useful to include in the rule the examples discussed in this preamble. The agencies note that creating safe harbors in the rule may generate certain problems over time due to changes in technology or business practices. Are there alternatives that the agencies should consider to illustrate the terms in the rule?

VIII. FDIC's Electronic Public Comment Site

The FDIC has included a page on its web site to facilitate the submission of electronic comments in response to this general solicitation (the EPC site). The EPC site provides an alternative to the written letter and may be a more convenient way for you to submit your comments. Commenting through the EPC site will assist the FDIC to more accurately and efficiently analyze comments submitted electronically. If you submit your comments through the EPC site your comments will receive the same consideration that they would receive if submitted in hard copy to the FDIC's street address. Information provided through the EPC site will be used by the FDIC only to assist in its analysis of the proposed regulation. The FDIC will not use an individual's name or any other personal identifier of an individual to retrieve records or information submitted through the EPC site. Like comments submitted in hard copy to the FDIC's street address, EPC site comments will be made available in their entirety (including the commenter's name and address if the commenter chooses to provide them) for public inspection.

The EPC site will be available on the FDIC's home page at *http://www.fdic.gov.* You will be able to provide comments directly on any of the sections of the proposed regulation as well as the specific questions that have been asked in the preceding Supplementary Information section. You will also be able to view the regulation and Supplementary Information sections that related to your comments directly on the site. Because the GLB Act requires promulgation of this regulation, the FDIC encourages you to provide written comments in the spaces provided. Written comments enable the FDIC to thoughtfully consider possible changes to the proposed regulation.

The FDIC is also interested in your feedback on the EPC site. We have provided a space for you to comment on the site itself. Answers to this question will help the FDIC evaluate the EPC site for use in future rulemaking.

At the conclusion of the EPC site you will have an opportunity to provide us with your name, indicate whether you are an individual, insured depository institution, financial holding company, community-based organization, trade association, government agency, or other, and provide the name of the organization you represent, if applicable. Whether you choose to respond to these questions is entirely up to you. Any responses received may help the FDIC to better understand the public comments it receives.

IX. 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 a rule that includes a Federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The proposed rule would not apply to state, local or tribal governments. Although the proposed rule would apply to insured depository institutions, affiliates, and nongovernmental entities and persons, OCC is not required to assess the effects of its regulatory actions on the private sector to the extent such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Many of the proposed provisions closely follow the requirements of Section 711 of the GLBA. Moreover, the proposal contains regulatory options designed to minimize costs and burdens. Therefore, the OCC has determined that this proposed 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.

OTS: 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 a rule that includes a Federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The proposed rule would not apply to state, local or tribal governments. Although the proposed rule would apply to insured depository institutions, affiliates, and nongovernmental entities and persons, OTS is not required to assess the effects of its regulatory actions on the private sector to the extent such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Many of the proposed provisions closely follow the requirements of section 711 of the GLB Act. Moreover, OTS has exercised its discretion, to the extent possible, to propose regulatory options to minimize costs and burdens. Therefore, the OTS has determined that this proposed 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 OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 35

Community development, Credit, Freedom of information, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 207

Banks, banking, Community development, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 346

Banks, banking, Community development, and Reporting and recordkeeping.

12 CFR Part 533

Administrative practice and procedure, Business and industry, Community development, Confidential business information, Credit, Freedom of information, Holding companies, Investments, Mortgages, Nonprofit organizations, Penalties, Reporting and recordkeeping requirements, Savings association.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC proposes to amend title 12, chapter I, of the Code of Federal Regulations by adding a new part 35 to read as follows:

PART 35—DISCLOSURE AND REPORTING OF CRA RELATED AGREEMENTS

Sec.

Authority: 12 U.S.C. 1831y.

§ 35.1 Purpose and scope.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, and affiliate of an insured depository institution that enters into a covered agreement to:

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) The provisions of this part are enforced by the OCC with respect to national banks and their subsidiaries.

§ 35.2 Definition of covered agreement.

(a) *General definition.* A covered agreement is any contract, arrangement, or understanding (whether or not legally binding) that meets all of the following criteria:

(1) The agreement is in writing.

(2) The parties to the agreement include:

(i) An insured depository institution or an affiliate of an insured depository institution; and

(ii) A nongovernmental entity or person (referred to hereafter as a person).

(3) The agreement provides for the insured depository institution or any affiliate to:

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in paragraph (c) of this section.

(b) *Agreements that are not covered agreements*— (1) *Certain loans.* A covered agreement does not include:

(i) Any individual mortgage loan; or

(ii) Any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if:

(A) The funds are loaned at rates not substantially below market rates; and

(B) The purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

(2) *Agreements where there has not been a CRA contact*—(i)*General.* A covered agreement does not include any agreement entered into by an insured depository institution or affiliate of an insured depository institution with a person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA.

(ii) *Examples of CRA contact.* The following are examples of CRA contacts. These examples are not exclusive and other actions by a person may also make the exemption in paragraph (b)(2)(i) of this section unavailable. If a person engages in any of the following actions and subsequently enters into an agreement with the insured depository institution or any affiliate of the institution, the agreement is not exempt under paragraph (b)(2)(i) of this section.

(A) *CRA contact with a Federal banking agency.* (*1*) The person submits a written comment to a Federal banking agency that discusses the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(*2*) The person provides oral testimony or comments to a Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(B) *CRA contact with insured depository institution or affiliate.* (*1*) The person has a discussion with, or otherwise contacts, an insured

depository institution or any affiliate of the institution about providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of the institution or any CRA affiliate of the institution.

(*2*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written comments to the institution that must be included in the institution's CRA public file.

(*3*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning the CRA rating of the institution, or the CRA record of performance of the institution or any CRA affiliate of the institution.

(*4*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning actions that should be taken to improve the CRA performance of the institution or any CRA affiliate of the institution.

(*5*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning any obligation or responsibility that the institution or any CRA affiliate of the institution may have to meet the banking needs of its community and the discussion or contact occurs while the institution or any affiliate has an application for a deposit facility pending at a Federal banking agency or is undergoing a publicly announced CRA performance examination.

(iii) *Examples of actions that are not CRA contacts.* The following are examples of actions that are not CRA contacts. The actions described in these examples would not, by themselves, cause the exemption in paragraph (b)(2)(i) of this section to be unavailable. These examples are not exclusive.

(A) A person provides comments or testimony concerning an insured depository institution or affiliate to a Federal banking agency in response to a direct request by the agency for comments or testimony from that person. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility by, an insured depository institution or an application by a company to acquire an insured depository institution.

(B) A person makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions or affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(C) A person sends a similar fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work.

(D) A person sends a general offering circular to financial institutions offering to sell a portfolio of loans. An insured depository institution that receives the offering circular discusses with the person whether the loans are in the institution's local community. No reference to the CRA or the institution's CRA performance is made in the offering circular or in the discussions of the parties.

(c) *Fulfillment of the CRA—(1) General.* Fulfillment of the CRA means the list of factors that the Federal banking agencies have determined have a material impact on an agency's decision:

(i) To approve or disapprove an application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902)); or

(ii) To assign a rating to an insured depository institution under section 807 of the CRA (12 U.S.C. 2906).

(2) *List of factors.* The list of factors referred to in paragraph (c)(1) of this section means the performance of any of the following activities by an insured depository institution or CRA affiliate that is a party to the agreement or that is an affiliate of a party to the agreement or by any person that is a party to the agreement:

(i) Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution;

(ii) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 25.22, including loan purchases, loan commitments, and letters of credit;

(iii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 25.23;

(iv) Delivering retail banking services, as described in § 25.24(d);

(v) Providing community development services, as described in § 25.24(e);

(vi) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 25.25(c);

(vii) In the case of a small insured depository institution, any lending or other activity described in § 25.26(a); or

(viii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 25.27(f).

(d) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate described in paragraph (c) of this section must notify each person that is a party to the agreement that the agreement concerns a CRA affiliate. The insured depository institution or affiliate must provide this notice prior to the time the agreement is entered into if the affiliate is a CRA affiliate at that time, or within a reasonable time after the affiliate becomes a CRA affiliate if the affiliate is not a CRA affiliate at the time the agreement is entered into.

(e) *Disclosure and reporting of certain existing agreements that become covered agreements.* An agreement that concerns the performance of any activity described in paragraph (c) of this section by an affiliate may become a covered agreement after it is entered into if the affiliate subsequently becomes a CRA affiliate. In that event, the disclosure and reporting obligations under §§ 35.4 and 35.5 begin on the date that the agreement becomes a covered agreement and do not apply to the period prior to that date.

§ 35.3 Related agreements considered a single agreement.

The following rules must be applied in determining whether a written contract, arrangement, or understanding is a covered agreement under § 35.2.

(a) *Contracts, arrangements, or understandings entered into by same*

parties. All written contracts, arrangements, or understandings to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the contracts, arrangements, or understandings:

(1) Are entered into with the same person;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a person is a party to each contract.

§ 35.4 Disclosure of covered agreements.

(a) *Effective date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public—(1) Disclosure required.* (i) Each person and each insured depository institution or affiliate that enters into a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request.

(ii) In disclosing a covered agreement to the public under paragraph (b)(1)(i) of this section, a person, insured depository institution, or affiliate may withhold from disclosure only those portions of an agreement that the relevant supervisory agency determines are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*).

(2) *Duration of obligation.* The obligation to disclose a covered agreement terminates 12 months after the end of the term of the agreement.

(3) *Reasonable copy and mailing fees.* Each person and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(4) *Use of CRA public file by insured depository institution.* An insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file and making the agreement available in accordance with the procedures set forth in § 35.43.

(c) *Disclosure of covered agreements to the relevant supervisory agency*—(1) *Disclosure by person.* Each person that is a party to a covered agreement must provide a complete copy of the agreement to the relevant supervisory agency within 30 days of receiving a request from the agency for the agreement. This obligation terminates 12 months after the end of the term of the covered agreement.

(2) *Disclosure by insured depository institution or affiliate*—(i) *Filing with the relevant supervisory agency.* Each insured depository institution or affiliate that is a party to a covered agreement must provide a copy of the agreement to each relevant supervisory agency within 30 days after the date the insured depository institution or affiliate enters into the agreement.

(ii) *Joint filings.* In the event that two or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file a copy of the covered agreement with each relevant supervisory agency. Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the covered agreement is being filed.

(d) *Relevant supervisory agency.* For purposes of this section and § 35.5, the ''relevant supervisory agency'' for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

§ 35.5 Annual reports.

(a) *Effective date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each person and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement*—(1) *General.* An annual report under this section must be filed with each relevant supervisory agency for:

(i) The fiscal year in which the parties enter into the covered agreement; and

(ii) Each fiscal year during the term of the covered agreement.

(2) *Exception for person that has not received any funds or resources.* A person is not required to file an annual report for a covered agreement for any fiscal year during the term of the agreement in which the person did not receive any funds or other resources under the agreement.

(d) *Annual reports filed by person*—(1) *General.* The annual report filed by a person under this section must include the following:

(i) The name and mailing address of the person filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) The information required by paragraphs (d)(2) and (d)(3) of this section concerning the use of funds received under the covered agreement.

(2) *Reporting for funds or resources allocated and used for a specific purpose.* For funds or other resources that the person received during the fiscal year under the covered agreement and allocated and used for a specific purpose during the fiscal year, the annual report must:

(i) Describe each specific purpose for which the funds or resources were used during the fiscal year; and (ii) State the amount of funds or resources used during the fiscal year for each specific purpose.

(3) *Funds or resources used for other purposes.* For all funds or resources that the person received during the fiscal year under the covered agreement and did not use for a specific purpose, the annual report must:

(i) State the amount received during the fiscal year; and

(ii) Provide a detailed, itemized list of how the funds or resources were used during the fiscal year, including the total amount used for:

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses or uses.

(4) *Use of other reports.* The annual report filed by a person may consist of, or incorporate, a report prepared for any other purpose, such as an Internal Revenue Service form, a state tax form,

a report to members or shareholders, financial statements, or other report, so long as the annual report contains all of the information required by this paragraph (d).

(5) *Consolidated reports permitted.* A person that is a party to five or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information required to be reported under paragraph (d)(1)(iii), (d)(2), and (d)(3) of this section may be reported on an aggregate basis for all covered agreements.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following:

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth:

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement:

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by a person under paragraph (d) of this section.

(2) *Consolidated reports permitted*—(i) *Party to large number of agreements.* An insured depository institution or affiliate that is a party to five or more covered agreements may file a single consolidated annual report with each relevant supervisory agency covering all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraph (e)(1)(iii), (iv), and (vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a person.* (i) A person may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than five months following the end of the person's fiscal year:

(A) A copy of the person's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the person.

(ii) An insured depository institution or affiliate that receives an annual report from a person pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the person within 30 days.

§ 35.6 Release of information under FOIA.

The OCC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the OCC's Rules Regarding the Availability of Information (12 CFR part 4). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 35.7 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If the OCC determines that a person has willfully failed to comply in a material way with §§ 35.4 or 35.5, the OCC will notify the person in writing of that determination and provide the person a period of 90 days (or such longer period as the OCC finds to be reasonable under the circumstances) to comply.

(2) If the person does not comply within the time period established by the OCC, the agreement shall thereafter be unenforceable by that person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The OCC may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the person's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the OCC may take either or both of the following actions:

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the OCC will provide written notice and an opportunity to present information to the OCC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the OCC under §§ 35.4 or 35.5 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the OCC to enforce the provisions of any covered agreement.

§ 35.8 Other definitions and rules of construction.

(a) *Affiliate.* ''Affiliate'' means:

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 35.2, an ''affiliate'' includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time:

(i) The parties enter into the agreement; and

(ii) The person that is a party to the agreement makes a CRA contact, as described in § 35.2(b)(2).

(b) *Control.* ''Control'' is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A ''CRA affiliate'' of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination.

(d) *CRA public file.* For purposes of this part, ''CRA public file'' means the public file maintained by an insured depository institution and described in § 25.43.

(e) *Federal banking agency; appropriate Federal banking agency.* The terms ''Federal banking agency'' and ''appropriate Federal banking agency'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(f) *Fiscal year.* (1) The fiscal year for a person that does not have a fiscal year shall be the calendar year;

(2) Any person, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(g) *Insured depository institution.* ''Insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(h) *Nongovernmental entity or person.* (1) *General.* A ''nongovernmental entity or person'' is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include:

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (h)(2)(i) through (iii) of this section.

(i) *Party.* The term ''party'' with respect to a covered agreement means each person and each insured depository institution or affiliate that entered into the agreement.

(j) *Person.* For purposes of this part, a ''person'' is any nongovernmental entity or person.

(k) *Term of agreement.* An agreement that does not by its terms establish a termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the appropriate Federal banking agency otherwise notifies each party in writing.

Dated: May 10, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, Title 12, Chapter II, of the Code of Federal Regulations is proposed to be amended by adding a new part 207 to read as follows:

PART 207—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS (REGULATION G)

Sec.

Authority: 12 U.S.C. 1831y.

§ 207.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, and affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) The provisions of this part are enforced by the Board with respect to state member banks, bank holding companies, and affiliates of bank holding companies, other than banks, savings associations and subsidiaries of banks and savings associations.

§ 207.2 Definition of covered agreement.

(a) *General definition.* A covered agreement is any contract, arrangement, or understanding (whether or not legally binding) that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) An insured depository institution or an affiliate of an insured depository institution; and

(ii) A nongovernmental entity or person (referred to hereafter as a person).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in paragraph (c) of this section.

(b) *Agreements that are not covered agreements*—(1) *Certain loans.* A covered agreement does not include—

(i) Any individual mortgage loan; or

(ii) Any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if—

(A) The funds are loaned at rates not substantially below market rates; and

(B) The purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

(2) *Agreements where there has not been a CRA contact.* (i) *General.* A covered agreement does not include any agreement entered into by an insured depository institution or affiliate of an insured depository institution with a person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA.

(ii) *Examples of CRA contact.* The following are examples of CRA contacts. These examples are not exclusive and other actions by a person may also make the exemption in paragraph (b)(2)(i) of this section unavailable. If a person engages in any of the following actions and subsequently enters into an agreement with the insured depository institution or any affiliate of the institution, the agreement is not exempt under paragraph (b)(2)(i) of this section.

(A) *CRA contact with a Federal banking agency.* (*1*) The person submits a written comment to a Federal banking agency that discusses the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(2) The person provides oral testimony or comments to a Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(B) *CRA contact with insured depository institution or affiliate.* (*1*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of the institution or any CRA affiliate of the institution.

(*2*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written comments to the institution that must be included in the institution's CRA public file.

(*3*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning the CRA rating of the institution, or the CRA record of performance of the institution or any CRA affiliate of the institution.

(*4*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning actions that should be taken to improve the CRA performance of the institution or any CRA affiliate of the institution.

(*5*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning any obligation or responsibility that the institution or any CRA affiliate of the institution may have to meet the banking needs of its community and the discussion or contact occurs while the institution or any affiliate has an application for a deposit facility pending at a Federal banking agency or is undergoing a publicly announced CRA performance examination.

(iii) *Examples of actions that are not CRA contacts.* The following are examples of actions that are not CRA contacts. The actions described in these examples would not, by themselves, cause the exemption in paragraph (b)(2)(i) of this section to be unavailable. These examples are not exclusive.

(A) A person provides comments or testimony concerning an insured depository institution or affiliate to a Federal banking agency in response to a direct request by the agency for comments or testimony from that person. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility by, an insured depository institution or an application by a company to acquire an insured depository institution.

(B) A person makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions or affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(C) A person sends a similar fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work.

(D) A person sends a general offering circular to financial institutions offering to sell a portfolio of loans. An insured depository institution that receives the offering circular discusses with the person whether the loans are in the institution's local community. No reference to the CRA or the institution's CRA performance is made in the offering circular or in the discussions of the parties.

(c) *Fulfillment of the CRA*—(1) *General.* Fulfillment of the CRA means the list of factors that the Federal banking agencies have determined have a material impact on an agency's decision—

(i) To approve or disapprove an application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902)); or

(ii) To assign a rating to an insured depository institution under section 807 of the CRA (12 U.S.C. 2906).

(2) *List of factors.* The list of factors referred to in paragraph (c)(1) of this section means the performance of any of the following activities by an insured depository institution or CRA affiliate that is a party to the agreement or that is an affiliate of a party to the agreement or by any person that is a party to the agreement—

(i) Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution;

(ii) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 228.22 of Regulation BB (12 CFR 228.22), including loan purchases, loan commitments, and letters of credit;

(iii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 228.23 of Regulation BB (12 CFR 228.23);

(iv) Delivering retail banking services, as described in § 228.24(d) of Regulation BB (12 CFR 228.24(d));

(v) Providing community development services, as described in

§ 228.24(e) of Regulation BB (12 CFR 228.24(e));

(vi) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 228.25(c) of Regulation BB (12 CFR 228.25(c));

(vii) In the case of a small insured depository institution, any lending or other activity described in § 228.26(a) of Regulation BB (12 CFR 228.26(a)); or

(viii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 228.27(f) of Regulation BB (12 CFR 228.27(f)).

(d) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate described in paragraph (c) of this section must notify each person that is a party to the agreement that the agreement concerns a CRA affiliate. The insured depository institution or affiliate must provide this notice prior to the time the agreement is entered into if the affiliate is a CRA affiliate at that time, or within a reasonable time after the affiliate becomes a CRA affiliate if the affiliate is not a CRA affiliate at the time the agreement is entered into.

(e) *Disclosure and reporting of certain existing agreements that become covered agreements.* An agreement that concerns the performance of any activity described in paragraph (c) of this section by an affiliate may become a covered agreement after it is entered into if the affiliate subsequently becomes a CRA affiliate. In that event, the disclosure and reporting obligations under §§ 207.4 and 207.5 begin on the date that the agreement becomes a covered agreement and do not apply to the period prior to that date.

§ 207.3 Related agreements considered a single agreement.

The following rules must be applied in determining whether a written contract, arrangement, or understanding is a covered agreement under § 207.2.

(a) *Contracts, arrangements, or understandings entered into by same parties.* All written contracts, arrangements, or understandings to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the contracts, arrangements, or understandings—

(1) Are entered into with the same person;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a person is a party to each contract.

§ 207.4 Disclosure of covered agreements.

(a) *Effective date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public*—(1) *Disclosure required.* (i) Each person and each insured depository institution or affiliate that enters into a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request.

(ii) In disclosing a covered agreement to the public under paragraph (b)(1)(i) of this section, a person, insured depository institution, or affiliate may withhold from disclosure only those portions of an agreement that the relevant supervisory agency determines are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*).

(2) *Duration of obligation.* The obligation to disclose a covered agreement terminates 12 months after the end of the term of the agreement.

(3) *Reasonable copy and mailing fees.* Each person and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(4) *Use of CRA public file by insured depository institution.* An insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file and making the agreement available in accordance with the procedures set forth in section § 228.43 of Regulation BB (12 CFR 228.43).

(c) *Disclosure of covered agreements to the relevant supervisory agency*—(1) *Disclosure by person.* Each person that is a party to a covered agreement must provide a complete copy of the agreement to the relevant supervisory agency within 30 days of receiving a request from the agency for the agreement. This obligation terminates 12 months after the end of the term of the covered agreement.

(2) *Disclosure by insured depository institution or affiliate.* (i) *Filing with the relevant supervisory agency.* Each insured depository institution or affiliate that is a party to a covered agreement must provide a copy of the agreement to each relevant supervisory agency within 30 days after the date the insured depository institution or affiliate enters into the agreement.

(ii) *Joint filings.* In the event that two or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file a copy of the covered agreement with each relevant supervisory agency. Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the covered agreement is being filed.

(d) *Relevant supervisory agency.* For purposes of this section and § 207.5, the ''relevant supervisory agency'' for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

§ 207.5 Annual reports.

(a) *Effective date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each person and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement*—(1) *General.* An annual report under this section must be filed with each relevant supervisory agency for—

(i) The fiscal year in which the parties enter into the covered agreement; and (ii) Each fiscal year during the term of the covered agreement.

(2) *Exception for person that has not received any funds or resources.* A person is not required to file an annual report for a covered agreement for any

fiscal year during the term of the agreement in which the person did not receive any funds or other resources under the agreement.

(d) *Annual reports filed by person*—(1) *General.* The annual report filed by a person under this section must include the following—

(i) The name and mailing address of the person filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) The information required by paragraphs (d)(2) and (d)(3) of this section concerning the use of funds received under the covered agreement.

(2) *Reporting for funds or resources allocated and used for a specific purpose.* For funds or other resources that the person received during the fiscal year under the covered agreement and allocated and used for a specific purpose during the fiscal year, the annual report must—

(i) Describe each specific purpose for which the funds or resources were used during the fiscal year; and

(ii) State the amount of funds or resources used during the fiscal year for each specific purpose.

(3) *Funds or resources used for other purposes.* For all funds or resources that the person received during the fiscal year under the covered agreement and did not use for a specific purpose, the annual report must—

(i) State the amount received during the fiscal year; and

(ii) Provide a detailed, itemized list of how the funds or resources were used during the fiscal year, including the total amount used for—

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses or uses.

(4) *Use of other reports.* The annual report filed by a person may consist of, or incorporate, a report prepared for any other purpose, such as an Internal Revenue Service form, a state tax form, a report to members or shareholders, financial statements, or other report, so long as the annual report contains all of the information required by this paragraph (d).

(5) *Consolidated reports permitted.* A person that is a party to five or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information required to be reported under paragraph (d)(1)(iii), (d)(2), and (d)(3) of this section may be reported on an aggregate basis for all covered agreements.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following—

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth—

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement—

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by a person under paragraph (d) of this section.

(2) *Consolidated reports permitted.* (i) *Party to large number of agreements.* An insured depository institution or affiliate that is a party to five or more covered agreements may file a single consolidated annual report with each relevant supervisory agency covering all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iii), (iv), and (vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a person.* (i) A person may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than five months following the end of the person's fiscal year—

(A) A copy of the person's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the person.

(ii) An insured depository institution or affiliate that receives an annual report from a person pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the person within 30 days.

§ 207.6 Release of information under FOIA.

The Board will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the Board's Rules Regarding the Availability of Information (12 CFR part 261). A party to a covered agreement may request

confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 207.7 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If the Board determines that a person has willfully failed to comply in a material way with §§ 207.4 or 207.5, the Board will notify the person in writing of that determination and provide the person a period of 90 days (or such longer period as the Board finds to be reasonable under the circumstances) to comply.

(2) If the person does not comply within the time period established by the Board, the agreement shall thereafter be unenforceable by that person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The Board may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the person's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the Board may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the Board will provide written notice and an opportunity to present information to the Board concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the Board under §§ 207.4 or 207.5 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the Board to enforce the provisions of any covered agreement.

§ 207.8 Other definitions and rules of construction used in this part.

(a) *Affiliate.* ''Affiliate'' means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 207.2, an ''affiliate'' includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The person that is a party to the agreement makes a CRA contact, as described in § 207.2(b)(2).

(b) *Control.* ''Control'' is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A ''CRA affiliate'' of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination.

(d) *CRA public file.* For purposes of this part, ''CRA public file'' means the public file maintained by an insured depository institution and described in § 228.43 of Regulation BB (12 CFR 228.43).

(e) *Federal banking agency; appropriate Federal banking agency.* The terms ''Federal banking agency'' and ''appropriate Federal banking agency'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(f) *Fiscal year.* (1) The fiscal year for a person that does not have a fiscal year shall be the calendar year;

(2) Any person, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(g) *Insured depository institution.* ''Insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(h) *Nongovernmental entity or person*—(1) *General.* A ''nongovernmental entity or person'' is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (h)(2)(i) through (iii) of this section.

(i) *Party.* The term ''party'' with respect to a covered agreement means each person and each insured depository institution or affiliate that entered into the agreement.

(j) *Person.* For purposes of this part, a ''person'' is any nongovernmental entity or person.

(k) *Term of agreement.* An agreement that does not by its terms establish a termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the appropriate Federal banking agency otherwise notifies each party in writing.

By order of the Board of Governors of the Federal Reserve System, May 10, 2000.

Jennifer J. Johnson,

Secretary of the Board

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the joint preamble, Title 12, Chapter III, of the Code of Federal Regulations is proposed to be amended by adding a new part 346 to read as follows:

PART 346—DISCLOSURE AND REPORTING OF CRA–RELATED AGREEMENTS

Sec.

346.8 Other definitions and rules of construction used in this part.

Authority: 12 U.S.C. 1831y.

§ 346.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, section 711, 113 Stat. 1465 (1999) (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, and affiliate of an insured depository institution that enters into a covered agreement to:

(1) Make the covered agreement available to the public and the appropriate federal banking agency; and

(2) File an annual report with the appropriate federal banking agency concerning the covered agreement.

(b) The provisions of this part are enforced by the FDIC with respect to a state nonmember insured bank or a foreign bank having an insured branch.

§ 346.2 Definition of covered agreement.

(a) *General definition.* A covered agreement is any contract, arrangement, or understanding (whether or not legally binding) that meets all of the following criteria:

(1) The agreement is in writing.

(2) The parties to the agreement include:

(i) An insured depository institution or an affiliate of an insured depository institution; and

(ii) A nongovernmental entity or person (referred to hereafter as a person).

(3) The agreement provides for the insured depository institution or any affiliate to:

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in paragraph (c) of this section.

(b) *Agreements that are not covered agreements*—(1) *Certain loans.* A covered agreement does not include:

(i) Any individual mortgage loan; or

(ii) Any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if:

(A) The funds are loaned at rates not substantially below market rates; and

(B) The purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

(2) *Agreements where there has not been a CRA contact.* (i) *General.* A covered agreement does not include any agreement entered into by an insured depository institution or affiliate of an insured depository institution with a person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA.

(ii) Examples of CRA contact. The following are examples of CRA contacts. These examples are not exclusive and other actions by a person may also make the exemption in paragraph (b)(2)(i) of this section unavailable. If a person engages in any of the following actions and subsequently enters into an agreement with the insured depository institution or any affiliate of the institution, the agreement is not exempt under paragraph (b)(2)(i) of this section.

(A) *CRA contact with a federal banking agency. (1)* The person submits a written comment to a federal banking agency that discusses the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(2) The person provides oral testimony or comments to a federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(B) *CRA contact with insured depository institution or affiliate. (1)* The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written or oral comments or testimony to any federal banking agency concerning the record of performance or future performance under the CRA of the institution or any CRA affiliate of the institution.

(*2*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written comments to the institution that must be included in the institution's CRA public file.

(*3*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning the CRA rating of the institution, or the CRA record of performance of the institution or any CRA affiliate of the institution.

(*4*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning actions that should be taken to improve the CRA performance of the institution or any CRA affiliate of the institution.

(*5*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning any obligation or responsibility that the institution or any CRA affiliate of the institution may have to meet the banking needs of its community and the discussion or contact occurs while the institution or any affiliate has an application for a deposit facility pending at a federal banking agency or is undergoing a publicly announced CRA performance examination.

(iii) *Examples of actions that are not CRA contacts.* The following are examples of actions that are not CRA contacts. The actions described in these examples would not, by themselves, cause the exemption in paragraph (b)(2)(i) of this section to be unavailable. These examples are not exclusive.

(A) A person provides comments or testimony concerning an insured depository institution or affiliate to a federal banking agency in response to a direct request by the agency for comments or testimony from that person. Direct requests for comments or testimony do not include a general invitation by a federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility by, an insured depository institution or an application by a company to acquire an insured depository institution.

(B) A person makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions or affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(C) A person sends a similar fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work.

(D) A person sends a general offering circular to financial institutions offering to sell a portfolio of loans. An insured depository institution that receives the offering circular discusses with the

person whether the loans are in the institution's local community. No reference to the CRA or the institution's CRA performance is made in the offering circular or in the discussions of the parties.

(c) *Fulfillment of the CRA*—(1) *General.* Fulfillment of the CRA means the list of factors that the federal banking agencies have determined have a material impact on an agency's decision:

(i) To approve or disapprove an application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902)); or

(ii) To assign a rating to an insured depository institution under section 807 of the CRA (12 U.S.C. 2906).

(2) *List of factors.* The list of factors referred to in paragraph (c)(1) of this section means the performance of any of the following activities by an insured depository institution or CRA affiliate that is a party to the agreement or that is an affiliate of a party to the agreement or by any person that is a party to the agreement:

(i) Providing or refraining from providing written or oral comments or testimony to any federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution;

(ii) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in 12 CFR 345.22, including loan purchases, loan commitments, and letters of credit;

(iii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in 12 CFR 345.23;

(iv) Delivering retail banking services, as described in 12 CFR 345.24(d);

(v) Providing community development services, as described in 12 CFR 345.24(e);

(vi) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in 12 CFR 345.25(c);

(vii) In the case of a small insured depository institution, any lending or other activity described in 12 CFR 345.26(a); or

(viii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in 12 CFR 345.27(f).

(d) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate described in paragraph (c) of this section must notify each person that is a party to the agreement that the agreement concerns a CRA affiliate. The insured depository institution or affiliate must provide this notice prior to the time the agreement is entered into if the affiliate is a CRA affiliate at that time, or within a reasonable time after the affiliate becomes a CRA affiliate if the affiliate is not a CRA affiliate at the time the agreement is entered into.

(e) *Disclosure and reporting of certain existing agreements that become covered agreements.* An agreement that concerns the performance of any activity described in paragraph (c) of this section by an affiliate may become a covered agreement after it is entered into if the affiliate subsequently becomes a CRA affiliate. In that event, the disclosure and reporting obligations under §§ 346.4 and 346.5 begin on the date that the agreement becomes a covered agreement and do not apply to the period prior to that date.

§ 346.3 Related agreements considered a single agreement.

The following rules must be applied in determining whether a written contract, arrangement, or understanding is a covered agreement under § 346.2.

(a) *Contracts, arrangements, or understandings entered into by same parties.* All written contracts, arrangements, or understandings to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the contracts, arrangements, or understandings:

(1) Are entered into with the same person;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a person is a party to each contract.

§ 346.4 Disclosure of covered agreements.

(a) *Effective date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public*—(1) *Disclosure required.* (i) Each person and each insured depository institution or affiliate that enters into a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request.

(ii) In disclosing a covered agreement to the public under paragraph (b)(1)(i) of this section, a person, insured depository institution, or affiliate may withhold from disclosure only those portions of an agreement that the relevant supervisory agency determines are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*).

(2) *Duration of obligation.* The obligation to disclose a covered agreement terminates 12 months after the end of the term of the agreement.

(3) *Reasonable copy and mailing fees.* Each person and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(4) *Use of CRA public file by insured depository institution.* An insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file and making the agreement available in accordance with the procedures set forth in 12 CFR 345.43.

(c) *Disclosure of covered agreements to the relevant supervisory agency*—(1) *Disclosure by person.* Each person that is a party to a covered agreement must provide a complete copy of the agreement to the relevant supervisory agency within 30 days of receiving a request from the agency for the agreement. This obligation terminates 12 months after the end of the term of the covered agreement.

(2) *Disclosure by insured depository institution or affiliate.* (i) *Filing with the relevant supervisory agency.* Each insured depository institution or affiliate that is a party to a covered agreement must provide a copy of the agreement to each relevant supervisory agency within 30 days after the date the insured depository institution or affiliate enters into the agreement.

(ii) *Joint filings.* In the event that two or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly

file a copy of the covered agreement with each relevant supervisory agency. Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the covered agreement is being filed.

(d) *Relevant supervisory agency.* For purposes of this section and § 346.5, the ''relevant supervisory agency'' for a covered agreement means the appropriate federal banking agency for:

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

§ 346.5 Annual reports.

(a) *Effective date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each person and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement*—(1) *General.* An annual report under this section must be filed with each relevant supervisory agency for:

(i) The fiscal year in which the parties enter into the covered agreement; and

(ii) Each fiscal year during the term of the covered agreement.

(2) *Exception for person that has not received any funds or resources.* A person is not required to file an annual report for a covered agreement for any fiscal year during the term of the agreement in which the person did not receive any funds or other resources under the agreement.

(d) *Annual reports filed by person*—(1) *General.* The annual report filed by a person under this section must include the following:

(i) The name and mailing address of the person filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) The information required by paragraphs (d)(2) and (d)(3) of this section concerning the use of funds received under the covered agreement.

(2) *Reporting for funds or resources allocated and used for a specific purpose.* For funds or other resources that the person received during the fiscal year under the covered agreement and allocated and used for a specific purpose during the fiscal year, the annual report must:

(i) Describe each specific purpose for which the funds or resources were used during the fiscal year; and

(ii) State the amount of funds or resources used during the fiscal year for each specific purpose.

(3) *Funds or resources used for other purposes.* For all funds or resources that the person received during the fiscal year under the covered agreement and did not use for a specific purpose, the annual report must:

(i) State the amount received during the fiscal year; and

(ii) Provide a detailed, itemized list of how the funds or resources were used during the fiscal year, including the total amount used for:

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses or uses.

(4) *Use of other reports.* The annual report filed by a person may consist of, or incorporate, a report prepared for any other purpose, such as an Internal Revenue Service form, a state tax form, a report to members or shareholders, financial statements, or other report, so long as the annual report contains all of the information required by this paragraph (d).

(5) *Consolidated reports permitted.* A person that is a party to five or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information required to be reported under paragraphs (d)(1)(iii), (d)(2), and (d)(3) of this section may be reported on an aggregate basis for all covered agreements.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following:

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth:

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement:

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by a person under paragraph (d) of this section.

(2) *Consolidated reports permitted.* (i) *Party to large number of agreements.* An insured depository institution or affiliate that is a party to five or more covered agreements may file a single consolidated annual report with each relevant supervisory agency covering all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iii), (iv), and (vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a person.* (i) A person may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than five months following the end of the person's fiscal year:

(A) A copy of the person's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the person.

(ii) An insured depository institution or affiliate that receives an annual report from a person pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the person within 30 days.

§ 346.6 Release of information under FOIA.

The FDIC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the FDIC's rules regarding Disclosure of Information (12 CFR part 309). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 346.7 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If the FDIC determines that a person has willfully failed to comply in a material way with §§ 346.4 or 346.5, the FDIC will notify the person in writing of that determination and provide the person a period of 90 days (or such longer period as the FDIC finds to be reasonable under the circumstances) to comply.

(2) If the person does not comply within the time period established by the FDIC, the agreement shall thereafter be unenforceable by that person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The FDIC may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the person's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the FDIC may take either or both of the following actions:

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the FDIC will provide written notice and an opportunity to present information to the FDIC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the FDIC under §§ 346.4 or 346.5 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the FDIC to enforce the provisions of any covered agreement.

§ 346.8 Other definitions and rules of construction used in this part.

(a) *Affiliate.* ''Affiliate'' means:

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 346.2, an ''affiliate'' includes any company that would be under common control or merged with another company on consummation of any transaction pending before a federal banking agency at the time:

(i) The parties enter into the agreement; and

(ii) The person that is a party to the agreement makes a CRA contact, as described in § 346.2(b)(2).

(b) *Control.* ''Control'' is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A ''CRA affiliate'' of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination.

(d) *CRA public file.* For purposes of this part, ''CRA public file'' means the public file maintained by an insured depository institution and described in 12 CFR 345.43.

(e) *Federal banking agency; appropriate federal banking agency.* The terms ''federal banking agency'' and ''appropriate federal banking agency'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(f) *Fiscal year.* (1) The fiscal year for a person that does not have a fiscal year shall be the calendar year;

(2) Any person, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(g) *Insured depository institution.* ''Insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(h) *Nongovernmental entity or person*—(1) *General.* A ''nongovernmental entity or person'' is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include:

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director,

employee, or representative) of an entity listed in paragraphs (h)(2)(i) through (iii) of this section.

(i) *Party.* The term ''party'' with respect to a covered agreement means each person and each insured depository institution or affiliate that entered into the agreement.

(j) *Person.* For purposes of this part, a ''person'' is any nongovernmental entity or person.

(k) *Term of agreement.* An agreement that does not by its terms establish a termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the appropriate federal banking agency otherwise notifies each party in writing.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 10th day of May, 2000.

Robert E. Feldman,

Executive Secretary.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, OTS proposes to amend Title 12, Chapter V, of the Code of Federal Regulations by adding a new part 533 to read as follows:

PART 533—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, and 1831y.

§ 533.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, and affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) The provisions of this part are enforced by OTS with respect to savings associations, savings and loan holding companies, and companies that are controlled by savings associations or savings and loan holding companies.

§ 533.2 Definition of covered agreement.

(a) *General definition.* A covered agreement is any contract, arrangement, or understanding (whether or not legally binding) that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) An insured depository institution or an affiliate of an insured depository institution; and

(ii) A nongovernmental entity or person (referred to as a NGEP).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in paragraph (c) of this section.

(b) *Agreements that are not covered agreements.* (1) *Certain loans.* A covered agreement does not include—

(i) Any individual mortgage loan; or

(ii) Any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if—

(A) The funds are loaned at rates not substantially below market rates; and

(B) The purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

(2) *Agreements where there has not been a CRA contact.* (i) *General.* A covered agreement does not include any agreement entered into by an insured depository institution or affiliate of an insured depository institution with a NGEP who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA.

(ii) *Examples of CRA contact.* The following are examples of CRA contacts. These examples are not exclusive and other actions by a NGEP may also make the exemption in paragraph (b)(2)(i) of this section unavailable. If a NGEP engages in any of the following actions and subsequently enters into an agreement with the insured depository institution or any affiliate of the institution, the agreement is not exempt under paragraph (b)(2)(i) of this section.

(A) *CRA contact with a Federal banking agency.* (*1*) The NGEP submits a written comment to a Federal banking agency that discusses the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(*2*) The NGEP provides oral testimony or comments to a Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(B) *CRA contact with insured depository institution or affiliate.* (*1*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of the institution or any CRA affiliate of the institution.

(*2*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written comments to the institution that must be included in the institution's CRA public file.

(*3*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning the CRA rating of the institution, or the CRA record of performance of the institution or any CRA affiliate of the institution.

(*4*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning actions that should be taken to improve the CRA performance of the institution or any CRA affiliate of the institution.

(*5*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning any obligation or responsibility that the institution or any CRA affiliate of the institution may have to meet the banking needs of its community and the discussion or contact occurs while the

institution or any affiliate has an application for a deposit facility pending at a Federal banking agency or is undergoing a publicly announced CRA performance examination.

(iii) *Examples of actions that are not CRA contacts.* The following are examples of actions that are not CRA contacts. The actions described in these examples would not, by themselves, cause the exemption in paragraph (b)(2)(i) of this section to be unavailable. These examples are not exclusive.

(A) A NGEP provides comments or testimony concerning an insured depository institution or affiliate to a Federal banking agency in response to a direct request by the agency for comments or testimony from that NGEP. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility by, an insured depository institution or an application by a company to acquire an insured depository institution.

(B) A NGEP makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions or affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(C) A NGEP sends a similar fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work.

(D) A NGEP sends a general offering circular to financial institutions offering to sell a portfolio of loans. An insured depository institution that receives the offering circular discusses with the NGEP whether the loans are in the institution's local community. No reference to the CRA or the institution's CRA performance is made in the offering circular or in the discussions of the parties.

(c) *Fulfillment of the CRA.* (1) *General.* Fulfillment of the CRA means the list of factors that the Federal banking agencies have determined have a material impact on an agency's decision—

(i) To approve or disapprove an application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902)); or (ii) To assign a rating to an insured depository institution under section 807 of the CRA (12 U.S.C. 2906).

(2) *List of factors.* The list of factors referred to in paragraph (c)(1) of this section means the performance of any of the following activities by an insured depository institution or CRA affiliate that is a party to the agreement or that is an affiliate of a party to the agreement or by any NGEP that is a party to the agreement—

(i) Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution;

(ii) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 563e.22 of this chapter, including loan purchases, loan commitments, and letters of credit;

(iii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 563e.23 of this chapter;

(iv) Delivering retail banking services, as described in § 563e.24(d) of this chapter;

(v) Providing community development services, as described in § 563e.24(e) of this chapter;

(vi) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 563e.25(c) of this chapter;

(vii) In the case of a small insured depository institution, any lending or other activity described in § 563e.26(a) of this chapter; or

(viii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 563e.27(f) of this chapter.

(d) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate described in paragraph (c) of this section must notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate. The insured depository institution or affiliate must provide this notice prior to the time the agreement is entered into if the affiliate is a CRA affiliate at that time, or within a reasonable time after the affiliate becomes a CRA affiliate if the affiliate is not a CRA affiliate at the time the agreement is entered into.

(e) *Disclosure and reporting of certain existing agreements that become covered agreements.* An agreement that concerns the performance of any activity described in paragraph (c) of this section by an affiliate may become a covered agreement after it is entered into if the affiliate subsequently becomes a CRA affiliate. In that event, the disclosure and reporting obligations under §§ 533.4 and 533.5 begin on the date that the agreement becomes a covered agreement and do not apply to the period prior to that date.

§ 533.3 Related agreements considered a single agreement.

The following rules must be applied in determining whether a written contract, arrangement, or understanding is a covered agreement under § 533.2.

(a) *Contracts, arrangements, or understandings entered into by same parties.* All written contracts, arrangements, or understandings to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the contracts, arrangements, or understandings—

(1) Are entered into with the same NGEP;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a NGEP is a party to each contract.

§ 533.4 Disclosure of covered agreements.

(a) *Effective date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public.* (1) *Disclosure required.* (i) Each NGEP and each insured depository institution or affiliate that enters into a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request.

(ii) In disclosing a covered agreement to the public under paragraph (b)(1)(i) of this section, a NGEP, insured depository institution, or affiliate may withhold from disclosure only those portions of an agreement that the relevant supervisory agency determines are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*).

(2) *Duration of obligation.* The obligation to disclose a covered agreement terminates 12 months after the end of the term of the agreement.

(3) *Reasonable copy and mailing fees.* Each NGEP and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(4) *Use of CRA public file by insured depository institution.* An insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file and making the agreement available in accordance with the procedures set forth in § 563e.43 of this chapter.

(c) *Disclosure of covered agreements to the relevant supervisory agency.* (1) Disclosure by NGEP. Each NGEP that is a party to a covered agreement must provide a complete copy of the agreement to the relevant supervisory agency within 30 days of receiving a request from the agency for the agreement. This obligation terminates 12 months after the end of the term of the covered agreement.

(2) *Disclosure by insured depository institution or affiliate.* (i) *Filing with the relevant supervisory agency.* Each insured depository institution or affiliate that is a party to a covered agreement must provide a copy of the agreement to each relevant supervisory agency within 30 days after the date the insured depository institution or affiliate enters into the agreement.

(ii) *Joint filings.* In the event that two or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file a copy of the covered agreement with each relevant supervisory agency. Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the covered agreement is being filed.

(d) *Relevant supervisory agency.* For purposes of this section and § 533.5, the *relevant supervisory agency* for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

§ 533.5 Annual reports.

(a) *Effective date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each NGEP and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement.* (1) *General.* An annual report under this section must be filed with each relevant supervisory agency for—

(i) The fiscal year in which the parties enter into the covered agreement; and (ii) Each fiscal year during the term of the covered agreement.

(2) *Exception for NGEP that has not received any funds or resources.* A NGEP is not required to file an annual report for a covered agreement for any fiscal year during the term of the agreement in which the NGEP did not receive any funds or other resources under the agreement.

(d) *Annual reports filed by NGEP.* (1) *General.* The annual report filed by a NGEP under this section must include the following—

(i) The name and mailing address of the NGEP filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) The information required by paragraphs (d)(2) and (d)(3) of this section concerning the use of funds received under the covered agreement.

(2) *Reporting for funds or resources allocated and used for a specific purpose.* For funds or other resources that the NGEP received during the fiscal year under the covered agreement and allocated and used for a specific purpose during the fiscal year, the annual report must—

(i) Describe each specific purpose for which the funds or resources were used during the fiscal year; and

(ii) State the amount of funds or resources used during the fiscal year for each specific purpose.

(3) *Reporting for funds or resources used for other purposes.* For all funds or resources that the NGEP received during the fiscal year under the covered agreement and did not use for a specific purpose, the annual report must—

(i) State the amount received during the fiscal year; and

(ii) Provide a detailed, itemized list of how the funds or resources were used during the fiscal year, including the total amount used for—

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses or uses.

(4) *Use of other reports.* The annual report filed by a NGEP may consist of, or incorporate, a report prepared for any other purpose, such as an Internal Revenue Service form, a state tax form, a report to members or shareholders, financial statements, or other report, so long as the annual report contains all of the information required by this paragraph (d).

(5) *Consolidated reports permitted.* A NGEP that is a party to five or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information required to be reported under paragraphs (d)(1)(iii), (d)(2), and (d)(3) of this section may be reported on an aggregate basis for all covered agreements.

(e) *Annual report filed by insured depository institution or affiliate.* (1) *General.* The annual report filed by an insured depository institution or affiliate must include the following—

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to

any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (e)(1)(iv) of this section, or, in the event such terms and conditions are set forth—

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement—

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by a NGEP under paragraph (d) of this section.

(2) *Consolidated reports permitted.* (i) *Party to large number of agreements.* An insured depository institution or affiliate that is a party to five or more covered agreements may file a single consolidated annual report with each relevant supervisory agency covering all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing.* (1) General. Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a NGEP.* (i) A NGEP may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than five months following the end of the NGEP's fiscal year—

(A) A copy of the NGEP's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the NGEP.

(ii) An insured depository institution or affiliate that receives an annual report from a NGEP pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the NGEP within 30 days.

§ 533.6 Release of information under FOIA.

OTS will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*), OTS's rules (part 505 of this chapter), and the Department of Treasury's rules (31 CFR part 1). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 533.7 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If OTS determines that a NGEP has willfully failed to comply in a material way with §§ 533.4 or 533.5, OTS will notify the NGEP in writing of that determination and provide the NGEP a period of 90 days (or such longer period as OTS finds to be reasonable under the circumstances) to comply.

(2) If the NGEP does not comply within the time period established by OTS, the agreement shall thereafter be unenforceable by that NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) OTS may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEP's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, OTS may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, OTS will provide written notice and an opportunity to present information to OTS concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or *de minimis* errors in annual reports or other documents filed with OTS under §§ 533.4 or 533.5 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing OTS to enforce the provisions of any covered agreement.

§ 533.8 Other definitions and rules of construction used in this part.

(a) *Affiliate. Affiliate* means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 533.2, an *affiliate* includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEP that is a party to the agreement makes a CRA contact, as described in § 533.2(b)(2).

(b) *Control. Control* is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A *CRA* affiliate of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination.

(d) *CRA public file.* For purposes of this part, *CRA public file* means the public file maintained by an insured depository institution and described in § 563e.43 of this chapter.

(e) *Federal banking agency; appropriate Federal banking agency.* The terms *Federal banking agency* and *appropriate Federal banking agency* have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(f) *Fiscal year.* (1) The fiscal year for a NGEP that does not have a fiscal year shall be the calendar year;

(2) Any NGEP, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(g) *Insured depository institution. Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(h) *Nongovernmental entity or person.* (1) *General. A nongovernmental entity or person* or *NGEP* is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (h)(2)(i), (h)(2)(ii), or (h)(2)(iii) of this section.

(i) *Party.* The term *party* with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(j) *Term of agreement.* An agreement that does not by its terms establish a termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the appropriate Federal banking agency otherwise notifies each party in writing.

Dated: May 10, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–12337 Filed 5–18–00; 8:45 am]

BILLING CODE 4810–33–U; 6210–01–U; 6714–01–U; 6720–01–U

Federal Register

Friday,
May 19, 2000

Part III

The President

Notice of May 18, 2000—Continuation of Emergency With Respect to Burma

Federal Register
Vol. 65, No. 98
Friday, May 19, 2000

Presidential Documents

Title 3—

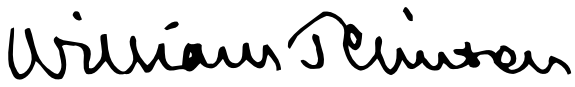
The President

Notice of May 18, 2000

Continuation of Emergency With Respect to Burma

On May 20, 1997, I issued Executive Order 13047, effective at 12:01 a.m. eastern daylight time on May 21, 1997, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma has committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons, contained in that section. I also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706).

The National Emergency declared on May 20, 1997, must continue beyond May 20, 2000, because the Government of Burma continues its policies of committing large-scale repression of the democratic opposition in Burma. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Burma. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
May 18, 2000.

[FR Doc. 00–12912
Filed 5–18–00; 12:47 pm]
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Vol. 65, No. 98

Friday, May 19, 2000

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S.J. Res. 40/P.L. 106–198
Providing for the appointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 249)

S.J. Res. 42/P.L. 106–199
Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 250)

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