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Monday  
May 10, 1993

# Federal Register

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### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- 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:** June 15 at 9:00 am
- WHERE:** Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538

### PHILADELPHIA, PA

- WHEN:** May 25, at 1:00 pm
- WHERE:** William J. Green, Jr. Federal Building, Conference Room 6306-10, 600 Arch St. Philadelphia, PA
- RESERVATIONS:** Federal Information Center 1-800-347-1997



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**Electronic Bulletin Board**

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# Rules and Regulations

Federal Register

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

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

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 1

[Docket No. 93-08]

#### Investment Securities Regulation

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its investment securities regulation to remove the requirement that banks maintain for specified periods of time credit information on issuers of certain securities. The purpose of this final rule is to reduce regulatory burden while promoting bank safety and soundness. National banks are expected to continue to exercise prudent banking judgment to retain records for appropriate periods.

**EFFECTIVE DATE:** June 9, 1993.

#### FOR FURTHER INFORMATION CONTACT:

Owen Carney, Capital Markets Division, Telephone: (202) 874-5070, Michael C. Dugas, Securities, Investments and Fiduciary Practices Division, Telephone (202) 874-5210, Comptroller of the Currency, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authority under 12 U.S.C. 24(Seventh) and 93a, the OCC is amending its investment securities regulation to eliminate the requirement to maintain records for specified periods of time, currently contained in 12 CFR 1.8(b). Section 1.8(a) requires banks to hold information adequate to demonstrate that they have exercised prudence in making determinations and carrying out securities transactions. Section 1.8(b) requires banks holding certain securities to maintain information for specified periods of time, depending on whether the bank is purchasing securities for its own

portfolio, underwriting or engaging in dealer activities.

The OCC proposed the amendment because it believes the specific retention requirements in § 1.8(b) are unnecessary. Under current industry practice and prudent management practices, investing banks generally use and maintain relevant credit data supplied by issuers, investment bankers and credit rating services in their credit decisions. Examples of such credit data are summary and in-depth analyses prepared by rating services or the financial advisory departments of large correspondent banks. These analyses generally are updated on an ongoing basis, and provide more meaningful information than an original prospectus, particularly as the credit ages. Under the current regulation, banks would hold an original prospectus or similar material even if these documents became dated and of little use in establishing the current condition of the issuer.

As stated in the proposal, the OCC believes that current credit data, supplied in accordance with industry practice, will adequately demonstrate that the bank has exercised prudence in making investment determinations and carrying out investment transactions. Therefore, the § 1.8(b) requirement for banks to retain records for specific time periods appears unnecessary.

The proposal was published for comment in the Federal Register on October 5, 1992 (57 FR 45756). The OCC received one comment in response to the proposal. The commenter supported the proposal and agreed that the action would reduce regulatory burden while promoting bank safety and soundness.

The OCC is adopting the amendment as proposed. The intended effect of the change is to remove an unnecessary regulatory requirement. Accordingly, Part 1 will no longer expressly require national banks to maintain credit information on issuers of securities for specified time periods. However, banks will be expected to continue to maintain sufficient information to evidence prudent banking judgment.

#### Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. The impact of this amendment is slight. This final rule eliminates an unnecessary regulatory requirement.

#### Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The impact of this amendment is slight, regardless of bank size. This final rule eliminates an unnecessary regulatory requirement.

#### List of Subjects in 12 CFR Part 1

Banks, banking, National banks, Investment securities, Reporting and recordkeeping requirements, Securities.

#### Authority and Issuance

For the reasons set out in the preamble, part 1 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

#### PART 1—INVESTMENT SECURITIES REGULATION

1. The authority citation for 12 CFR part 1 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a.

#### § 1.8 [Amended]

2. Section 1.8 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

Dated: April 30, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 93-10944 Filed 5-7-93; 8:45 am]

BILLING CODE 4810-33-P

#### 12 CFR Part 5

[Docket No. 93-03]

RIN 1557-AA97

#### Rules, Policies and Procedures for Corporate Activities: Changes in Directors and Senior Executive Officers

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; request for comments.

**SUMMARY:** The Office of the Comptroller of the Currency ("OCC" or "Office") is issuing this final rule which continues the requirement that national banks, within certain specified categories, file notices with the OCC prior to adding or

replacing members of their boards of directors or prior to employing individuals as senior executive officers or changing the responsibilities of individuals from one senior executive position to another. This final rule revises the OCC's current temporary rule. This final rule is intended to implement section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and to clarify the temporary rule's requirements in light of public comments received. In addition to the final rule, the OCC is also requesting comments on a proposed modification to the definition of change in control.

**DATES:** This final rule is effective on May 10, 1993. Comments must be submitted on or before July 9, 1993.

**ADDRESSES:** Comments should be directed to Communications Division, 250 E St., SW., Washington, DC 20219, Attention: Docket No. 93-03. Comments will be available for photocopying and public inspection at the same location.

**FOR FURTHER INFORMATION CONTACT:** Linda Gottfried, Senior Attorney, Corporate Organization and Resolutions Division, (202) 874-5300; or Cathy Young, National Bank Examiner, Chief National Bank Examiner's Office, (202) 874-5170.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On August 9, 1989, the President signed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law 101-73. Section 914 of FIRREA added section 32 of the Federal Deposit Insurance Act ("FDIA"), codified at 12 U.S.C. 1831i ("section 914"). On March 5, 1990, the OCC issued a temporary rule, codified at § 5.51, to implement section 914 and solicited comments on the temporary rule as part of the process of adopting a final rule. See 55 FR 7692.

The temporary rule implementing section 914 required national banks in certain specified categories to submit written notice to the OCC at least 30 days prior to the effective date of the placement of an individual on the board of directors or as a senior executive officer. The temporary rule required written notice from any national bank, District bank, federal branch, and federal agency that: (1) Had been chartered for less than two years, (2) had undergone a change in control within two years prior to the proposed placement of such individual, (3) did not meet its minimum capital requirements, or (4) was otherwise in a troubled condition. The temporary rule included definitions of "director",

"senior executive officer", and "troubled condition", and elaborated on the type of "change in control" that triggered the written notice requirement.

The temporary rule also set forth procedures for the filing of written notices, for the OCC's processing of the notices—including OCC requests for additional information—and for determining when the statutory 30-day review period begins. Under the temporary rule, individuals could assume their posts prior to the expiration of the 30-day review period if the OCC issued a notice of intent not to disapprove. As permitted by section 914, the temporary rule implemented the OCC's authority to grant waivers of the prior notice requirement. Finally, the temporary rule set forth grounds for disapproval prescribed by section 914 and established an appeal procedure for cases where the OCC disapproved an individual's service as a director or senior executive officer.

The OCC received 16 comment letters from banks, bank holding companies, and trade groups. This final rule revises the temporary rule based on these comments and makes other changes to clarify and ease the requirements of the temporary rule. The following is a discussion of the issues raised by the commenters, the OCC's responses to those issues, and a summary of other changes made to the temporary rule.

**II. Review of comments**

**A. "Technically complete notice" and "technically complete notice date"**

While the temporary rule did not define these two concepts, it provided that the OCC may require the submission of additional information following submission of the original notice. Further, the temporary rule provided that the 30-day review period "will begin to run on the date the Office determines that all required information has been provided and notifies the bank that the notice is technically complete."

Several commenters thought that the ability of the OCC to request additional information could unduly delay the process. One commenter thought that the OCC's ability to request additional information could be abused and that indefinite delays would be possible. Another commenter suggested that the waiting period should be shortened to 15 days when the OCC requests additional information.

The OCC has considered these comments, but believes that it is not appropriate to change the regulation in light of the OCC's statutory duties under section 914. Section 914 requires the OCC to issue a notice of disapproval if

the competence, experience, character, or integrity of the individual with respect to whom a notice is submitted indicates that it would not be in the best interests of the depositors of the national bank or in the best interests of the public to permit the individual to be employed by or associated with the national bank. The OCC can fulfill its statutory responsibilities only if it has sufficient opportunity to obtain, verify and review complete and thorough information which is relevant and necessary for proper evaluation of notices filed under section 914.

Another commenter stated that the OCC should not require any information beyond the information that Congress expressly provided for in section 914. That information includes information listed in section 7(j)(6)(A) of the FDIA, which pertains to the identity, personal history, business background, and experience of the proposed director or senior executive officer, including his or her material business activities and affiliations during the past five years, a description of any material pending legal or administrative proceedings in which he or she is a party, and any criminal indictment or conviction of such person. Section 914 also authorizes the OCC to prescribe other information by regulation. All of the information prescribed by the final rule pertains to the criteria expressly contemplated by section 914. Any additional information sought by the OCC following an original notice, including requesting up to ten additional years of material business activities and affiliations depending upon the facts, will be pertinent to these criteria and will facilitate the OCC's review of the information that was submitted in connection with the notice.

Several commenters specifically objected to the fingerprint requirement. One commenter stated that the OCC's decision to require fingerprint cards would compound an already severe problem banks have in recruiting good directors. The OCC believes that an essential component in fulfilling its statutory duty to review nominees for director and senior executive officer positions at certain institutions is a review of records maintained by the Federal Bureau of Investigation ("FBI"). The FBI requires, as a prerequisite for such a review, the submission of a fingerprint card for the individual whose name is being searched. Moreover, the OCC does not agree that the fingerprint requirement will create severe problems for national banks when they recruit new directors. Many national banks already require fingerprint submissions by lower level

employees. Similar requirements for more senior level employees and directors do not seem unreasonable.

More importantly, the fingerprint requirement itself will help to protect national banks from unknowingly employing someone with a criminal record. This requirement will also serve as a deterrent to individuals who might otherwise seek to serve as a director of a national bank or accept employment as a national bank's senior executive officer if such a review is not made. In addition, the fingerprint requirement makes background checks more accurate and more reliable.

Two commenters felt that there was a stigma attached to having fingerprints taken at a police station. The OCC does not believe that business contact with the police will have any negative connotation for prospective directors and senior executive officers. Moreover, the regulation does not require that fingerprinting be done by the police. In fact, the instructions for filing a notice merely state that fingerprints must be legible, and it is "strongly recommended" that they be done by someone who has experience taking fingerprints, for example, at the local police station.

Finally, to ease the burden of filings where possible, the OCC will continue its current practice of not requiring submission of fingerprints by any individual who, within three years prior to a filing, has been the subject of a section 914 notice and has previously submitted fingerprints. This exemption has been incorporated into the final rule.

For purposes of clarity, the OCC has added to the final rule a definition of the term "technically complete notice". A technically complete notice is a notice that provides all the information required under § 5.51(e)(2). This information includes legible fingerprints and complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers. The information also includes any additional information that the OCC may request following a determination that the original submission of the notice was not technically complete.

If a national bank does not provide full and thorough information, the OCC will provide written notification to the bank and the individual that the notice is not technically complete, set forth the reasons for this determination, and may request that the bank submit additional information on specific topics in any notice subsequently filed for the proposed individual.

If false information is provided concerning a material fact: (1) The person(s) responsible may be subject to criminal sanctions; (2) the fraudulent notice will be considered by the OCC as never having been technically complete; and (3) if an individual assumed the position designated in the fraudulent notice, that individual will be required to discontinue service to the bank.

For purposes of clarity, the OCC has also added to the final rule a definition of the term "technically complete notice date". The OCC will provide written notification to the bank of the technically complete notice date when the OCC has received a "technically complete notice." This date of receipt will mark the beginning of the 30-day review period. If, however, the original submission of the notice is considered not technically complete, the OCC will inform the bank and the individual of this conclusion in writing.

#### *B. Prior notice; 30-day review period; positions covered; banks covered.*

The temporary rule provided that the 30-day prior notice requirement pertaining to the addition or replacement of a member of the board of directors, or the employment or change in responsibilities of any individual to a position as a senior executive officer, should apply to national banks falling within one of three categories: (1) Those chartered as a national bank for less than two years; (2) those which, within the preceding two years, have undergone a change in control that required a notice to be filed under the Change in Bank Control Act, codified at 12 U.S.C. 1817(j), or § 5.50; or (3) those which are not in compliance with minimum capital requirements or which are otherwise in a troubled condition. The comments received by the OCC generally addressed three different concerns. The three concerns were with: the 30-day review period, positions covered by the final rule, and banks covered by the final rule.

#### **1. The 30-day Review Period**

Several commenters suggested reduction of the length of the 30-day review period following the receipt of a technically complete notice. The length of the review period, 30 days, is provided for in the statute. See 12 U.S.C. 1831i(b). As indicated previously, the OCC does not believe that it can feasibly reduce this review period while fulfilling its statutory responsibilities. However, the OCC notes that under the final rule, there are two situations that would permit a proposed director or senior executive officer to begin to serve prior to the

expiration of the 30-day review period. The first, as is more fully discussed elsewhere in this preamble, is where the bank has sought and the OCC has granted a waiver of the prior notice requirement. In such circumstances, the person can assume the responsibilities of the designated post prior to filing the notice, but is subject to disapproval. The second is where the OCC issues a notice of intent not to disapprove prior to the expiration of the 30-day review period.

#### **2. Positions Covered by the Final Rule**

The temporary rule imposed the prior notice requirements on each proposed director<sup>1</sup> of affected institutions except an advisory director who is not elected by the shareholders of the bank or of any parent institution, who is not authorized to vote on matters before the board of directors, and who solely provides general policy advice to the board of directors.

One commenter stated that although an advisory director is exempt from the definition of "director", an advisory director should be subject to the prior notice requirement of section 914 if the individual falls under the part of the definition of "senior executive officer" pertaining to "any individual who exercises significant influence over, or participates in, major policy-making decisions of a national bank without regard to title, salary, or compensation."

With respect to this comment, the OCC determined that it is inappropriate to either include or exclude, as a group, all individuals serving national banks under the title "advisory director." Given the varied circumstances under which such persons may provide service, subjecting all such individuals to the section 914 process is unnecessary to fulfill the goals underlying section 914 and, therefore, unduly burdensome. Conversely, excluding all such individuals from the prior notice requirement would clearly be inconsistent with such goals in circumstances where an individual, although nominally titled as an "advisory director", either functions as a *de facto* director or individually exercises significant influence in the major policy-making processes of a national bank in the absence of board control and direction. While acknowledging the fact-dependence and potential subjectivity of this matter, the OCC believes that the basis for distinction between advisory directors who are exempt from the prior notice requirement and those who are subject

<sup>1</sup> The bank must continue to ensure that the qualifications requirements of 12 U.S.C. 72 have been met with regard to the proposed director.

to section 914 was established by the temporary rule and was retained in the final rule through the respective definitions of "Director" and "Senior Executive Officer".

In a related respect, the final rule changed and simplified the advisory director exception to the definition of director by deleting the requirement that advisory directors not be elected by the shareholders of the bank or of any parent institution. The OCC believes that the important element, for purposes of section 914, is what that advisory director does, not how the advisory director achieved appointment to his or her position.

Several commenters suggested that the final rule not include changes in membership on the board of directors and should not include changes in senior management other than a change in the position of chief executive officer. However, the statute applies to the "proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer \* \* \*." Thus, with respect to the board of directors, the terms of the statute prevent the OCC from implementing the commenters' suggestion. With respect to senior executive officers, the OCC believes that the commenters' suggestion does not encompass all senior executive officers who exercise significant influence over, or participate in, major policy-making decisions of a national bank. Therefore, the OCC will retain a broader definition of individuals covered by the final rule.

One commenter thought that a notice should not be required when a person who already occupies a position covered by section 914 is proposed to assume another position covered by that section other than a position as chief executive officer or president; another thought that bank employees who are being promoted to covered positions also should not be subject to the requirement.

Section 914 literally requires the OCC to evaluate the competence, experience, character, and integrity of any individual proposed to occupy a position as director or senior executive officer of a national bank. The OCC must disapprove any such individual if it determines that it would not be in the best interests of the depositors of the national bank and in the best interests of the public to permit the individual to be employed by, or associated with, the national bank in his or her proposed capacity as a senior executive officer or director. For this reason, the OCC believes it is appropriate to apply the notice requirement to employees who are promoted to a senior executive

officer position within a national bank. The OCC also believes the notice requirement is appropriate for lateral transfers. For example, a competent senior investment officer who has been approved for that post under section 914 may not have the competence or the experience to be a skilled senior lending officer.

Another commenter believed that the temporary rule might inadvertently have the effect of perpetuating an inept board by requiring approval of new directors, but not directors who are re-elected. This result would theoretically arise from the burden placed on the bank in electing a new board in compliance with section 914. The OCC does not see the burden associated with section 914 as outweighing the desire of the national bank's shareholders to be served by competent directors. Furthermore, Congress granted to the OCC the limited authority to review only additional or replacement directors and senior executive officers. However, the OCC notes that it has other authority to remove existing directors and senior executive officers, pursuant to 12 U.S.C. 1818(e), and dismiss directors and senior executive officers, under certain circumstances, pursuant to 12 U.S.C. 1831o(f). Therefore, the OCC does not believe that its rule will perpetuate an ineffective board of directors.

### 3. Banks Covered by the Final Rule

*a. National banks undergoing a change in control.* In the temporary rule, the OCC explained that it did not believe that Congress intended to cover every transaction that might be characterized as a change in control. Thus, the OCC took the position that the wording and history of section 914 indicate that it was not meant to apply to a change in control that is exempted from the requirements of the Change in Bank Control Act, such as a transaction subject to approval under section 3 of the Bank Holding Company Act or section 18 of the Federal Deposit Insurance Act. All three commenters addressing this point agreed with the OCC's interpretation of the statute.

Two commenters took the position that there are situations covered by the Change in Bank Control Act that are not appropriately considered as subject to the section 914 notice requirement. These commenters expressed concern that the section 914 requirements would be triggered for a two-year period following the purchase by an employee stock ownership plan ("ESOP") of more than 10 percent, but less than 25 percent, of the voting stock of an institution even where the shares will be distributed to employees and all

voting rights with respect to the shares held by the ESOP will be passed through to the employee participants.

The OCC believes that whether an ESOP's acquisition of control of a national bank triggers the prior notice requirement of section 914 depends on the particular circumstances involved. If the ESOP is not exempted pursuant to § 5.50(f)(4), the OCC takes the position that the question of whether an acquisition by an ESOP is covered by the Change in Bank Control Act should be determined by standards similar to those applicable to voting trusts, whose structures resemble ESOPs. See OCC Banking Circular No. 232, Procedures for Processing Notices of Change in Bank Control—Voting Trusts and Banks in Organization (January 26, 1989).

It has been the OCC's position that, pursuant to § 5.50, the trustee of an absolute voting trust, where the trustee has the power to vote the trust's shares, must file a notice of change in control with the OCC when the trust acquires enough stock to trigger a change of control of a national bank. Conversely, a non-absolute voting trust, where the power to vote is directed by each beneficiary, is not subject to the prior notice requirement of § 5.50, unless an acquisition of an ownership interest by an individual beneficiary or a group of beneficiaries acting in concert triggers a change in control of the bank.

In the case of an absolute ESOP established by a national bank, an acquisition of control arises when the trustee acquires the absolute power to vote: (1) 25 percent or more of the voting stock in the national bank; (2) more than 10 percent, but less than 25 percent, of the voting stock of the national bank and no other person owns a greater percentage of that national bank than the ESOP; or (3) all of the shares of a class of securities issued to the ESOP and registered under the Securities Act of 1933 or the Securities Exchange Act of 1934. Therefore, after the trustee of an absolute ESOP acquires control of a national bank, the bank is subject to section 914, and the bank must file a section 914 notice with the OCC whenever the bank proposes an addition to or change of directors or senior executive officers during the two years following the change in control.

In a non-absolute ESOP, the power to vote the ESOP's shares passes through to each shareholder. An acquisition of control can only arise when one shareholder or a group of shareholders acting in concert acquires absolute voting power over: (1) 25 percent or more of the voting stock in the national bank; (2) more than 10 percent, but less than 25 percent, of the voting stock of

the national bank and no other person owns a greater proportion of those national bank shares than that shareholder or group of shareholders acting in concert; or (3) a percentage constituting control [as defined in (1) and (2)] of a class of securities registered under the Securities Act of 1933 or the Securities Exchange Act of 1934 that the national bank issues to the ESOP. Therefore, a section 914 notice is only triggered by a non-absolute ESOP if conditions (1), (2) or (3) are met, in which case the bank must file a section 914 notice with the OCC whenever the bank proposes an addition to or change of directors or senior executive officers during the two years following the change in control.

One commenter cited another situation that the commenter believed was covered by the Change in Bank Control Act. The situation identified occurs when a bank buys the outstanding stock of a shareholder resulting in a percentage increase of ownership for all remaining shareholders. The commenter stated that such an increase of ownership can be very small—less than 1 percent—and not involve a change in control, but would nevertheless trigger a Change in Bank Control notice. The commenter believed that the situation should not trigger the prior notice requirement of section 914.

The situation cited by the commenter would not trigger the applicability of section 914. First, under 12 U.S.C. 83, a national bank cannot purchase shares of its own capital stock unless the purchase is necessary to prevent a loss upon a debt previously contracted in good faith. If the national bank's acquisition of shares described above is in satisfaction of a debt previously contracted in good faith, then, pursuant to § 5.50(f)(3), the transaction is exempt and not subject to the prior notice requirement of the Change in Bank Control Act. Thus, the transaction itself would not subject the national bank to the prior notice requirement of section 914. Second, the remaining shareholders' de minimis increase in ownership does not constitute an "acquisition" of shares for Change in Bank Control Act purposes. Therefore, the prior notice requirement of section 914 will not be triggered.

*b. National banks not in compliance with capital requirements.* One commenter expressed the view that applicability of the temporary rule to national banks based on noncompliance with capital requirements should be limited to those national banks with capital directives or with agency orders that require capital levels within the

generally applicable minimum levels as stated in the regulatory guidelines. The applicable capital requirements for national banks are located in 12 CFR part 3. The OCC believes that the applicable capital requirements should include not only the risk-weighted assets ratio and the leverage ratio, but also any higher minimum ratio that has been established by the OCC for a bank on an individual basis. See 12 CFR 3.9.

In certain circumstances, the OCC believes that higher minimum capital ratios are necessary to insure the safety and soundness of the bank. Examples of when higher minimum capital ratios may be required are listed in § 3.10. Consequently, the final regulation specifically incorporates those capital ratios applicable to an institution under either §§ 3.6 or 3.9 in defining a national bank which is in compliance with minimum capital requirements applicable to it.

*c. National banks in a "troubled condition."* The temporary rule defined "troubled condition" as meaning a national bank that: (1) Has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System; (2) is subject to a cease and desist proceeding or order, or a formal written agreement, unless otherwise informed in writing by the OCC; or (3) is informed in writing as a result of supervisory analysis that it was designated as in "troubled condition" for purposes of section 914. Several commenters addressed the definition of "troubled condition" as contained in the temporary rule.

One commenter suggested elimination of the first two tests on the grounds that, due to local economic conditions, virtually all institutions in the commenter's geographic region may be encompassed. The OCC believes that the first test is valid because 4- and 5-rated banks warrant consideration as being in troubled condition. This test is unambiguous. Regarding the second test, the OCC believes that when a national bank is operating under a cease and desist order, consent order,<sup>2</sup> or formal written agreement, such a document is, prima facie, indicative of problem conditions which may affect the national bank's viability. The OCC does not issue such documents without cause. Therefore, the OCC declines to eliminate the first two tests.

Another commenter questioned whether the second test should be applied to 3-rated banks. That

<sup>2</sup> In the final rule, the OCC has added "consent order" to the second test to clarify that this type of action also triggers the prior notice requirement of section 914.

commenter felt that a 3-rated bank "does not evidence a situation that is tantamount to that which may be considered prima facie 'troubled condition' and should therefore not be categorized as such. Inasmuch as an order or agreement may indicate a need to improve an institution's condition, it should not be the sole determinative factor \* \* \*." As stated above, the OCC believes that these formal proceedings and written agreements are, prima facie, indicative of problem conditions which may affect the national bank's viability. Therefore, the second test remains applicable to affected 3-rated banks.

Two commenters expressed concerns about the third test under which a bank is informed in writing that, as a result of a supervisory analysis, it is designated as in a "troubled condition". These commenters felt this test was too open-ended and could be subject to arbitrary action and abuse. Both suggested the establishment of clear, objective guidelines. One recommended that the OCC's written notice to a bank should specify why the bank has been classified as "troubled". This commenter also felt that such a decision should be made at a level no lower than the district director of supervision and that an appeals process should be instituted with respect to such determinations.

The OCC believes that conditions present in some, but not all, 3-rated banks and banks subject to informal agreements warrant supervisory oversight in the selection of senior executive officers and directors. Therefore, the OCC adopted the third test instead of including all 3-rated banks under the first test and all banks subject to informal agreements under the second test. The third test provides the OCC with flexibility in applying section 914 to national banks that do not fall under the first two tests but, nonetheless, are considered to be in a troubled condition. At this time, the OCC does not anticipate the need to employ the third test with respect to 1- or 2-rated banks. However, the OCC cannot rule out the possibility that unforeseen circumstances may require one or more such banks to file section 914 notices in the future.

The OCC agrees with the commenters who recommended that each bank determined to be in "troubled condition" pursuant to the third test will be informed in writing of the conditions or supervisory concerns that have caused them to be so designated. The OCC will determine through internal operating procedures which of its personnel may classify a bank as troubled. Also, an appeals process exists

for disputing a determination under the third test. As is the case with any supervisory conclusion, a bank which disagrees with the determination may request in writing that the judgment be reviewed by a higher level OCC official pursuant to the Examination Review Process set out in OCC Banking Circular 257, Examination Review Process (February 26, 1992).

*d. Miscellaneous comments.* One commenter suggested that the temporary rule should only apply to banks in troubled condition; two other commenters suggested that the temporary rule should not apply to banks in operation for less than two years that are subsidiaries of holding companies that are more than two years old. These suggestions are beyond the authority of the OCC to implement. The statute unambiguously includes new insured depository institutions and institutions that have undergone a change in control. Moreover, no statutory basis exists for creating an exception for newly-chartered national banks owned by holding companies that are more than two years old.

### C. Procedures

#### 1. Notice of Disapproval

The temporary rule provided that the OCC may disapprove an individual proposed as a member of the board of directors or as a senior executive officer upon determining that, on the basis of the individual's competence, experience, character, or integrity, the appointment would not be in the best interests of the depositors or of the public. One commenter stated that the regulation lacked any intimation of the criteria that the regulator would apply in issuing a disapproval and that, without identified criteria, it would be difficult to appeal a decision.

The establishment of predetermined criteria by the OCC goes beyond the statutory requirements of section 914. The OCC believes that national banks must have flexibility in identifying competent personnel, including making decisions regarding their competence, experience, character and integrity. Similarly, the OCC, in its review of notices, must also have sufficient flexibility—circumscribed by statutory standards—in fulfilling its statutorily mandated responsibilities.

Furthermore, if the OCC disapproves an individual, the OCC requires that the disapproval letter: (1) States the basis for disapproval; (2) be signed by the OCC official making the decision; and (3) be mailed to the national bank with a copy to the disapproved individual. Within 15 days of receipt of a notice of

disapproval, the national bank, the disapproved individual, or both, may appeal the disapproval to the Comptroller or an authorized delegate. The appeal can be on the grounds that the reasons given for disapproval are contrary to fact and/or are insufficient to justify disapproval.

Another commenter was concerned about the lack of accountability of "anonymous" decision-makers passing on section 914 notices who may not have the judgment, experience, information and skill required for such decisions. OCC officials making the decisions on the section 914 notices will be accountable and will not be anonymous because those officials will continue to issue a signed letter of disapproval. Furthermore, final decisions will continue to be made by experienced OCC supervisory personnel and appeals will be decided by senior OCC officials.

#### 2. Waiver of Prior Notice

The temporary rule provided that, upon petition, the OCC may waive the prior notice requirement, but not the filing of the notice required under section 914, if the OCC finds that delay could harm the national bank or the public interest or that other extraordinary circumstances exist. The temporary rule further provided that, in granting a waiver, the OCC would specify the time period in which the notice had to be submitted and that a waiver would not affect the authority of the OCC to issue a notice of disapproval within 30 days of the receipt of a technically complete notice. Finally, the temporary rule provided that, in the case of the election—at a meeting of the shareholders—of a new director not proposed by management, such waiver is granted. In such situations under the temporary rule, the bank must file a notice within 48 hours of the time the individual was notified of the election.

One commenter suggested that the regulation provide that the OCC respond to any request for a waiver within three days, and that the OCC accept these requests by letter, cable, fax, or telephone. In adopting the final rule, the OCC has clearly required that any request for a waiver be in writing. A fax or other electronic means that produces a written request is permitted as long as it is sent to the appropriate OCC office. The OCC will not accept telephone requests. With regard to limiting the OCC's time to respond to waiver requests, exigent or emergency situations requiring a waiver depend upon the facts, which vary with each different waiver application. Because these situations vary, the OCC believes

it is important to retain its flexibility in responding to waiver requests.

With respect to directors nominated by management, one commenter thought that the temporary rule would require that the OCC pre-approve the entire slate of directors pursuant to the procedures set forth in section 914 and these implementing regulations. Section 914 has been in effect since the enactment of FIRREA on August 9, 1989. Since that time, national banks have been aware of the requirements of section 914 including the requirement that all individuals, proposed to be added to the board of directors of certain national banks, are subject to the prior notice requirements of section 914. Thus, pre-approval of directors is feasible and recommended by the OCC. However, pre-approval is not required. The final rule requires that the bank submit notices for all such nominees at least 30 days in advance of the effective date of their addition to the board, not 30 days in advance of the election. If the bank believes that, due to extraordinary circumstances, it cannot provide 30 days prior notice to the OCC, then the bank must request a waiver, and the OCC may grant the waiver based upon the facts presented by the bank.

With respect to directors not nominated by management, the commenter was concerned that the bank could not assume that a waiver would be granted. Without a waiver such persons are prevented from joining the board immediately. This concern is unfounded. The temporary rule, and the final rule as adopted today, state clearly that a waiver is granted in these situations. However, the waiver is granted contingent upon the bank filing a technically complete notice in a timely manner with the OCC.

Finally, with respect to waivers, the OCC has made three clarifying changes to the final rule. First, the OCC has revised the provision regarding waiver of prior notice to clarify that the length of the waiver period is based on the circumstances of each situation.

Second, once the OCC has granted a waiver, the proposed individual may assume the position on an interim basis, and the bank must submit a technically complete notice in a timely manner as provided for in the waiver. If a technically complete notice is filed in a timely manner, the proposed individual can serve on an interim basis until the individual and the bank receive a notice of disapproval. If a technically complete notice is not filed in a timely manner, the proposed individual must resign his or her position. The individual can assume the position on a permanent basis after the bank receives a notice of

intent not to disapprove or the 30-day review period elapses. Third, in the last sentence of § 5.51(e)(4)(i) of the temporary rule, the OCC has replaced the phrase "within 30 days of the receipt of a technically complete notice" with "within 30 days of the expiration of such waiver." This new language is found in § 5.51(e)(7)(i) of the final rule. The OCC amended this language to be consistent with the statutory language of section 914.<sup>3</sup> This change provides the OCC with the full 30 days to review the notice after the last possible date that the technically complete notice could be submitted under the terms of the waiver (i.e., on the date the waiver expires).

#### D. General Comments

Other commenters made more general comments disagreeing with the approach embodied by the temporary rule. One commenter characterized the prior notice requirement as "cumbersome" and stated that "if the existing board and senior management do not have the capability of placing prudent and qualified people in these positions, then the Comptroller's office should be looking at replacing them." Another commenter contended that the temporary rule inappropriately shifts control of hiring and appointment of board members and senior executive officers from banks to the government. These commenters suggested that the OCC should predetermine qualifications and criteria for the hiring of senior executive officers and the designation of directors or, alternatively, that banks should consider input from the OCC with respect to persons under consideration in making their decisions.

As stated earlier, prior review by the OCC and an opportunity to disapprove proposed directors and senior executive officers of certain institutions is required by statute and beyond the authority of the OCC to change. The predetermination by the OCC of rigid, fixed qualifications would be more intrusive than the statutory requirements, which permit institutions broad flexibility in identifying appropriate personnel. Also, the alternative suggestion involving OCC input would still require the OCC to have prior notice of a proposed appointment, to receive the information called for by section 914, to investigate and to make a determination as to the suitability of the proposed individual. Consequently, the OCC has not adopted these suggestions.

<sup>3</sup> Twelve U.S.C. 1831(c)(2) provides that such waivers shall not affect the authority of the OCC to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver.

### III. Other Issues

In addition to the above changes made to provisions which were the subject of comments, the OCC has made other revisions and undertaken other analysis with regard to the temporary rule for purposes of clarification and/or to ease burdens which may be imposed upon national banks during the notice period.

#### A. Effect on Other Statutes

The OCC does not believe that Congress, in enacting section 914, intended to repeal other pre-existing statutory authority permitting the OCC to require notice in similar situations. Specifically, section 914 does not displace or supersede the OCC's long standing authority under the National Bank Act's chartering provisions (12 U.S.C. 21 *et seq.*) to require prior review of proposed changes in executive officers for two years as a condition of granting the charter. Unlike the prior review authority of section 914, the chartering authority does not require the OCC to complete its review or to issue a notice of disapproval within 30 days.

Likewise, section 914 does not displace or repeal any provision of section 8(b) of the FDIA, 12 U.S.C. 1818(b). This statute authorizes the OCC to include a provision in a cease and desist order requiring a national bank to employ qualified officers or employees (who may be subject to approval by the OCC), 12 U.S.C. 1818(b)(6)(E). Like the chartering authority, this authority does not require the OCC to complete its review or to act with respect to a proposed individual in 30 days.

Further, section 914 does not displace any provision of section 38(f) of the FDIA, 12 U.S.C. 1831o(f). This statute authorizes the OCC to do one or more of the following: Order a new election for the national bank's board of directors; require the national bank to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the institution became undercapitalized; or require the national bank to employ qualified senior executive officers (who, if the OCC so specifies, shall be subject to approval by the OCC.) This statute, like the chartering authority, does not require the OCC to complete its review or to act with respect to a proposed individual in 30 days.

Finally, it is emphasized that compliance with the prior notice requirement of section 914 does not remove the requirement for certain individuals to comply with the provisions of section 19 of the FDIA, 12 U.S.C. 1829. Pursuant to section 1829,

persons previously convicted of criminal offenses involving dishonesty or breach of trust may not become institution-affiliated parties with respect to national banks, or participate, directly or indirectly, in the conduct of a national bank's affairs, without obtaining the written consent of the FDIC. Section 914 does not preclude or remove the requirement for an affected individual to obtain separate written consent from the FDIC pursuant to section 1829.

#### B. Rules of General Applicability

The temporary rule provided that § 5.5, entitled "Fees", did not apply to § 5.51. However, § 5.7 is applicable to § 5.51 and authorizes the OCC to assess fees for investigations pursuant to 12 CFR part 8. The OCC has studied the cost of processing section 914 notices since the temporary rule was published. As a result of these efforts, the OCC determined that charging a fee under § 5.5 is the most efficient way to recover the cost of processing section 914 notices. Therefore, § 5.5 is applicable to § 5.51 and a filing fee will be set under § 5.5. The filing fee will be published in a notice as prescribed by 12 CFR 8.8. The final rule has been amended to reflect this change.

#### C. Applicability to Officials of Federal Branches

The definition of national bank includes any federal branch of a foreign bank with deposits insured by the Federal Deposit Insurance Corporation ("FDIC"). However, with the exception of persons functioning as the chief managing official of a federal branch, this final rule does not cover changes in senior executive officers or directors of foreign banks that operate federal branches. The OCC has modified the definitions of senior executive officer and director to clarify this position.

#### D. Applicability of Section 914 to Insured Depository Institutions

In the temporary rule, the definition of national bank included "any national bank, any district bank, and any Federal branch or Federal agency." In the statute, Congress designated the institutions covered by section 914 as "insured depository institutions". In the final rule, the OCC has changed the definition of national bank in § 5.51(c)(2) to limit the application of section 914 to institutions—that is, national banks, District banks or federal branches—with deposits insured by the FDIC. Federal agencies have been excluded from the definition of national bank in the final rule because they do not accept deposits insured by the FDIC.

Thus, the prior notice requirement in § 5.51(d) is applicable to national banks, District banks, and federal branches with deposits insured by the FDIC.

#### *E. Applicability of Section 914 to New Depository Institutions*

Under the temporary rule, the prior notice requirement was triggered for a new institution when "the national bank has been chartered less than two years." In the final rule, the factor triggering the prior notice requirement for a new institution is whether "the national bank has been operated as an insured depository institution for less than two years." The OCC believes that with respect to new depository institutions Congress intended to encompass institutions that do not have a significant track record of operations as insured depository institutions. Therefore, the most appropriate measure consistent with Congressional intent is the tolling of the two-year time period from the time the institution began its operations as an insured depository institution.

Consequently, the OCC believes that when an FDIC-insured depository institution, such as a state bank or a savings association, converts to a national bank charter, the act of conversion will not require the institution to file a section 914 notice if, within two years after the conversion, new directors or senior executive officers are proposed. However, the prior notice requirement of section 914 would cover a situation where the converting institution had been operated as an insured depository institution for less than two years prior to the conversion. Following the conversion, the prior notice requirement would apply until two years had elapsed after the bank began operations as either an insured savings association or insured bank. On the other hand, where a national bank that is not an insured depository institution changes its operations so that it becomes an insured depository institution, the two-year period starts when the bank begins operations as an insured depository institution.

#### *F. Requests for Additional Information Following Receipt of a Technically Complete Notice*

If the OCC, during its review of a technically complete notice, discovers information which may lead to a disapproval before the end of the 30-day review period, under § 5.51(e)(3), the OCC may request in writing, when feasible, that the bank submit additional information, within a certain time frame, which addresses the discovered

information. Because the OCC cannot extend the 30-day review period, the bank must provide the additional information by the date specified by the OCC. However, the bank may request, under § 5.51(e)(4)(i), that the OCC suspend processing the notice for up to 60 days if the bank is unable to respond to the request for additional information within the time period specified by the OCC.

If the bank does not provide the additional information before the expiration of the applicable time period, the OCC has two choices; it can make a decision on the notice based on the information then before it (drawing any reasonable inferences from the bank's failure to provide the requested information) or it can treat the notice as abandoned pursuant to § 5.7 and inform the national bank and the individual of this determination in writing.

#### *G. Instances When the OCC Does Not Receive Report(s) That It Has Requested From Other Government Agencies Within the 30-day Review Period*

Occasionally, the OCC does not receive a report or reports that it has requested from other government agencies concerning a proposed individual within the 30-day review period. In that case, the OCC may request that the bank and the proposed individual certify, by signing a letter provided by the OCC, that the individual will not assume the proposed position until the OCC has received and reviewed the report(s) and has issued a notice of intent not to disapprove. In making this request, the OCC will notify the bank and the individual of the basis for the OCC's unwillingness to issue a notice of intent not to disapprove before the end of the 30-day review period. If either the bank or the individual does not sign the certification before the end of the 30-day review period, the OCC will decide whether to issue a notice of disapproval based on the information then before it. The final rule has been modified to reflect this change.

#### *H. Commencement of Service*

The temporary rule provided that the proposed individual may begin service in a position upon the expiration of the 30-day review period unless the OCC issues a notice of disapproval by the end of that period. The OCC has modified the final rule to provide additional guidance on the question of when an individual can assume the proposed position. Under the final rule, an individual may assume the proposed position following the end of the 30-day review period, unless: (1) The OCC issues a notice of disapproval during the

30-day review period; (2) the OCC suspends the 30-day review period pursuant to § 5.51(e)(4)(i); (3) the bank and the proposed individual certify, pursuant to § 5.51(e)(4)(ii), that the individual will not assume the proposed position; or (4) the national bank does not provide additional information within the time period required by the OCC pursuant to § 5.51(e)(3) and the OCC informs the national bank in writing that it is treating the notice as abandoned pursuant to § 5.7.

#### *I. Appeal procedures*

If the OCC disapproves an individual, the OCC requires that the disapproval letter: (1) States the basis for disapproval; (2) is signed by the OCC official making the decision; and (3) is mailed to the national bank with a copy to the disapproved individual. Within 15 days of receipt of a notice of disapproval, the national bank, the disapproved individual or both may appeal the disapproval to the Comptroller or an authorized delegate. The appeal can be on the grounds that the reasons given for disapproval are contrary to fact and/or are insufficient to justify disapproval. The appellant should submit all documents and written arguments that the appellant believes should be considered in support of the appeal.

The Comptroller or an authorized delegate may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The appellate official will make an independent determination after considering all information submitted with the original notice, the material before the OCC official who made the initial decision, and any information submitted by the appellant in support of the appeal. The Comptroller, authorized delegate, or the appellate official will inform the appellant of the result in writing. If the appellate official overturns the original decision, the individual may assume the designated position.

#### *J. Senior Executive Officer Definition*

The OCC clarified the senior executive officer definition by shifting the list of specific positions covered by the definition to the beginning of the definition. The definition retains the OCC's discretion to identify an individual who will occupy a position not specified in the list and will exercise significant influence over, or participate in, major policy making decisions of the bank, without regard to the individual's title, salary or compensation. The OCC believes that the change will provide national banks



with more certainty over which positions are covered by the definition of senior executive officer. The OCC deleted the position of president because the individual who will occupy that position will also perform one of the listed functions. The final rule has been modified to reflect this clarification.

#### IV. Request for Comments

The temporary rule and the final rule adopted today provide that section 914 notices are triggered by changes in control of a national bank only when notices must be filed with the OCC pursuant to the Change in Bank Control Act. As a general matter, acquisitions of national banks by bank holding companies are not subject to the Change in Bank Control Act, and therefore such a change in control would not trigger the submission of section 914 notices for the subsequent two-year period.

However, the OCC believes that review of additional or replacement bank directors and senior executive officers pursuant to section 914 may be appropriate where control of a national bank has been acquired by a newly established bank holding company.<sup>4</sup> There are three primary reasons for presenting this proposal.

First, in the absence of facts triggering section 914 on other grounds, individuals who wish to acquire a national bank without triggering the prior notice requirement under the change in control provisions of section 914 need only form a bank holding company. By forming a bank holding company, the individuals are exempted from the prior notice requirement of the Change in Bank Control Act and consequently from section 914 under the OCC's current interpretation of change in control. Second, the OCC is concerned about previously unregulated entities or entities without a significant regulatory track record exercising significant influence over their newly acquired subsidiary national bank(s). Third, section 914 does not expressly require that changes in control be limited to those triggering Change in Bank Control Act notices.

Thus, the OCC is proposing that, unless one of two exceptions applies, when a national bank is acquired by a bank holding company which has been regulated as a bank holding company for less than two years, such acquisition constitutes a change in control within the meaning of section 914. The

national bank must file section 914 notices with the OCC with respect to additional or replacement directors and senior executive officers for a period of two years from the date the bank is so acquired.

There are two exceptions to this proposal. The first is when the newly established bank holding company is itself owned by a registered bank holding company that has been in existence for more than two years. The second is when the newly established bank holding company is established in a reorganization where substantially all of the shareholders of the bank holding company were shareholders of the bank prior to the bank holding company's formation.

The OCC believes that the issue of whether section 914 applies should not depend on whether a group of individuals chooses to acquire control of a national bank as individuals or, instead, opts to form a holding company to undertake the acquisition. The OCC is requesting comment on this proposal for a period of 60 days.

#### V. Effective date

Because the final rule makes only technical and clarifying changes to the temporary regulation currently in effect or, in certain instances, eases restrictions currently imposed by the temporary rule, it is effective immediately upon its publication in the Federal Register.

Thus, the final rule applies immediately to all national banks that: (1) Begin operations as insured depository institutions; (2) are subject to a change in control that triggers application of section 914 and this implementing regulation; or (3) are insured depository institutions and fail to meet their minimum capital requirements or are in "troubled condition" for purposes of section 914 and this final rule.

#### Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1557-0014.

The estimated average burden associated with this collection of information is 6 hours per response or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate should be directed to the Office of the Comptroller of the Currency, Legislative, Regulatory and International Activities Division, Washington, DC

20219, and the Office of Management and Budget, Paperwork Reduction Project (1557-0014), Washington, DC 20503.

#### Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule implements section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and imposes only the minimum burden necessary for compliance with the statute. Therefore, no adjustment of burden to account for bank size is possible.

#### Executive Order 12291

It has been determined that this document is not a major rule as defined in E.O. 12291 and a regulatory impact analysis is not required. This final rule implements section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and imposes only the minimum burden necessary for compliance with the statute. This final rule also relieves burden imposed under the temporary rule. Under the temporary rule, all national banks could be subject to the prior notice requirements of section 914. The final rule covers only national banks with deposits insured by the Federal Deposit Insurance Corporation.

#### List of Subjects in 12 CFR Part 5

Administrative practice and procedure, Directors, National banks, Officers, Reporting and recordkeeping requirements, Securities.

#### Authority and Issuance

For the reasons set out in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

#### PART 5—[AMENDED]

1. The authority citation for part 5—Rules, Policies, and Procedures for Corporate Activities continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 93a.

2. Section 5.51 is revised to read as follows:

**§ 5.51 Changes in directors and senior executive officers.**

(a) Authority. 12 U.S.C. 1831i.

(b) Rules of general applicability. Sections 5.4 and 5.8 through 5.11 do not apply to changes in directors and senior executive officers.

<sup>4</sup>The OCC notes that this position is similar to the Federal Reserve System proposal discussed in the preamble to their interim rule. See 55 FR 6787 (codified at 12 CFR 225.72).

(c) *Definitions.* (1) *Director* means every national bank director except:

- (i) A director of a foreign bank that operates a federal branch; and
- (ii) An advisory director who does not have the authority to vote on matters before the board of directors and provides solely general policy advice to the board of directors.

(2) *National bank* means any national bank, District bank, or federal branch, provided that the institution receives deposits insured by the Federal Deposit Insurance Corporation.

(3) *Senior executive officer* means the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer and any other individual identified by the Office to the national bank who exercises significant influence over, or participates in, major policy making decisions of the bank without regard to title, salary or compensation. The term also includes employees of entities retained by a national bank to perform such functions in lieu of directly hiring the individuals and, with respect to a federal branch operated by a foreign bank, the individual functioning as the chief managing official of the federal branch.

(4) *Technically complete notice* means a notice that provides all the information requested in paragraph (e)(2) of this section, including legible fingerprints, complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the Office may request following a determination that the original submission of the notice was not technically complete.

(5) *Technically complete notice date* means the date on which the Office has received a technically complete notice.

(6) *Troubled condition* means a national bank that:

- (i) Has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System;
- (ii) Is subject to a cease and desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the Office; or
- (iii) Is informed in writing as a result of a supervisory analysis that it has been designated as in "troubled condition" for purposes of this section.

(d) *Prior notice.* A national bank shall provide written notice to the Office at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors, the employment of any individual as a senior executive officer, or a change in responsibilities of a senior executive

officer who will remain a senior executive officer, if:

(1) The national bank has operated as an insured depository institution for less than two years;

(2) Within the preceding two years, the national bank has undergone a change in control that required a notice to be filed under the Change in Bank Control Act or § 5.50 of this part; or

(3) The national bank is not in compliance with minimum capital requirements applicable to such institution, as prescribed in §§ 3.6 and 3.9 of this chapter, or is otherwise in troubled condition.

(e) *Procedures.* (1) *Filing notice.* Notice forms and instructions can be obtained from the applicable OCC district or field office. A notice must be filed by the national bank with the applicable OCC district or field office responsible for the direct supervision of the national bank, except that a multinational bank shall file with the Deputy Comptroller for Multinational Banking. The notice must contain the information set forth in paragraph (e)(2) of this section. When a notice is filed, each individual must attest to the validity of the information filed pertaining to that individual. The 30-day review period begins on the technically complete notice date.

(2) *Content of notice.* A notice must contain the identity, personal history, business background, and experience of each person whose designation as a director or senior executive officer is subject to this section. The notice must include:

(i) A description of his or her material business activities and affiliations during the 5 years preceding the date of the notice;

(ii) A description of any material pending legal or administrative proceedings in which he or she is a party;

(iii) Any criminal indictment or conviction by a State or Federal court; and

(iv) Legible fingerprints of such person, *except that* fingerprints are not required with respect to any person who, within the three years immediately preceding the date of the present notice, has been subject to a notice filed with the Office pursuant to 12 U.S.C. 1831i or this section and has previously submitted fingerprints.

(3) *Requests for additional information.* Following receipt of a technically complete notice, the Office may make a written request, when feasible, for additional information and may specify a time period during which such information must be provided. Such additional information may

include, but is not limited to, up to 10 additional years of an individual's material business activities and affiliations depending upon the facts.

(4) *Suspension of the 30-day review period.* (i) When the Office makes a request for additional information pursuant to paragraph (e)(3) of this section, the national bank must provide the information within the time period specified by the Office or the national bank may request in writing that the Office suspend processing of the notice. To enable the national bank to provide such information, the Office may suspend processing for a period of up to 60 days from the date of the request. If the national bank has not provided the requested information within the latest applicable time period specified by the Office:

(A) The Office may make its decision based on the information then before it and may draw any reasonable inferences from the national bank's failure to provide the requested information; or

(B) The Office may treat the notice as abandoned pursuant to § 5.7 of this part and inform the national bank in writing.

(ii) If the Office does not receive a report that it requested from another government agency concerning an individual proposed by the national bank within the 30-day review period, the Office may request that the national bank and the proposed individual certify, by signing a letter provided by the Office, that the individual will not assume the proposed position until the Office has received and reviewed the report and has issued a notice of intent not to disapprove. In making this request, the Office will notify the national bank and the individual of the basis for its unwillingness to issue a notice of intent not to disapprove before the end of the 30-day review period without receipt and review of the report. If either the national bank or the individual do not sign the certification before the end of the 30-day review period, the Office will decide whether to issue a notice of disapproval based on the information then before it.

(5) *Notice of disapproval.* The Office may disapprove an individual proposed as a member of the board of directors or as a senior executive officer upon determining that—on the basis of the individual's competence, experience, character, or integrity—it would not be in the best interests of the depositors of the national bank or of the public to permit the individual to be employed by, or associated with, the national bank. The Office will send a notice of disapproval to both the national bank and the disapproved individual. The notice of disapproval will contain a

statement of the basis for disapproval and will be signed by the official making the decision.

(6) *Notice of intent not to disapprove.* An individual proposed as a member of the board of directors or as a senior executive officer may begin service before the expiration of the 30-day review period if the Office notifies the national bank of an intention not to disapprove the proposed director or senior executive officer.

(7) *Waiver of prior notice.* (i) A national bank may file a written petition with the appropriate OCC supervisory office requesting a waiver of the prior notice requirement. The Office may waive the prior notice requirement, but not the filing required under this section. The Office may grant a waiver if it finds that delay could harm the national bank or the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement. The length of any waiver depends on the circumstances in each individual case. If the Office grants a waiver, the national bank must file the required notice within the time period specified in the waiver and the proposed individual may assume the position on an interim basis until the individual and the national bank receive a notice of disapproval. If the required notice is not filed within the time period specified in the waiver, the proposed individual must resign his or her position. The individual can assume the position on a permanent basis after the national bank receives a notice of intent not to disapprove or after the 30-day review period elapses. A waiver does not affect the Office's authority to issue a notice of disapproval within 30 days of the expiration of such waiver.

(ii) In the case of the election at a meeting of the shareholders of a new director not proposed by management, a waiver is automatically granted and the proposed individual may begin service as a director. However, under these circumstances, the national bank must file the required notice with the appropriate OCC supervisory office as soon as practical but not later than seven days from the date the individual is notified of the election.

(8) *Commencement of service.* An individual proposed as a member of the board of directors or as a senior executive officer may assume the office following the end of the 30-day review period, which begins on the technically complete notice date, unless:

(i) The Office issues a notice of disapproval during the 30-day review period;

(ii) The Office suspends the 30-day review period pursuant to paragraph (e)(4)(i) of this section;

(iii) The national bank and the individual certify, pursuant to paragraph (e)(4)(ii) of this section, that the individual will not assume the proposed position; or

(iv) The national bank does not provide additional information within the time period required by the Office pursuant to paragraph (e)(3) of this section and the Office treats the notice as abandoned pursuant to § 5.7 of this part.

(5) *Appeal.* (1) If the Office disapproves a notice, its disapproval letter will state the reason(s) for disapproval. Within 15 days of receipt of a notice of disapproval, the national bank, the proposed individual, or both may appeal the disapproval to the Comptroller or an authorized delegate. The national bank or the individual may appeal on the grounds that the reason(s) for disapproval are contrary to fact and/or are insufficient to justify disapproval. The appellant must submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

(2) The Comptroller or an authorized delegate may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The Comptroller, authorized delegate, or the appellate official shall consider all information submitted with the original notice, the material before the OCC official who made the initial decision, and any information submitted by the appellant at the time of the appeal.

(3) The Comptroller, authorized delegate, or the appellate official shall independently determine whether the appellant has demonstrated either that the reasons given for the disapproval are contrary to fact or are insufficient to justify the disapproval. If either burden is satisfied, the Comptroller, authorized delegate, or the appellate official shall overturn the disapproval.

(4) Upon completion of the review, the Comptroller, authorized delegate, or the appellate official shall notify the appellant in writing of the decision. If the original decision is overturned, the individual may assume the position in the bank for which he or she was proposed.

Dated: April 30, 1993.  
Eugene A. Ludwig,  
Comptroller of the Currency.  
[FR Doc. 93-10945 Filed 5-7-93; 8:45 am]  
BILLING CODE 4810-33-P

## 12 CFR Part 31

[Docket No. 93-09]

### Extensions of Credit to National Bank Insiders

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency is amending the authority citation in its regulation concerning insider lending. This change is technical in nature and is necessary because of recent amendments to the statutory authority for the regulation. It will have no effect on the substance of the regulation.

**EFFECTIVE DATE:** May 10, 1993.

**ADDRESSES:** Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**FOR FURTHER INFORMATION CONTACT:** David V. Thede, Attorney, Bank Operations and Assets Division (202) 874-4460; or Robert J. Hemming, National Bank Examiner, Chief National Bank Examiner's Office, (202) 874-5170.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Stat. 2236, amended section 22(h) of the Federal Reserve Act, 12 U.S.C. 375b, which governs loans to a bank's officers and directors. As a result of this amendment, the existing authority citation for the OCC's regulation on insider lending, 12 CFR 31, is now incorrect. The citation to 12 U.S.C. 375b(2) should refer instead to section 375b(3). Therefore, the OCC is amending the authority citation in part 31 and in § 31.1.

The OCC finds that notice and comment under 5 U.S.C. 553(b)(B) and a delayed effective date under 5 U.S.C. 553(d) are unnecessary since the amendment is technical and the rule is a rule of agency management which will not affect the substance of part 31.

### Regulatory Flexibility Act

Since this final rule makes only a technical, nonsubstantive change to update a statutory cite and is a rule of agency management, notice and comment are not required under the Administrative Procedure Act. Therefore, this final rule is exempt from the Regulatory Flexibility Act, 5 U.S.C. 605(b).

### Executive Order 12291

This final rule is not subject to the requirements of Executive Order 12291 since it is a rule of agency management and makes only a technical,

nonsubstantive change to update a statutory cite. It is exempt under section 1, paragraph (a)(3) of Executive Order 12291.

#### List of Subjects in 12 CFR Part 31

Credit, National banks, Reporting and recordkeeping requirements.

#### Authority and Issuance

For the reasons set out in the preamble, part 31 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

#### PART 31—[AMENDED]

1. The authority citation for part 31 is revised to read as follows:

**Authority:** 12 U.S.C. 375a(4), 375b(3), 1817(k), and 1972(2)(G)(ii), as amended.

2. Section 31.1 is revised to read as follows:

##### §31.1 Authority.

This subpart is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 375a(4) and 375b(3), as amended.

Dated: April 30, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 93-10946 Filed 5-7-93; 8:45 am]

BILLING CODE 4810-33-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 92-NM-209-AD; Amendment 39-8568; AD 93-09-01]

#### Airworthiness Directives; Boeing Model 747-400, 757, and 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400, 757, and 767 series airplanes, that requires a one-time inspection of the discharge cartridges and electrical connectors on the fire extinguisher bottles, and replacement of damaged cartridges and connectors. This amendment is prompted by reports of bent pins found in the discharge cartridges and damaged electrical connectors on some fire extinguisher bottles. The actions specified by this AD are intended to ensure the proper discharge of the fire extinguisher bottle in the event of a fire.

**DATES:** Effective June 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1993.

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

#### FOR FURTHER INFORMATION CONTACT:

Barbara Mudrovich, Aerospace Engineer, Systems & Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2670; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747-400, 757, and 767 series airplanes was published in the Federal Register on December 29, 1992 (57 FR 61842). That action proposed to require a one-time inspection of the discharge cartridges and electrical connectors on the fire extinguisher bottles, and replacement of damaged cartridges and connectors.

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

One commenter supports the proposed rule.

One commenter requests that the statement of unsafe condition be revised to read, "To prevent an improper electrical connection of the fire extinguishing system due to a damaged \* \* \*." The FAA concurs with this commenter's request since this change in wording would clarify that bent (damaged) pins in the discharge cartridge may result in improper electrical connections and the consequent misfiring of the fire extinguisher. The final rule has been revised accordingly.

One commenter requests that the operational tests of the discharge cartridges specified in the referenced service bulletins be deleted from the requirements of the final rule, since the discharge cartridge must be disassembled to accomplish the proposed visual inspection regardless of

the outcome of the operational tests. The commenters note that the operational tests are unnecessary and expensive. The FAA concurs. After further review of the inspection procedures described in the referenced service bulletins, the FAA has determined that safety of the fleet would not be affected adversely with the deletion of the requirement to accomplish the operational tests prior to performing the visual inspection. The FAA finds that the detailed visual inspection would adequately ensure that damaged discharge cartridges and electrical connectors would be detected and replaced. Therefore, paragraph (a) of the final rule has been revised to state that the operational tests of the discharge cartridges specified in the service bulletins are not required to be accomplished prior to performing the detailed visual inspection.

Several commenters request that the final rule be revised to exclude the requirement for the cross-wiring end-to-end functional tests following any maintenance actions, which is required by AD 89-03-51, amendment 39-6213 (54 FR 20118, May 10, 1989). The commenters note that the proposed one-time inspection, if performed one cartridge at a time, would avert the potential for mis-wiring and/or mis-plumbing in the fire protection systems. The FAA concurs. The FAA has reviewed all available data, as well as the proposed requirement for a detailed visual inspection of the auxiliary power unit (APU), cargo compartment, and engine fire extinguishing systems, and has determined that the possibility for mis-wiring and mis-plumbing can be averted if the proposed inspection is performed one cartridge at a time. Therefore, the final rule has been revised to add a new paragraph (c) to state that the functional tests required by AD 89-03-51 do not have to be performed following accomplishment of the inspection required by this final rule, if the inspection is performed one cartridge at a time.

Several commenters note that the referenced Boeing Alert Service Bulletin 757-26A0032, dated October 22, 1992, lists the part numbers incorrectly. The FAA infers from this comment that the commenters would like the part numbers referenced correctly in the final rule. The FAA concurs. Since issuance of the proposal, Boeing has issued Notice of Status Change 757-26A0032 NSC 2, dated February 4, 1993, that lists the part numbers correctly. The FAA has determined that the part numbers listed in the service bulletin were non-existent; therefore, no operator could have installed the

incorrect part inadvertently. The final rule has been revised to reference this Notice of Status Change as the appropriate document in which the correct part numbers are listed.

One commenter questions whether or not the proposed inspection needs to be performed on Boeing Model 727 series airplanes and McDonnell Douglas DC-8 and DC-10 series airplanes, since these airplanes also use shunt plugs in the discharge cartridge whenever the electrical connector is disconnected from the discharge cartridge. The commenter contends that the possibility exists for damaged discharge cartridges or electrical connectors to be found on the fire extinguisher bottles on these airplanes. The FAA does not concur. The FAA has reviewed all available data, has discussed this issue with representatives from Boeing Commercial Airplane Company, and has found that Boeing Model 727 series airplanes use 16-gauge pins that are 20 percent larger than those used on the Boeing Model 747-400, 757, and 767 series airplanes; therefore, these pins would not have the same propensity for damage as those used in the Boeing Model 747-400, 757, and 767 series airplanes. Since McDonnell Douglas Corporation also uses heavier gauge pins on the McDonnell Douglas DC-8 and DC-10 series airplanes, the pins on these airplanes also would not be subject to the damage found on Boeing Model 747-400, 757, and 767 series airplanes.

Several commenters recommend that the proposal be withdrawn, since the AD addresses a problem induced by faulty maintenance practices, which rulemaking action will not correct. The commenters assert that the proposed inspection is currently performed by operators; therefore, the FAA need only to confirm the accomplishment of the inspection with the cognizant Flight Standards District Office. The FAA does not concur. The FAA finds that the (faulty) maintenance practice of using shunt plugs in the discharge cartridge whenever the electrical connector is disconnected from the discharge cartridge has been discontinued.

However, since the installation of shunt plugs may have inadvertently bent the pins in the discharge cartridge, the proposed one-time inspection is to detect damaged discharge cartridges and electrical connectors. Further, since operators have reported findings of bent pins in discharge cartridges on fire extinguisher bottles installed at various locations in the airplane, the FAA has determined that sufficient justification exists for issuance of this rulemaking action to ensure that bent pins are detected in a timely manner.

Consequently, this rulemaking action is the means by which the FAA can ensure positively that the unsafe condition posed by improper electrical connection (caused by bent pins) in the fire extinguishing system and the resultant misfiring of the fire extinguisher is detected and corrected.

The economic impact information, below, has been revised to correct a mathematical error that appeared in the proposal.

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

There are approximately 1,059 airplanes of the affected design in the worldwide fleet; of this number, 149 are Model 747-400 series airplanes, 489 are Model 757 series airplanes, and 421 are Model 767 series airplanes. The FAA estimates that 496 airplanes of U.S. registry will be affected by this AD; of this number, 22 are Model 747-400 series airplanes, 311 are Model 757 series airplanes, and 163 are Model 767 series airplanes.

The FAA estimates that it will take approximately 5 work hours per airplane (.25 work hour per cartridge) to accomplish the required actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$136,400, or \$275 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

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

93-09-01 Boeing: Amendment 39-8568. Docket 92-NM-209-AD.

*Applicability:* Model 747-400 series airplanes, passenger and combi configurations, line positions 696 through 906, inclusive; Model 757 series airplanes, line numbers 1 through 488, inclusive; and Model 767 series airplanes, line numbers 1 through 421, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent an improper electrical connection of the fire extinguishing system due to a damaged discharge cartridge or electrical connector on the fire extinguisher bottle, accomplish the following:

(a) Within 120 days after the effective date of this AD, conduct a detailed visual inspection to detect damage to the discharge cartridges and the electrical connectors on each fire extinguisher bottle installed in auxiliary power unit (APU), cargo compartment, and engine fire extinguishing systems, in accordance with Boeing Alert Service Bulletin 747-26A2210, dated October 29, 1992 (for Model 747-400 series airplanes); Boeing Alert Service Bulletin 757-26A0032, dated October 22, 1992, as amended by Notice of Status Change 757-26A0032 NSC 2, dated February 4, 1993 (for Model 757 series airplanes); or Boeing Alert Service Bulletin 767-26A0089, dated October 22, 1992 (for Model 767 series airplanes); as applicable. The operational tests of the discharge cartridges specified in the Accomplishment Instructions of the applicable service bulletin are not required to be performed prior to accomplishing the detailed visual inspection required by this paragraph. Since an operational test of the

fire extinguishing system can be successfully completed even if there is a damaged pin or connector, this inspection must be performed by visually examining the discharge cartridge and the electrical connector.

(b) If any damage is detected during the inspection required by paragraph (a) of this AD, prior to further flight, replace the damaged item with a serviceable part and perform an operational test of the bottle discharge cartridge circuit in accordance with Boeing Alert Service Bulletin 747-26A2210, dated October 29, 1992 (for Model 747-400 series airplanes); Boeing Alert Service Bulletin 757-26A0032, dated October 22, 1992, as amended by Notice of Status Change 757-26A0032 NSC 2, dated February 4, 1993 (for Model 757 series airplanes); or Boeing Alert Service Bulletin 767-26A0089, dated October 22, 1992 (for Model 767 series airplanes); as applicable. Any discrepancy detected as a result of the operational test must be corrected prior to further flight.

(c) The cross-wiring end-to-end functional tests required by AD 89-03-51, Amendment 39-6213, do not have to be accomplished following performance of the inspection required by paragraph (a) of this AD, if the inspection is accomplished one discharge cartridge at a time.

(d) As of the effective date of this AD, no person shall install a fire extinguisher bottle on any airplane unless the discharge cartridge and electrical connector have been inspected in accordance with this AD.

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

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspection and replacement shall be done in accordance with Boeing Alert Service Bulletin 747-26A2210, dated October 29, 1992 (for Model 747-400 series airplanes); Boeing Alert Service Bulletin 757-26A0032, dated October 22, 1992, and Notice of Status Change 757-26A0032 NSC 2, dated February 4, 1993 (for Model 757 series airplanes); or Boeing Alert Service Bulletin 767-26A0089, dated October 22, 1992 (for Model 767 series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North

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

(h) This amendment becomes effective on June 9, 1993.

Issued in Renton, Washington, on April 28, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-10880 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-13-P

#### 14 CFR Part 39

[Docket No. 92-NM-242-AD; Amendment 39-8570; AD 93-09-03]

#### Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Aviation Model Mystere-Falcon 900 series airplanes, that requires modification of the windshield support structure-to-aft window frame attachment at frame 4. This amendment is prompted by the results of fatigue tests, which revealed cracking in the windshield support structure at the aft window frame attachment points. The actions specified by this AD are intended to prevent fatigue cracking, which could lead to reduced structural integrity of the windshield support structure and potential loss of the windshield.

**DATES:** Effective June 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal

Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 900 series airplanes was published in the Federal Register on February 8, 1993 (58 FR 7495). That action proposed to require modification of the windshield support structure-to-aft window frame attachment at frame 4.

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

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 45 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$24,750, or \$2,475 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

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

**93-09-03 Dassault Aviation: Amendment 39-8570. Docket 92-NM-242-AD.**

**Applicability:** Model Mystere-Falcon 900 series airplanes; serial numbers 1 through 9, inclusive; and 11 through 20, inclusive; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the windshield support structure and potential loss of the windshield, accomplish the following:

(a) For airplane serial number 1: Prior to the accumulation of 3,750 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the windshield support structure-to-aft window frame attachment at frame 4 on the right-hand and left-hand sides, in accordance with Dassault Aviation F900-91 Service Bulletin F900-53-12 and Appendix 1 to that service bulletin, both dated July 8, 1992.

(b) For airplanes having serial numbers 2 through 9, inclusive, and 11 through 20, inclusive: Modify the windshield support structure-to-aft window frame attachment at frame 4 on the right-hand and left-hand sides, in accordance with Dassault Aviation F900-91 Service Bulletin F900-53-12 and Appendix 1 to that service bulletin, both dated July 8, 1992; and at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 3,750 total landings, or within 6 years since date of manufacture, whichever occurs first.

(2) Within 6 months after the effective date of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, 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, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Dassault Aviation F900-91 Service Bulletin F900-53-12, dated July 8, 1992 and Appendix 1 to that service bulletin F900-53-12, both dated July 8, 1992. (Note: Appendix 1 contains pages 101 through 106.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 9, 1993.

Issued in Renton, Washington, on April 28, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-10879 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-13-P

### 14 CFR Part 39

[Docket No. 92-NM-226-AD; Amendment 39-8569; AD 93-09-02]

### Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, that requires a one-time operational test to detect potential ball bearing failure of the electric motor that drives the hydraulic fire shutoff valve (FSOV) actuator and to detect subsequent FSOV malfunction, and replacement of discrepant FSOV's. This amendment is prompted by reports of operational failure of hydraulic FSOV's during maintenance checks. The actions specified by this AD are intended to prevent jamming of the hydraulic FSOV actuator, which could result in the inability to isolate hydraulic fluid from an engine fire.

**DATES:** Effective June 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point

Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98056-4056; telephone (206) 227-2140; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes was published in the Federal Register on February 9, 1993 (58 FR 7759). That action proposed to require a one-time operational test to detect potential ball bearing failure of the electric motor that drives the hydraulic fire shutoff valve (FSOV) actuator and to detect subsequent FSOV malfunction, and replacement of discrepant FSOV's.

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

Both commenters support the proposed rule.

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

The FAA estimates that 91 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required actions, and that the average labor rate is \$55 per workhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be 5,005, or \$55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

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

**93-09-02 Airbus Industrie: Amendment 39-8569. Docket 92-NM-226-AD.**

**Applicability:** Model A300, A310, and A300-600 series airplanes, as listed in Airbus Industrie All Operator Telex (AOT) 29-07, dated August 28, 1992; airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent jamming of the hydraulic fire shut off valve (FSOV) actuator, which could result in the inability to isolate hydraulic fluid from an engine fire, accomplish the following:

(a) For airplanes having any hydraulic FSOV that has not ever been functionally tested in accordance with Maintenance Planning Document (MPD) Task Number 29-11-33-0503-1 (for Model A300 series airplanes) or MPD Task Number 29-11-33-01-1 (for Model A310 and A300-600 series airplanes): Within 450 hours time-in-service after the effective date of this AD, perform a one-time operational test to detect potential bearing failure of the electric motor that drives the hydraulic FSOV actuator, and to detect FSOV malfunction, in accordance with Airbus Industrie All Operator Telex (AOT) 29-07, dated August 28, 1992.

(1) If any FSOV fails the operational test, prior to further flight, replace that FSOV in accordance with the AOT.

(2) If a FSOV passes the operational test, no further action is necessary for that FSOV.

(b) For airplanes having any hydraulic FSOV that has been functionally tested only once in accordance with MPD Task Number 29-11-33-0503-1 (for Model A300 series airplanes) or MPD Task Number 29-11-33-01-01 (for Model A310 and A300-600 series airplanes): Within 900 hours time-in-service after the effective date of this AD, perform a one-time operational test to detect potential bearing failure of the electric motor that drives the hydraulic FSOV actuator, and to detect FSOV malfunction, in accordance with Airbus Industrie All Operator Telex (AOT) 29-07, dated August 28, 1992.

(1) If any FSOV fails the operational test, prior to further flight, replace that FSOV in accordance with the AOT.

(2) If a FSOV passes the operational test, no further action is necessary for that FSOV.

(c) For airplanes having any hydraulic FSOV that has been functionally tested two or more times in accordance with MPD Task Number 29-11-33-0503-1 (for Model A300 series airplanes) or MPD Task Number 29-11-33-01-01 (for Model A310 and A300-600 series airplanes): No further action is required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, 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, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(f) The tests shall be done in accordance with Airbus Industrie All Operator Telex (AOT) 29-07, dated August 28, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 9, 1993.

Issued in Renton, Washington, on April 28, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-10950 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-13-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

#### Recordkeeping

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is amending its general recordkeeping requirements set forth in 17 CFR 1.31 to allow production of computer-generated records on optical disk to be immediately substituted for hard-copy computer reports.

The purpose of these amendments is to allow the use of new technology for recordkeeping that promises to provide a cost-effective alternative to microfilm.

**EFFECTIVE DATE:** June 9, 1993.

#### FOR FURTHER INFORMATION CONTACT:

Lamont L. Reese, Supervisory Statistician, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-3310.

#### SUPPLEMENTARY INFORMATION:

On October 28, 1992, the Commission published in the Federal Register (57 FR 48480) a notice of proposed rulemaking to amend its general recordkeeping rule, 17 CFR § 1.31, which would allow computer-generated reports written on optical disk to be immediately substituted for hard-copy reports. Currently paragraph (b) of Rule 1.31 allows only substitution of microfilm for source documents for purposes of records storage.<sup>1</sup> Microfilm may be substituted immediately for computer, accounting machine or business machine generated records. For records produced by other means, the rule allows immediate microfilming of source documents; but requires that source documents be retained in hard-copy form for the first two years of a five-year retention period. In proposing to allow optical disk to serve as a storage media for source documents, the Commission specified certain conditions in order to ensure that

<sup>1</sup> Rule 1.31 provides that books and records must be kept for five years and be readily accessible during the first two years of this time period.



optical storage systems meet the following goals:

1. They must provide reasonable assurance that, once a record is created, the record cannot be altered without detection;
2. They must provide speedy and high quality access to records stored on the medium; and
3. In the event that the persons storing the records cannot or will not produce a hard copy of stored reports, the Commission must have an expedient means to do so itself.

These proposed conditions included specific technical requirements for allowable systems and filing requirements for users of such systems. The purpose of the proposed technical requirements and the notification and filing procedures were chiefly to provide assurance that records could not be easily modified and to allow the Commission ready access to information on optical disks in the event that it could not obtain hard-copy reports from persons employing optical storage systems.

Additionally, the Commission proposed that persons using optical disk storage would be required to keep only Commission-required records on any one optical disk. The storage of any other records on a disk that also contained Commission-required records would be deemed a waiver of any privilege, claim of confidentiality or other objection to disclosure with respect to those other records in the event the Commission or Department of Justice undertook to inspect or seize the disk or use it in a legal proceeding.

Aside from requesting comment on specific proposed rule amendments concerning the immediate substitution of records on optical storage for computer-generated reports, the Commission also sought initial comment on possible further amendments to its recordkeeping requirements which might allow for optical storage of digital records produced through electronic imaging. Imaging is a technique used to create digital replicas of paper records. The Commission noted that many of the criteria it had specified for optical storage of computer-generated records might also apply to storage of imaged digital records and sought comment concerning additional specific conditions, restrictions and safeguards that might be instituted before allowing substitution of imaged records for source documents. Finally, the Commission sought suggestions from the public on additional initiatives that would allow firms to capture savings

resulting from the use of new electronic technologies.

Thirty-five persons commented on the Commission's proposed rulemaking. Eight comment letters were sent by the Association for Information and Image Management ("AIIM") or its members. Twenty-five comment letters were sent by self-regulatory organizations and by interested firms. In addition, the Futures Industry Association conducted a survey which was completed by sixteen persons. The results of this survey were compiled and submitted as a comment on the proposed rule.<sup>2</sup>

#### I. Recordkeeping Requirements for Computer Reports

In its Federal Register release, the Commission observed that optical disk technology promises to provide a cost-effective alternative to microfilm. The cost savings are likely to accrue from two sources. First, optical disk is cheaper to generate than microfilm as a storage medium and, second, retrieval costs are greatly reduced since search and retrieval are done by computer. Commenters generally verified that significant savings could be achieved using optical disk technology.<sup>3</sup> Virtually all commenters supported the proposal that Rule 1.31 be amended to allow for storage of records on optical media. Significant issues, however, were raised about conditions that were deemed necessary in order to allow the use of this media. In this respect, comment on the Commission's proposal was diverse, ranging from general comments taking issue with the need to specify technical criteria to specific recommendations for only certain particular changes to the Commission's proposal.

##### A. General Comments

AIIM, its members, and other commenters objected to the Commission potentially limiting the use of existing or future technologies by proposing that records storage systems conform to certain technical criteria. They suggested that the regulations should not be media-specific, but rather specify

<sup>2</sup> One additional person directed comment to the Office of Management and Budget (OMB) concerning implications of the Commission's proposal relating to the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.* This comment is discussed below in relation to other issues dealing with the PRA.

<sup>3</sup> It should be noted that Commission regulations do not preclude the use of optical disk based storage systems. Under current regulations, however, firms using such systems would, in addition, either be required to save the hard copy or microfilm reproductions of documents. In these instances, firms can reduce search and retrieval costs for requests for documents even though they incur the cost for paper storage or microfilm reproductions.

general safeguards that might assure the accuracy and integrity of the record. Towards this end, a committee of AIIM is working on model legislation that might be used by regulatory agencies in drafting media-independent recordkeeping requirements.<sup>4</sup> Discussions with AIIM representatives, however, indicate that this project may not be completed prior to 1994. The National Institute of Standards and Technology (NIST) is developing technical standards for optical disk technology, although this work also is not yet completed.

Although drafting media-independent regulations concerning recordkeeping is a desirable goal, achieving agreement on cost-effective and universal safeguards that are written with enough specificity to be enforceable may be a difficult, long-term process. For example, this may involve drafting minimum standards concerning security measures to prevent unauthorized access and use, mandating requirements for audit systems that show activity on the system, and perhaps mandating actual audits to confirm the accuracy of the system. The Commission will, of course, follow the efforts of AIIM's committee and review its work to determine if it can be adapted to Commission use. Similarly, the Commission will review standards developed by NIST when they become available to ascertain whether further amendments to its regulations are appropriate.

However, the Commission believes that it is both unnecessary and unwise to delay implementation of the proposed rule change for users of optical disk systems in the futures industry while it awaits final action by these two groups. Firms in the futures industry produce a large number of computer reports that are microfilmed for storage. A number of commenters indicated that the use of optical storage for computer-generated records would greatly reduce recordkeeping costs by eliminating charges for microfilm, thereby providing immediate and substantial cost savings. Fifteen firms submitted comment urging that the Commission not delay adoption of final rulemaking, but rather proceed consistent with the proposal published last October as it pertained to computer reports. Moreover, many firms

<sup>4</sup> As used herein, media-independent regulations refer to regulations that are not media-specific; i.e., they do not list allowable media such as microfilm or optical disks, nor do they specify technical criteria for the use of any media. As described by one commenter, AIIM's committee is "a distinguished task force of lawyers, users and other representatives from the government and private sectors."

commenting on the Commission proposal indicated that some technical criteria may be necessary in any event, and suggested only certain modifications to those proposed. In this respect, the Commission has reviewed its proposed technical criteria and notification procedures in light of the requests for modifications and believes that its recordkeeping goals can be achieved with fewer technical requirements than proposed.

#### *B. Issues Concerning the Alterability of Records*

As noted previously, the Commission proposed a number of technical criteria to provide some assurance that records created on optical storage media cannot be altered without detection. The Commission recognizes, as some commenters suggested, that no technique for record retention is tamper proof, including those currently allowed under Rule 1.31. The Commission's concern in this area relates to the trustworthiness of documents that may be relied upon by the Commission in conducting investigations and entered into evidence in administrative and judicial proceedings. In this respect, microfilm records are considered trustworthy, since the image cannot be readily altered and firms use documented procedures that are performed in the ordinary course of business. The Commission believes under specified conditions optical disk storage can be as trustworthy as microfilm and paper records. To this end, the Commission proposed that allowable optical systems use a non-rewritable, non-erasable format; have write/verify capabilities; time/date files on disks in a permanent non-erasable manner; and write records directly to optic media. In addition, the Commission noted that the optical system must allow exclusively for the preservation of records under Rule 1.31 and, as such, multi-function drives could not be used for this purpose.<sup>5</sup>

Persons commenting on these requirements requested that the Commission clarify its requirement concerning the time/date which must be etched on the disk. One commenter urged that the Commission specify that the time/date should be the computer run time of the file and not the time/date the file was added to the optical disk. Other commenters questioned the requirement that records be written directly to the optical storage device. One commenter noted that typically

reports are written to an intermediate file or device while they are waiting in queue to be printed. The Commission notes that in both instances similar procedures are used in the production of microfilm or microfiche.<sup>6</sup> In view of this, the Commission is specifying that the required time/date be that pertaining to the computer run time of the file in question.

With respect to writing records directly to optical disk, the Commission has determined to eliminate this requirement in light of current practices with respect to microfilm. However, the Commission notes that Rule 1.31(b)(1), formerly and as amended herein, requires that records be immediately produced or reproduced on the relevant medium and kept in that form. Thus, records must be transferred to the permitted non-erasable media as soon as is feasible, given the medium being used and the daily volume of records produced by the registrant. If there is any significant delay between generation of a record and its transfer to a non-erasable medium, a hard copy of the record must be maintained during that interim period. Moreover, registrants must use appropriate safeguards to protect records temporarily stored in erasable form in order to comply with their obligations under Rule 1.31 and their obligations to diligently supervise their employees. For example, data transfer and copying to and from files should be performed by technical staff, not operations personnel, security measures should be in place to prohibit unauthorized access to the records, and system audit trails should document when and by whom files are accessed or modified.

Some commenters responding to AIIM's member alert questioned the Commission's position that optical disk technology that is rewritable or whose rewrite capability is determined by the media in the drive (i.e., multi-function drives) would not be acceptable for record retention purpose under proposed Rule 1.31 (57 FR 48482). One commenter, a firm that supplies multi-function optical drives, opined that the media used in its drive could not be overwritten or changed by its drive. This commenter indicated that the Commission's position on this matter may lock firms into "potentially outdated, low performance, and expensive solutions which ignore the

<sup>6</sup> The Commission also proposed that Rule 1.31 be amended to include the use of microfiche under the same conditions as microfilm. No comments were received on this proposal. Since these are essentially identical media for recordkeeping purposes, the Commission is amending Rule 1.31 to explicitly allow for the use of microfiche.

tremendous progress and international acceptance of never multi-function technologies."

The Commission's Office of Information Resources Management (OIRM) has investigated the technical characteristics of multi-function drives and the media such drives employ. Such drives use lasers, as do the WORM (Write Once Read Many) drives. Rather than permanently changing the surface of the media, most multi-function drives employ differently coded media for WORM and rewritable functions. OIRM noted that, even if the media is specially stamped or write-protected for use in the WORM mode, data could be altered by accident or design, however, this risk was generally small. In view of this, it would appear that the use of multi-function drives to write data to optical media provides nearly the same assurance as WORM drives that a record cannot be altered; provided that WORM media is used in the drive. In view of this, the Commission is not excluding the use of multi-function drives in Rule 1.31, however, it is requiring that data be written to WORM media.

#### *C. Issues Concerning Commission Access to Records*

The Commission proposed both notification and filing procedures, as well as additional technical criteria, in order to allow the Commission direct access to records stored on optical disk. The technical criteria included serializing the disks, etching directory structures and indices on the disk, requiring that devices use removable optical disks, and storing the records in an ASCII or EBCDIC format.

In terms of notification and filing, the Commission proposed that all persons using optical systems pursuant to Rule 1.31 must file with the Commission and keep current a copy of the logical file formats and field formats for each file of information written on the optical disks, as well as any other information needed to allow the Commission to read optical disks and locate specific records.<sup>7</sup> Additionally, persons wishing to store required records using a technology that writes records in an ASCII or EBCDIC format other than standard non-compressed ASCII or EBCDIC would have been required to file documentation on the method used to encode the data, providing a thorough description of any compression algorithm, the physical file format, and

<sup>5</sup> Multi-function optical drives can write records both to non-erasable WORM disks and to erasable disks.

<sup>7</sup> This would include the hardware make and model and operating system software version and release level of the computer system hosting the storage device and identity of the device driver used to write the optical media including the release level.

conversion routines to transform the records to a standard non-compressed format.

The Commission also proposed that persons intending to use optical systems that employ something other than WORM or CD-ROM technology give written notice at least 60 days prior to using such technology. The Commission proposed that the notice include appropriate instructional and descriptive documentation regarding the optical storage technology system (hardware and software) to be used and an explanation of how the system meets the regulatory concerns of the Commission.

Because of reporting burdens inherent in such an approach, the Commission invited commenters to address alternative means, such as the use of agreements between persons using optical storage technology and conversion service vendors who have the capability and the compatible technology necessary to produce on hard copy the records preserved on optical disk. Among other things, the Commission wished to consider whether relying on service vendors is appropriate. Also, in addition to requirements that the agreements must specifically provide for the Commission and the Department of Justice to obtain unconditionally, promptly, and free of expense, paper copy of stored records, the Commission sought comment on what other provisions, if any, should be considered minimally acceptable. The Commission requested comment on the willingness of conversion service vendors to voluntarily submit to Commission oversight, and on the legal mechanism most appropriate for ensuring the Commission's ability to oversee the service firm or bureau and to ensure the Commission a legally enforceable right to obtain the information from such persons on the same basis as from a Commission registrant.

The majority of commenters opposed the proposed notification and filing procedures as burdensome and unnecessary. These included self-regulatory organizations (SROs) who must have access to records themselves in order to carry out their responsibilities with respect to futures markets. One commenter opined that "ultimately both the Commission and the SROs rely upon a registrant's cooperation in an investigation, and rules have been adopted to charge one's failure to cooperate as a separate disciplinary action." Few persons commented on the proposal requiring persons using optical storage systems to execute a contract with a service

conversion vendor as an alternative to the proposed filing and notification procedures. Those comments which were received by the Commission on this alternate proposal, however, were also negative.

The Commission believes these comments have merit. However, it remains concerned that not having direct access to data on optical disk may impede its audit and inspections activities and investigations. One SRO submitting comments in favor of the Commission's proposal requested that registrants be required to provide copies of optical disks to the regulator on request. This commenter explained that "situations may arise such as in an exchange- or Commission-initiated investigation which will make it appropriate and necessary for the SRO or Commission to analyze information within its own office." The commenter added that "such a requirement was in conformity with existing exchange regulations, requiring members to provide information in a format designated by the exchange."<sup>8</sup>

Currently, during the course of an investigation, firms may supply rolls of microfilm or, in some instances, data on machine-readable media, for use by investigators at Commission offices. This process can expedite investigations when search, retrieval and copy times are minimized for firms and, in the event data is on machine-readable media, analyses can begin without converting the records to a machine-readable form. Commission investigations may be severely hampered if the practice of supplying large amounts of data on a storage medium other than paper were not continued from firms using optical storage systems.<sup>9</sup> This is particularly true when investigations are first initiated, and the Commission generally reviews information pertaining to an event or series of transactions before focusing on specific documents for review.

The Commission is aware that data, such as computer records stored on optical disk in ASCII or EBCDIC format, can be read by the computer originally producing the records, stored as a file and output to other machine-readable media, such as computer tape or diskette, which can be read by existing Commission equipment.

<sup>8</sup> The Commission's proposal does not require that registrants provide SROs with records. SROs establish their own recordkeeping rules.

<sup>9</sup> As addressed below, Commission investigations also can be impeded if Commission staff cannot independently read records from a particular storage medium.

Commission staff have in the past discussed this issue with firms in the futures industry. For example; a vendor in the back office accounting market who provides services for a large number of Commission registrants indicated that computer records stored on optical disk can easily be provided to the Commission on alternate machine-readable media.

The Commission believes that requiring registrants to provide information by such alternative means to some degree alleviates its concerns about having direct access to the information. Thus, it has determined to eliminate the proposed filing requirement, provided that the proposed systems and file documentation are maintained on its premises in accessible form by the firm using the optical storage device, and that firms using optical storage devices grant Commission staff access to the device as well as the optical disks themselves.<sup>10</sup> Additionally, the Commission has determined to eliminate the requirement that the directory structure and indices be etched on the disk. Persons commenting on this requirement indicated that the practice of etching the directory structure on the disk was unnecessary and inconsistent with practices among users of mainframe computers. Moreover, as one commenter noted, the ability to do this may be restricted to only certain systems.<sup>11</sup>

In view of the above, the Commission is revising paragraph 1.31(b)(3) of its proposal to require that persons provide upon request copies of records stored on optical disk to the Commission on compatible data processing media as defined in sections 15.00 (l) (1) and (2) of the regulations using a format and coding structure specified in the request.<sup>12</sup> In addition, the Commission is revising paragraphs 1.31 (c)(2)(ii) and (d) to eliminate the requirement that the directory structure and indices be etched on the disk, and to require that the proposed systems and file documentation be maintained in a

<sup>10</sup> The Commission and the SROs will check on the completeness and availability of this documentation in the course of their routine audits.

<sup>11</sup> The remaining technical requirements reflect industry practice in most cases, are not burdensome, and are essential to the Commission's ability to review the documents independently.

<sup>12</sup> Regulation 15.00(l) defines compatible data processing media as

(1) Unblocked, nine track, 1600 BPI magnetic tape using EBCDIC encoding and a standard IBM label if magnetic media are filed at the Commission's Chicago or New York Regional Offices; and

(2) Magnetic diskettes using a single density IBM 3741 format if magnetic media are filed at the Commission's Chicago, New York or Kansas City Regional Offices.

readily accessible form by firms using optical storage devices.

#### *D. Storage of Commission- and Non-Commission-Required Documents*

As noted previously, the Commission requested comment on a provision stipulating that the storage of both Commission- and non-Commission-required records on the same disk be deemed a waiver of any privilege, claim of confidentiality, or other objection to disclosure with respect to those other records in the event the Commission or Department of Justice undertook to inspect or seize the disk, or use it in a legal proceeding. As noted in the preamble to the proposed rules, this was a concern not only of the Commission, but also of the Department of Justice.

Only one person commented on this aspect of the Commission's proposal. The FIA's Law and Compliance Division was of the opinion that commingling required and non-required records on the same disk could cause a firm to lose all claim to confidentiality or privilege. The Commission agrees and is adopting this aspect of the rule amendment as proposed.<sup>13</sup>

## II. Electronic Imaging

In addition to storage of computer records on optical disk, the Commission requested comment on specific conditions, restrictions and safeguards under which the storage of electronic images created from paper records should be allowed in lieu of the original records under Rule 1.31.<sup>14</sup> The Commission noted that electronic imaging is not a mature technology. That is, there exists no widespread commercial acceptance of standards for this technology. In view of its concern that adoption of rules permitting the use of this technology may involve significant costs, the Commission requested comment concerning the extent to which persons in the futures industry may wish to use this technology as it currently exists for record storage. The Commission also requested comment on specific additional technical criteria for scanning equipment, as well as limiting the time period during which reproductions of paper records stored

on optical disks can be substituted for source documents.

Comments received by the Commission indicate that few persons in the futures industry currently are using optical scanning equipment, although a number of commenters recognized some potential for its use. Based upon its survey, the FIA concluded that "this technology is relatively new and only a small percentage of FIA firms are using it." FIA opined that operations personnel believe that this technology "has a high potential to reduce storage and retrieval costs and improve regulatory compliance capability." Other commenters agreed that a great potential exists for the use of optical scanning, but indicated no current use of the technology.

Some commenters questioned the advisability of allowing the use of this technology for certain records. Similarly, the Commission in the preamble to the proposed rule changes noted that its own experience using electronic imaging indicates that there are limitations similar to those of microfilm in the usefulness of reproductions of paper records stored through the newer technology and that problems may be more acute simply because optical disk storage promises lower costs, and thus a wider use, than microfilm storage. Microfilm reproductions generally do not capture erasures or differences that may indicate that notations were made by different writing instruments or other evidence that may be critical in investigations. For this reason, although current regulations do not foreclose a firm from immediately microfilming paper documents, the paper documents must be retained for the first two years of the required five-year retention period.

In view of the problems with microfilming, the Commission requested comment on whether source documents, with the exception of trading cards and order tickets, that were imaged should also be maintained for a two-year period. With respect to trading cards and written records of customer orders, the Commission sought comment on a requirement that such documents would have to be preserved in original form for the full five-year period. The Commission noted that it would consider applying this requirement both to substitution of records preserved on optical disk and microfilm.<sup>15</sup>

<sup>15</sup> In proposing this requirement the Commission stated that "these documents are essential to investigations which involve the reconstruction of intraday trading over some period of time. Such

Four persons commented on the issue of record retention periods for paper records. Three of the commenters, all exchanges, confirmed the Commission's view that optical scanning may have limited application to customer order tickets and trading cards for reasons cited by the Commission. With respect to record retention periods for other documents, two commenters suggested this was unnecessary and would diminish the potential benefits to be derived from electronic scanning. One commentor opined that "[as] long as the Commission's other requirements relating to the standards and methods of protection to be used in connection with optical disk scanning are met, the Commission should recognize the reliability of this technology and not impose duplicative retention requirements that only result in additional costs and expenses to Commission registrants."

The Commission's request for suggestions on additional technical criteria for optical scanning technology met with negative comment similar to that expressed concerning the proposed technical criteria for optical storage. One commentor, recognizing that optical scanning was a relatively new and rapidly changing technology, believed that restricting the type of technology that registrants could purchase by specifying narrow technical criteria was inappropriate and potentially anti-competitive.<sup>16</sup>

In view of the above comments, there remain a number of issues that must be resolved prior to adopting amendments to the Commission's regulations concerning the optical storage of imaged documents. Since optical storage of paper records is a multi-step process involving access to records at a number of points, recordkeeping procedures and standards to ensure the trustworthiness of the stored record became paramount, even more so than for transmitting computer generated reports to optical

investigations are labor intensive and generally lengthy, at times continuing for several years. The documents themselves are usually multi-ply, color coded and are created daily in large numbers."

<sup>16</sup> The Commission specifically requested comment on density requirements (i.e., dots per inch for scanner); the use of Tagged Image File Format ("TIFF") as a standard; and a requirement that records when digitized be written directly to the optic storage device. Generally, commentors indicated that many formats were available for digitizing records and that the specification of a single format would be costly to firms and anti-competitive. In addition commentors did not know of any devices that write digitized records directly to an optical storage device. Last, the Commission suggested that a standard of 240 dots per inch be adopted with respect to scanning equipment. Commentors believed that 200 dots per inch would give adequate image resolution and is a commercially accepted standard.

<sup>13</sup> The Commission also proposed conforming amendments to Rule 1.35(b) and is adopting these amendments as proposed.

<sup>14</sup> Creating an electronic image of paper records involves the conversion of paper formats to digital formats using an electronic scanner or camera. Facsimile machines capture and transmit replicas of documents using this technique. After a digital image is created, the digital bits of information may be written to an optical storage device.

disk. In addition, source documents may contain erasures or notations that are not conducive to imaging and separate procedures may have to govern their storage. As noted above the Commission intends to review the efforts of AIIM's committee in drafting non-technical procedures and standards for recordkeeping. After review of this work is completed, the Commission will reconsider proposing rule amendments to Rule 1.31 allowing for optical storage of imaged records.

The Commission does not believe that delaying consideration of additional rule amendments will be particularly costly to the futures industry at this time. As explained above, this technology is currently used in a limited manner by only a few firms in the industry. Additionally, firms submitted comment requesting that the Commission separate the issues concerning electronic imaging and storage of computer records by adopting the proposed limited amendments to Rule 1.31. These firms indicated that by acting as soon as possible on its proposed amendments, the Commission would assist the industry in reducing its costs and becoming more efficient.

With respect to trading cards and customer order tickets, the Commission believes, and most persons commenting on this proposal agree, that these documents should be retained for the full five year period.<sup>17</sup> In view of this, the Commission is amending Rule 1.31 to require that trading cards and order tickets be retained for five years. The Commission, however, has determined to do this in a separate rulemaking.<sup>18</sup> The Commission fully supports the introduction of new information technologies that reduce costs associated with production, transfer, and storage of paper documents, provided there are sufficient safeguards to protect the public's interest. Currently, exchanges have instituted, and the Commission has approved, rules which provide for electronic trading systems. Exchanges are also testing the use of electronic trading cards and developing and implementing, in a limited manner, electronic order routing systems. In order to access the systems, firms in the

industry are developing and testing electronic order entry systems. These systems are seen as cost-effective alternatives to the production and transfer of paper documents, and can enhance audit trails which are necessary for effective regulation. In addition, computer records produced by these systems can be stored on optical disk pursuant to newly-adopted amendments to Commission Rule 1.31 which should result in significant savings in storage and retrieval costs. Certain regulations, however, may require that firms prepare written documents. In light of the above developments in information technology, Commission staff are now reviewing regulations which require the production of written documents to determine conditions under which the paper documents may no longer be necessary.<sup>19</sup>

### III. Other Concerns

The Commission requested comment in the Federal Register from SROs, and the Department of Justice to determine if conditions set forth in the proposed rule adequately protect their record inspection ability. Comments from SROs were discussed above. No comments were received from the Department of Justice. The Commission believes that the conditions set forth in its rule protect its record inspection ability and that of the Department of Justice.

The Commission requested comment from the Securities and Exchange Commission (SEC) and firms subject to regulation by both the SEC and the Commission. Broker/dealers registered with the SEC may also be Commission registrants. Currently SEC rules differ in a number of ways from Commission recordkeeping rules.<sup>20</sup> In view of this, the Commission sought comment on the extent, if any, that the Commission's

<sup>19</sup> The Commission requested comment on the potential use of optical disk technology for storing computer generated records of customer orders that may be created by FCMs and introducing brokers. The Commission received no comments on this matter.

<sup>20</sup> The SEC requires that duplicate copies of microfilm be maintained in separate locations while Commission rules do not require this. The Commission specifically requested comment on this aspect of the SEC's rules, noting that the requirement for duplicate copies of storage media in different locations appeared to be a sound business practice. Persons commenting on this issue believed that it was best left to the judgment of individual firms whether and where duplicate copies should be made and stored. One commentator requested that since optical disks are relatively expensive, firms be allowed to store duplicate records on alternative media. Although the Commission has not experienced problems with its current requirements, it will continue to monitor the need to require that duplicate copies of records be made and retained.

requirements may cause or have resulted in disparate treatment or increased costs to persons subject to the rules of both agencies.

The SEC did not comment on the Commission's proposal. In its comment, the FIA reported that survey respondents were primarily concerned with their firm's futures market operations and could not provide substantive comment on the difference between SEC and Commission requirements. These persons, however, believed that the requirements of both agencies were similar in scope. Other persons commented that the rules of both agencies should be similar to avoid excessive or unnecessary costs to firms using optical disk technology but provided no specifics on existing disparate treatment or costs. The Commission believes adoption of its proposal as amended will not result in unnecessary costs from firms regulated by both the SEC and the Commission.

### IV. Electronic Filing of Reports

In its October release, the Commission invited comment on the use of electronic information technology, particularly data transfers, which could reduce burdens and compliance costs associated with regulatory requirements and, in addition, could reduce costs to regulators in terms of obtaining, processing and storing required information. In particular, the Commission noted two areas in which the use of improved electronic technology may prove cost effective for persons supplying information to the Commission. These areas concerned disclosure documents filed by Commodity Trading Advisors (CTAs) and Commodity Pool Operators (CPOs) and financial information provided by FCMs and introducing brokers.

The FIA included questions concerning these matters in their survey and, in addition, two SROs provided comment concerning their experience collecting financial information from member firms. The FIA reported that most FCM respondents believed that electronic transmission of financial information and disclosure documents would be beneficial. The only CTA respondent in the survey indicated that disclosure document delivery by diskette produced from a word processing machine would be beneficial.

Both SROs responding to the Commission's request from comment explained they had developed and implemented electronic filing systems for financial information. The SROs reported that the systems work well and have been well received by member

<sup>17</sup> The Commission noted in its October Federal Register release that exchanges currently do not microfilm trading cards and order tickets. The industry standard, in practice, appears to be to retain these documents for the full five-year period.

<sup>18</sup> The Commission has determined to make the amendments to Rule 1.31 concerning storage of records on optical disk effective 30 days after publication in the Federal Register and the amendments concerning a change in the retention period for trading cards and order tickets effective 90 days after publication in the Federal Register.

firms. One SRO encouraged the Commission's interest in electronic filing systems and urged the Commission to adopt rules which permitted registrants to file reports and disclosure documents electronically. The SRO opined that "cooperation between the public and private sectors with respect to technologies such as electronic data interchange will result in increased efficiencies and greater cost savings for futures industry participants."

The Commission will be further reviewing these issues.

## V. Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments principally affect contract markets, FCMs, CPOs and CTAs. The Commission has previously defined "small entities" in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618-18621 (April 30, 1982). In that statement, the Commission concluded that contract markets, FCMs and CPOs are not considered to be small entities for purposes of the RFA. Other Commission registrants such as CTAs and introducing brokers may also be affected. In this respect, optical storage systems are not currently allowed to be used for record archival under the Commission's regulations. The proposed rules would allow, but not require, the use of such systems. Pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission, however, sought comments from any one who believes that these rules would have a significant economic impact upon its operations. No comments concerning the RFA were received.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget (OMB). The information collection

requirements of the proposed rule concerned the notification and filing procedures discussed above for systems and file documentation. The Commission has deleted these requirements from the final rule.

In its notice of proposed rulemaking, the Commission advised that persons wishing to comment on the information that would be required by these rules should contact Gary Waxman at OMB. One person commented to OMB.

Generally, this commentator opposed adoption of the Commission's rule on the basis that the Commission should not establish specific technical criteria for recordkeeping systems. While recognizing that agencies can establish regulations that prohibit the destruction of original paper records, the commentator argued that under the PRA "no regulation should be permitted that prohibits the destruction of the original paper records unless the agency can definitively prove that this burden is necessary to protect the public welfare and support the regulatory purpose of the agency." The commentator also argued that the use of specific criteria may be burdensome to firms that are regulated by multiple agencies since each agency may establish its own criteria. The commentator requested that OMB accept the recommendations of AIIM's task force that regulations be written that assure the accuracy and integrity of the record rather than specify the technology to be used.

The Commission does not find these views to be persuasive. Each of the Commission's existing recordkeeping requirements has been reviewed and approved by OMB based upon the vital role they play in protecting the public. Moreover, the purpose of these proposed changes is to make them less burdensome by permitting the use of new and emerging technologies. As adopted, these rules provide for fewer technical requirements and, as discussed above, the Commission will review the work of AIIM's task force when it is completed to determine if the use of media-independent regulations is satisfactory for Commission purposes.

With respect to persons subject to regulation by multiple agencies, the Commission is also concerned if its recordkeeping requirements cause disparate treatment or increased costs to firms vis a vis other agencies requirements and requested comment on this matter. However, no Commission registrants provided information on potential conflicts. Of course persons that may be adversely affected in this manner may, in any event, petition the Commission or the relevant other agencies for rule changes.

While this rule has no burden, it is a part of a large group of rules that have been approved and assigned OMB control number 3038-0022. The group of rules of which this is a part has the following burden:

*Average burden hours per response:*

612.26

*Number of respondents:* 4,281

*Frequency of response:* On occasion

Copies of the OMB-approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395-7340.

### List of Subjects in 17 CFR Part 1

Contract markets, Futures commission merchants, Recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4, 4g, 4i, 5 and 5a of the Act, 7 U.S.C. 6, 6g, 6i, 7 and 7a (1988), the Commission hereby amends part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

### PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

*Authority:* 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, and 24, unless otherwise noted.

2. Section 1.31 is amended by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

#### § 1.31 Books and records: Keeping and inspection.

\* \* \* \* \*

(b) Reproductions on microfilm, microfiche and optical disk may be substituted for hard copy as follows:

(1) Computer, accounting machine or business machine generated records may be immediately produced or reproduced on microfilm or microfiche and kept in that form. Computer generated records may be immediately produced on optical disk in conformity with the requirements of paragraph (d) of this section and kept in that form.

(2) For all other books and records, microfilm or microfiche reproductions thereof may be substituted for the hard copies for the final three years of the 5-year period.

(c) If microfilm, microfiche or optical disk substitution for hard copy is made, the persons required to keep such records shall:

(1) At all times have on their premises and make available upon request to representatives of the Commission or the Department of Justice:

(i) Facilities for easily readable projection of the microfilm or microfiche, or display of information stored on optical disk, that allow immediate examination of their records;

(ii) If the records are preserved on microfilm or microfiche, facilities for immediately producing complete, accurate and easily readable facsimile enlargements of the records; and

(iii) If the records are preserved on optical disk, facilities for immediately producing complete, accurate and easily readable hard copies of the records and the means to provide, immediately upon request, any Commission or Department of Justice representative with copies of the records on Commission compatible machine-readable media as defined in § 15.00(l) (1) and (2).

(2) In order to permit the immediate location of any particular record:

(i) Arrange, index and file microfilm or microfiche and preserve the index and file in such a manner as to permit the immediate location of any particular record; and

(ii) Create a directory structure for files of records and an index for records on optical disk, and preserve the files, index and directory structure in such a manner as to permit the immediate location of any particular record. Directory structures must organize and locate computer files and an index must distinguish, identify and locate records in the same file. In addition, persons must maintain on their premises at all times current, accurate and complete hard copies of such directory structures and indices for examination by representatives of the Commission or the Department of Justice. Such hard copies must be preserved for 5 years.

(3) Be ready at all times to provide, and immediately provide, at the expense of the person required to keep such records, any hard copy or facsimile enlargement of such records, and for records stored on optical disk, copies of such records on approved machine-readable media as defined in § 15.00(l) (1) and (2) which any representative of the Commission or U.S. Department of Justice may request. Records on machine-readable media must use a format and coding structure specified in the request; and

(4) Keep only Commission-required records on the same disk. Storage of a non-Commission-required record on the same disk with a Commission-required record shall be deemed a waiver of any privilege, claim of confidentiality, or other objection to disclosure with

respect to the non-Commission-required record.

(d) Optical Storage Systems—Any optical storage system used to preserve records under paragraph (b) of this section must allow for the preservation of the records required under this Section using non-rewritable, WORM (write once read many) media. All records preserved on optical media pursuant to paragraph (b) of this section must be preserved on non-rewritable WORM media. The technology must have write-verify capabilities that continuously and automatically verifies the quality and accuracy of the information stored and automatically corrects quality and accuracy defects.

(1) The system must:

(i) Use removable disks;

(ii) Serialize the disks;

(iii) Using a permanent and non-erasable time-date, it must time-date all files of information placed on the disk, reflecting the computer run time of the file of information; and

(iv) Write files in ASCII or EBCDIC format.

(2) Persons using optical storage systems must maintain on their premises, keep current, grant access to and surrender promptly, upon request by representatives of the Commission or the Department of Justice, all information necessary to read, convert to hard copy and download records stored in optical storage units, including directory structures and indices. This shall include but not be limited to a copy of logical file formats and field formats of all different files written on optical disks, the hardware make and model and operating system software version and release level of the computer system hosting the storage device and identity of the device driver used to write the optical media, including the release level, and if records are written in an ASCII or EBCDIC format other than standard non-compressed ASCII or EBCDIC, documentation of the method used to encode data providing a thorough descriptions of any compression algorithm, including the physical file format and conversion routines to transform the records to a non-compressed ASCII or EBCDIC format.

3. Section 1.35 is amended by revising the paragraph that follows (b)(3)(iii) to read as follows:

**§ 1.35 Records of cash commodity, futures and options contracts.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) \* \* \*

Provided, however, that where reproductions on microfilm, microfiche

or optical disk are substituted for hard copy in accordance with the provisions of § 1.31(b) of this part, the requirements of paragraphs (b)(1) and (b)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides in the same city as that in which such person's commodity or commodity option books and records are maintained, at the expense of such person, reproduced copies which show the records as specified in paragraphs (b)(1) and (b)(2) of this section, on request of any representatives of the Commission or the U.S. Department of Justice.

\* \* \* \* \*

Issued in Washington, DC, this 4th day of May 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-10864 Filed 5-7-93; 8:45 am]

BILLING CODE 6351-01-M

**17 CFR Part 1**

**Recordkeeping**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is amending its general recordkeeping requirements set forth in 17 CFR 1.31 to stipulate that trading cards and order tickets required pursuant to § 1.35(a-1)(1), (a-1)(2), and (d) be retained in hard-copy form for five years. This is intended to conform Commission regulations to current industry practice.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Lamont L. Reese, Supervisory Statistician, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-3310.

**SUPPLEMENTARY INFORMATION:** On October 26, 1992, the Commission published in the Federal Register (57 FR 48480) a notice of proposed rulemaking to amend its general recordkeeping rule, 17 CFR § 1.31, which would allow computer-generated reports written on optical disk to be immediately substituted for hard-copy reports. Currently paragraph (b) of Rule 1.31 allows only substitution of microfilm for source documents for

purposes of records storage.<sup>1</sup> Microfilm may be substituted immediately for computer, accounting machine or business machine generated records. For records produced by other means, the rule allows immediate microfilming of source documents; but requires that source documents be retained in hard-copy form for the first two years of a five-year retention period.

Aside from requesting comment on specific proposed rule amendments concerning the immediate substitution of records on optical storage for computer-generated reports, the Commission also sought initial comment on possible further amendments to its recordkeeping requirements which might allow for optical storage of digital records produced through electronic imaging. Imaging is a technique used to create digital replicas of paper records.<sup>2</sup> The Commission noted that many of the criteria it had specified for optical storage of computer-generated records might also apply to storage of imaged digital records and sought comment concerning additional specific conditions, restrictions and safeguards that might be instituted before allowing substitution of imaged records for source documents. In this respect, the Commission requested comment on specific additional technical criteria for scanning equipment, as well as limiting the time period during which reproductions of paper records stored on optical disks can be substituted for source documents.

Thirty-five persons commented on the Commission's proposed rulemaking. Eight comment letters were sent by the Association for Information and Image Management ("AIIM") or its members. Twenty-five comment letters were sent by self-regulatory organizations and by interested firms. In addition, the Futures Industry Association conducted a survey which was completed by sixteen persons. The results of this survey were compiled and submitted as a comment on the proposed rule. In a separate notice of final rulemaking, the Commission adopted amendments to Rule 1.31 which allow the immediate substitution of records stored on optical disk for hard-copy of computer-generated records. This amendment is

<sup>1</sup> Rule 1.31 provides that books and records must be kept for five years and be readily accessible during the first two years of this time period.

<sup>2</sup> Creating an electronic image of paper records involves the conversion of paper formats to digital formats using an electronic scanner or camera. Facsimile machines capture and transmit replicas of documents using this technique. After a digital image is created, the digital bits of information may be written to an optical storage device.

effective thirty days from its publication in the Federal Register.

The Commission, in the preamble to the proposed rule changes published on October 26, 1992, noted that its own experience indicates there are limitations in the usefulness of reproductions of paper records stored through both microfilm and the newer technology involving electronic imaging. Indeed, problems with the newer technology may be more acute simply because optical disk storage promises lower costs, and thus a wider use, than microfilm storage. In this respect, microfilm reproductions generally do not capture erasures or differences that may indicate that notations were made by different writing instruments or other evidence that may be critical in investigations. For this reason, although current regulations do not foreclose a firm from immediately microfilming paper documents, the paper documents must be retained for the first two years of the required five-year retention period.

In view of the problems with microfilming, the Commission requested comment on whether source documents, with the exception of trading cards and order tickets, that were imaged should also be maintained for a two-year period. With respect to trading cards and written records of customer orders, the Commission sought comment on a requirement that such documents would have to be preserved in original form for the full five-year period. The Commission noted that it would consider applying this requirement both to substitution of records preserved on optical disk and microfilm.<sup>3</sup>

Four persons commented on the issue of record retention periods for paper records. Three of the commenters, all exchanges, confirmed the Commission's view that optical scanning may have limited application to customer order tickets and trading cards for reasons cited by the Commission, and agreed that these documents should be retained for the full five-year period.<sup>4</sup>

The Commission recognizes that costs are associated with its recordkeeping requirements. The length of time that

<sup>3</sup> In proposing this requirement the Commission stated that these documents are essential to investigations which involve the reconstruction of intraday trading over some period of time. Such investigations are labor intensive and generally lengthy, at times continuing for several years. The documents themselves are usually multi-pty, color coded and are created daily in large numbers.

<sup>4</sup> The Commission noted in its October Federal Register release that exchanges currently do not microfilm trading cards and order tickets. The industry standard, in practice, appears to be to retain these documents for the full five-year period.

documents must be stored and, of course, the media upon which records are stored are factors affecting this cost. The current five-year retention period for trading cards and order tickets is not affected by this rulemaking. The proposed amendments to Rule 1.31 would require, however, that the originals of such documents be retained for the full five-year period, precluding the possibility that persons may microfilm the documents and preserve only the microfilm for the final three years of the five-year period. To the Commission's knowledge, no one in the futures industry now microfilms these documents. Rather, the current industry practice is to maintain them in original form for five years.<sup>5</sup> In view of this prevailing industry practice, the Commission is amending Rule 1.31 to provide that the trading cards and order tickets required pursuant to Rules 1.35(a-1)(1), 1.35(a-1)(2), and 1.35(d) be retained for five years.

The Commission fully supports the introduction of new information technologies that reduce costs associated with production, transfer, and storage of paper documents, provided there are sufficient safeguards to protect the public's interest. Currently, exchanges have instituted, and the Commission has approved, rules which provide for electronic trading systems. Exchanges are also testing the use of electronic trading cards and developing and implementing, in a limited manner, electronic order routing systems. In order to access the systems, firms in the industry are developing and testing electronic order entry systems. These systems are anticipated to be cost-effective alternatives to the production and transfer of paper documents, and may enhance audit trails, which are necessary for effective regulation. In addition, computer records produced by these systems can be stored on optical disk pursuant to newly-adopted amendments to Commission Rule 1.31. This can result in significant savings in storage and retrieval costs. Certain regulations, however, may require that firms prepare written documents. In light of the above developments in information technology, Commission staff are now reviewing regulations which require the production of written

<sup>5</sup> Commission rules have allowed the substitution of microfilm for paper documents during the last three years of the five-year retention period since 1972. Apparently, it is more cost-effective to store source documents rather than microfilm order tickets and trading cards. In any event, it does not appear likely that the Commission's amendments will result in additional recordkeeping costs for registrants.



documents to determine conditions under which the paper documents may no longer be necessary.

**I. Related Matters**

**A. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments principally affect contact markets and futures commission merchants (FCMs). The Commission has previously defined "small entities" in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618-18621 (April 30, 1982). In that statement, the Commission concluded that contract markets and FCMs are not considered to be small entities for purposes of the RFA. Other Commission registrants such as introducing brokers and floor brokers may also be affected. In this respect, the Commission believes that its amendments to Rule 1.31 conform this rule to current industry practice. As such, the amendments should not increase recordkeeping costs for any Commission registrant. Pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission, however, sought comments from anyone who believed that these rules would have a significant economic impact upon its operations. No comments concerning the RFA were received.

**B. Paperwork Reduction Act**

The Paperwork Reduction Act of 1980, (Act) 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. The Commission believes that this final rule does not increase the burden hours. While the industry has the ability to microfilm records after two years it is general industry practice to keep them the entire five years. The Commission currently estimates the recordkeeping burden associated with these documents as if the documents were retained for the entire five-years. The burden associated with this entire collection, including this final rule, is as follows:

*Average burden hours per response:*  
612.26  
*Number of Respondents:* 4,281  
*Frequency of response:* On occasion

The burden associated with Rule 1.31, which does not change due to this rule, is as follows:

*Average burden hours per response:*  
50.40  
*Number of Respondents:* 3,212  
*Frequency of response:* On occasion

Persons wishing to comment on the information required by this rule should contact Gary Waxman, Office of Management and Budget, Room 3220, NEOB Washington DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254-9735.

**List of Subjects in 17 CFR Part 1**

Contract markets, Futures commission merchants, Recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4, 4g, 4i, 5 and 5a of the Act, 7 U.S.C. 6, 6g, 6i, 7 and 7a (1988), the Commission hereby amends part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

**PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT.**

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

**Authority:** 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, and 24, unless otherwise noted.

2. Section 1.31 is amended by revising paragraph (b)(2) to read as follows:

**§ 1.31 Books and records: Keeping and inspection.**

\* \* \* \* \*

(b) \* \* \*  
(2) Except as provided herein, for all other books and records, microfilm or microfiche reproductions thereof may be substituted for the hard copies for the final three years of the 5 year period. Trading cards and written customer orders, required to be kept pursuant to § 1.35(a-1)(1), (a-1)(2) and (d), must be retained in hard-copy form for the full five-year period.

\* \* \* \* \*  
Issued in Washington, DC, May 4, 1993, by the Commission.  
Lynn K. Gilbert,  
Deputy Secretary of the Commission.  
[FR Doc. 93-10865 Filed 5-7-93; 8:45 am]  
BILLING CODE 6351-01-M

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 228, 229**

[Release Nos. 33-6998; 34-32255; 35-25807; 39-2307; IC-19451]

RIN 3235-AC48

**Rulemaking for EDGAR System; Correction**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Correction to interim rules.

**SUMMARY:** This document contains corrections to the interim rules that were published Thursday, March 18, 1993 (58 FR 14628). Those rules relate to the implementation of the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system.

**EFFECTIVE DATE:** These rules are effective April 26, 1993, except entry number 27 in the Exhibit Tables to Item 601 of Regulations S-K and Regulation S-B, relating to the Financial Data Schedule, which will be effective on November 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** James R. Budge, Office of Disclosure Policy, Division of Corporation Finance at (202) 272-2589.

**SUPPLEMENTARY INFORMATION:**

**Background**

The interim rules that are the subject of these corrections become effective on April 26, 1993 and implement mandated electronic filing on the EDGAR system for registrants whose filings are processed by the Divisions of Corporation Finance and Investment Management and for those making filings with respect to such registrants. Development and implementation of the EDGAR system was effected pursuant to Section 35A of the Securities and Exchange Act of 1934 (15 U.S.C. 78j).

**Need for Corrections**

This action is necessary to ensure that the entries in the Exhibit Tables in Regulations S-K and S-B coincide with the descriptions of the exhibits found in paragraph (b) of Item 601 of Regulations S-K and S-B.

**Correction of Publication**

Accordingly, the publication on March 18, 1993 of the interim rules, which were the subject of FR Doc. 93-4805, is corrected as follows:

**§ 228.601 [Corrected]**

1. On page 14660, second column, amendatory instruction No. 13, beginning in the fourth line, "in the

Exhibit Table, remove entry number 29, revise entry numbers (2), (3), (10), (27), and (28), add and reserve entry numbers

(29) through (98), and add entry number (99) and Footnote 5;" should read "revise the Exhibit Table,"; and the

Exhibit Table should read as set forth below:

BILLING CODE 8010-01-M

EXHIBIT TABLE

	Securities Act Forms					Exchange Act Forms			
	SB-2	S-2	S-3	S-4***	S-8	10-SB	S-K	10-OSB	10-KSB
(1) Underwriting agreement	x	x	x	x	-----	-----	x	-----	-----
(2) Plan of acquisition, reorganization, arrangement, liquidation, or succession	x	x	x	x	-----	x	x	x	x
(3) (i) Articles of incorporation	x	-----	-----	x	-----	x	-----	-----	x
(ii) By-laws	x	-----	-----	x	-----	x	-----	-----	x
(4) Instruments defining the rights of holders, incl. indentures	x	x	x	x	x	x	x	x	x
(5) Opinion re: legality	x	x	x	x	x	-----	-----	-----	-----
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Opinion re: liquidation preference	x	x	-----	x	-----	x	-----	-----	-----
(8) Opinion re: tax matters	x	x	x	x	-----	-----	-----	-----	-----
(9) Voting trust agreement	x	-----	-----	x	-----	x	-----	-----	x
(10) Material contracts	x	x	-----	x	-----	x	-----	x	x
(11) Statement re: computation of per share earnings	x	x	-----	x	-----	x	-----	x	x
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual or quarterly reports, Form 10-Q *	-----	x	-----	x	-----	-----	-----	-----	x
(14) Material foreign patents	x	-----	-----	x	-----	x	-----	-----	-----
(15) Letter on unaudited interim financial information	x	x	x	x	x	-----	-----	x	-----
(16) Letter on change in certifying accountant****	x	x	-----	x	-----	x	x	-----	x
(17) Letter on director resignation	-----	-----	-----	-----	-----	-----	x	-----	-----
(18) Letter on change in accounting principles	-----	-----	-----	-----	-----	-----	-----	x	x
(19) Reports furnished to securityholders	-----	-----	-----	-----	-----	-----	-----	x	-----
(20) Other documents or statements to securityholders	-----	-----	-----	-----	-----	-----	x	-----	-----
(21) Subsidiaries of the registrant	x	-----	-----	x	-----	x	-----	-----	x
(22) Published report regarding matters submitted to vote	-----	-----	-----	-----	-----	-----	-----	x	x
(23) Consent of experts and counsel	x	x	x	x	x	-----	x**	x**	x**
(24) Power of attorney	x	x	x	x	x	x	x	x	x
(25) Statement of eligibility of trustee	x	x	x	x	-----	-----	-----	-----	-----
(26) Invitations for competitive bids	x	x	x	x	-----	-----	-----	-----	-----
(27) Financial Data Schedule*****	x	x	x	x	x	x	x	x	x
(28) Information from reports furnished to state insurance regulatory authorities	x	x	x	x	x	x	-----	-----	x
(29) through (98) [Reserved]	-----	-----	-----	-----	-----	-----	-----	-----	-----
(99) Additional Exhibits	x	x	x	x	x	x	x	x	x

\* Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10-KSB, where the annual report is incorporated by reference into the text of the Form 10-KSB.

\*\* Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

\*\*\* An issuer need not provide an exhibit if: (1) an election was made under Form S-4 to provide S-2 or S-3 disclosure; and (2) the form selected (S-2 or S-3) would not require the company to provide the exhibit.

\*\*\*\* If required under Item 304 of Regulation S-B.

\*\*\*\*\* Financial Data Schedules shall be filed by electronic filers only. Such schedule shall be filed only when a filing includes annual and/or interim financial statements that have not been previously included in a filing with the Commission. See Item 601(c) of Regulation S-B.

**§ 229.601 [Corrected]**

2. On page 14665, first column, amendatory instruction No. 18, beginning in the fourth line, "in the Exhibit Table remove entry number (29),

revise entry numbers (2), (3), (10), (27), and (28), add and reserve entry numbers (29) through (98), and add entry number (99) and Footnote 5;" should read "revise the Exhibit Table;" and the

Exhibit Table should read as set forth below:

**BILLING CODE 8010-01-M**

EXHIBIT TABLE

Securities Act Forms

Exchange Act Forms

	S-1	S-2	S-3	S-4 <sup>3</sup>	S-8	S-11	F-1	F-2	F-3	F-4 <sup>3</sup>	10	8-K	10-Q	10-K
(1) Underwriting agreement	X	X	X	X	-----	X	X	X	X	X	-----	X	-----	-----
(2) Plan of acquisition, reorganization, arrangement, liquidation, or succession	X	X	X	X	-----	X	X	X	X	X	X	X	X	X
(3) (i) Articles of incorporation	X	-----	-----	X	-----	X	X	-----	-----	X	X	-----	-----	X
(ii) By-laws	X	-----	-----	X	-----	X	X	-----	-----	X	X	-----	-----	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	-----	-----	-----	-----
(6) Opinion re discount on capital shares	X	X	-----	X	-----	X	X	X	-----	X	X	-----	-----	-----
(7) Opinion re liquidation preference	X	X	-----	X	-----	X	X	X	-----	X	X	-----	-----	-----
(8) Opinion re tax matters	X	X	X	X	-----	X	X	X	X	X	-----	-----	-----	-----
(9) Voting trust agreement	X	-----	-----	X	-----	X	X	-----	-----	X	X	-----	-----	X
(10) Material contracts	X	X	-----	X	-----	X	X	X	-----	X	X	-----	X	X
(11) Statement re computation of per share earnings	X	X	-----	X	-----	X	X	X	-----	X	X	-----	X	X
(12) Statements re computation of ratios	X	X	X	X	-----	X	X	X	-----	X	X	-----	-----	X
(13) Annual report to security holders, Form 10-Q or quarterly report to security holders <sup>1</sup>	-----	X	-----	X	-----	-----	-----	-----	-----	-----	-----	-----	-----	X
(14) Material foreign patents	X	-----	-----	X	-----	-----	X	-----	-----	X	X	-----	-----	-----
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	-----	-----	X	-----
(16) Letter re change in certifying accountant <sup>4</sup>	X	X	-----	X	-----	X	-----	-----	-----	-----	X	X	-----	X
(17) Letter re director resignation	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	X	-----	-----
(18) Letter re change in accounting principles	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	X	X
(19) Report furnished to security holders	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	X	-----
(20) Other documents or statements to security holders	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	X	-----	-----
(21) Subsidiaries of the registrant	X	-----	-----	X	-----	X	X	-----	-----	X	X	-----	-----	X
(22) Published report regarding matters submitted to vote of security holders	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	X	X
(23) Consent of experts and counsel	X	X	X	X	X	X	X	X	X	X	-----	X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X	-----	X	X	X	X	X	-----	-----	-----	-----
(26) Invitations for competitive bids	X	X	X	X	-----	-----	X	X	X	X	-----	-----	-----	-----
(27) Financial Data Schedule <sup>5</sup>	X	X	X	X	X	X	-----	-----	-----	-----	X	X	X	X
(28) Information from reports furnished to state insurance regulatory authorities	X	X	X	X	X	-----	-----	-----	-----	-----	X	-----	-----	X
(29) through (98) (Reserved)	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
(99) Additional Exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X

<sup>1</sup> Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10-K, where the annual report to security holders is incorporated by reference into the text of the Form 10-K.

<sup>2</sup> Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

<sup>3</sup> An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Forms S-4 or F-4 to provide information about such company at a level prescribed by Forms S-2, S-3, F-2 or F-3 and (2) the form, the level of which has been elected under Forms S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

<sup>4</sup> If required pursuant to Item 304 of Regulation S-K.

<sup>5</sup> Financial Data Schedules shall be filed by electronic filers only. Such schedule shall be filed only when a filing includes annual and/or interim financial statements that have not been previously included in a filing with the Commission. See Item 601(c) of Regulation S-K.

Dated: May 4, 1993.  
**Jonathan G. Katz,**  
*Secretary.*  
 [FR Doc. 93-10938 Filed 5-7-93; 8:45 am]  
 BILLING CODE 6010-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 9**

[FRL-4653-5]

**OMB Approval Numbers Under the Paperwork Reduction Act**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is adding a new Part to consolidate the display of Office of Management and Budget (OMB) control numbers issued under the Paperwork Reduction Act (PRA) for various EPA regulations with information collection request requirements.

**EFFECTIVE DATE:** This final rule is effective on May 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at (202) 260-2740.

**SUPPLEMENTARY INFORMATION:** EPA is continuing to examine its management of the PRA. As part of that review, EPA is today publishing the current information collection request (ICR) control numbers issued by OMB for various regulations promulgated under the Safe Drinking Water Act and the Clean Air Act. The affected regulations are codified at 40 CFR parts 61, 82, 141, and 142. EPA is presenting the OMB control numbers in a consolidated table format to be codified in part 9 of the agency's title 40 regulations, and in each CFR volume containing EPA regulations. The table lists the part and Section numbers with reporting and recordkeeping requirements, and the current OMB control number.

The ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to issue this table without prior notice and comment. Due to the technical nature of the table, further notice and public comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

For additional information, see 58 FR 18014, April 7, 1993.

**List of Subjects in 40 CFR Part 9**

Reporting and recordkeeping requirements.

Dated: May 4, 1993.  
**Carol M. Browner,**  
*Administrator.*  
 For the reasons set out in the preamble Chapter I, title 40 of the Code of Federal Regulations is amended by adding part 9 to read as follows:

**PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT**

**Authority:** 42 U.S.C. 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, 7401, 7412, 7414, 7416, 7601, 7671-7671q.

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

This part consolidates the display of control numbers assigned to collections of information in certain EPA regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This part fulfills the requirements of section 3507(f) of the PRA.

40 CFR citation	OMB control No.
<b>National Emission Standards for Hazardous Air Pollutants</b>	
61.24-61.25 .....	2060-0191.
61.93-61.95 .....	2060-0191.
61.103-61.105 .....	2060-0191.
61.107 .....	2060-0191.
61.123-61.124 .....	2060-0191.
61.126 .....	2060-0191.
61.203 .....	2060-0191.
61.206-61.209 .....	2060-0191.
61.223-61.224 .....	2060-0191.
61.253-61.255 .....	2060-0191.
<b>Protection of Stratospheric Ozone</b>	
82.9-82.13 .....	2060-0170.
82.36 .....	2060-0247.
82.38 .....	2060-0247.
82.40 .....	2060-0247.
82.42 .....	2060-0247.
<b>National Primary Drinking Water Regulations</b>	
141.2 .....	2040-0090.
141.4 .....	2040-0090.
141.11-141.15 .....	2040-0090.
141.21-141.22 .....	2040-0090.
141.23-141.24 .....	2040-0090, as amended by 2040-0155.
141.25-141.30 .....	2040-0090.
141.31-141.32 .....	2040-0090, as amended by 2040-0155.
141.33-141.35 .....	2040-0090.
141.40 .....	2040-0090, as amended by 2040-0155.
141.41-141.43 .....	2040-0090.
141.50-141.52 .....	2040-0090.
141.60-141.63 .....	2040-0090.
141.70-141.75 .....	2040-0090.
141.80-141.91 .....	2040-0090.
141.100 .....	2040-0090.
141.110-141.111 .....	2040-0090.
<b>National Primary Drinking Water Regulations Implementation</b>	
142.2-142.3 .....	2040-0090.

40 CFR citation	OMB control No.
142.10-142.15 .....	2040-0090.
142.16 .....	2060-0090, as amended by 2040-0155.
142.17-142.24 .....	2040-0090.
142.56-142.57 .....	2040-0090.
142.60-142.61 .....	2040-0090.
142.62 .....	2040-0090, as amended by 2040-0155.
142.63-142.64 .....	2040-0090.
142.70-142.78 .....	2040-0090.
142.81-142.81 .....	2040-0090.

[FR Doc. 93-10990 Filed 5-7-93; 8:45 am]  
 BILLING CODE 6560-60-M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

[FCC 93-195]

**Forfeiture Proceedings**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** By this action, the Commission amends § 1.80(d) of the rules to reflect amendments to section 503(b)(5) of the Communications Act of 1934, as amended. Section 503(b)(5) was recently amended by Congress to provide that nonlicensee tower owners may be subject to forfeiture for violations of the painting and/or illumination requirements without a prior citation under certain conditions. The amendment to § 1.80(d) merely restates the statutory language of amended section 503(b)(5) to conform the Commission's forfeiture rules to the statute.

**EFFECTIVE DATE:** May 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Douglas Cooper, Office of General Counsel, Federal Communications Commission, (202) 632-6990.

**SUPPLEMENTARY INFORMATION:**

In the matter of Amendment of Section 1.80(d) of the Commission's Rules

**Order**

Adopted: April 13, 1993.

Released: May 3, 1993.

By the Commission:

1. Congress recently amended section 503(b)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(5), to provide that nonlicensee tower owners may be subject to forfeiture for violations of the painting and/or illumination requirements for radio

towers as prescribed by the Commission without a prior citation under certain conditions. Public Law No. 102-538, 106 stat. 3533, enacted October 27, 1992. By this Order we amend section 1.80(d) of our rules, 47 CFR 1.80(d), to reflect the amended statute.

2. Specifically, the amendment to section 503(b)(5) allows the Commission to assess forfeitures for violations of section 303(q) if the nonlicensee tower owner has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses the tower.

3. The changes to § 1.80(d) of our rules adopted herein merely restates in our rules the statutory language of 47 U.S.C. 503(b)(5). Therefore, the Commission for good cause finds that compliance with the notice and comment and effective date provisions of the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b)(B), 553(d)(3).

4. Accordingly, pursuant to sections 4(i), 303(r) and 503(b)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 503(b)(5), *It is ordered that 47 CFR § 1.80(d) is Amended as set forth in the Rule Changes, Effective upon publication in the Federal Register.*

**List of Subjects in 47 CFR Part 1**

Penalties.  
Federal Communications Commission.  
Donna R. Searcy,  
Secretary.

**Rule Changes**

Title 47 of the Code of Federal Regulations, part 1, is amended as follows:

**PART 1—PRACTICE AND PROCEDURE.**

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

**Authority:** 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552; 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.80 is amended by revising the second sentence of paragraph (d) to read as follows.

**Miscellaneous Proceedings**

**§ 1.80 Forfeiture proceedings.**

(d) *Preliminary procedure in some cases; citations.* \* \* \* However, a forfeiture penalty may be imposed, if such person is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required or if such person is a cable television operator, or

in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. \* \* \*

[FR Doc. 93-10758 Filed 5-7-93; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 92-292; RM-8135]

**Radio Broadcasting Services; Milton-Freewater, OR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Alexandra Communications, substitutes Channel 250C2 for Channel 250C3 at Milton-Freewater, Oregon, and modifies Station KLKY(FM)'s construction permit to specify operation on the higher class channel. See 57 F.R. 61037, December 23, 1992. Channel 250C2 can be allotted to Milton-Freewater in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.8 kilometers (11 miles) northeast to accommodate petitioner's desired transmitter site, at coordinates North Latitude 45-59-04 and West Longitude 118-10-08. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** June 18, 1993.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 92-292, adopted April 26, 1993, and released May 4, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

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

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 250C3 and adding Channel 250C2 at Milton-Freewater.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-10877 Filed 5-7-93; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 93-11; RM-8164]

**Radio Broadcasting Services; Spokane, WA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Melinda Boucher Read, substitutes Channel 245C3 for Channel 245A at Spokane, Washington, and modifies the Station KSPO (FM)'s construction permit accordingly. See 58 FR 7815, February 10, 1993. Channel 245C3 can be allotted to Spokane in compliance with the Commission's minimum distance separation requirements for domestic allotments at petitioner's specified site. The coordinates for Channel 245C3 at Spokane are North Latitude 47-41-39 and West Longitude 117-20-03. Since Spokane is located within 320 kilometers (200 miles) of the U.S.-Canadian border and the allotment is short-spaced to a vacant Canadian allotment, Canadian concurrence has been obtained for Channel 245C3 at Spokane as a specially negotiated allotment. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** June 18, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-11, adopted April 26, 1993, and released May 4, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**47 CFR PART 73—[AMENDED]**

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

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 245A and adding Channel 245C3 at Spokane.

Federal Communications Commission

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-10876 Filed 5-7-93; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AB75

**Endangered and Threatened Wildlife and Plants; Final Rule to List Spectacled Eider as Threatened**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines that the spectacled eider (*Somateria fischeri*) is a threatened species throughout its range in Alaska and Russia. This action is being taken because the species has declined by as much as 94-98 percent on its principal breeding range in Alaska and breeding birds in Alaska continue to decline by about 14 percent per year. Critical habitat is not being designated at this time. The rule implements the protection of the Endangered Species Act of 1973, as amended, for the spectacled eider.

**EFFECTIVE DATE:** June 9, 1993.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, room G-62, Anchorage, Alaska, 99501.

**FOR FURTHER INFORMATION CONTACT:** Jean Cochrane, Endangered Species Specialist (see ADDRESSES above) (907/271-2888).

**SUPPLEMENTARY INFORMATION:****Species Description and Range**

The spectacled, or Fisher's, eider (also known as Quageq in Yupik and

Quvaasuk in Inupiat) is a large-bodied marine diving duck and one of three eiders in the genus *Somateria*. It was first described by Brandt in 1847 as *Fuligula fischeri*, then later placed in the genera *Lampronetta* and *Arctonetta*, and finally under *Somateria* (American Ornithologist's Union (AOU) 1983). The adult male spectacled eider has a green head with a long, sloping forehead, large, distinctive white eye patches, a black chest and a white back. Juveniles and adult females are brown with less distinct spectacle eye patches.

Spectacled eiders breed discontinuously along the coast of Alaska from the Nushagak Peninsula on Bristol Bay north to Barrow and east nearly to the Yukon border (Christian P. Dau, U.S. Fish and Wildlife Service, Cold Bay, Alaska, pers. comm., 1991, North 1990, Kessel 1989, Dau and Kistchinski 1977). They also nest on St. Lawrence Island, Alaska (Fay and Cade 1959) and along the Arctic coast of Russia from the Chukotsk Peninsula west to the Yana Delta (AOU 1983). High density breeding grounds for this eider are the Yukon-Kuskokwim Delta, Alaska and the Chaun, Kolyma, Yana and Indigirka Deltas in Siberia (Kondratyev 1992, Dau and Kistchinski 1977).

Dau and Kistchinski (1977) hypothesized that the spectacled eider's primary winter range is in the central and northwestern Bering Sea. Migrant flocks stage offshore from St. Lawrence Island, where they are regularly seen in the spring and fall (Mary Hogan 1992). Only a few spectacled eiders have been documented during the winter in nearshore waters of Alaska and British Columbia (AOU 1983).

Spectacled eiders have been studied only within their breeding grounds. Dau and Kistchinski (1977) suggest that they feed primarily on benthic mollusks and crustaceans in shallow waters ( $\leq 30$  meters (98.4 feet) deep). Kessel (1989) hypothesized that they also may forage on pelagic amphipods that are concentrated along the sea water-ice interface. On their coastal breeding grounds, these eiders feed on aquatic crustaceans, aquatic insects, and plant materials (Dau 1974). Their nests are built on shorelines, islands, and meadows in coastal tundra, predominantly within 15 kilometers of the coast (Dau 1974, Dau and Kistchinski 1977).

**Population Decline**

Dau and Kistchinski (1977) provide the only rangewide estimates for spectacled eider numbers, based principally on study sites on the Yukon-Kuskokwim Delta in Alaska and

Indigirka Delta in Siberia. They estimate that 47,700 pairs nested on the Yukon-Kuskokwim Delta in average years before 1972, increasing to 70,000 pairs in "good years", plus another 3,000 pairs elsewhere in Alaska and 30,000-40,000 pairs in Russia. These figures do not include subadult birds, which may comprise a substantial portion of the population (Dau and Kistchinski 1977). The Service estimates that 1,700-3,000 pairs nested on the Yukon-Kuskokwim Delta in 1990-1992 (Stehn *et al.* 1992b) and as many as a few thousand pairs may nest on Alaska's North Slope (Warnock and Troy 1992).

The estimated 1,700-3,000 pairs nesting on the Yukon-Kuskokwim Delta since 1990 represents a 94-98 percent decline from 47,700-70,000 pairs in the early 1970s. Further evidence that the decline in spectacled eiders on their primary breeding range in the United States is substantial and unabated comes from aerial waterfowl surveys and nest plot studies. Stehn *et al.* (1992b) summarized the following data collected by U.S. Fish and Wildlife Service biologists. Since 1957, the number of all eiders observed on standardized waterfowl breeding pair surveys flown in western Alaska decreased at an average rate of 7 percent per year. Biologists flew intensified aerial surveys over the central Yukon-Kuskokwim coast during 1967-1970 and 1988-1992. Aerial eider observations declined 87 percent between the two time periods, and since 1988 declined at an average rate of 9 percent per year. Aerial observations included Steller's eiders (*Polysticta stelleri*) and common eiders (*S. mollissima*), however, spectacled eiders accounted for most of the eiders observed. Regression analysis of data from random plots sampled on the central Yukon-Kuskokwim coast (2,264 km<sup>2</sup>, 874 mi<sup>2</sup>) from 1986 to 1992 indicate an average rate of decline in spectacled eider nest densities of 14 percent per year. No trend in common eider nest numbers was detected during this time.

Far less data are available on spectacled eiders elsewhere in Alaska. Spectacled eiders were never abundant on the Seward Peninsula, where they are now rare breeders (Kessel 1989), Residents of Gambell, St. Lawrence Island, Alaska, claim migrant spectacled eider flocks have not diminished during the last 10 years (Mary Hogan 1992); however, bird watching guides report seeing far fewer spectacled eiders migrating past Gambell in the 1980's than in the previous two decades (Isleib 1992).



The North Slope of Alaska may have supported 3,000 pairs 20 years ago (Dau and Kistchinski 1977), although this estimate was based on little data (Christian P. Dau, pers. comm., 1991). Spectacled eiders are infrequently detected on the North Slope coastal plain breeding pair surveys due to survey timing. Based on the past surveys from which the population declines of eiders were first detected, a new aerial survey was designed specifically to survey for eiders on the North Slope. This survey was initiated in 1992. Preliminary results indicate that up to a few thousand pairs may nest on the North Slope.

Spectacled eiders have been observed during bird population studies at Prudhoe Bay since 1981. Based on an intensive helicopter survey in 1991, the estimated spectacled eider population in Prudhoe Bay (550 km<sup>2</sup> or 212 mi<sup>2</sup>) was 122 pairs (Warnock and Troy 1992). This number is well below nesting densities on primary breeding sites, but similar to the current average density on all Yukon-Kuskokwim Delta coastal habitats combined (12,600 km<sup>2</sup> or 4,864 mi<sup>2</sup>) (Stehn *et al.* 1992b). The number of spectacled eiders observed on systematic ground surveys in Prudhoe Bay declined 80 percent from 1981 to 1991 (Warnock and Troy 1992)—the same rate of decline as Stehn *et al.* (1992b) observed for nest densities on the coastal Yukon-Kuskokwim Delta.

Spectacled eider populations are not surveyed systematically in Siberia. Dement'ev and Gladkov (1967) reported that numbers were dwindling on the Indigirka Delta, the center of Siberian breeding range (Dau and Kistchinski 1977), but no recent studies have been conducted in that region. Dr. Aleksandr Golovkin of the Institute of Nature Conservation in Moscow estimates that the current Russian population is about 20,000 breeding birds; however, he explains that this estimate is based on old data from few nesting areas and may be inaccurate (Steve Kohl, U.S. Fish and Wildlife Service, Washington, D.C., *in litt.*, 1992). Other Russian biologists indicate that data are insufficient for estimating current population size or trends in Russia (Vladimir Flint 1992, Tomkovich 1991). Spectacled eiders have not been nominated for the Red Data Book of Russia (U.S.S.R Ministry of Agriculture 1978) or regional rare species lists (Tomkovich 1991).

#### Petition Process Background

On December 10, 1990, the Service received a petition from James G. King of Juneau, Alaska, dated December 1, 1990, to list the spectacled eider and Steller's eider as endangered species

and to designate critical habitat for these species on the Yukon Delta National Wildlife Refuge and the National Petroleum Reserve—Alaska. Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires that, to the maximum extent practicable, within 90 days of receipt of a petition to list, delist, or reclassify a species, the Service determine whether or not substantial information has been presented indicating that the requested action may be warranted. The 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted was published in the Federal Register on April 25, 1991 (56 FR 19073).

In accordance with Section 4(b)(3)(B) of the Act, a 12-month finding was signed on February 12, 1992, determining that listing was warranted. For the Steller's eider, the Service determined that listing was warranted, but precluded by listing actions for higher priority species. Steller's eiders were designated a Category 1 candidate species, and comments received from the public will be considered in future status reviews for that species.

On May 8, 1992, the Service published a proposed rule in the Federal Register to list the spectacled eider as a threatened species throughout its range (57 FR 19852–19856). That notice solicited comments on the proposed listing from any interested parties, especially concerning threats to the species, its distribution and range, whether or not critical habitat should be designated, and activities that might impact the species. The proposed rule notice was sent to appropriate State agencies, Alaska Native regional corporations, borough and local governments, Federal agencies, foreign countries, scientific organizations, and other interested parties with a request for information that might contribute to the development of a final rule. Newspaper notices inviting general public comment were published in the Anchorage Daily News, Anchorage Times, Fairbanks Daily News-Miner, Nome Nugget, Kodiak Daily Mirror, and *Tundra Drums* during May 20–28, 1992.

#### Summary of Comments and Recommendations

Comments were received from 25 parties during the 160-day comment period, including the Russian Ministry of Ecology, Alaska Department of Fish and Game, U.S. Air Force, North Slope Borough, seven conservation organizations, three oil industry businesses, and 11 individuals from Russia, Norway, Canada and the United

States. No one requested a public hearing on the proposal. Of the comments, 13 supported and none opposed the proposed listing. Many respondents commented on the status of Steller's eiders, suggested additions or technical corrections for the proposal, or addressed eider management issues. Only comments specific to the proposed listing of spectacled eiders are addressed here. Individual comments are grouped by topic.

**Comment:** Four respondents commented that data available to the Service support listing the spectacled eider as endangered rather than threatened because the well documented, precipitous rate of decline on a substantial portion of the species' range will lead imminently to extinction.

**Service response:** When the 12-month finding on the eider petition was signed in February, 1992, the Service determined that the best scientific and commercial information available supported listing the spectacled eider as a threatened species throughout its worldwide range. As defined in the Act, the term "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, while an "endangered species" is "in danger of extinction." The information currently available to the Service does not indicate that the spectacled eider is in danger of extinction. However, the Service will continue to actively collect and evaluate status information on spectacled eiders and may propose reclassification at any time, should this become warranted. The draft recovery plan, which the Service expects to complete by one year from publication of this rule, will set out quantitative criteria for reclassification as well as recovery and delisting.

**Comment:** Two respondents requested that the Service list three separate spectacled eider populations—Yukon-Kuskokwim Delta, North Slope, and Siberia—to assure that each of these segments is fully protected.

**Service response:** Under the Act, vertebrate species may be listed rangewide or by subspecies or population. Since the Service determined that spectacled eiders warrant listing throughout their worldwide range, listing was proposed for the species as a whole. The Service has not determined whether populations of this wide ranging species are separate and distinct. The spectacled eider recovery team will be asked to evaluate separate breeding segments or populations and determine how each

segment contributes to rangewide population viability. As a result, the recovery plan could establish separate recovery goals for distinct population segments, as appropriate for conservation of the species.

*Comment:* Four respondents commented that the Service's decision not to designate critical habitat is unjustified. More specifically, they maintained that the proposed rule did not provide a comprehensive review of the chronic and cumulative impacts to terrestrial and marine habitats, or describe what areas are essential to the conservation of spectacled eiders. At a minimum, these respondents recommended that critical habitat be designated on high density breeding habitat on the Yukon Delta. One respondent supported the "not prudent" determination on critical habitat because evidence indicates the cause of decline does not involve breeding habitat.

*Service response:* The Service finds that designating critical habitat would provide no net benefit to spectacled eiders at this time, because the species is widely dispersed in remote habitats that remain predominantly unaltered and uninhabited. Prohibitions against adverse modification of critical habitat only apply to federally-funded, permitted or operated activities. Current Federal activities are affecting a limited portion of the species' suspected marine and terrestrial habitats (see detailed discussion under Critical Habitat).

*Comment:* Two respondents commented that the proposed rule understated the potential effects of oil and gas activities on spectacled eiders, and industrial development should be considered a past and future threat to the species. In contrast, another respondent said statements about the potential effects of oil and gas activities were unfounded and that new regulations restricting oil and gas exploration and development should be limited unless the Service provided data demonstrating that these activities were harmful.

*Service response:* Based on data collected in the Prudhoe Bay oil field since 1981, preliminary indications are that spectacled eiders continue to nest and raise broods in active oil fields in numbers typical of low density nesting habitat (Anderson *et al.* 1992, Warnock and Troy 1992, North 1990). Further, the rate of population decline in Prudhoe Bay parallels the rate of decline in southwestern Alaska, suggesting that the principal cause for the widespread decrease in breeding bird numbers will be found on migration or wintering grounds shared by both breeding

segments (Warnock and Troy 1992). Oil and gas development is not anticipated on primary breeding grounds in southwestern Alaska. The Service recognizes, however, that industrial development may affect birds locally on the North Slope and that future development could affect the species (see discussion below). The Federal Government controls oil and gas leasing in outer continental shelf waters and is typically involved in State-controlled nearshore and onshore development in Alaska through permitting requirements for alteration of wetlands and navigable waters. Hence, oil and gas development within the spectacled eider's United States range will be subject to the consultation requirements of section 7 of the Act. Measures can be incorporated into development plans to avoid disturbance and promote recovery of spectacled eiders.

*Comment:* Two respondents felt additional information should be provided on the threat posed by subsistence hunting. Another respondent expressed concern that listing spectacled eiders would stimulate the Service to enforce Migratory Bird Treaty Act prohibitions on traditional spring and summer harvest of other waterfowl, especially common eiders and king eiders (*Somateria spectabilis*). This respondent also expressed concern that such enforcement would jeopardize ongoing discussions between the United States and Canada to amend the 1916 Migratory Bird Treaty to permit regulated spring subsistence harvest of waterfowl in Alaska and Canada.

*Service response:* Current information indicates that an average of about five percent of the Yukon-Kuskokwim Delta breeding birds were harvested on the delta each year since 1987. This level of harvest is probably not the sole cause of the observed decline in this region (Stehn *et al.* 1992b). Yet, since the population is greatly reduced, any harvest now poses a threat to the species. The Service will be addressing this concern through an active outreach program to coastal villages. The Service's policy on harvest of migratory birds in Alaska during the closed season states that priorities for enforcement will be based on the status of populations and will involve consultation with affected interests (53 FR 16881). The Service will include spectacled eiders in a specific enforcement policy in 1993 to reduce any illegal harvest. The Service continues to support amendment of the Migratory Bird Treaty to allow for regulated, traditional subsistence harvest of waterfowl during the spring.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all information presently available, the Service has determined that the spectacled eider should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the spectacled eider are as follows:

#### A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The destruction of habitat is not known to be a factor in the decline of the spectacled eider. Breeding habitat encompasses vast expanses of coastal tundra and ponds that remain predominantly unaltered and uninhabited. No development or other substantial threats to the species' principal breeding habitat on the Yukon Delta National Wildlife Refuge are foreseen.

Nesting habitat on the central coast of Alaska's North Slope, a small portion of the species' breeding range, has been altered by oil and gas development. Potential threats from this development include contamination from accidental spills, off road vehicle use, wetland filling, and indirect effects of human presence. While the extent of spectacled eider nesting habitat impacted by oil and gas development is presently small, industrial development could expand in the future. Changes in predator populations that may be affecting spectacled eiders are discussed under Disease or Predation.

Marine habitat requirements of spectacled eiders are poorly understood (Dau and Kistchinski 1977). Past and present threats to suspected marine habitats could include (1) toxic contaminants transported from Russian or North American sites, (2) indirect impacts of shifting populations of species with overlapping food habits, and (3) secondary effects of commercial fish and invertebrate harvests in the Bering Sea (Stehn *et al.* 1992b). The Service has not found evidence that these generalized threats have actually occurred, although minimal information is available on long-term changes in the Bering Sea ecosystem.

Future offshore oil and gas development could also pose a threat to

spectacled eiders. In outer continental shelf waters, proposed lease sales could result in active exploration and development within spectacled eider wintering, migration and molting habitat. State-controlled, nearshore marine waters may also be leased and developed. Planned satellite telemetry research will help the Service delineate more precisely the marine habitats used by spectacled eiders and permit a thorough assessment of these possible threats.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Eiders have traditionally been harvested during migration, and birds and eggs have been taken on some nesting grounds for subsistence use by Alaskan and Siberian Natives. Historically, eider skins and feathers were used for clothing and bones were used for household purposes (Klein 1966, Johnson 1971). Feathers have been applied to ceremonial fans and masks that are sold to tourists (Klein 1966). Spring harvest of eiders has provided an important traditional source of meat to coastal communities, however, spectacled eiders constitute a small portion of the total eiders and total birds taken (Wentworth 1991, Braund *et al.* 1989a, 1989b, Johnson 1971). Spectacled eiders do not molt on their breeding grounds (Dau 1974); hence, they would not have been vulnerable to capture during historic drives of flightless birds.

In recent years, spectacled eiders have apparently been taken in low numbers for subsistence and minimally for sport use, but rangewide and local effects of this harvest are not documented. Sport harvest of spectacled eiders in the United States was limited primarily to a few taken annually by collectors on St. Lawrence Island until the U.S. sport hunting season was closed in 1991 (Robin West, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Some illegal harvest for the taxidermy trade has also been reported from Gambell, St. Lawrence Island, but the magnitude of take is unknown (Stephen A. Tuttle, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Eiders are harvested by Native Siberians on the Chukotsk Peninsula and farther west, however, no data are available on take of spectacled eiders in Russia (Steve Kohl, *in litt.*, 1992).

The estimated, annual subsistence harvest on the Yukon-Kuskokwim Delta from 1985 to 1992 averaged 334 spectacled eiders, equivalent to about five percent of the average, local nesting

population during those years (Stehn *et al.* 1992b). Another 66 were reported taken at Wainwright and Barrow in 1988 (Braund *et al.* 1989a, 1989b) and spectacled eiders could account for some of the unidentified eiders taken by residents of these villages. In addition, residents of other villages near eider migration routes and nesting range may harvest spectacled eiders.

While historic harvest data are unavailable, traditional subsistence harvest likely did not have a significant effect on formerly large populations. The petition to list spectacled eiders suggested that harvest may have increased in the 1980s in compensation for voluntary restrictions on subsistence harvest of four goose species protected by the Cooperative Yukon-Kuskokwim Delta Goose Management Plan. The average annual take of 3,800 eiders (all species) on the Yukon-Kuskokwim Delta from 1985–1991 (Wentworth 1991) is close to a 1964 estimate of 3,300 eiders taken (Klein 1966), indicating that total eider harvest has not changed substantially in 25 years.

In combination with reduced reproductive success or increased mortality due to other factors, even low harvest levels may be contributing to the further population decline. Overharvest may have eliminated local breeding birds from suitable habitat near villages in western Alaska (Stehn *et al.*, 1992b). Due to delayed maturity and low recruitment of young birds to breeding age, even low hunting mortality can affect sea duck populations (Goudie 1992).

#### C. Disease or Predation

Eider eggs, young, and occasionally adults are preyed upon by mammalian and avian predators, particularly arctic fox (*Alopex lagopus*), glaucous gulls (*Larus hyperboreus*), and parasitic jaegers (*Stercorarius parasiticus*). Rangewide or long-term effects of predation on spectacled eider populations have not been documented.

Historically, eiders nested in association with black brant (*Branta bernicla*) and cackling Canada geese (*B. canadensis minima*), possibly as a strategy to reduce predation losses (Kertell 1991). When brant, cacklers and other geese declined sharply during the past few decades in Alaska, fox predation on eider eggs may have increased (Kertell 1991). However, average spectacled eider nest and brood survival have apparently been high on at least some parts of the Yukon-Kuskokwim Delta (Harwood *et al.* 1992, Stehn *et al.* 1992a, Harwood and Moran 1991). Populations of large gulls (primarily glaucous-winged gulls (*L.*

*glaucescens*) but also glaucous gulls) may have increased markedly in southwestern Alaska due to increased food availability, particularly fish processing wastes (Robert Gill, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Hence, gull predation on eider eggs and hatchlings may have risen with increased gull densities, although spectacled eider nest and brood survival were high near gull colonies on the delta (Harwood *et al.* 1992). Similarly, spectacled eider nest and brood survival appear to be relatively high in Prudhoe Bay (Warnock and Troy 1992), despite possible increases in fox and common raven (*Corvus corax*) populations around oil fields (Eberhardt *et al.* 1982).

#### D. The Inadequacy of Existing Regulatory Mechanisms

Harvest of eiders is regulated under authority of the Migratory Bird Treaty Act (16 U.S.C. 703–711). The U.S. sport hunting season on spectacled eiders has been closed since 1991. Subsistence harvest continues with an estimate of at least 500 birds harvested per year. Spectacled eiders were harvested historically in Russia (Portenko 1972, Dement'ev and Gladkov 1967). The current Russian harvest may be high (Germogenov 1992 in Stehn *et al.* 1992b), but no recent estimates are available (Steve Kohl, *in litt.*, 1992).

Spring and summer subsistence hunting of eiders in Alaska is in violation of the Migratory Bird Treaty Act, which prohibits hunting for most migratory birds between March 10 and September 1. The Service recognizes, however, that residents of certain rural areas in Alaska depend on waterfowl as a customary and traditional source of food. Due to this long established dependence, the Service has exercised discretion in not strictly enforcing the closed season on taking some birds, provided that the birds were taken in a non-wasteful manner and used for food. Spectacled eiders will be included in the Service's enforcement policy in 1993 to try to eliminate any illegal harvest. The Service has initiated an information and education program to gain public support for spectacled eider protection.

Regulations requiring the use of non-toxic shot for hunting waterfowl, cranes and snipe in Alaska were implemented for the 1991–1992 migratory bird hunting season (50 CFR part 20.134). Conversion from lead shot to steel shot would reduce the threat of lead poisoning from ingested or imbedded shot. The Service and the Alaska Department of Fish and Game are promoting the use of steel shot through

educational seminars in coastal villages, yet compliance is not assured. Lead shot is still available for upland game hunting in eider nesting range.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The petition to list the spectacled eider as an endangered species cited oil spills, pollution resulting from offshore oil development and fishery vessels, the effects of large scale fishery fleets on marine ecology, and direct mortality in fishing nets as potential factors affecting the spectacled eider. At present, no evidence is available demonstrating that these factors have had a direct effect on spectacled eiders in the North Pacific or Arctic Oceans, but investigations of spectacled eider marine habitats are just beginning. Direct mortality in fishing nets or from oil spills has not been documented by the Service. Food supplies or other critical elements of the marine ecosystem may have been diminished by fishing activity, contamination, competition with other species, or disruption of the benthic environment.

The Service recently received reports of birds, including unidentified eiders, accidentally striking commercial fishing vessels operating near the pack ice in the northern Bering Sea (Tuttle 1992). Since these crab fishing boats are operating in potential spectacled eider wintering range (Dau and Kistchinski 1977), accidental collisions may be a threat to the species.

Hazardous materials are spilled regularly into the Bering Sea from shipwrecks and bilge discharges and some of these materials may enter benthic or pelagic food chains (Everett Robinson-Wilson, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Proposed oil and gas leasing and potential development in State and outer continental shelf waters could impact eiders due to disturbance and oil spills. Production of oil in the outer continental shelf of the Bering and Chukchi Seas would substantially increase the probability of oil spills from platforms, pipelines, and tankers (Minerals Management Service 1992), with potential effects on spectacled eiders. The anticipated increase in shipping activity in pack ice lead systems if offshore oil fields are developed could put eiders at risk of oil spill damages during critical migration, wintering, and molting periods, when they are highly concentrated or in flightless flocks. Similar impacts could occur with State leases in near shore marine waters.

In 1992, one spectacled eider was collected on the Yukon Delta National

Wildlife Refuge that had died from lead poisoning, possibly due to the ingestion of lead shot (Jean Cochrane, U.S. Fish and Wildlife Service, Anchorage, Alaska, *in litt.*, 1992). Lead shot is commonly used by coastal residents of Alaska for hunting birds, although non-toxic shot is now required for waterfowl hunting. Potentially, residual lead shot could remain on the tundra or in shallow ponds for years, posing a prolonged risk to eiders. Spectacled eiders may also be exposed to environmental pollutants including heavy metals and organochlorines in the marine environment, with potential effects on survival and reproduction.

Severe weather is also a threat to arctic sea ducks, and major eider die-offs have been recorded after late spring storms on the Arctic Ocean (Myres 1958, Barry 1968). While historically large populations would not be seriously affected by periodic die-offs or by nesting failures due to coastal flood surges (Dau 1974), remnant or isolated populations are susceptible to devastation from these periodic events.

In summary, the Service estimates that approximately 1,700–3,000 pairs of spectacled eiders nested on their historically important breeding range on the Yukon-Kuskokwim Delta during 1990–92, where an estimated 47,740–70,000 pairs nested twenty years ago. This 94–98 percent decline is corroborated by the seven percent per year decline in the number of all eiders seen on breeding pair surveys in southwestern Alaska since 1957 and the 14 percent per year decline in spectacled eider nest densities on the Yukon Delta National Wildlife Refuge since 1986. The geographically separate breeding segment in Prudhoe Bay, Alaska, has declined at a similar annual rate, equivalent to 80 percent from 1981 to 1991.

Although the factors that caused these declines are unknown, a number of potential contributory factors have been identified. These, or other still unidentified threats have increased mortality above the rate of reproductive replacements. If the downward trend in nest densities continues unabated, the Yukon-Kuskokwim Delta breeding segment will be reduced to 50 percent of current size every 4.0 years (Stehn *et al.* 1992a). Based on data from Prudhoe Bay and the Yukon-Kuskokwim Delta, spectacled eiders are declining at about the same rate throughout their Alaskan breeding range. No data are available to show whether similar trends have affected the breeding population in Russia where as many as 40,000 pairs traditionally nested.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species for the purposes of this final rule. Based on this evaluation, the preferred action is to list the spectacled eider as a threatened species throughout its worldwide range (i.e., a species that is likely to become endangered throughout all or a significant portion of its range in the foreseeable future).

#### **Critical Habitat**

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Although the Service received several comments advocating the designation of critical habitat, no demonstrable overall benefit to the spectacled eider can be identified from designating critical habitat. The species is widely dispersed in remote habitats that remain predominantly unaltered and uninhabited. Current and planned Federal activities are affecting a limited portion of the species' suspected marine and terrestrial habitats. Hence, the Service has determined that critical habitat designation is not prudent at this time (50 CFR 424.12).

The spectacled eider's principal nesting grounds encompass 12,600 km<sup>2</sup> (4,864 mi<sup>2</sup>) of coastal tundra on the Yukon Delta National Wildlife Refuge. Coastal habitats in the refuge have not been subject to seismic exploration or industrial development. Human use is limited essentially to subsistence activities and refuge operations (U.S. Fish and Wildlife Service 1988). No Federal activities are foreseen that threaten the spectacled eider's coastal tundra habitat on this refuge (U.S. Fish and Wildlife Service 1988).

At least 13,400 km<sup>2</sup> (5,172 mi<sup>2</sup>) of the coastal plain on Alaska's North Slope may be spectacled eider nesting habitat, of which less than 2,000 km<sup>2</sup> have been developed as oil production fields (Philip Martin, U.S. Fish and Wildlife Service, Fairbanks, Alaska, *in litt.*, 1992). No more than five percent of the tundra wetlands within the 2,000 km<sup>2</sup> (772 mi<sup>2</sup>) oil fields has been destroyed (Philip Martin, *in litt.*, 1992), representing a small fraction of the total available tundra breeding habitat on the North Slope.

Spectacled eiders nest in low numbers in active oil fields (Warnock and Troy 1992, Anderson *et al.* 1992). Alteration of wetlands, direct human disturbance, and indirect impacts such as increased fox populations near oil fields (Truett and Kertell 1992,

Eberhardt *et al.* 1982) may cumulatively affect local nesting numbers. The most common habitat conversion within the oil fields is creation of water impoundments (Truett and Kertell 1992), which are frequented by spectacled eider pairs and broods (Warnock and Troy 1992). Breeding pair densities in Prudhoe Bay are comparable to study sites in undeveloped regions of the North Slope (Warnock and Troy 1992, North 1990).

Past seismic activities in the National Petroleum Reserve-Alaska also have altered some undeveloped tundra lands. Surface disturbance of the tundra caused by industrial activities on the North Slope typically increases surface moisture and primary plant productivity, however, the food chain effects of these widely dispersed tundra landscape disturbances are not known (Truett and Kertell 1992).

Marine spectacled eider habitat in U.S. territory may include some or all of the southern Chukchi and Northern Bering Seas. Of four outer continental shelf oil and gas lease sales proposed for 1992-97 in the Chukchi and Bering Seas, only the Hope Basin sale is still planned (John Shindler, Minerals Management Service, Anchorage, Alaska, pers. comm., 1992). Industry has not expressed any interest in the other Chukchi sales or in the St. George Basin south of the Pribilof Islands (*ibid.*). Most current leases in potential spectacled eider marine range, other than the Beaufort Sea, have expired or are inactive and will expire soon. Spectacled eiders may use coastal waters of the Beaufort Sea for brief periods, but Myres (1958) presented evidence that their principal migration routes between the Chukchi Sea and North Slope breeding grounds are over land.

In summary, Federal activities are affecting a small portion of low density spectacled eider breeding habitat on the North Slope. Supposed molting and wintering habitats within United States waters, including known range near St. Lawrence Island, are not presently being explored or developed by oil and gas companies. Critical habitat cannot be designated outside of U.S. territory, including the suspected wintering range in Russian waters (Dau and Kistchinski 1977).

The Service recognizes that ongoing research may reveal future threats to spectacled eider habitat from Federal activities, which could be addressed through critical habitat designation. For example, satellite telemetry tracking of spectacled eiders is planned for 1993 to more precisely delineate migration and wintering range. By monitoring Federal

activities that may affect spectacled eider tundra and marine habitats, the Service will be able to promptly propose critical habitat if subsequent information indicates such action has become warranted.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local governments and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Regulations implementing the Migratory Bird Treaty Act make it illegal to take, possess, sell, deliver, carry, transport, or ship spectacled eiders or their parts, eggs, nests, and young (50 CFR 20.71). However, the Migratory Bird Treaty Act affords no protection to their habitat. Section 7(a) of the Endangered Species Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Studies to determine spectacled eider staging, molting, or wintering areas are presently underway. Consultation between the Minerals Management Service and the Service will be initiated for proposed outer continental shelf oil and gas lease sales. The Service has already initiated informal conference with the U.S. Army Corps of Engineers and the U.S. Department of Transportation and recommended measures to avoid impacts to spectacled eiders from wetland fill permitting

activities on the North Slope and airport expansion projects in southwestern Alaska. Consultation is expected with the National Marine Fisheries Service over commercial fishing operations in the northern Bering Sea, to identify potential effects on spectacled eiders. Reasonable and prudent alternatives may be implemented for Federally-funded or permitted projects to avoid causing jeopardy to the spectacled eider.

The Service will convene a recovery team and develop a recovery plan for the spectacled eider promptly upon listing. An information and education program to gain public support for the protection of spectacled eiders has already been initiated and will be carried out cooperatively with affected communities. The recovery plan will outline viable population levels, quantify recovery goals and set recovery task priorities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10(e) of the Act exempts any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska, or any non-native permanent resident of an Alaskan Native village, from the aforementioned prohibitions on taking any endangered or threatened species, if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to section 10(e) may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that provisions of this subsection shall not apply to any non-native resident of an Alaskan Native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

Regulations limiting subsistence harvest by any Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan Native village may be established pursuant to section 10(e)(4)

of the Act if the Secretary determines that such taking materially and negatively affects the threatened or endangered species and holds hearings on the proposed harvest regulations in the affected judicial districts of Alaska. Subsistence harvest regulations promulgated pursuant to the Endangered Species Act would have to be in accordance with the Migratory Bird Treaty Act. The Service is not currently promulgating special regulations for spectacled eiders under section 10(e)(4) of the Act, but maintains full authority for enforcing harvest regulations pursuant to the Migratory Bird Treaty Act. Current regulations implementing the Migratory Bird Treaty Act prohibit all harvest of spectacled eiders (50 CFR 20.32).

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes

of the Act. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Such permit applications are not expected, however, since the spectacled eider is not presently in commercial trade. For the same reason, the Service does not anticipate requesting that the spectacled eider be included under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 CFR 49244).

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Anchorage Field Office (see ADDRESSES above).

**Author**

The primary author of this proposed rule is Jean Fitts Cochran, Anchorage Field Office (see ADDRESSES above).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Proposed Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
Eider, spectacled (= Fisher's).	<i>Somateria</i> (= <i>Fuligula</i> , = <i>Lampronetta</i> = <i>Arctonetta</i> ) <i>fischeri</i> .	U.S.A. (AK); Russia .	Entire .....	T	503	NA	NA

Dated: April 29, 1993.  
Richard N. Smith,  
Deputy Director, U.S. Fish and Wildlife Service.  
[FR Doc. 93–10951 Filed 5–7–93; 8:45 am]  
BILLING CODE 4310–55–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 663**

[Docket No. 930509–3101]

**Pacific Coast Groundfish Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule; request for comments.

**SUMMARY:** The Secretary of Commerce (Secretary) issues this emergency

interim rule prohibiting further processing at sea of Pacific whiting in order to provide 42,000 metric tons (mt) Pacific whiting for processing by shoreside processors. This action is necessary to: (1) Preserve significant economic opportunities for shoreside processors and the vessel operators that deliver to them, (2) prevent significant social and community dislocation in small coastal towns dependent on the whiting fishery, (3) achieve a fair and equitable sharing of the resource between the competing shoreside and at sea processors, and (4) accomplish the intent of the Pacific whiting allocations adopted by the Secretary for 1993. The

Secretary also announces the release of the 30,000-mt reserve for use by vessels delivering to shoreside processors.

**DATES:** Effective from May 4, 1993, until August 9, 1993. Comments will be accepted through May 19, 1993.

**ADDRESSES:** Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN-C15700, Seattle, Washington 98115-0070; or Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, California 90802-4213. Documentation supporting this emergency action is available at the Northwest Regional Office, NMFS, at the address above.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at (206) 526-6140; or Rodney McInnis at (310) 980-4030.

**SUPPLEMENTARY INFORMATION:** The Secretary issues this emergency rule under the authority of section 305(c)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and in accordance with the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP). The notice of annual specifications for the Pacific Coast Groundfish Fishery (58 FR 2990, January 7, 1993) established a 1993 Pacific whiting harvest guideline of 142,000 metric tons (mt). A final rule allocating the 1993 Pacific whiting resource is codified at 50 CFR 663.23(b)(4) (58 FR 21265, April 20, 1993).

This emergency rule is necessary to provide support to the small towns along the coasts of Washington, Oregon, and California that are dependent on businesses that harvest and process whiting. This was the fishery management concern addressed by the April 20, 1993, final rule, which was intended to provide approximately 42,000 mt of whiting for vessels that deliver to processors located on shore in 1993. Under the original recommendation by the Pacific Fishery Management Council (Council), the 1993 allocation to shoreside processors included several provisions, which together would have provided up to 105,200 mt to shoreside processors; of these provisions, the Secretary approved only the establishment of a 30,000-mt reserve for release to vessels delivering to shoreside processors when the balance of the 142,000-mt harvest guideline, i.e., the initial 112,000 mt, had been harvested. The final rule so allocated the 1993 harvest guideline by establishing the reserve and making the initial 112,000 mt available for harvest and processing by all types of vessels.

The Secretary expected that the ratio of catch rates between vessels delivering to shoreside processors and those processing at sea would be essentially the same in the spring of 1993 as during peak processing periods for each sector in 1992, i.e., a ratio of one to nine. Therefore, it was assumed that, in addition to the 30,000-mt reserve, approximately 12,000 mt (or one-tenth of 112,000 mt) would be delivered to shoreside processors during the open fishery. The Secretary's decision to approve only the 30,000-mt reserve component of the Council's recommendation for allocating Pacific whiting, was predicated on this assumption. The Secretary did not foresee that the actual catch ratio in April/May of 1993 would preclude the shorebased communities from utilizing their fair share of the 112,000-mt open fishery.

The most recent catch data available for this fishery indicate that, through April 27, 1993, less than 1,000 mt of whiting have been delivered to shoreside processors since the fishery opened on April 15. Based on the best data available, NMFS projects that 100,000 mt will have been taken for processing at sea by 12 noon on Wednesday, May 5, 1993. By closing the at-sea processing fishery at that time and date, the 12,000 mt intended by the Secretary to be harvested by vessels delivering to shoreside processors during the open fishery will be available only for delivery to shoreside processors.

This emergency action will preserve opportunities for shoreside processors and the vessels that deliver to them. Without this emergency rule, almost all of the 112,000 mt available during the open fishery would have been preempted by intensive early-season fishing by large factory/rawlors and vessels delivering to motherships. These smaller vessel operators normally rely on a longer season. Prohibition of further at-sea processing of whiting will have the effect of providing that approximately 30 percent of this year's harvest guideline will be available for shoreside processing, which was the amount contemplated by the Secretary when he issued the April 20, 1993, final rule. A 30 percent shoreside processing share closely approximates the share utilized by shoreside processors in 1992. Shoreside processing plants and the vessels that deliver to them were not fully operational when the fishery began on April 15.

#### Secretarial Action

For the reasons stated above, 50 CFR 663.23(b)(4)(i) and 663.23(b)(4)(v), as

published in the *Federal Register* on April 20, 1993 (58 FR 21265), are temporarily suspended and §§ 663.23(b)(4) (vi) and (vii) are temporarily added so that 12,000 mt of the initial 112,000 mt that is to be harvested in the fishery will be available for harvest only by vessels delivering to shoreside processors. These amendments, authorizing the prohibition on at-sea processing announced below, will be effective on filing and until 90 days after the date that this rule is published in the *Federal Register*, and may be extended for an additional 90 days.

Also for the reasons stated above and pursuant to the authority in 50 CFR 663.23(b)(4), after 12 noon (local time) on May 5, 1993, at-sea processing of Pacific whiting in the fishery management area is prohibited (except for Pacific whiting that was on board the processing vessel prior to that time), and further taking and retaining, or receiving (except as cargo) of Pacific whiting by a vessel with processed whiting on board is prohibited. These prohibitions will remain effective until further notice.

Because 100,000 mt of the 1993 whiting harvest guideline has been harvested for processing at sea, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), hereby releases the 30,000-mt reserve to vessels delivering to shoreside processors, according to the procedure set forth at 50 CFR 663.23(b)(4)(vii). The Assistant Administrator will announce any reapportionment of the reserve in the *Federal Register* on September 1, 1993, or as soon as practicable thereafter.

In addition to this *Federal Register* publication, NMFS is providing notice of these actions to the public via a computerized bulletin board (contact 206-526-6128), press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF).

#### Classification

This action cannot be implemented through normal notice-and-comment rulemaking in time to prevent the at-sea processing sector from harvesting more than 100,000 mt in the open fishery. Accordingly, NMFS is taking this action under the emergency provisions of section 305(c)(1) of the Magnuson Act. The Assistant Administrator has determined that this action is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law. The aggregate data upon which this action is based are available for public inspection at the Office of the Director, Northwest

Region (see ADDRESSES), during regular business hours.

The Council prepared an environmental assessment (EA) for the April 20, 1993, final rule. The Assistant Administrator concluded that the 1993 whiting allocation would have no significant impact on the human environment. The impacts of this emergency rule fall within the scope of this EA. Therefore, a separate EA for this emergency rule is unnecessary.

The Assistant Administrator also had determined that the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment prior to the effective date, or to delay for 30 days the effective date of this emergency regulation, under the provisions of 553 (b) and (d) of the Administrative Procedure Act. This rule needs to be filed with the Office of the Federal Register on May 4, 1993.

NMFS issued biological opinions under the Endangered Species Act on August 10, 1990; November 26, 1991; and August 28, 1992, pertaining to the Pacific coast groundfish fishery, and particularly the whiting fishery. It concluded that the fishery would not jeopardize the continued existence of any of the species considered. This emergency rule will not have impacts that differ from those discussed in those biological opinions, and NMFS has concluded that further consultations are not necessary.

This emergency rule is exempt from the normal review procedures of Executive Order (E.O.) 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget (OMB) with an explanation of why it is not possible to follow the regular procedures of that Order.

This rule does not contain a collection-of-information requirement under the Paperwork Reduction Act.

This rule is exempt from the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This emergency rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

#### List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: May 4, 1993.

Samuel W. McKeen,  
Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is amended from May 4, 1993, until August 9, 1993.

#### PART 663—PACIFIC COAST GROUND FISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. In § 663.23, paragraphs (b)(4)(i) and (b)(4)(v) are suspended, and new paragraphs (b)(4)(vi) and (vii) are added to read as follows:

#### § 663.23 Catch restrictions.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(vi) *Initial allocation.* Of the 142,000-mt 1993 Pacific whiting harvest guideline, 30,000 mt is reserved for harvest by vessels delivering to shoreside processors, and the remainder, 112,000 mt, is designated as a limit on the amount of whiting that can be harvested initially in the fishery. Of this 112,000 mt, 12,000 mt is available for harvest only by vessels delivering to shoreside processors.

(vii) *Announcements.* The Assistant Administrator will announce in the *Federal Register* when 100,000 mt of whiting has been, or is about to be, harvested for processing at sea, specifying a time after which further at-sea processing in the fishery management area is prohibited. At that time, the Assistant Administrator will make the 30,000 mt reserve available to vessels delivering to shoreside processors. The Assistant Administrator will announce any reapportionment of the reserve in the *Federal Register* on September 1, 1993, or as soon as practicable thereafter. In order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206-526-6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the *Federal Register*, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council,

the Regional Director will inform the Council in writing of actions taken.

\* \* \* \* \*  
[FR Doc. 93-10889 Filed 5-4-93; 4:57 pm]  
BILLING CODE 3510-22-M

#### 50 CFR Part 678

[Docket No. 920409-3047]

#### Atlantic Shark Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure of the commercial segment of the Atlantic, Caribbean and Gulf of Mexico large coastal shark fisheries.

SUMMARY: NMFS closes the commercial fishery for Atlantic, Caribbean and Gulf of Mexico large coastal sharks. Closure of this fishery is necessary because the first semi-annual quota of 1,218 metric tons (mt) allocated for this fishery will have been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATES: The closure is effective from 0001 hours local time May 15, 1993, through June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3721 or Richard B. Stone/Aaron E. King, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic, Caribbean and Gulf of Mexico shark fisheries are managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by the Secretary of Commerce under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.23(b)(1)(i) of the regulations provides for two semi-annual quotas of 1,218 mt of large coastal sharks to be harvested from Atlantic, Caribbean and Gulf of Mexico waters by commercial fishermen. The first semi-annual quota is available for harvest from January 1 through June 30, 1993. The large coastal group consists of the following 22 species:

Basking Sharks—Cetorhinidae

Basking shark, *Cetorhinus maximus*

Hammerhead Sharks—Sphyrnidae

Great hammerhead, *Sphyrna mokarran*

Scalloped hammerhead, *Sphyrna lewini*

Smooth hammerhead, *Sphyrna zygaena*

Mackerel Sharks—Lamnidae

White shark, *Carcharodon carcharias*



Nurse Sharks—Ginglymostomatidae  
 Nurse shark, *Ginglymostoma cirratum*  
 Requiem Sharks—Carcharhinidae  
 Bignose shark, *Carcharhinus altimus*  
 Blacktip shark, *Carcharhinus limbatus*  
 Bull shark, *Carcharhinus leucas*  
 Caribbean reef shark, *Carcharhinus perezii*  
 Dusky shark, *Carcharhinus obscurus*  
 Galapagos shark, *Carcharhinus galapagensis*  
 Lemon shark, *Negaprion brevirostris*  
 Narrowtooth shark, *Carcharhinus brachyurus*  
 Night shark, *Carcharhinus signatus*  
 Sandbar shark, *Carcharhinus plumbeus*  
 Silky shark, *Carcharhinus falciformis*  
 Spinner shark, *Carcharhinus brevipinna*  
 Tiger shark, *Galeocerdo cuvieri*  
 Sand Tiger Sharks—Odontaspidae  
 Bigeye sand tiger, *Odontaspis noronhai*  
 Sand tiger shark, *Odontaspis taurus*  
 Whale Sharks—Rhincodontidae  
 Whale shark, *Rhincodon typus*

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 678.28 to monitor the catch and landing statistics and, on the basis of these statistics, determine when the catch of Atlantic, Caribbean and Gulf of Mexico sharks will equal any quota under § 678.23(b)(1). When shark

harvests equal or exceed a quota established under § 678.23(b)(1), the Assistant Administrator is further authorized under § 678.28 to limit retention of sharks in the closed species group in or from the exclusive economic zone (EEZ) to four per vessel per trip; and to prohibit the sale, purchase, trade, or barter of any shark carcass or fin of that species group in or from the EEZ.

The Assistant Administrator has determined, based on the reported catch and on other relevant factors, that the first half of the annual quota for Atlantic, Caribbean and Gulf of Mexico large coastal sharks will have been attained as of May 15, 1993. In addition to measures made effective by the final rule published April 26, 1993, at 58 FR 21931, the following measures are effective from 0001 hours local time on May 15, 1993, through June 30, 1993:

(1) Possession of any shark from the large coastal group in or from the EEZ is limited to four per fishing vessel per trip;

(2) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of a shark carcass or fin of the closed species group in or from the EEZ is prohibited;

(3) The possession limit may not be combined with a bag or possession limit applicable to state waters;

(4) The operator of a vessel for which the possession limit applies is

responsible for the vessel trip limit for the large coastal group;

(5) A person aboard a vessel subject to the possession limit may not transfer at sea a shark of the large coastal group—

(a) Taken in the EEZ, regardless of where such transfer will take place; or

(b) In the EEZ, regardless of where such shark was taken; and

(6) The prohibition regarding sale, purchase, trade, or barter, or attempted sale, purchase, trade, or barter, does not apply to trade in shark carcasses or fins of the large coastal group that were harvested, off-loaded, and sold, traded, or bartered, prior to May 15, 1993, and were held in storage by a dealer or processor.

#### Classification

This action is required by 50 CFR part 678 and complies with E.O. 12291.

#### List of Subjects in 50 CFR Part 678

Fisheries, Penalties, Reporting and recordkeeping requirements.

Dated: May 4, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-10890 Filed 5-4-93; 4:19 pm]

BILING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 58, No. 88

Monday, May 10, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 27

[Docket No. 93-04]

#### Fair Housing Home Loan Data System

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) proposes to amend its Fair Housing Home Loan Data System (FHHLDS) to enhance its ability to utilize data collected under the Home Mortgage Disclosure Act (HMDA) in fair lending examinations and to reduce recordkeeping requirements on national banks that are currently required to maintain duplicative information under both the FHHLDS and the HMDA. In order to relieve duplicative recordkeeping for those national banks, this proposal would replace the current FHHLDS monthly recordkeeping requirement with the HMDA Loan Application Registers already maintained by national banks, which will be required to be updated on a monthly basis. National banks that are not subject to the HMDA requirements, but are currently subject to the existing monthly recordkeeping requirement in the FHHLDS, will continue to be subject to such requirement. The intended effect of this proposal is to reduce duplicative recordkeeping burden on national banks subject to such burden without losing any monthly home loan activity information that is currently being compiled.

**DATES:** Comments must be received by July 9, 1993.

**ADDRESSES:** Comments should be directed to Communications Division, 250 E St., SW., Washington, DC 20219, Attention Docket No. 93-04. Comments will be available for photocopying and public inspection at the same location.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Lindsey, National Bank Examiner, Compliance Management Division, (202) 874-4428; or F. John Podvin, Jr., Attorney, Bank Operations and Assets Division, (202) 874-4460, Office of the Comptroller of the Currency, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing, pursuant to 12 U.S.C. 93a, to amend the FHHLDS, 12 CFR part 27, in order to improve its ability to use HMDA data in fair lending examinations of national banks and reduce burden on national banks. The proposal will relieve the requirement to maintain duplicative records for those national banks which currently maintain records under both the FHHLDS and the HMDA, 12 U.S.C. 2801 *et seq.* Under the proposal, national banks subject to the HMDA will be required to update their Loan/Application Register within 30 days of the final disposition date of a loan application and to report the reason for denying a loan application. The proposal retains the existing requirement to maintain monthly home loan activity information for national banks subject to the FHHLDS, but not subject to the HMDA. The Comptroller will retain his or her discretion to require any national bank to maintain a Fair Housing Inquiry/Application Log, under § 27.4, or to complete and submit additional Home Loan Data Submission Forms, under § 27.7, if the Comptroller has reason to believe that a national bank is not in compliance with fair housing laws.

#### Background

On November 2, 1979, the OCC published a final rule (1979 final rule) in the Federal Register (44 FR 63084), which implemented 12 CFR part 27. The 1979 final rule provided a basis for a more effective fair housing monitoring program for home loans. The 1979 final rule established new recordkeeping requirements and a data collection system for monitoring national bank compliance with the Fair Housing Act (title VIII of the Civil Rights Act of 1968), 42 U.S.C. 3601 *et seq.* and the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*

In August 1989, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), sec. 1211, Public Law 101-73, 103 Stat. 183

(12 U.S.C. 2803) amended the HMDA. On December 15, 1989, the Federal Reserve Board published a final rule (FRB final rule) in the Federal Register (54 FR 51356). The FRB final rule implemented a revised version of 12 CFR part 203 (Regulation C), which is the implementing regulation for the HMDA. Under the FRB final rule, certain national banks and their majority-owned mortgage banking subsidiaries must maintain individual loan application registers and forward them to the appropriate OCC office as prescribed in Regulation C.

In response to FIRREA and the FRB final rule, the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC) amended their regulations concerning home loan activity to make them similar to Regulation C.

#### OCC Proposal

The OCC recognizes that national banks subject to the recordkeeping requirements of both the FHHLDS and the HMDA are required to maintain duplicative information on home loan activity. The OCC proposal will relieve the duplicative recordkeeping burden on these banks without affecting banks that currently are subject to the monthly recordkeeping requirement in the FHHLDS, but are not subject to the HMDA.

The OCC proposes to amend the FHHLDS to relieve the duplicative recordkeeping requirement for banks subject to both FHHLDS and HMDA by replacing the recordkeeping requirement on monthly home loan activity, currently located at § 27.3(a), with the existing requirement in the HMDA and Regulation C, which directs that certain national banks maintain information on home loan activity. Under this proposal, national banks subject to the HMDA will maintain the information in a format similar to that prescribed under Regulation C (Loan/Application Register), except that (1) if a loan is denied, the reasons for denial are required, not optional on the Loan/Application Register; and (2) all the information required is entered on the Loan/Application Register within 30 calendar days after final disposition of the loan application. These two exceptions will be discussed more fully below.

Consistent with Regulation C, only those national banks with an office or

branch located in a metropolitan statistical area or primary metropolitan statistical area, as defined by the Office of Management and Budget, and with total assets greater than \$10 million as of December 31 of the preceding calendar year, must comply with the monthly recordkeeping requirement in § 27.3(a)(1) of the proposed rule. This recordkeeping requirement will differ from that imposed by Regulation C in the following two respects.

First, Regulation C provides that reporting the reasons for denying a loan application are optional for all institutions. 12 CFR 203.4(c). The OTS currently requires that its regulated institutions provide the reasons for denial on their Loan/Application Registers. The OCC also believes that this information is helpful in identifying discrimination in home lending. Therefore, the OCC proposes to require all institutions maintaining a Loan/Application Register to provide reasons for denying a loan application.

Second, Regulation C does not specify a time limit for recording the required data on the Loan/Application Register. However, the FDIC currently requires that the Loan/Application Register be updated within 30 calendar days after the final disposition of the loan application. The OCC also believes that the Loan/Application Register must be updated regularly to be a useful examination tool. A national bank can use the updated Loan/Application Register to monitor its compliance with consumer protection laws and with its own lending policies. Therefore, the OCC proposes to require that national banks subject to the HMDA enter all the required information on the Loan/Application Register within 30 calendar days after the final disposition of the loan application (i.e. the application is denied or withdrawn, or the loan closes).

Finally, although the monthly home loan activity information currently required to be maintained by these banks under § 27.3(a) is useful to examiners, it became duplicative of the information maintained under Regulation C because of the FIRREA amendments to the HMDA, implemented by the FRB final rule. Therefore, the OCC is proposing to eliminate the burden of maintaining these duplicative records for banks subject to both the FHLDS and the HMDA. This proposal will make the OCC's recordkeeping requirements relating to home loan information more consistent with those of the other banking regulators without losing home loan information currently maintained

by national banks that are not subject to the HMDA.

The OCC proposal retains the existing monthly recordkeeping requirements in the FHLDS for national banks that are not subject to the HMDA and Regulation C. The OCC will also retain the remaining provisions of the FHLDS. The remaining provisions of the FHLDS authorize the Comptroller to use his or her discretion in requiring national banks to maintain a Fair Housing Inquiry/Application Log or to complete Home Loan Data Submission Forms if the Comptroller has reason to believe that a national bank is engaging in discriminatory practices.

Several clarifying amendments to § 27.7 are also proposed. These changes will make § 27.7 conform with the proposed amendments to the recordkeeping requirements in § 27.3(a).

The OCC is studying the FHLDS to determine what data are most effective in identifying discrimination in home lending, to identify the most effective and least burdensome method for collecting home loan data, and to develop an improved statistical model that will enhance our ability to analyze home loan data. After the OCC completes its study of the FHLDS, the OCC expects to publish in the Federal Register a notice of proposed rulemaking to explain any further proposed changes to the FHLDS.

#### **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557-0159), Washington, DC 20503, with copies to the Office of the Comptroller of the Currency at the address previously specified.

The proposed collection of information, in § 27.3(a), is required by the Office of the Comptroller of the Currency to identify discrimination in home lending pursuant to the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA). This information will be used to review and monitor bank compliance with the FHA and ECOA. The likely recordkeepers are national banks.

This proposed rule requires national banks to update the records required under the HMDA and Regulation C, monthly rather than annually. The OCC believes that the change in the frequency of updates will result in no

additional burden. Further, the OCC believes that banks would maintain, as a matter of usual and customary business practice, essentially the same types of records specified in § 27.3, even if those records were not required by OCC regulation. Therefore, the OCC believes that the recordkeeping burden imposed by § 27.3 is minimal. The OCC specifically requests comment on this issue.

For those banks required to submit Home Loan Data Submission Forms, pursuant to § 27.7, the reporting burden is estimated to average approximately 100 hours annually, varying by the size and activity of the bank. This proposed rule will also result in the elimination of a duplicative system of records for national banks subject to both the FHLDS and the HMDA and a burden reduction of approximately 8,760 burden hours. The OCC estimates that there will be 3,750 banks maintaining records and 13 banks filing reports, on average, per year.

Estimated respondents under 12 CFR part 27: 3,750.

Estimated annual burden hours under 12 CFR part 27: 6,300.

#### **Regulatory Flexibility Act**

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will relieve an unnecessary duplicative recordkeeping burden on banks that are subject to the recordkeeping requirements of both the FHLDS and the HMDA.

#### **Executive Order 12291**

The OCC has determined that this regulation is not a "major rule" and therefore does not require a regulatory impact analysis. The impact of this final rule is expected to be slight and will benefit banks by relieving duplicative recordkeeping burden and by clarifying existing regulations.

#### **List of Subjects in 12 CFR Part 27**

Civil rights, Credit, Fair housing, Mortgages, National banks, Reporting and recordkeeping requirements.

#### **Authority and Issuance**

For the reasons set out in the preamble, part 27 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

#### **PART 27—[AMENDED]**

1. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1 *et seq.* 93a, 161, 481, and 1818; 15 U.S.C. 1691 *et seq.*; 42 U.S.C. 3601 *et seq.*; 12 CFR part 202.

2. In § 27.3, paragraph (a) is revised to read as follows:

**§ 27.3 Recordkeeping requirements.**

(a) *Monthly recordkeeping requirement*—(1) A bank which has an office in a metropolitan statistical area or primary metropolitan statistical area and which had total assets exceeding \$10 million as of December 31 of the preceding calendar year, shall collect data regarding applications for, origination of, and purchases of home loans (including home improvement loans), for each calendar year. These data shall be presented on Federal Reserve Form FR HMDA-LAR or in an automated format in accordance with the instructions, except that:

(i) A bank shall maintain the reason(s) it denied a loan application; and

(ii) A bank shall record all information required by this paragraph within 30 calendar days after the final disposition of the loan application (i.e., the application is denied or withdrawn, or the loan closes).

(2) A bank which receives 50 or more home loan applications a year, as measured by the previous calendar year, and which is not required to collect data under paragraph (a)(1) of this section, shall record and maintain for each decision center the following information on home loan activity:

(i) Number of applications received for each of the following: Purchase; construction-permanent; refinance.

(ii) Number of loans closed for each of the following: Purchase; construction-permanent; refinance.

(iii) Number of loans denied for each of the following: Purchase; construction-permanent; refinance.

(iv) Number of loans withdrawn by applicant, for each of the following: Purchase; construction-permanent; refinance.

(3) The information required to be maintained under paragraph (a)(2) of this section shall be updated monthly within 10 working days after the close of the month in a format consistent with the bank's recordkeeping procedures.

(4) A bank exempted under paragraph (a)(2) of this section shall be covered by that requirement beginning the month following any quarter in which their average monthly volume of home loan applications exceeds four applications per month. Banks which are subject to this paragraph may discontinue keeping this information beginning the month following two consecutive quarters in which their average monthly volume of home loan applications drops to four or

fewer applications per month. A bank which is otherwise exempted under this paragraph may be required upon notification received from the Comptroller, to record and maintain such information where there is cause to believe that the bank is not in compliance with the fair housing laws based on prior examinations and/or has substantive consumer complaints, among other factors.

\* \* \* \* \*

3. In § 27.7, paragraph (b), the introductory text for paragraph (c), and paragraph (d) are revised to read as follows:

**§ 27.7 Availability, submission and use of data.**

\* \* \* \* \*

(b) Prior to a scheduled bank examination, the Comptroller may request the information maintained under § 27.3(a) of this part. A bank required to maintain information under § 27.3(a)(2) shall submit the information to the Comptroller on the form prescribed as appendix I. A bank which is exempt from maintaining the information required under § 27.3(a) shall notify the Comptroller of this fact in writing within 30 calendar days of its receipt of the Comptroller's request.

(c) If, upon review of the information maintained under § 27.3(a), the Comptroller determines that statistical analysis prior to examination is warranted, the bank will be notified.

\* \* \* \* \*

(d) If there is cause to believe that a bank is in noncompliance with fair housing laws, the Comptroller may require submission of additional Home Loan Data Submission Forms. The Comptroller may also require submission of the information maintained under § 27.3(a) and Home Loan Data Submission Forms at more frequent intervals than specified in paragraphs (b) and (c) of this section.

Dated: April 30, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 93-10943 Filed 5-7-93; 8:45 am]

BILLING CODE 4810-33-P

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 229, 230, 239 and 249**

[Release Nos. 33-6997; 34-32232; International Series Release No. 539 and File No. S7-16-93]

RIN 3235-AF83

**Amendments to the Multijurisdictional Disclosure System for Canadian Issuers; Correction**

In FR Document No. 93-10350 beginning on page 26442 for Monday, May 3, 1993, the file number was incorrectly stated as S7-15-93. The correct file number is S7-16-93.

May 4, 1993.

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10924 Filed 5-7-93; 8:45 am]

BILLING CODE 8010-01-M

**17 CFR Part 240**

[Release No. 34-32256; International Series Release No. 540; File No. S7-17-93]

**Net Capital Rule**

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comment.

**SUMMARY:** The Securities and Exchange Commission solicits comments on a broad range of questions regarding the capital standards imposed by the Net Capital Rule, 17 CFR 240.15c3-1 (Rule 15c3-1) under the Securities Exchange Act of 1934 ("Exchange Act"), on broker-dealer participation in the derivative products markets. Following receipt of public comments, the Commission will determine whether proposed rulemaking or other action is appropriate.

**DATES:** Comments should be received on or before September 10, 1993.

**ADDRESSES:** Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All written comments should refer to File No. S7-17-93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, (202) 272-2904, Harry Melamed, (202) 272-2382, Herbert Brooks, (202) 272-3589, Michael P. Jamroz, (202) 272-2372.

Roger G. Coffin, (202) 272-7375, Julius R. Leiman-Carbia, (202) 272-2824, Timothy H. Thompson, (202) 272-2398 or Marjorie S. Riegel, (202) 504-2892.

## I. Introduction

In recent years, the financial markets have been transformed by the rapid development of derivative products markets. Very broadly, a derivative product may be defined as a financial instrument that derives its value from the performance of other assets, including securities, rates or indexes.<sup>1</sup> Derivative products encompass a wide array of financial contracts, including swaps, futures, options and forwards, and some combinations of these contracts.<sup>2</sup> Institutional investors, non-financial corporations, banks and others often use derivative products to lock in their future interest rates or currency values, to make a certain level of investment in foreign equity markets or for risk management (i.e., either to hedge a risk they do not want or to take a risk that they believe will yield value). Derivative products such as stock options or financial futures contracts have long been traded on exchanges, which offer standardized products<sup>3</sup> backed by clearing organizations' guarantees.

In recent years, ever larger volumes of individually negotiated or "customized" contracts between specific counterparties have been created. For example, by engaging in what is typically known as a forward, an aircraft manufacturer may contract with a major bank or broker-dealer for a specific currency exchange rate on a specific sum several years into the future to cover the expected delivery date of an aircraft where the purchase price will be required in a specific currency. These individual contracts are generally not "traded," either on exchanges or otherwise. However, they are considered a part of the over-the-counter ("OTC") market because they are created and closed out in transactions directly with major financial institutions and dealers. Many investors prefer OTC derivative product contracts because they can be structured to match the portfolio, or the investment

strategy, of a particular purchaser of a derivative contract. This flexibility has served, among other things, as the impetus for businesses to use derivative products to control ancillary risks in their commercial and investment transactions.

Broker-dealers registered with the Securities and Exchange Commission ("SEC" or "Commission"), or in some cases, the holding company or affiliates of the broker-dealer, along with certain banks, principally serve as financial intermediaries in the OTC derivative products market, undertaking a dealer or market-making function.<sup>4</sup> In this regard, many broker-dealers state that they attempt to create so-called "matched books" in derivative products or use securities or other financial instruments to offset exposures in their positions.<sup>5</sup>

The Commission consistently has monitored the evolution of the derivative products markets.<sup>6</sup> In 1978, for example, the Commission prepared a study focusing on the listed options market.<sup>7</sup> Subsequent to the 1978 study, the Commission participated in a joint study of derivative products with the Board of Governors of the Federal Reserve System and the Commodity

<sup>4</sup> This concept release does not include any analysis of the status of particular derivative contracts under the federal securities laws. This release also does not address questions regarding the status of financial intermediaries under those laws.

<sup>5</sup> For example, if a corporation and a broker-dealer enter into an interest rate swap in which the corporation pays a fixed rate of interest to the broker-dealer, and receives interest payments at a floating rate, the broker-dealer may, to offset this exposure, enter into another swap transaction with a different entity, or a mirror swap with an affiliate, in which the broker-dealer receives interest at a floating rate and pays interest at a fixed rate. In other cases, the broker-dealer may offset its exposure using actual securities, futures or options positions. Also, a broker-dealer may enter into certain derivative products contracts to offset its own proprietary positions.

<sup>6</sup> In this regard, the Commission has concluded that options on securities are a subsystem within the National Market System ("NMS") under section 11A of the Exchange Act (15 U.S.C. 78k-1). That section directs the Commission, among other things, to facilitate competition among exchange and non-exchange markets in NMS securities. In addition, in accordance with various sections, including Section 9(b) of the Exchange Act (15 U.S.C. 78i(b)), the Commission has played a central and critical role in the development of markets for securities options, including options on stock indexes. See, e.g., Securities Exchange Act Rel. No. 19264 (Nov. 22, 1982), 47 FR 53981 (Nov. 30, 1982); Securities Exchange Act Rel. No. 19133 (Oct. 14, 1982), 47 FR 46946 (Oct. 21, 1982).

<sup>7</sup> Staff of the SEC, 96th Cong., 2d Sess., Report of the Special Study of the Options Markets (Comm. Print 1979). This study made specific recommendations on improving the regulatory framework for the listed options market, which resulted in, among other things, improved exchange surveillance and enhanced suitability and customer protection rules.

Futures Trading Commission ("CFTC").<sup>8</sup> The joint study concluded that "because options and futures are delayed delivery instruments, the principal financial risk posed by their trading is that the parties to a transaction may be unable to perform their obligations."<sup>9</sup>

The Commission's continued regulatory efforts have confirmed that broker-dealers who participate in the derivative products markets are subject to numerous risks, including market or position risk (the risk of adverse price movements), pricing risk (the risk that pricing models inadequately price derivatives) and liquidity risk (the risk that the broker-dealer cannot replace the contract in a timely manner). Broker-dealers engaging in OTC derivative products are exposed to the additional credit risk, or risk of default by a counter-party. With respect to a swap, an OTC option or a forward, the party expecting future payment or delivery has a credit risk related to the profit on the transaction, unless it is offset by margin or collateral from the paying party. The credit risk associated with derivative products is not fixed, but increases or decreases as the market value of the underlying instrument moves.<sup>10</sup>

Dealers in the OTC derivative products markets have responded to the credit risk element of derivative products in a number of ways. First, broker-dealers have selected counterparties on the basis of credit ratings and credit evaluation. Second, broker-dealers have attempted to enhance their

<sup>8</sup> See Board of Governors of the Federal Reserve System, CFTC, and SEC, A Study of the Effects on the Economy of Trading in Futures and Options IV-2 (Dec. 1984) ("Joint SEC Study 1984").

<sup>9</sup> Joint SEC Study 1984 at VIII-32. As part of the Commission's continued efforts in this area, the Division of Market Regulation ("Division") also produced written reports extensively discussing the effect of derivative products on the market break of October 1987 and the market decline of October 1989. Division, The October 1987 Market Break ch. 3 (Feb. 1988); Division, Market Analysis of October 13 and 16, 1989 chs. 3 & 4 (Dec. 1990). See also Staff of the SEC, Staff Report of the Division of Market Regulation on the Interest Rate Swap Market (Sept. 1985).

<sup>10</sup> For example, a broker-dealer engaging in a forward transaction to buy a specified number of British Pounds in a three month period at a predetermined exchange rate will have a credit risk for the amount of British Pounds it is expecting to receive in three months, to the extent the Pound increases in value, unless it secures performance of the contract by obtaining margin or collateral. This credit risk will increase as the value of the British Pound increases. A broker-dealer with unsecured profit in a trade with a particular counter-party has a credit risk to the extent of that profit. As the value of the British Pound increases, the party with the obligation to deliver will endure a financial loss equal to the difference between the forward rate and the spot rate necessary to purchase the British Pounds for delivery.

<sup>1</sup> See Dictionary of Finance and Investment Terms 107 (3d ed. 1991).

<sup>2</sup> See generally Remolona, The Recent Growth of Financial Derivative Markets, Fed. Res. Bank N.Y. Q. Rev. 28 (1993).

<sup>3</sup> It should be noted, however, that the Commission recently approved a proposal by the Chicago Board Options Exchange, Inc. to list and trade options that allow counterparties to specify, with greater flexibility some of the terms that traditionally were not negotiable (e.g. expiration date). Securities Exchange Act Rel. No. 31920 (Feb. 24, 1993), 58 FR 12280 (Mar. 3, 1993).

own credit ratings in order to play a larger role in the increasingly credit conscious derivatives market. One method of accomplishing credit enhancement is to create an affiliate or subsidiary of the broker-dealer or the broker-dealer holding company, whose purpose is to conduct OTC derivative products transactions. In some cases, the credit rating assigned to OTC derivative products companies has been higher than the ratings of the broker-dealer or the broker-dealer holding company.

Broker-dealers generally have conducted derivative activities that they deem not to require broker-dealer registration in affiliates of the broker-dealer. Certain broker-dealers have informed the Commission staff that a factor in their decision to engage in OTC derivative activities in affiliates of the broker-dealer is the Commission's Net Capital Rule.<sup>11</sup> Historically, unsecured credit extensions have not been a significant element of a broker-dealer's business. The Net Capital Rule's design reflects this; thus the rule contains sophisticated assessments of the market risk component of securities and commodities positions, but treats unsecured credit risk issues more severely. The unrealized profit related to certain OTC derivative products, for example, generally is treated as if it were an unsecured receivable under the Net Capital Rule, subject to a 100% capital charge in computing net capital.

Although options and futures markets have traded derivative products for many years, and dealers similarly have offered customized derivative products for many years, the recent growth in OTC derivative products, and the widespread institutional interest in these products, have drawn the attention of other financial regulators. A concern frequently raised is the effect that a failure of even one of the larger dealers, which represent the great majority of derivative activity, would have on the U.S. financial system.<sup>12</sup> Members of the Commission also have discussed issues relating to derivative products.<sup>13</sup>

<sup>11</sup> 17 CFR 240.15c3-1.

<sup>12</sup> See, e.g., Bank for International Settlements, Recent Developments in International Interbank Relations (Oct. 1992); see generally Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Comptroller of the Currency, Derivative Product Activities of Commercial Banks: Joint Study Conducted in Response to Questions Posed by Senator Riegle on Derivative Products (Jan. 27, 1993).

<sup>13</sup> Richard C. Breeden, Chairman, SEC, Speech before the International Swap Dealers Association Annual Meeting (Mar. 11, 1993); J. Carter Beese, Jr., Commissioner, SEC, OTC Derivatives: Encouraging Innovation and Managing Risk, Speech before the

This release constitutes one component of the Commission's larger and continuing efforts to examine developments in the derivative products markets. Recently, the Commission adopted risk assessment recordkeeping and reporting rules for broker-dealers, concerning the affiliates of the broker-dealer.<sup>14</sup> The risk assessment rules require a registered broker-dealer to file with the Commission, among other things, data concerning off-balance sheet information for its material affiliates. Analysis of this data will enable the Commission to determine with greater accuracy the size of, and concentration of activity in, the derivative products markets. This data also will aid the Commission in determining how the activity in the derivative products markets conducted by unregulated material affiliates affects registered broker-dealers.

The purpose of this release is to explore and evaluate whether the Commission's Net Capital Rule should be modified in light of activities in the derivative products markets, and in the OTC market in particular. One approach would involve maintenance of the current Net Capital Rule, which may have the effect of encouraging derivative products activity to move or remain outside U.S. regulated broker-dealers. Another approach would be to devise capital requirements that comprehensively address the credit and market risks posed by derivative products, so that firms could conduct their businesses in a registered broker-dealer without what they regard as undue capital constraints. A third approach, which could be combined with either of the previously stated approaches or implemented separately, would be to formulate separate capital guidelines that specifically would apply to derivative products companies that are registered broker-dealers.

The remainder of this release describes the various elements of the derivative products markets and the present capital charges relating to these activities. The release concludes by

Federal Reserve Bank of Atlanta Conference on Financial Markets (Mar. 4, 1993); Richard Y. Roberts, Commissioner, SEC, Secondary Market Disclosure and Swaps, Speech before the National Association of State Treasurers' Legislative Conference (Mar. 3, 1993); Mary L. Schapiro, Commissioner, SEC, The Growth of the Synthetic Derivatives Market: Risks and Benefits, Speech before The National Options & Futures Society (Nov. 13, 1991).

<sup>14</sup> See Securities Exchange Act Rel. No. 30929 (July 16, 1992), 57 FR 32159 (July 21, 1992). The rules require broker-dealers to maintain and preserve records and other information concerning certain of the broker-dealers' material affiliates, and to file this information with the Commission on Form 17-H.

setting forth questions as to whether these charges are appropriate, and whether other methods of capital treatment would be more appropriate.

## II. Description of Products and Current Capital Treatment

### A. Options

#### 1. Description

A security option provides the holder the right to buy or sell a particular security, including currencies traded on an exchange, or an index based on the value of a basket of securities<sup>15</sup> at a certain price (i.e., the striking price) for a limited period of time.<sup>16</sup> A call option is a "contract giving its owner the right to buy a fixed number of units of a specified underlying instrument at a fixed price at any time on or before a given date."<sup>17</sup> A put option gives the holder "the right to sell a fixed number of units of a specified underlying instrument at a fixed price at any time on or before a given date."<sup>18</sup>

An option's price, or "premium," has two components, the option's intrinsic value and the "time value premium." A call option's intrinsic value is the amount by which the striking price is less than the stock price. In the case of a put option the intrinsic value is the amount by which the striking price is greater than the stock price. The time value premium is the amount by which the option premium itself exceeds the option's intrinsic value.<sup>19</sup> The factors affecting the value of a security option include the striking price, the current value and volatility of the underlying security, interest rates, cash dividends, if any, and remaining time to expiration.<sup>20</sup>

<sup>15</sup> If exercised, an option on an index based on the value of a basket of securities generally entitles the holder of the option to pay or collect the cash value of the index rather than to receive or deliver the securities.

<sup>16</sup> Options may be either European style, where the option may be exercised only at its expiration, or American style, where the option may be exercised at any time up to the date of expiration. Listed, index options also may be capped, or capped-style, where they are automatically exercised prior to expiration if the exchange on which the option is traded determines that the exercise settlement value for the option on any trading day prior to expiration has hit the cap price for the option.

<sup>17</sup> J. Cox & M. Rubinstein, *Options Markets 1* (1985). See also Staff of the SEC, *supra* note 7, at xvi.

<sup>18</sup> See J. Cox & M. Rubinstein, *supra* note 17, at 3. A short position conveys an obligation to sell the underlying securities (i.e., short call) or to purchase the underlying security (i.e., short put). A long position conveys a right to purchase the underlying securities (i.e., long call) or to sell the underlying security (i.e., long put).

<sup>19</sup> *Options Essential Concepts and Trading Strategies 47* (The Options Institute ed. 1990).

<sup>20</sup> J. Cox & M. Rubinstein, *supra* note 17, at 33.

## 2. Treatment of Option Positions Under Rule 15c3-1

*a. Listed options.* Under Rule 15c3-1, there are two different capital treatments for options positions held by broker-dealers. The first approach assumes that the option will be exercised or held to expiration. Therefore, capital charges are based on the market value of the underlying security.<sup>21</sup> The second approach, or premium-based approach, assumes that options are frequently traded. Therefore, capital charges, or haircuts, under this approach are based on the market value of the option, not the underlying security. In either case, to account for potential price movements not reflected in the option's current value, both approaches generally assess minimum charges for naked, or uncovered, option positions or recognized option strategies.

*b. Unlisted options.* The Net Capital Rule generally treats long unlisted options very conservatively because of the credit risk involved and because they have very limited liquidity. This conservative treatment requires a broker-dealer to adjust net worth by deducting the full time value premium of unlisted options from net worth. In addition, the broker-dealer is required to apply a deep haircut on the option's intrinsic value. Moreover, as a general rule, no preferential hedging or spread benefits (e.g., a long call offset by a short stock position) are allowed for long unlisted options.<sup>22</sup>

### B. Futures Contracts and Options on Futures Contracts

#### 1. Description

*a. Futures contracts.* As a general matter, a futures contract obligates the holder to buy certain amounts of a particular commodity, of a group or index of securities<sup>23</sup> or of government securities at a specified price on the

<sup>21</sup> The capital charges for options under this approach, therefore, employ the volatility assumptions incorporated into the haircuts applied to securities positions held by broker-dealers.

<sup>22</sup> The Division of Market Regulation has issued a no-action letter which gives value for net capital purposes to long unlisted options on U.S. Government securities hedged with the underlying securities. This treatment is provided exclusively under specific circumstances designed to limit the credit risk to the holder of the option. Letter from Michael A. Macchiaroli, Assistant Director, Division, SEC, to Salvatore Pallante, Senior Vice President, New York Stock Exchange, Inc., and Thomas Cassella, Vice President, National Association of Securities Dealers, Inc. (Jan. 31, 1990).

<sup>23</sup> Pursuant to Section 2 of the Commodity Exchange Act, market participants may not enter into futures contracts where the underlying instrument is an individual security, other than an "exempted security." 7 U.S.C. 2a(v).

maturity date of the contract.<sup>24</sup> At any time, the value of a futures contract will depend on the underlying spot price<sup>25</sup> and the cost of carrying the underlying commodity or security to the futures' delivery date. Carrying charges fall into four basic categories: storage cost, insurance cost, transportation cost and financing cost.<sup>26</sup> The most significant of these as to financial instruments is the financing cost.

Because the value of a futures contract is linked to the underlying spot price, holders run a risk insofar as their positions may have a positive or negative expected cash return.<sup>27</sup> The risk involved in the trading of these instruments, however, can be eliminated by closing out the position at any time. That is, the holder of a futures position can purchase or sell a futures contract with the same characteristics, but which is on the other side of the market.

*b. Options on futures contracts.* An option on a futures contract, or a futures option, provides the holder with the right to buy or sell the underlying futures contract at the exercise price of the option. Generally, the value of a futures option is conditioned by the same factors that affect a security option.<sup>28</sup> The essential difference in the valuation process between security and futures options is that the latter's underlying value is not the same as that of the underlying asset but instead it equals the value of the futures contract, which relies on both the spot price and the cost of carrying.

### 2. Treatment of Futures Contracts and Options on Futures Contracts Under Rule 15c3-1

Generally, capital charges for futures contracts and options on futures contracts are based on the margin requirement of the applicable commodity clearing organization.<sup>29</sup>

<sup>24</sup> See Smith, Smithson & Wilford, Managing Financial Risk, J. Applied Corp. Fin. 34 (1989). The person who agrees to buy the underlying commodity is long the future, and the person who agrees to sell the underlying commodity is short the future. Like index options based on the value of a basket of securities, futures on a group or index of securities are cash settled.

<sup>25</sup> "The spot price of a commodity is the price at which it can be bought or sold for immediate delivery." Black, The Pricing of Commodity Contracts, 3 J. Fin. Econ. 167 (1976).

<sup>26</sup> Kolb, Pricing Financial Futures: an Introduction, in The Financial Derivatives Reader 94 (R.W. Kolb ed. 1992).

<sup>27</sup> See Black, *supra* note 25, at 171.

<sup>28</sup> See *id.* at 176.

<sup>29</sup> If the broker-dealer is a member of a self-regulatory organization but not a clearing member of the commodity clearing corporation clearing the commodity contract, it must take a haircut deduction equal to 150% of the greater of the applicable maintenance margin requirement of the

This may vary, however, if the futures contract or the futures option is offset by securities or related option positions. In many instances, recognition of these strategies has involved treating the futures or related option position as the offsetting underlying security.<sup>30</sup>

### C. Forward Contracts

#### 1. Description

A forward contract obligates a party to pay for or deliver currencies, U.S. Government securities or a commodity on a specified future date, the maturity date, for the forward price prevailing at the time the contract is initiated.<sup>31</sup> Customarily, there is no money settlement at the beginning of the forward contract or during the lifetime of the contract, but only on the maturity date.<sup>32</sup> Registered broker-dealers most commonly enter into forward contracts on U.S. Government securities and foreign currencies.<sup>33</sup> The most common type of forward contract is a currency forward.

Like futures contracts, the value of forward contracts will depend on the underlying spot price and the carrying cost. The most important differences between these two derivative products, however, is that forward contracts are traded in the OTC market and the market-to-market customarily is not settled daily. Moreover, unlike future contracts, forward contracts do not carry a clearing house guarantee. As a result of these differences, forward contracts carry significant credit risk.

### 2. Treatment of Forward Contracts Under Rule 15c3-1

Under the Net Capital Rule, the charge for currency forward contracts and forwards on U.S. Government securities is based on the underlying instrument.<sup>34</sup> The capital charges for

applicable board of trade or the commodity clearing corporation.

<sup>30</sup> For example, foreign currency futures contracts may be treated as underlying securities and options on foreign currency futures may be treated as security options when they are used to offset foreign currency options in the same underlying major currency. See, e.g., Letter from Michael A. Macchiaroli, Assistant Director, Division, SEC, to Diane Anderson, Assistant Vice President, Philadelphia Stock Exchange, Inc., and Steven O'Malley, Vice President, The Chicago Board Options Exchange, Inc. (July 9, 1992).

<sup>31</sup> See Cox, Ingersoll & Ross, The Relation between Forward Prices and Futures Prices, 9 J. Fin. Econ. 322 (1981).

<sup>32</sup> *Id.*

<sup>33</sup> Regulation T under the Exchange Act, which establishes credit requirements and payment rules for securities transactions, makes it unlikely for broker-dealers to trade forwards on securities that are subject to its provisions. 12 CFR Part 220.

<sup>34</sup> The general net capital treatment of forwards on commodities (other than foreign currencies

Continued

these forward contracts, therefore, is the haircut applied to the underlying position.

Forward contracts incorporate credit risk to the extent that their marks-to-market are not settled on a daily basis. In each instrument, the credit risk is the unrealized amount of profit the broker-dealer would make as to a particular long or short position (without regard to any offset), if that position was closed out at that moment. The Net Capital Rule generally treats this amount as an unsecured receivable which must be deducted from net worth in arriving at net capital.

#### D. Swaps

##### 1. Description

For purposes of this discussion, the term swaps includes any of a growing number of contractual agreements providing for the exchange of cash flows between two parties. The swapped amounts are calculated based on underlying debt obligations, equity securities and indexes, currencies and other commodities. Swaps are traded in the OTC market, the terms of each agreement are determined by the parties to the contract,<sup>35</sup> and there is no central clearing mechanism. The following section describes basic swap structures.

*a. Interest rate swaps.* Generally, a party to an interest rate swap has a financing or debt position, which it desires to change. Although it may not be able to change the terms of its financing or debt position, it may change the corresponding or related interest rate exposure by entering into an interest rate swap with a third party. Interest rate swaps account for most of the volume in the swaps market.<sup>36</sup>

A typical interest rate swap (i.e., a "plain vanilla" swap) involves the net exchange of a fixed rate of interest for a short term floating rate. The parties agree on an amount (i.e., the notional amount), which is not exchanged, but

which receive a charge of either 6% for major currencies or 20% for other currencies) is set forth in Appendix B of Rule 15c3-1. Broker-dealers must deduct 20% of the market value of naked, or uncovered, forward contracts to account for market risk. Broker-dealers incur no market risk deduction if the forward is currently registered as deliverable on a contract market and is covered by an open futures contract or by a commodity option on a physical. Broker-dealers incur a market risk deduction of 10% for other forward contracts to purchase or sell commodities that are covered by an open futures contract.

<sup>35</sup> It should be noted, however, that, as a general rule, most broker-dealers use the terms and conditions set forth in standard swap agreements prepared by industry groups.

<sup>36</sup> See Arthur Andersen & Co., Market Survey Highlights First Half 1992, prepared for the International Swap Dealers Association, Inc. ("ISDA") (1993).

instead is used to calculate the payments made under the interest rate swap. At the time when the interest payments are due, the parties will usually exchange a single amount representing the net settlement obligation.<sup>37</sup>

In order to accommodate their specific needs, market participants have developed many variations from the basic plain vanilla swap. Swap transactions can be structured so that the notional principal increases ("accreting swaps") or decreases ("amortizing swaps") during the life of the contract. Amortizing swaps can be used in the case of asset-backed securities, where there are expected changes in the mortgage-backed securities' underlying principal. An accreting swap can be used where the underlying principal is expected to increase, for example, by taking down a line of credit gradually at a floating rate. Interest rate swaps also can be structured so that the cash flows are different from the normal fixed-for-float swap. For example, the swap can be structured so that there is an exchange of a floating rate for a rate that is based on an interest rate index.<sup>38</sup>

*b. Currency swaps.* Currency swaps generally involve exchanges of fixed amounts of currencies, and are roughly equivalent to a series of forward exchange agreements. Upon maturity, the parties re-exchange the principal amounts. Interest payments are generally paid by the parties based on the interest rates available in the two currencies at the beginning of the agreement.

*c. Equity swaps.* Equity swaps allow the parties to exchange the rate of return (or a component thereof) on an equity investment (e.g., a group of equity securities or an index) for the rate of

<sup>37</sup> Wall & Pringle, Interest Rate Swaps: A Review of the Issues, Fed. Res. Bank of Atlanta Econ. Rev. 23 (1988). The basic fixed-for-float rate swap is usually characterized as a "par value" swap. This results from the fact that the swap is viewed as a hypothetical exchange of fixed for floating rate bonds that, when arranged at market interest, both bonds are equal to their face values.

Frequently, interest rate swaps are used in conjunction with other derivative instruments to offset the interest rate fluctuation risk. Interest rate swaps may be offset with, for example, "caps," "floors" or "collars." These are "european-style option-based instruments." A "cap" is essentially a call option which places a limit on the amount of floating rate interest that must be paid on a certain principal amount. A "floor" is essentially a put option which places a limit on the minimum amount that would be paid on a certain prescribed amount. A "collar" is essentially a combination of a long cap and a short floor where the striking prices are set at different levels.

<sup>38</sup> See generally Abken, Beyond Plain Vanilla: A Taxonomy of Swaps, Fed. Res. Bank of Atlanta Econ. Rev. 12 (1991).

return on another non-equity or equity investment. Typically, an investor will swap either fixed or floating rate interest payments for payments indexed to the performance of a broad-based stock index in a domestic or foreign market.

##### 2. Treatment of Swaps Under Rule 15c3-1

*a. Interest rate swaps.* The Commission has been told that few swaps are booked in a registered broker-dealer because of the treatment accorded to swap transactions by the Net Capital Rule. The first component of the capital treatment for interest rate swaps requires the current value of the next net interest payment due from the interest rate swap to be considered an unsecured receivable and to be deducted from net worth in arriving at net capital. The second component of the capital treatment of interest rate swaps requires a deduction or "haircut" on the notional amount of the swap. The amount of the deduction depends on the maturity of the swap and whether the broker-dealer has offset the swap.

*b. Currency swaps.* Because currency swaps are essentially the functional equivalent of two currency forwards, the Net Capital Rule treats a currency swap the same as long a currency forward and short another currency forward. Thus, if a broker-dealer has a currency swap in which it receives Deutsche marks and pays out British pounds, the broker-dealer would treat the currency swap as a long position in a forward Deutsche mark contract and an unrelated short position in a forward British pound contract for capital purposes.

*c. Equity swaps.* Under the Net Capital Rule, broker-dealers are required to consider the next, net payment amount as an unsecured receivable, and, therefore, must deduct that amount from net worth in arriving at net capital. In addition, broker-dealers are required to take a deduction on the notional amount of the equity swap equal to the haircut applicable to the underlying position. The Net Capital Rule, moreover, does not allow any beneficial treatment for positions deemed to offset the risk associated with a long equity swap (i.e., when the broker-dealer is entitled to receive the cash flow linked to a stock index position).

##### III. Risk Analysis of Derivative Products

This section focuses on the primary risks associated with the trading of derivative products—market risk and credit risk. Although the market risks in derivative products generally can be related to the risks encountered in more traditional equity and interest rate



instruments, derivative products present these risks in a new light because most positions are managed by intermediaries using complex models based on historical volatilities of related products.<sup>39</sup> Although credit risk is present in virtually every transaction between trade and settlement date, the credit risk is significantly greater in the trading of OTC derivative products than in the trading of typical exchange-traded products because executory contracts may not be settled for long periods of time, usually are not margined and are not afforded clearing organizations' guarantees. Furthermore, the amount of credit risk is linked to the amount of market risk because the credit exposure changes with the value of the OTC derivative product.

Questions are set forth below under headings for market and credit risk and separate sub-sections for various categories of derivatives. In responding to questions, commentators should view the headings as organizational rather than as limiting the scope of the question.

#### A. Market Risk

##### 1. Generally

The market risk of a derivative product is the risk of financial loss inherent in adverse changes in the value of the contract until the asset or liability can be liquidated. In the case of derivative products, the adverse movement generally results from a fluctuation in the price of the security, index, or in the yield of the instrument underlying the derivative. The relationship between changes in the price of the underlying asset and the price of the derivative product, or the derivative's "price sensitivity," can vary depending on the terms of the derivative contract.

Because the market risk of the derivative product is related to the market risk of the underlying asset, the underlying asset may be used to offset the market risk of the derivative. Participants in the derivatives markets argue that the appropriate approach to measuring market risk is not to measure the price sensitivity of the individual contract, but of the portfolio of contracts and related assets and liabilities that a particular dealer holds. Thus, the market risk that a swap dealer is subject to, and for which his capital should be assessed, would be the net change in the

value of the swap portfolio,<sup>40</sup> along with the change in the value of any instruments used to offset the portfolio (e.g., debt securities or interest rate or currency futures), that would result from anticipated changes<sup>41</sup> in the relevant price or rate.

One of the more severe problems in measuring market risk is the possibility of mispricing derivative products. Because prices of specific OTC derivative products generally are not publicly available (nor are there comparable products traded on an exchange), prices of derivatives must be interpolated using a price grid or computed using a financial model. But reliance on a financial model could cause a firm significant harm. For example, reliance on a financial model that incorrectly predicts future volatility<sup>42</sup> of the underlying instrument may lead to financial distress or even cause the failure of a weaker firm.

##### 2. Current Proposals

*a. Options.* The Commission staff currently is studying a recommendation that the Commission adopt a theoretical pricing model system developed by the Options Clearing Corporation ("OCC") to determine haircuts for broker-dealers' options positions under the Net Capital Rule. Under this proposal, the capital charges associated with a portfolio of options on a given underlying instrument would be the difference between the closing market prices and the option's theoretical price after applying assumed adverse market movements. In addition, if the portfolio contains related underlying instruments, the charge for those positions would be equal to the market movement assumed for purposes of calculating the option's theoretical price.

This would not be the first time that the Commission has recognized the utility of theoretical pricing models. In 1986, the Commission approved the use of a pricing model approach to calculate

<sup>40</sup> ISDA has developed a master agreement that allows an intermediary to combine all of its transactions with a defaulted counterparty and establish a final net payment. Accordingly, it is argued that regulators should recognize netting in their capital guidelines by applying the charges to the net and not the gross amount of credit risk. The problem with this approach is that, although netting generally is legally recognized in U.S. bankruptcy law, its legal status is uncertain in some countries. See 12 U.S.C. 4403.

<sup>41</sup> The charge used may be the haircut on the underlying asset.

<sup>42</sup> The difficulty of estimating future volatility is well recognized although difficult to resolve. See, e.g., Ball, A Review of Stochastic Volatility Models with Application to Option Pricing, Working Paper, Owen Graduate School of Management, Vanderbilt University (Mar. 21, 1993).

margin requirements for participants of the OCC.<sup>43</sup> The Commission's decision at that time was based partly on the OCC's ability to mutualize the risk associated with member defaults.<sup>44</sup> There may be different applicable considerations where a single broker-dealer assumes the risks without the benefit of a central clearing system.

##### Questions for Comment

1. The Commission invites commentators to discuss whether pricing models should be different for listed and OTC options. In the case of pricing models for OTC options, commentators are invited to address the availability and standardization of the information (e.g., closing prices) necessary to calculate the prices of these instruments.

2. The Commission recognizes that transactions in derivative products by firms, which are dually registered as broker-dealers and futures commission merchants ("FCMs"), may raise capital compliance issues that need to be addressed in coordination with the CFTC. In this connection, the CFTC has informed the Commission that it is reviewing the continuing appropriateness of its Rule 1.19, which precludes firms registered as FCMs from offering, underwriting or assuming financial responsibility for dealing in OTC commodity options, except for options traded pursuant to the rules of a U.S. or foreign contract market.<sup>45</sup> Comment is requested on these and other additional issues in this area of concern to regulated firms.

*b. Currency forwards and swaps.* The Commission believes that, as a general matter, the market risks related to forward contracts for commodities and government securities are appropriately handled under the Net Capital Rule. The primary questions arise, therefore, as to currencies. As noted above, because basic currency swaps are essentially two currency forwards, the proposed treatment for currency swaps is discussed here, as well.

The SIA has proposed a net capital treatment of currency forwards.<sup>46</sup> The market risk portion of that treatment<sup>47</sup> would require a charge on the net long or short position of all uncovered

<sup>43</sup> Securities Exchange Act Rel. No. 23167 (Apr. 22, 1986), 51 FR 18127 (Apr. 30, 1986).

<sup>44</sup> *Id.*, 51 FR at 18131.

<sup>45</sup> 17 CFR 1.9.

<sup>46</sup> Letter from Dominic Carone, Chairman, Capital Committee, SIA, to William H. Heyman, Director, Division, SEC (Oct. 9, 1992).

<sup>47</sup> The SIA proposal contains separate treatments for market risk and credit risk. The credit risk portion of the proposal will be discussed in the Credit Risk portion of this release.

<sup>39</sup> See generally Hu, *Misunderstood Derivatives: The Causes of Informational Failure and the Promise of Regulatory Incrementalism*, 102 Yale L.J. 1457 (1993).

currency positions.<sup>48</sup> The amount of the capital charge on the uncovered position would depend on the currency category. Category A<sup>49</sup> currencies would require a charge of 6% on the uncovered position. Category B<sup>50</sup> currencies would require an 8% charge on the uncovered position. Category C<sup>51</sup> currencies would require a charge of 20%.

The SIA proposal would apply one charge to any long currency position offset with a short position of any other currency. The charge on the matched position would be equal to the charge on the currency in the category with the highest capital charge of the two categories involved. For example, if a long position in a Category A currency were offset with a short position in a Category C currency, the haircut on the Category C currency (i.e., 20%) would be applied to the matched position.<sup>52</sup>

An additional risk that may need to be accounted for is the interest rate risk in offsetting transactions. Interest rate differentials determine the difference between the spot rate for the exchange of currencies today and the rate for the exchange of those same two currencies in the future. The interest rate risk in a forward contract is the risk that a shift in the interest rate differential will cause the value of the forward contract to change even when there is not a change in the spot rate. One approach to address this risk would be to assign the currency forward positions to maturity bands and assess a capital

charge for interest rate risk depending on the maturity of the contract. This approach would parallel the assignment done in the government securities area. Interest rate-related capital charges on short and long currency positions could be offset against each other to varying degrees depending on their relative maturities.

#### Questions for Comment

3. The Commission invites commentators to address the SIA proposal for the treatment of market risk of currency forwards as set forth above.

4. The major question (aside from the appropriate capital charge for the underlying currency) is to what degree, if any, one foreign currency position should be allowed to offset another foreign currency position in the determination of capital charges? The Commission invites commentators to submit data supporting their recommendations.

5. The Commission also invites commentators to recommend whether, and if at all, such products as interest rate swaps and currency swaps, should be allowed to offset the risk of related forward positions in the determination of capital charges.

6. The Commission staff understands that a change in interest rates may result in differing and unequal changes in foreign exchange rates in offsetting positions in different currencies with different maturities. The Commission invites commentators to address the approach concerning the treatment of interest rate risk of currency forwards discussed above. The Commission invites commentators to suggest whether the added complexity that this proposal would add to the calculation of capital charges is justified by the risk. If it is believed that the complexity is not justified by the risk, the Commission invites commentators to recommend an approach to deal with the risk.

*c. Interest Rate Swaps.* At a minimum, there are two separate approaches concerning the treatment of these contracts. The first approach would calculate exposure by synthetically converting the large number of separate payments from a large interest rate swap book into a portfolio of specified debt securities that are equivalent, in terms of interest rate sensitivity, to the swap payment flows. Under this approach, cash flows from interest rate swaps would be taken together if they are denominated in the same currency. These derived securities would then be treated under the Net Capital Rule in the same way as actual bond positions with the same characteristics. The value of the derived securities would be

calculated in terms of zero coupon bond equivalents.<sup>53</sup>

The second approach for the treatment of interest rate swaps is to slot the notional amount of the swaps into the maturity bands currently in use for government securities, and apply a capital charge ranging from 0% to 6%, depending on the maturity of the swap. The capital charges of long and short positions in swaps could be offset depending on the relative maturities of the two swaps, or could be hedged with other debt instruments.

#### Questions for Comment

7. The Commission invites commentators to address these approaches. Specifically, the Commission invites commentators to discuss the advantages or disadvantages of each. Should the charges for these instruments be integrated into the net capital debt haircut scheme?

8. To what extent does a secondary market for interest rate swaps exist? To what extent is it possible to close out an interest rate swap?

9. To what extent should treatment under the Net Capital Rule reflect the probability of netting in bankruptcy?

10. The Commission invites commentators to provide data on the market movements of interest rate swaps, particularly during times of market stress or increased volatility. Also, the Commission invites commentators to submit calculations of haircut charges on sample portfolios using a model suggested by the first or second approach described above.

11. The Commission invites commentators to recommend to what extent other products, including interest rate instruments and option products such as caps and collars, should be allowed to offset the risk of interest rate swaps in the determination of capital charges.

12. The Commission invites commentators to recommend, in detail, other proposals for the treatment of interest rate swaps.

13. In the case of amortizing and accreting interest rate swaps, it is difficult for the swapholder to maintain appropriate offsets for these instruments, because of the changing notional amount. The Commission invites commentators to recommend appropriate capital treatment to account for the increased risk factors of these swaps, or any other swaps with unique risk characteristics.

<sup>53</sup>This means each of the cash flows would be discounted, using zero coupon rates, to its present value (i.e., the current value of a zero coupon bond with those payment characteristics).

<sup>48</sup> The calculation of a position in a currency other than the firm's base currency would include: (1) All balance sheet assets and liabilities denominated in that currency (A broker-dealer may elect to exclude from the calculation of currency positions assets that otherwise require a 100% deduction from capital); (2) all forward contracts for the purchase or sale of that currency, at their contract value; (3) all currency futures contracts at the nominal value of the contracts; and (4) all other commitments to purchase or sell assets denominated in that currency. A broker-dealer could elect to treat the net currency position thus calculated as a position in the "underlying security" for purposes of determining the deduction for currency options required under Appendix A of Rule 15c3-1 or Rule 15c3-1(c)(2)(x).

<sup>49</sup> Category A currencies are the German mark, the British pound, the Japanese yen, the Canadian dollar, the Swiss franc, the French franc and the European Currency Unit.

<sup>50</sup> Category B currencies are the Italian lira, the Dutch guilder, the Danish kroner, the Swedish krona, the Belgian franc, the Norwegian kroner, the Finnish mark, the Spanish peseta, the Australian dollar and the New Zealand dollar.

<sup>51</sup> Category C currencies are all currencies that are not Category A or Category B currencies.

<sup>52</sup> Assume a long \$120 equivalent position in British pounds (Category A) were offset with a short \$100 equivalent position in Australian dollars (Category B). The charge on the \$100 equivalent matched position would be 8%. A 6% charge would be applied to the remaining \$20 equivalent position in British pounds (i.e., the uncovered portion). The total capital charge for the portfolio would be \$9.20 (.08 times \$100 plus .06 times \$20).

#### d. Equity Swaps.

##### Questions for Comment

14. It would seem that the obligation to pay or the right to receive the rate of return based on the value of securities should be treated as if it were an equity position. The Commission invites comment on alternative methods of determining a capital charge.

15. To what extent should equity swaps be allowed to offset equity securities or debt securities in the determination of capital charges. Please be specific in how these offsets would be calculated.

#### B. Credit Risk

##### 1. Generally

Credit risk is the risk that the counterparty to a transaction will default, or otherwise fail to perform under the terms of the contract. In this context, the Commission here is not requesting comments on the credit risk involving centrally-cleared, exchange transactions.<sup>54</sup> Instead, the Commission is requesting comments on the appropriate capital treatment to reflect the credit risk in OTC derivative products, which are generally unmarginated contracts involving terms which are negotiated directly between the counterparties, without the intervention of a central clearing organization.

The Net Capital Rule operates to discourage broker-dealers from holding positions that entail unsecured credit risk. Broker-dealers, therefore, traditionally have had limited exposure to credit risk.<sup>55</sup> Clearing organizations for securities and commodity contracts substantially reduce credit risk in exchange-traded derivatives by collecting margin and clearing fund deposits.<sup>56</sup> As such, the clearing organization substitutes the

<sup>54</sup> In exchange transactions there may be some credit risk between regular way trade date and settlement date, or with ordinary margin transactions.

<sup>55</sup> Broker-dealer affiliates were exposed to large amounts of credit risk with "bridge loans" during the merger and acquisitions period in the 1980s. A bridge loan generally was an unsecured loan from a broker-dealer affiliate to a company or a group of investors interested in buying the stock of a target company. Once this group or company gained control of the target, they would cause the company to issue debt and use the proceeds to repay the bridge loan.

<sup>56</sup> Futures contracts are cleared through commodity clearing organizations designated or affiliated with the contract market. Futures clearing organizations collect original margin from both the buyer and seller of the futures contract as a good faith deposit in their respective obligations to perform under the terms of the futures contract. The clearing organization also collects variation margin from the members on a daily basis reflecting the daily difference in value of the futures contract.

creditworthiness of a single dealer for that of the clearing organization, which represents the combined creditworthiness of all the clearing participants.

a. *Measuring credit exposure.* The amount of credit exposure as of a particular time is commonly measured by the derivative product's replacement cost, which is essentially the cost of entering into a new agreement under current market conditions with rates or other price data equivalent to those on the agreement being replaced. Thus, it is important that the contracts are marked-to-market regularly so that the current credit exposure can be monitored.

Replacement cost, in the case of swaps, for example, normally will be only a small percentage of the notional principal amount of the contract, which is usually a hypothetical basis on which payments are calculated rather than an amount actually to be exchanged. The current replacement cost of swaps can be calculated as the discounted present value of the cash flow a counterparty is expected to receive. While both parties to a single swap contract may be subject to credit risk during the life of the contract, normally only one party will be subject to credit risk at any one time.

It is more difficult to measure potential future credit exposure, which changes as the price, or yield of the underlying instrument changes. These changes cannot be estimated with certainty, but financial intermediaries attempt to measure the potential exposure by models using various methods to estimate volatilities of the underlying instrument.<sup>57</sup>

b. *Managing credit exposure.* The credit risk in OTC derivative products can be protected against and managed by requiring margin, by maintaining adequate capital, and by requiring netting agreements. Generally, counterparties also will reduce credit exposures to weakening institutions by reducing the volume and maturity of transactions they conduct with those institutions.

Derivative products often are highly complex and require careful management to assure that appropriate hedges are maintained. Risk management controls are thus, even more important for derivatives than for traditional products. Derivative intermediaries must rely on their internal controls to control their credit exposure.<sup>58</sup>

<sup>57</sup> See Hu, *supra* note 39, at 1477-80 (discussing the difficulty in predicting future volatility).

<sup>58</sup> Breeden, *supra* note 13.

##### 2. Current Approaches

The Commission is considering the use of two different approaches for the determination of capital charges on the credit risk of derivative products.

a. *SIA Approach.* The SIA recommended an approach to address the credit risk of currency forwards which could be applicable to all derivatives.<sup>59</sup> Under that approach, the credit risk capital charge for OTC derivative products would consist of two distinct charges.

(i) *Basic charge.* The first charge would be a basic credit charge. The basic charge would require an 8% charge on the "credit equivalent amount" multiplied by the "counterparty factor" for a given counterparty. The "credit equivalent amount" is the value obtained by "marking-to-market" all contracts<sup>60</sup> relating to open trades plus 1% of the notional amounts of contracts with less than one year to maturity and 5% of the notional amount of contracts with a maturity of greater than one year.

The value obtained by marking-to-market also may be referred to as the "deficit." The "deficit" is the current credit exposure on an open trade. For a long OTC option contract, the deficit is the in-the-money amount. For a forward agreement, the deficit is the profit accumulated on the transaction since its inception. The net deficit for a counterparty would be reduced by any margin or other deposits held by the broker-dealer in connection with such transactions with the same party and by any margin calls issued by the broker-dealer outstanding not more than two business days.

The counterparty factor proposed by the SIA is 0% for Zone A<sup>61</sup> central governments and central banks. The counterparty factor is 20% for Multilateral Development Banks,<sup>62</sup> for Zone A regional governments, and for Zone A credit institutions. The

<sup>59</sup> This credit risk proposal is the second part of the SIA proposal discussed under the Market Risk section of this release. See *supra* note 46.

<sup>60</sup> Negative values are disregarded on this calculation.

<sup>61</sup> Zone A central governments include: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Saudi Arabia, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

<sup>62</sup> The Multilateral Development Banks include the European Investment Bank, the European Bank for Reconstruction and Development, the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, and the Nordic Development Bank.

counterparty factor is 50% for all other entities.

(ii) Concentration charge. The basic charge described above is meant to protect against the risk that a counterparty fails to perform its obligation under an agreement involving an OTC derivative contract. The concentration charge is meant to discourage a firm from assuming a large amount of credit risk with any one particular counterparty or from assuming too much overall credit risk. This charge would require the broker-dealer to take a charge equal to the sum of: (1) The amount by which the net deficit with one counterparty exceeds 10% of the firm's tentative net capital<sup>63</sup> and (2) the amount by which the net deficit as to all counterparties exceeds 25% of the firm's tentative net capital.

b. *Second approach.* Another approach would require the broker-dealer to take a capital charge based on some percentage of the broker-dealer's total exposure to all counterparties. The amount of the charge on the particular exposure would depend on the credit rating of the counterparty. The charge would be higher for lower rated counterparties. The underlying theory is that this approach would account for the risk involved in entering into too many transactions with lower rated counterparties. This approach could also call for an additional base amount of capital.

#### Questions for Comment

16. The Commission seeks comment on the approaches set forth in sections III.B.2.a-b. Specifically, the Commission seeks comment on whether any, or both of these approaches are acceptable and which approach is preferable, and the reasons why. The Commission also seeks comment on alternative methods for determining credit risk capital charges. In this regard, the Commission seeks detailed proposals setting forth the methodology recommended, any assumptions relied upon, and any supporting data.

17. If a replacement cost method is recommended, how could the capital rule be structured to reduce potential future credit exposure?

18. To what extent should netting of contracts with a single counterparty be permitted? What consideration should be made for the uncertainty related to the legality of netting arrangements throughout the world? Should distinctions be drawn between those

derivative contracts with termination clauses and those without?

19. In determining the "credit equivalent amount" under the SLA proposal, a cushion is added to that amount. The cushion is 1% of the notional amount for contracts with less than one year to maturity and 5% for other contracts. The Commission invites commentators to recommend what the amount of the cushions should be for derivatives other than currency derivatives.

#### C. Other Risks

There are other risks associated with the trading of derivative products that are not as readily susceptible to analysis. All of these risks to some degree are present also in the trading of non-derivatives.<sup>64</sup>

One significant risk is operating risk, or the risk that faulty internal controls, mistakes, system failure, or fraud can result in unexpected losses. This risk could lead to open positions or credit exposures that exceed established limits. These risks are increased by the complexity of derivative instruments and the sophisticated mathematical models used to price and hedge these instruments.

Another significant risk affecting OTC derivative products is market liquidity risk. Market liquidity risk is the risk that a financial asset cannot be sold or replaced quickly at, or close to, its fundamental value. It might be possible for a derivative contract to provide for the termination of the contract for a specific price.

A risk related to liquidity risk is the massive leverage that a firm dealing in derivative products can attain. Because many of the contracts are conducted in entities not subject to margin or capital adequacy regulations and do not involve initial outlays of funds, the amount of derivative instruments that an unregulated or inadequately regulated financial derivatives intermediary can enter into is limited only by its creditworthiness and the willingness of its counterparties to do business with it.

Leverage is an important concern for the Commission. If derivative instruments are entered into by a registered entity, the Commission is concerned about the operational and financing complexities that may result if the firm is required to liquidate a large derivative instrument portfolio, involving many cash flows in different currencies over an extended period of time.

Legal risk is yet another risk that affects derivative products. Legal risk refers to the risk that future court decisions or laws may affect the rights of counterparties or the enforceability of derivative contracts. Because much of the derivative products markets is relatively young, many legal uncertainties exist regarding these instruments.

A final risk that should be considered is systemic risk. The growth of activity in derivative products, the tendency of derivatives to strengthen the linkages between different market segments, and the leverage associated with derivatives have increased the likelihood that disruptions in one market might affect other markets more quickly than in the past.

#### Question for Comment

20. The Commission invites comment on the effect of these other risks on the derivatives markets and to recommend net capital, margin, clearing, or other approaches the Commission may take to reduce these risks.

#### IV. Derivative Products Companies

Generally, a derivative products company ("DPC") is a triple-A rated subsidiary of a financial institution that provides its parent corporation with a vehicle for participating in derivative products transactions through an increased credit standing. Through a DPC, a broker-dealer with less than a triple-A credit rating arguably can increase its participation in the derivative products markets at a lower cost.

DPCs are given a credit rating by one or more of the credit rating institutions. Such rating services normally perform an evaluation of each DPC with emphasis on the following areas: portfolio quality; management and operating guidelines; parent-subsidiary relationship; and capital adequacy and risk modeling.

#### Question for Comment

21. Assuming that DPCs are registered with the Commission pursuant to the Exchange Act, the Commission invites commentators to discuss whether Rule 15c3-1 should be amended to recognize DPCs as a special class of broker-dealer with rules specific to their business. If so, from what provisions of Rule 15c3-1 should the DPC be exempt? Comments are also solicited on the impact, if any, of such exemptions on the objectives of the Securities Investor Protection Act of 1970.<sup>65</sup> If the current financial responsibility rules are believed to be

<sup>63</sup> Tentative net capital means a broker-dealer's net capital before the application of haircuts and undue concentration charges.

<sup>64</sup> See generally Federal Reserve Board, *supra* note 12; see also Bank for International Settlements, *supra* note 12.

<sup>65</sup> 15 U.S.C. 78aaa.

appropriate for DPCs, what modifications to the rules are necessary to insure that the rule adequately addresses the special requirements of DPCs?

By the Commission.

Dated: May 4, 1993.

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10976 Filed 5-7-93; 8:45 am]

BILLING CODE 9010-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1040

[Docket No. 93N-0044]

#### Laser Products; Intent to Amend Performance Standard

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

**SUMMARY:** The Food and Drug Administration (FDA) is considering amendments to the Federal performance standard for laser products to achieve greater consistency between the requirements applicable under that standard and the International Electrotechnical Commission (IEC) standards for laser products and medical laser products. Additional proposed changes to the Federal standard that are unrelated to harmonization are being considered as a result of FDA experience in enforcing the present laser standard and processing variances. The changes would, in many cases, reduce the regulatory burden on affected manufacturers (without compromising public health) and generally would improve the effectiveness of FDA's regulation of laser products.

**DATES:** Written comments and data by August 9, 1993.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Patricia Dubill, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the Federal Register of July 31, 1975 (40 FR 32252), FDA published the

performance standard for laser products in part 1040 (21 CFR part 1040) as a final rule. The standard became effective on August 2, 1976. In the Federal Register of November 28, 1978 (43 FR 55387), and again on August 20, 1985 (50 FR 33682), FDA amended the standards. The experience of FDA in the administration of the laser standard since the last amendments indicates that some provisions of the standard may need to be amended. Identification of the need for many of the changes under consideration stemmed largely from extensive FDA involvement in international standardization efforts for laser products with IEC, an international standards development organization with participants from many countries. FDA has made a considerable contribution to the development of the IEC laser standards and believes that greater consistency between the FDA standard and the IEC standards will result in an improved FDA standard, improved compliance, and a more efficient enforcement program. Other changes to the FDA laser standard that are unrelated to harmonization with the IEC standard were determined to be needed as a result of FDA's continuing effort to evaluate new information and experience enforcing the present laser standard and processing variance applications.

For requirements under § 1040.10 (21 CFR 1040.10), the proposed changes would: (1) increase the accessible emission limits (AEL) set forth in Tables I through III-B of § 1040.10(d) in the red and near infrared portions of the spectrum; (2) establish a maximum classification time for Class I laser products that emit visible or infrared radiation that is not intended to be viewed; (3) establish the AEL for Class IIIa laser products having invisible emission; (4) reduce the AEL of Class I for repetitively pulsed lasers; (5) expand the infrared wavelength range for which military "eye safe" data are available; (6) modify the measurement parameters for classification; (7) increase the levels of laser radiation for which safety interlocks are required; (8) delete the requirements for beam attenuators and emission indicators for Class II and Class IIIa laser systems; (9) establish a requirement for emission indicators for remote laser apertures; (10) eliminate an aspect of the scan fail safeguard requirement; (11) allow acceptance of the IEC warning and explanatory labels as alternates to the presently required warning logotypes; (12) alter the required wording for protective housing labels; and (13) eliminate some

requirements for information in the user instructions.

For requirements under § 1040.11 (21 CFR 1040.11) for specific purpose laser products, FDA is considering several additional requirements, including requiring an additional warning for promotional material for Class II and Class IIIa demonstration products and requiring a laser emitting warning, emergency stop control, and laser operation monitor for Class IIIb and Class IV medical laser products. The latter requirements are being considered in order to achieve consistency with the newly approved IEC 601-2-22 standard for medical lasers.

It should be noted that this notice of intent to amend the laser standard should not be construed as a commitment to the changes discussed being formally proposed or adopted. This document is for the purposes of serving notice that amendments to the standard are being considered and inviting comments and recommendations from all concerned. Although some of the changes under consideration would, if adopted, reduce the level of controls, indicators, and warnings for some laser products, FDA will pursue such changes only if it is confident that no additional risk of injury will result from the changes. This is in keeping with FDA's primary responsibility of protecting the public health.

This notice is being issued under FDA's policy of seeking early public participation in radiation safety standard amendment activities. Details concerning the rationales for the amendments under consideration are discussed below.

##### II. Amendments Under Consideration

1. FDA is considering amending § 1040.10(d) to increase the AEL in the spectral range from 500 to 1,400 nanometers (nm) for emission durations of 10 seconds or longer. FDA believes that there are accepted biological data and publications in peer-reviewed journals that support this increase and notes that similar adjustments have already been adopted in the IEC 825 and American National Standards Institute (ANSI) Z-136.1-1986 standards. Because the structure of the tables of the AEL in the FDA standard have been in place for many years, and because manufacturers of products intended for United States market are familiar with their use, modification of the AEL might be accomplished by redefining the factor  $k_1$  for this spectral range in § 1040.10(d), Table IV.

2. FDA is considering amending § 1040.10(d) to reduce the emission

durations to be used for the classification of Class I laser products that emit visible or infrared laser radiation not intended for human exposure or to be viewed, as determined from the design of the product or its intended function. For such products, the maximum emission duration to be considered for the purpose of classification would be 100 seconds. The rationale for this proposal is that an unnecessary burden is imposed by the present requirement to consider emission durations of greater than  $10^4$  seconds in all cases. Visual fixation for such durations requires immobilization of the body, and such prolonged exposure of the cornea or skin to emissions from many kinds of laser products is unreasonable. A maximum emission duration of 100 seconds is considered more reasonable given these considerations. However, for products for which viewing or exposure is intended or inherent in the design of the product, the classification time would remain unchanged at greater than  $10^4$  seconds.

FDA is suggesting that the classification determination be made on the basis of whether a laser product is intended for a specific or for a general purpose. General-purpose laser products such as laboratory laser systems or surveying lasers would be classified for emission durations of greater than  $10^4$  seconds, whereas laser products such as point-of-sale scanners, machine vision products, or fiber optic communication products would be classified using the shorter classification time. The reduced classification time would also be utilized in evaluating the levels of interior laser radiation fields for the purpose of determining the applicability of requirements for safety interlocks and protective housing labels.

3. There are at present no AEL in the ultraviolet and infrared wavelength ranges for Class IIIa. FDA is considering an amendment to § 1040.10(d), Table III-A, to establish such limits. FDA believes that the present transition at invisible wavelengths from Class I to Class IIIb is too abrupt. At the AEL of Class I, no hazard is recognized to exist, and there are no requirements for safety performance features or warning labels. Those products that exceed the AEL of Class I by any amount at invisible wavelengths are Class IIIb products and are required to incorporate almost all performance features and severe warnings on the labels. By having a transition in Class IIIa, there would be a more graded approach to addressing the minimal hazard of those products whose accessible levels slightly exceed the AEL of Class I. Hence, FDA is

considering Class IIIa AEL for those invisible wavelengths that do not exceed the AEL of Class I by greater than a factor of five. This approach is already incorporated into both the IEC and ANSI standards.

4. FDA is also considering proposing amendments to § 1040.10(d) to reduce the AEL of Class I for repetitively pulsed lasers. Accepted biological research indicates that the hazard from repetitive pulses is not simply additive, i.e., effects occur which make such lasers more hazardous than simple addition of the pulse energies would indicate. Thus, FDA is considering proposing to introduce a factor of  $N^{-1/4}$ , where N is the number of pulses in the emission duration under consideration. This correction of the AEL is already incorporated into the IEC and ANSI standards.

5. FDA is considering expansion of the wavelength range for "eye safe" infrared laser radiation. The current range is from 1,535 nm to 1,545 nm. FDA believes that there is a need to amend Tables IV and V of § 1040.10(d) in deference to current biological knowledge.

6. FDA is considering amendment of Tables I through VI of § 1040.10(d), the AEL of the classes of laser products, to respond to recent data in optical radiation biological effects research and to more closely conform the tables to the class limits in the IEC and ANSI standards. However, it is the intention of FDA to preserve the present structure of the tables if at all possible because U.S. manufacturers of laser products are accustomed to working with these tables. The tables are simpler to use than those in the IEC and ANSI standards in that they have fewer correction factors. FDA will attempt to combine as many biological dependencies as possible into as few correction factors as possible.

7. The current parameters for the measurement of radiant power or energy established in § 1040.10(e)(3) require the use of a 7 millimeter (mm) diameter circular aperture for products unlikely to be viewed with optical instruments and the use of collimating optics of 5 diopters or less (which implies a measurement distance of 20 centimeters (cm)). FDA believes that the 20 cm measurement distance is not sensitive to the ability of young and myopic persons to accommodate objects at closer distances. A distance of 10 cm could be acceptable to such persons. Additionally, a 7 mm aperture is generally overly conservative, and there is literature confirming that the pupil of the eye constricts when an object at a very close distance is viewed. Revisions

to these measurement requirements are therefore under consideration, and FDA believes that the IEC committee will consider like requirements. The final determination regarding whether FDA will propose a revision of this section will depend partly on the outcome of recently proposed amendments to the ANSI and IEC standards.

8. FDA is considering an amendment to relax the laser radiation levels for which the requirements of § 1040.10(f)(2) are applicable. This relaxation will require safety interlocks only to prevent access to laser radiation levels in excess of Class IIIa unless: (1) The radiation is emitted directly through the opening caused by opening of the protective housing; or (2) the Class IIIa levels are contained within the protective housing of a Class I, IIa, II, or IIIa laser product. Since the IEC standard only requires safety interlocks to prevent access to Class IIIb or IV levels that exceed the class of the product (embedded lasers), safety interlocks are never required by that standard for Class IV products. This amendment would be intended to close the gap between the two standards and may result in the IEC adopting a similar requirement.

9. FDA is considering relaxing the requirements of § 1040.10(f)(5) and (f)(6) by eliminating requirements for emission indicators and beam attenuators for Class II and IIIa laser systems. These amendments would achieve consistency with both the IEC and the ANSI standards for emission indicators and with the IEC standard for beam attenuators. As a further consideration, under authority granted by § 1040.10(f)(6)(ii), FDA has issued numerous approvals of alternate means of safety, such as emission controls, to provide the safety afforded by a beam attenuator. FDA believes that it is clear that, in the lower classes, the safety of the laser system is not improved by the presence of a beam attenuator when there is an immediate control for the termination of emission.

10. FDA is considering amendment of § 1040.10(f)(5) to require visible indications of actual emission from remote laser apertures of Class IIIb and Class IV laser systems. This requirement would be in addition to the present requirements, as applicable. The agency has become aware of industrial material processing machines that use a single high-power laser system shared in time between more than one work station or aperture. The agency believes that it is important that persons in the vicinity of remote apertures be alerted when there is emission so that appropriate measures can be taken to avoid exposure.

11. FDA is considering deletion of § 1040.10(f)(9)(ii), which requires a scan failure safeguard to prevent human access to laser radiation exceeding the AEL of the class of the scanned laser radiation. This requirement applies if the laser product is Class IIIb or IV, and the AEL of Class IIIa would be exceeded solely as a result of a failure causing a change in either scan velocity or amplitude. Deletion of the requirement is under consideration because there has been considerable difficulty in understanding the requirement since its implementation in 1986. There are no plans to propose changing the requirement in § 1040.10(f)(9)(i) for a scan failure safeguard to prevent human access to laser radiation that exceeds the AEL of the product class as a result of any failure causing a change in either scan velocity or amplitude.

12. FDA is considering amending the warning logotype label requirements to allow the IEC warning and explanatory labels as alternatives to the presently required labels. This would permit a uniform system of labeling and class designations under both standards. The current requirements of § 1040.10(g)(1) through (g)(4) require the use of logotypes described in the American National Standard for Product Safety Signs and Labels, ANSI Z-535.4-1991. The ANSI logotypes require the signal word "CAUTION" for Class II and Class IIIa products with an irradiance less than or equal to  $2.5 \times 10^{-3}$  watts per square centimeter ( $W/cm^2$ ), and the signal word, "DANGER," for Class IIIa products with an irradiance greater than  $2.5 \times 10^{-3} W/cm^2$  and for all Class IIIb and Class IV products. These paragraphs also require the use of Roman numerals for the laser class designation on the warning logotypes. The IEC labels allow the use of Arabic numerals for the class designations and do not require use of the signal words. FDA believes that such an amendment will make compliance with this requirement easier for manufacturers that sell to both U.S. and international markets. Further, since the ANSI laser standard permits the IEC labels, and because there is confusion as to the classification of medical laser products in the United States (because Roman numerals are used to designate both the laser product hazard class and the medical device class), FDA believes that such an amendment, which will reduce the confusion, would be desirable. However, it is important that the FDA and IEC standards be in agreement on the designations and AEL of the classes for this change to be meaningful.

13. FDA is also considering an amendment to § 1040.10 (g)(6) to permit

the word, "CAUTION," in place of the word, "DANGER," to achieve uniformity with the IEC standard. Acceptance of alternate schemes such as symbols to provide these warnings may also be considered.

14. FDA is considering simplifying and making more uniform the requirements of § 1040.10(g)(6) and (g)(7) for labels for noninterlocked and defeatably interlocked protective housings. The present label wordings depend on the level of the internal laser radiation with the protective housing open or removed and are a complex matrix.

15. FDA is considering simplifying § 1040.10(h)(1) and adding a requirement for the hazardous area surrounding a laser product to be identified in the user instructions. FDA will also consider making other requirements of this section less specific to permit greater flexibility in providing the required instructions for user safety.

16. FDA is considering amendment of § 1040.11(a) for medical laser products to require a visible or audible indication during actual emission of laser radiation in excess of the AEL of Class IIIa from a medical laser product. This requirement is being considered in order to bring the FDA standard into closer agreement with the requirements of IEC standard 601-2-2 for medical laser equipment. The emission indicator presently required by § 1040.10(f)(5) on Class IIIb and Class IV medical laser products provides its indication sufficiently prior to laser emission for people in the vicinity to take action to avoid exposure. On existing laser devices, the delay in actual emission from the time of the indication has been observed to range from a few seconds to some minutes. However, this indicator may continue to provide its indication for an extended time while the product is in a standby mode and not actually emitting, decreasing its value as an alarm. The proposed amendments would incorporate the approach used in the IEC standard, which reflects the concern that people in the vicinity should be alerted while the laser is actually emitting and when precautions are actually required to avoid exposure.

17. FDA is considering amendment of § 1040.11(a) to require an emergency laser stop control for Class IIIb and Class IV medical laser products. This requirement would bring the FDA standard into closer agreement with the requirements of IEC standard 601-2-22. The emergency stop control could be a panel or foot switch readily accessible to the operator of the product. This control would provide an alternate and additional control to the key-actuated

master control required under § 1040.10(f)(4), or any other such control that might be present for the purpose of terminating laser emission in response to emergencies or unintended occurrences.

18. FDA is considering amendment of § 1040.11(a) to require optical or electrical monitoring of the operation of lasers in Class IIIb and Class IV medical laser products. This requirement is being considered in order to bring the FDA standard into closer agreement with the requirements of IEC standard 601-2-22. The monitoring of the operation of the laser is intended to warn the operator of excessive fluctuations in laser emission or excursions from a set level of emission. This requirement would be in addition to the present requirement of § 1040.11(a)(1) that the laser product incorporate a system for measurement of the level of laser radiation intended for irradiation of the human body. In many cases the meeting of the present requirement may satisfy the proposed requirement; however, an additional means of monitoring would be required for those laser products in which the output is only measured occasionally, such as before a procedure or between patient exposures.

19. FDA is considering amendment of § 1040.11(c) to require specific warnings in the user instructions for demonstration laser products against exposure of spectators to laser radiation in excess of Class I AEL. When this section was amended to allow the promotion of Class IIIa demonstration laser products, the proliferation in these products that occurred was not anticipated. In the preamble to the amendment, FDA expressed its policy that the same restrictions applicable under variances to Class IIIb and Class IV laser products, against exposure of the public to hazardous levels of laser radiation should also apply to the lower classes for which variances are not required. However, since the amendments were published, FDA has become aware of some instances of promotion of Class IIIa demonstration laser products for direct exposure of the public by trade show exhibitors and promotional pictures depicting such practices. For this reason, FDA believes it is appropriate to require manufacturers to publish warnings that these products are not to be used for exposure of the public to ensure that this information is available to purchasers and users.

### III. Comments

Interested persons may, on or before August 9, 1993 submit to the Dockets

Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA is preparing to present its proposals to amend the standard to the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) prior to the publication of proposed amendments in the *Federal Register*. TEPRSSC is an advisory committee established by the Radiation Control for Health and Safety Act of 1968 to provide consultation before the Commissioner of Food and Drugs prescribes any performance standard for an electronic product. An opportunity for public comment will be provided in conjunction with the presentation to TEPRSSC, in addition to the opportunity being provided with this notice. All comments received will be considered to the fullest possible extent in formulating the proposed amendments.

#### IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. IEC 825: "Radiation Safety of Laser Products, Equipment Classification, Requirements and User's Guide," American National Standards Institute, 11 West 42d St., New York, NY 10036, 1984.
2. IEC 825: Amendment to IEC 825 (1984), available as above, 1990.
3. IEC 601-2-22: "Medical Electrical Equipment, Part II: Particular Requirements for the Safety of Diagnostic and Therapeutic Laser Equipment," available as above, 1992.
4. Z-136.1: "American National Standard for the Safe Use of Lasers," Laser Institute of America, 12424 Research Pkwy., suite 130, Orlando, FL 32826, 1986.
5. Z-535.4: "American National Standard for Product Safety Signs and Labels," National Electrical Manufacturers Association, 2101 L St. NW., Washington, DC 20037, 1991.

Dated: April 23, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-10885 Filed 5-7-93; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[CO-45-91]

RIN 1545-AQ08

#### Proposed Rulemaking Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document proposes rules to determine whether stock of a loss corporation is owned as a result of being a qualified creditor for purposes of section 382(l)(5)(E) of the Internal Revenue Code and the regulations thereunder and withdraws previously proposed regulations addressing this subject. See 56 FR 47921 (September 23, 1991). These rules will help a loss corporation to determine whether it is eligible for the special rules of section 382(l)(5).

**DATES:** Written comments must be received by July 6, 1993. Requests to speak (with outlines of oral comments to be presented) at the public hearing scheduled for 10 a.m. July 16, 1993, must be received by July 6, 1993. See the notice of hearing published elsewhere in this issue of the *Federal Register*.

**ADDRESSES:** The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Send requests to speak, outlines of oral comments, and written comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:DOM:CORP:T:R [CO-45-91], Room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Diana C. MacKeen concerning the regulations (202-622-7550); Mike Slaughter concerning the hearing (202-622-7190) (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the

Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collections of information in these proposed regulations are in §§ 1.382-9 (d)(2)(iii) and (d)(4)(iv). This information is required by the Internal Revenue Service to assure that a loss corporation properly determines the amount of stock that it issues in exchange for qualified indebtedness. The respondents will be persons who hold the indebtedness of loss corporations that may qualify for the special bankruptcy provision of section 382(l)(5).

These estimates are approximations of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

Estimated total annual reporting burden: 250 hours.

Estimated burden per respondent varies from 10 minutes to 1 hour depending on individual circumstances, with an estimated average of 15 minutes.

Estimated number of respondents: 1000.

Estimated frequency of responses: 1 per respondent.

#### Background

This document proposes amendments to the Income Tax Regulations (26 CFR part 1) under section 382 of the Internal Revenue Code (Code). Section 382 limits the amount of income earned by a corporation after an ownership change that can be offset by losses incurred prior to the ownership change. In general, an ownership change is an increase of more than 50 percentage points in stock ownership by 5-percent shareholders over a three-year period.

Section 382(l)(5) provides special rules for ownership changes resulting from bankruptcy proceedings. A loss corporation that qualifies for the special rules can use its loss carryforwards, after certain reductions, against its post-change income without limitation by section 382. A loss corporation qualifies only if its pre-change shareholders and creditors own at least 50 percent of its stock after the ownership change. Section 382(l)(5)(E) provides that stock issued in exchange for indebtedness counts toward the 50 percent threshold of section 382(l)(5) only if the indebtedness (1) was held by the



creditor at least 18 months before the bankruptcy filing, or (2) arose in the ordinary course of the trade or business of the loss corporation and was held at all times by the same beneficial owner.

In September, 1991, the Service proposed regulations regarding the continuous ownership requirement of section 382(l)(5)(E). See 56 FR 47921 (September 23, 1991). The 1991 proposed regulations contained special rules to simplify the determination of whether the holders of widely-held indebtedness met the continuous ownership requirement of section 382(l)(5)(E). In addition, the proposed regulations provided guidance regarding when indebtedness arises in the ordinary course of the trade or business of a loss corporation. The Service received comments on the proposed regulations and held a hearing concerning the proposed regulations on November 20, 1991. This document hereby withdraws the proposed regulations.

#### Explanation of Provisions

##### A. Definitions of Qualified Creditor and Qualified Indebtedness

Section 1.382-9(b)(2) of the regulations provides generally that section 382(l)(5) of the Code does not apply to an ownership change unless the pre-change shareholders and qualified creditors of the old loss corporation own (after the ownership change and as a result of being pre-change shareholders or qualified creditors immediately before the ownership change) at least 50 percent of the stock of the new loss corporation. The amendments proposed in this document, following the 1991 proposed regulations, provide that a qualified creditor is the beneficial owner, immediately before the ownership change, of qualified indebtedness of the loss corporation. Indebtedness of a loss corporation is qualified indebtedness if it (1) has been owned by the same beneficial owner since the date that is 18 months before the date of the filing of the title 11 or similar case, or (2) arose in the ordinary course of the trade or business of the loss corporation and has been owned at all times by the same beneficial owner.

##### B. Ordinary Course Indebtedness

The 1991 proposed regulations provided that ordinary course indebtedness is indebtedness incurred by the loss corporation in connection with the normal, usual or customary conduct of business, determined without regard to whether the indebtedness funds ordinary or capital

expenditures of the loss corporation. This definition closely followed the language of the relevant legislative history. See H.R. Rep. No. 841, 99th Cong., 2d Sess. II-192 (1986). The 1991 proposed regulations also provided specific examples of ordinary course indebtedness. The provisions regarding ordinary course indebtedness included in these proposed amendments are virtually identical to those of the 1991 proposed regulations. In response to comments on the proposed regulations, however, these proposed amendments include an additional example of ordinary course indebtedness and provide a special rule for claims arising from the rejection of a burdensome contract or lease pursuant to the title 11 or similar case.

##### C. Treatment of Certain Indebtedness as Continuously Owned by the Same Owner

The 1991 proposed regulations contained special rules intended to simplify the determination of whether the holders of widely-held indebtedness met the continuous ownership requirement of section 382(l)(5)(E). As the preamble to the 1991 proposed regulations explained, tracking the ownership of widely-held indebtedness can be costly and difficult, because, for example, the indebtedness is often held in street name. To alleviate these difficulties, the 1991 proposed regulations generally would have allowed a loss corporation to treat all or a portion of each class of its widely-held indebtedness as always having been owned by the same beneficial owners. The amount that could have been so treated was the amount owned by less-than-5-percent beneficial owners on either the plan date or the date of the ownership change, whichever amount was lower. The plan date was defined generally as the date of approval of a plan of reorganization. The 1991 proposed regulations would have required measurement of ownership of widely-held indebtedness on the plan date to preclude the application of the special rule for widely-held indebtedness to indebtedness accumulated by speculative investors and sold, prior to the change date, to purchasers who each own less than 5 percent of the class of indebtedness.

The 1991 proposed regulations provided optional procedures to determine ownership of widely-held indebtedness on the plan date and the change date. These optional procedures were intended to simplify the determination of the portion of indebtedness held in street name owned

by one or more less-than-5-percent beneficial owners.

Based on comments on the 1991 proposed regulations, the Service determined that the rules of the proposed regulations can be simplified, thereby further reducing the administrative difficulties involved in the application of section 382(l)(5), and facilitating planning regarding the application of that section. In particular, the amendments proposed in this document include a de minimis rule that allows a loss corporation to treat indebtedness as always having been owned by the beneficial owner of the indebtedness immediately before the ownership change if the beneficial owner is not, immediately after the ownership change, either a 5-percent shareholder or an entity through which a 5-percent shareholder owns an indirect ownership interest in the loss corporation (a 5-percent entity). For purposes of the de minimis rule, the term 5-percent shareholder includes any person who is a 5-percent shareholder of the loss corporation within the meaning of § 1.382-2T(g). The de minimis rule does not apply to indebtedness owned by a person whose participation in formulating a plan of reorganization makes evident to the loss corporation that the person has not owned the indebtedness for the requisite period. This exception would apply regardless of whether the participant exchanges the indebtedness for stock pursuant to the plan or transfers the indebtedness to other persons prior to the effective date of the plan.

Several factors contribute to the simplification achieved by the proposed amendments. By extending the de minimis concept underlying the 1991 proposed regulations, the proposed amendments address the practical difficulties of applying the rules of section 382(l)(5)(E) to indebtedness that is not widely-held. Because the proposed amendments incorporate existing 5-percent shareholder concepts, they are simpler and easier to apply. Loss corporations must identify their 5-percent shareholders for purposes of section 382 generally. Thus, the proposed amendments do not impose any additional administrative burdens. In particular, use of 5-percent shareholder concepts obviates the need for the detailed optional procedures included in the 1991 proposed regulations for determining ownership of widely-held indebtedness.

Finally, the proposed amendments do not require a loss corporation applying the de minimis rule to determine the ownership of its indebtedness on any

date other than the change date. The Service determined that the possibility of purchases and sales of indebtedness by speculative investors do not justify the additional burdens involved in requiring loss corporations to measure the ownership of their indebtedness on the plan date as well as the change date.

As noted above, the de minimis rule applies only if the owner of the indebtedness prior to the ownership change is not, thereafter, either a 5-percent shareholder or a 5-percent entity. Because of the attribution rules of § 1.382-2T(h)(2), the de minimis rule is not conditioned solely on whether the owner of indebtedness becomes a 5-percent shareholder. Under the attribution rules, an entity that receives 5 percent or more of loss corporation stock in exchange for indebtedness would not be a 5-percent shareholder. Instead, the stock held by the entity would be attributed to the owners of the entity and treated as not owned by the entity itself. To insure that the de minimis rule does not apply to indebtedness owned by an entity that directly owns, after the ownership change, at least 5 percent of the loss corporation stock, the rule does not apply if the entity is a 5-percent entity.

For purposes of the de minimis rule, the option attribution rules of § 1.382-2T(h)(4) do not apply in identifying 5-percent shareholders. The de minimis rule does not apply to indebtedness, however, if the loss corporation has actual knowledge immediately after the ownership change that the exercise of an option to acquire or dispose of its stock would cause the beneficial owner of the indebtedness immediately before the ownership change to be, thereafter, a 5-percent shareholder or a 5-percent entity. This treatment of options applies only to determine whether indebtedness of the loss corporation is qualified indebtedness. The proposed amendments do not affect the option rules provided in § 1.382-9(e), which apply to determine the percentage of loss corporation stock owned after the ownership change by persons who were pre-change shareholders or qualified creditors of the loss corporation.

#### *D. Special Rule if Indebtedness Is a Large Portion of a Beneficial Owner's Assets*

The 1991 proposed regulations included a special rule under which indebtedness of a loss corporation generally would not have been qualified indebtedness if (1) the beneficial owner of the indebtedness itself had had an ownership change during a prescribed period and (2) the indebtedness represented more than 25 percent of the

beneficial owner's gross assets on the change date. This special rule would not have applied, however, if, immediately before the ownership change of the loss corporation, the beneficial owner owned less than \$100,000 of the loss corporation's indebtedness, or the beneficial owner owned widely-held indebtedness that was less than 5 percent of its class. As stated in the preamble to the 1991 proposed regulations, this special rule was considered necessary to prevent the creation of special purpose entities to hold corporate indebtedness so that, if the debtor became financially troubled, ultimate economic ownership of the indebtedness could be transferred by selling interests in the entity without adversely affecting the debtor's ability to qualify under section 382(l)(5). The amendments proposed in this document include a special rule that is similar to that of the 1991 proposed regulations. Consistent with the de minimis rule described in Part (C), however, the special rule applies only if the beneficial owner of the indebtedness is a 5-percent entity.

#### *E. Tacking Rules*

The preamble to the 1991 proposed regulations included a request for comments on whether, in certain circumstances, a transferee of debt should be treated as having owned the debt during the period that it was held by the transferor for the purpose of determining whether the debt meets the continuous ownership requirement of section 382(l)(5)(E). Based in part on comments on the 1991 proposed regulations, the amendments proposed in this document include tacking rules that provide such treatment.

In general, under the proposed amendments, a transferee of indebtedness in a qualified transfer is treated as having owned the indebtedness for the period that it was owned by the transferor for the purpose of determining whether the indebtedness is qualified indebtedness. A transfer is a qualified transfer if (1) the transfer is between related parties, (2) the transfer is pursuant to a customary loan syndication, (3) the transfer is by an underwriter pursuant to an underwriting, (4) the transferee's basis in the indebtedness is determined under section 1014 or 1015 or with reference to the transferor's basis in the indebtedness, (5) the transfer is in satisfaction of a right to receive a pecuniary bequest, (6) the transfer is pursuant to a divorce or separation instrument, or (7) the transfer is by reason of subrogation. A transfer of indebtedness is not a qualified transfer,

however, if the transferee acquired the indebtedness for a principal purpose of benefitting from the losses of the loss corporation.

The proposed amendments provide a special rule for cases in which a loss corporation satisfies its indebtedness with new indebtedness, either through an exchange of new indebtedness for old indebtedness or a change in the terms of indebtedness that results in an exchange under section 1001. Under this rule, the owner of the new indebtedness is treated as having owned the new indebtedness for the period that it owned the old indebtedness. In addition, the new indebtedness is treated as having arisen in the ordinary course of the trade or business of the loss corporation if the old indebtedness so arose.

#### *F. Proposed Effective Dates*

The proposed amendments apply to ownership changes occurring on or after the date the Treasury Decision adopting these amendments is filed with the Federal Register. The Service intends that the final regulations will ensure that taxpayers are not disadvantaged by the withdrawal of the 1991 proposed regulations and requests comments on ways to achieve this result.

#### *Special Analyses*

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7804(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### *Comments and Requests for a Public Hearing*

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held at 10:00 a.m., July 16, 1993. See notice of hearing published elsewhere in this issue of the Federal Register.

**Drafting Information**

The principal author of these regulations is Diana C. MacKeen, Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

**List of Subjects in 26 CFR 1.381(a)-1 Through 1.383-3**

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 TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953**

**Paragraph 1.** The authority citation for part 1 is amended by adding the following citation to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \* Section 1.382-9 also issued under 26 U.S.C. 382(m). \* \* \*

**Par. 2.** Section 1.382-1 is amended by adding an entry for paragraph (d) and continuing to reserve the entry for paragraph (c) of § 1.382-9 to read as follows:

**§ 1.382-1 Table of contents.****§ 1.382-9 Special Rules Under Section 382 for Corporations Under the Jurisdiction of a Court in a Title 11 or Similar Case.**

(c) [Reserved].

(d) Rules for determining whether stock of the loss corporation is owned as a result of being a qualified creditor.

(1) Qualified creditor.  
(2) General rules for determining whether indebtedness is qualified indebtedness.

(i) Definition.  
(ii) Determination of beneficial ownership.  
(iii) Duty of inquiry.  
(iv) Ordinary course indebtedness.  
(3) Treatment of certain indebtedness as continuously owned by the same owner.

(i) In general.  
(ii) Operating rules.  
(iii) Indebtedness owned by beneficial owner who becomes a 5-percent shareholder or 5-percent entity.

(iv) Example.  
(4) Special rule if indebtedness is a large portion of creditor's assets.

(i) In general.  
(ii) Applicable period.  
(iii) Determination of ownership change.  
(iv) Reliance on statement.

(5) Tacking of ownership periods.  
(i) Transferee treated as owning indebtedness for period owned by transferor.  
(ii) Qualified transfer.

- (iii) Exception.  
(iv) Debt-for-debt exchanges.  
(6) Effective date.

**Par. 3.** Section 1.382-9 is amended as follows:

1. The last sentence of paragraph (a) is revised to read as set forth below;  
2. Paragraph (d) is added to read as set forth below;  
3. The second sentence of paragraph (e)(1) is revised to read as set forth below.

**§ 1.382-9 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.**

(a) \* \* \* Terms and nomenclature used in this section, and not otherwise defined herein (including the nomenclature and assumptions in § 1.382-2T(b) relating to the examples) have the same respective meanings as in section 382 and the regulations thereunder.

(d) *Rules for determining whether stock of the loss corporation is owned as a result of being a qualified creditor—*

(1) *Qualified creditor.* A qualified creditor is the beneficial owner, immediately before the ownership change, of qualified indebtedness of the loss corporation. A qualified creditor owns stock of the new loss corporation (or a controlling corporation) as a result of being a qualified creditor only to the extent that the qualified creditor receives stock in full or partial satisfaction of qualified indebtedness in a transaction that is ordered by the court or is pursuant to a plan approved by the court in a title 11 or similar case. For purposes of this paragraph (d)(1), ownership of stock after the ownership change is determined without applying the attribution rules generally applicable under section 382(l)(3)(A) or § 1.382-2T(h).

(2) *General rules for determining whether indebtedness is qualified indebtedness—*(i) *Definition.* Indebtedness of the loss corporation is qualified indebtedness if it—

(A) Has been owned by the same beneficial owner since the date that is 18 months before the date of the filing of the title 11 or similar case; or  
(B) Arose in the ordinary course of the trade or business of the loss corporation and has been owned at all times by the same beneficial owner.

(ii) *Determination of beneficial ownership.* For purposes of paragraph (d)(2)(i) of this section, beneficial ownership of indebtedness is determined without applying attribution rules.

(iii) *Duty of inquiry.* The loss corporation must determine that

indebtedness that the loss corporation treats as qualified indebtedness, other than indebtedness to which paragraph (d)(3)(i) of this section applies, has been owned for the requisite period by the beneficial owner who owns the indebtedness immediately before the ownership change. The loss corporation may rely on a statement, signed under penalties of perjury, by a beneficial owner regarding the amount of indebtedness the beneficial owner owns and the length of time that the beneficial owner has owned the indebtedness.

(iv) *Ordinary course indebtedness.* For purposes of this paragraph (d)(2), indebtedness arises in the ordinary course of the loss corporation's trade or business only if the indebtedness is incurred by the loss corporation in connection with the normal, usual, or customary conduct of business, determined without regard to whether the indebtedness funds ordinary or capital expenditures of the loss corporation. For example, indebtedness (other than indebtedness acquired for a principal purpose of being exchanged for stock) arises in the ordinary course of the loss corporation's trade or business if it is trade debt; a tax liability; a liability arising from a past or present employment relationship, a past or present business relationship with a supplier, customer, or competitor of the loss corporation, a tort, a breach of warranty, or a breach of statutory duty; or indebtedness incurred to pay an expense deductible under section 162 or included in the cost of goods sold. A claim that arises upon the rejection of a burdensome contract or lease pursuant to the title 11 or similar case is treated as arising in the ordinary course of the loss corporation's trade or business if the contract or lease so arose.

(3) *Treatment of certain indebtedness as continuously owned by the same owner—*(i) *In general.* For purposes of paragraph (d)(2) of this section, a loss corporation may treat indebtedness as always having been owned by the beneficial owner of the indebtedness immediately before the ownership change if the beneficial owner is not, immediately after the ownership change, either a 5-percent shareholder or an entity through which a 5-percent shareholder owns an indirect ownership interest in the loss corporation (a 5-percent entity). This paragraph (d)(3)(i) does not apply to indebtedness beneficially owned by a person whose participation in formulating a plan of reorganization makes evident to the loss corporation (whether or not the loss corporation had previous knowledge) that the person has not owned the indebtedness for the requisite period.

(ii) *Operating rules.* For purposes of paragraph (d)(3)(i) of this section:

(A) If a loss corporation has actual knowledge of a coordinated acquisition of its indebtedness by a group of persons, through a formal or informal understanding among themselves, for a principal purpose of exchanging the indebtedness for stock, the indebtedness (and any stock received in exchange therefor) is treated as owned by an entity. A principal element in determining if an understanding exists among members of a group is whether the investment decision of each member is based upon the investment decision of one or more other members.

(B) If the loss corporation has actual knowledge regarding stock ownership described in § 1.382-2T(k)(2), the loss corporation must take that ownership into account in determining which beneficial owners of indebtedness are, immediately after the ownership change, 5-percent shareholders or 5-percent entities. The loss corporation is not required to take into account an ownership interest described in § 1.382-2T(k)(4) unless the loss corporation has actual knowledge of the ownership interest.

(C) The term 5-percent shareholder includes any person who is a 5-percent shareholder of the loss corporation within the meaning of § 1.382-2T(g), without regard to the option attribution rules of section 382(l)(3)(A) or § 1.382-2T(h)(4).

(D) Paragraph (d)(3)(i) of this section does not apply to indebtedness if the loss corporation has actual knowledge immediately after the ownership change that the exercise of an option to acquire or dispose of stock of the loss corporation would cause the beneficial owner of the indebtedness immediately before the ownership change to be, after the ownership change, either a 5-percent shareholder or a 5-percent entity. An interest that is similar to an option, within the meaning of § 1.382-2T(h)(4)(v), is treated as an option for purposes of this paragraph (d)(3)(ii)(D).

(iii) *Indebtedness owned by beneficial owner who becomes a 5-percent shareholder or 5-percent entity.* If the beneficial owner of indebtedness immediately before the ownership change is a 5-percent shareholder or 5-percent entity immediately after the ownership change, the general rules of paragraph (d)(2) of this section apply to determine whether the indebtedness has been owned for the requisite period by the beneficial owner.

(iv) *Example.* The following example illustrates paragraph (d)(3) of this section.

(A)(1) L is a loss corporation in a title 11 case. The plan of reorganization of L

approved by the bankruptcy court provides for the satisfaction of claims by the issuance of new L common stock to its creditors as follows:

A—2 percent  
B—7.5 percent  
C—2.5 percent  
P1—3 percent  
P2—10 percent  
P3—4.9 percent  
P4—4.9 percent  
P5—4.9 percent

(2) P2 is owned by Public P2. L has actual knowledge that D owns P3, P4 and P5. In addition, L has actual knowledge, immediately after the ownership change, that C owns an option to acquire newly-issued stock of L that, if exercised, would increase C's percentage ownership of L stock from 2.5 percent to 8 percent. An ownership change of L occurs on the date the plan becomes effective.

(B) Under paragraph (d)(3)(i) of this section, L may treat the indebtedness owned by A and P1 immediately before the ownership change as always having been owned by A and P1. Neither A nor P1 is a 5-percent shareholder immediately after the ownership change. Further, because P1 owns less than 5 percent of the L stock, P1 is treated as an individual, and the stock of P1 is not attributed to any other person. See § 1.382-2T(h)(2)(iii). Therefore, P1 is not a 5-percent entity.

(C) Paragraph (d)(3)(i) of this section does not apply to the indebtedness owned by B, C, P2, P3, P4, or P5. B is a 5-percent shareholder immediately after the ownership change. L has actual knowledge immediately after the ownership change that the exercise of C's option would cause C to be a 5-percent shareholder immediately after the ownership change. (L does not take into account the effect of the exercise of the option, however, in determining the percentage stock ownership of any person other than C because the deemed exercise would not cause any other person to be a 5-percent shareholder or a 5-percent entity after the ownership change.) P2 is a 5-percent entity, because Public P2, a 5-percent shareholder, owns an indirect ownership interest in L through P2, P3, P4, and P5 are 5-percent entities because D, a 5-percent shareholder, owns an indirect ownership interest in L through P3, P4, and P5. Because L has actual knowledge that D would be a 5-percent shareholder but for the application of § 1.382-2T(h)(2)(iii), that section does not apply to P3, P4, or P5. See § 1.382-2T(k)(2). Thus, under § 1.382-2T(h)(2)(i), the L stock owned by P3, P4, and P5 is attributed to D, and D is a 5-percent shareholder. Because paragraph (d)(3)(i) of this section does not apply to the indebtedness owned by B, C, P2, P3, P4, and P5, L may treat as qualified indebtedness only indebtedness that it determines had been owned by such persons for the requisite period. See paragraph (d)(2)(iii) of this section.

(4) *Special rule if indebtedness is a large portion of creditor's assets—(i) In general.* Indebtedness is not qualified indebtedness if—

(A) The beneficial owner of the indebtedness is a corporation or other entity that had an ownership change on any day during the applicable period;

(B) The indebtedness represents more than 25 percent of the fair market value of the total gross assets (excluding cash or cash equivalents) of the beneficial owner on its change date; and

(C) The beneficial owner is a 5-percent entity immediately after the ownership change of the loss corporation (determined by applying the rules of paragraph (d)(3) of this section).

(ii) *Applicable period.* For purposes of paragraph (d)(4)(i) of this section, the term *applicable period* means the period beginning on the day 18 months before the filing of the title 11 or similar case (or the day on which the beneficial owner acquired the indebtedness, if later) and ending with the change date of the loss corporation.

(iii) *Determination of ownership change.* For purposes of paragraph (d)(4)(i) of this section, the determination whether a beneficial owner of indebtedness has an ownership change is made under the principles of section 382 and the regulations thereunder, without regard to whether the beneficial owner is a loss corporation and by beginning the testing period no earlier than the latest of the day three years before the change date, the day 18 months before the filing of the title 11 or similar case, or the day on which the beneficial owner acquired the indebtedness.

(iv) *Reliance on statement.* Paragraph (d)(4)(i) of this section does not apply to indebtedness if the loss corporation obtains a statement, signed under penalties of perjury, by the beneficial owner of the indebtedness that states that paragraph (d)(4)(i) of this section does not apply to the indebtedness.

(5) *Tacking of ownership periods—(i) Transferee treated as owning indebtedness for period owned by transferor.* To determine whether indebtedness transferred in a qualified transfer is qualified indebtedness, the transferee is treated as having owned the indebtedness for the period that it was owned by the transferor.

(ii) *Qualified transfer.* For purposes of paragraph (d)(5)(i) of this section, a transfer of indebtedness is a qualified transfer if—

(A) The transfer is between parties who bear a relationship to each other described in section 267(b) or 707(b) (substituting *at least 80 percent for more than 50 percent* each place it appears in section 267(b) and section 267(f)(1)) or 707(b));

(B) The transfer is a transfer of a loan within 90 days after its origination,

pursuant to a customary syndication transaction;

(C) The transfer is a transfer of newly incurred indebtedness by an underwriter that owned the indebtedness for a transitory period pursuant to an underwriting;

(D) The transferee's basis in the indebtedness is determined under section 1014 or 1015 or with reference to the transferor's basis in the indebtedness;

(E) The transfer is in satisfaction of a right to receive a pecuniary bequest;

(F) The transfer is pursuant to any divorce or separation instrument (within the meaning of section 71(b)(2)); or

(G) The transfer is pursuant to a subrogation in which a bank or insurance company acquires a claim against a loss corporation by reason of a payment to the claimant pursuant to a letter of credit or insurance policy.

(iii) *Exception.* A transfer of indebtedness is not a qualified transfer for purposes of paragraph (d)(5)(i) of this section if the transferee acquired the indebtedness for a principal purpose of benefitting from the losses of the loss corporation by—

(A) Exchanging the indebtedness for stock of the loss corporation pursuant to the title 11 or similar case; or

(B) Selling the indebtedness at a profit that reflects the expectation that, by reason of section 382(l)(5), section 382(a) will not apply to any ownership change resulting from the title 11 or similar case.

(iv) *Debt-for-debt exchanges.* If the loss corporation satisfies its indebtedness with new indebtedness, either through an exchange of new indebtedness for old indebtedness or a change in the terms of indebtedness that results in an exchange under section 1001—

(A) The owner of the new indebtedness is treated as having owned that indebtedness for the period that it owned the old indebtedness; and

(B) The new indebtedness is treated as having arisen in the ordinary course of the trade or business of the loss corporation if the old indebtedness so arose.

(6) *Effective date.* This paragraph (d) applies to ownership changes occurring on or after [Insert date the Treasury Decision adopting these regulations is filed with the Federal Register].

(e) *Option attribution for purposes of determining stock ownership under section 382(l)(5)(A)(ii)—(1) In general.* \* \* \* An option that is owned as a result of being a pre-change shareholder or qualified creditor and that, if exercised, would result in the ownership of stock

by a pre-change shareholder or qualified creditor is not treated as exercised under this paragraph (e). \* \* \*

\* \* \* \* \*

Michael P. Dolan,  
Acting Commissioner of Internal Revenue.  
[FR Doc. 93-10747 Filed 5-7-93; 8:45 am]  
BILLING CODE 4830-01-U

## 26 CFR Part 1

[CO-45-91]

RIN 1545-AQ08

### Proposed Rulemaking Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards; Hearing

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations that determine whether stock of a loss corporation is owned as a result of being a qualified creditor for purposes of section 382(l)(5)(E) of the Internal Revenue Code and the regulations thereunder and withdraws previously proposed regulations addressing this subject.

**DATES:** The public hearing will be held on Friday, July 16, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, June 25, 1993.

**ADDRESSES:** The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [CO-45-91], room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190, (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 382 of the Internal Revenue Code (Code). These regulations appear in the proposed rules section of this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the

time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, June 25, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,  
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).  
[FR Doc. 93-10870 Filed 5-7-93; 8:45 am]  
BILLING CODE 4830-01-U

## 26 CFR Parts 1 and 602

[INTL-401-88]

RIN 1545-AL80

### Intercompany Transfer Pricing Regulations Under Section 482; Hearing

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document contains notice of a public hearing on proposed regulations relating to intercompany transfer pricing under section 482 of the Internal Revenue Code.

**DATES:** The public hearing will be held on Monday, August 16, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, July 26, 1993.

**ADDRESSES:** The public hearing will be held in the Internal Revenue Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben

Franklin Station, Attn: CC:CORP:T:R, (INTL-401-88), room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 or (202) 622-7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 482 of the Internal Revenue Code. The proposed regulations appeared in the *Federal Register* for Thursday, January 21, 1993, at page 5310 (58 FR 5310).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, July 26, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 93-10871 Filed 5-7-93; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD1 93-009]

#### Drawbridge Operation Regulations; Hutchinson River (Eastchester Creek), NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the Westchester County Department of Public Works, the Coast Guard is proposing to change the regulations governing the South Fulton Avenue Bridge over Hutchinson River (Eastchester Creek), at mile 2.9, between the City of Mount Vernon and the Town of Pelham, Westchester County, New York. The proposed regulations would provide that the draw open on signal from three hours before to three hours after the predicted high tide. At all other times, at least four hours advance notice is given except that requests for opening within six hours after predicted high water shall be given to the bridge tender before he is scheduled to depart and the four hours notice would not apply. This change is being made because of the decrease in requests for opening the draw around low tide. This action will relieve the bridge owner of having a person constantly available to open the draw during periods of low tide while still providing for the needs of marine traffic.

**DATES:** Comments must be received on or before June 24, 1993.

**ADDRESSES:** Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The District Commander maintains the public docket for this rulemaking at the above address. Comments and other material referenced in this notice are part of this docket and will be available for inspection and copying at the above address. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:**

William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, this rulemaking (CGD1 93-009), the specific section of this proposal to which each comment applies, and give reasons for concurrence with or any recommended changes to the proposal. Persons desiring acknowledgment that their comments have been received

should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period and determine a course of final action on this proposal. The proposed regulations may be changed in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager, listed under "ADDRESSES". If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

**Drafting Information**

The drafters of this notice are Waverly W. Gregory, Jr., Project Manager, and Lieutenant Commander Jeffrey Stieb, Project Counsel, First Coast Guard District, Legal Office.

**Background and Purpose**

Current regulations provide that the draw of the South Fulton Avenue Bridge shall open on signal at all times. The South Fulton Avenue Bridge over the Hutchinson River (Eastchester Creek) is a single leaf bascule (Scherzer Rolling Lift) span located near the end of the navigable portion of the river. The navigational clearances of the bridge provide a vertical distance in the closed position of six feet above mean high water (MHW), and 13 feet above mean low water (MLW) with a horizontal distance of 100 feet between fenders. In the open position, the bridge provides unlimited vertical distance through a clear horizontal distance of 80 feet between tips of bascule leaves. The river is used exclusively by small coastal tankers, self-propelled barges, tugs and tows.

Westchester County has requested to limit the drawtenders normal presence to six hours twice a day, coinciding with the high tide. At all other times, the County would provide openings if at least four hours advance notice is given.

**Discussion of Proposed Amendments**

Discussions with marine interests indicated that all commercial transits through the bridge would require an opening, however due to the shallow depth of Hutchinson River (Eastchester Creek) at low tide approximately -7 feet, passage of boats and or barges are limited to a period of two to three hours before and after each high tide which normally occurs twice a day.

The proposed regulation would require that from three hours before to three hours after the predicted high tide,

the draw shall open on signal. For these purposes predicted high tide would be based on four hours after predicted high water for New York (Battery), as given in the tide tables published by the National Oceanic and Atmospheric Administration (NOAA). The proposed change to the regulations will include the new provisions for clearance gauges on all bridges on this waterway to minimize openings and permit vessel operators to comply with § 117.11. The regulations will also define the maximum time delays for openings of railroad bridges as required by § 117.9. This amendment also updates appendix A to part 117 to reflect the most current information regarding radiotelephone equipped bridges on this waterway, their call signs and frequency.

#### Regulatory Evaluation

This proposal is not major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based upon the fact that due to the shallow depth of the river, requests for openings of the bridge for commercial vessels will generally be limited to periods around the high tide. Additionally, all the movable bridges on this waterway presently maintain clearance gauges, and the minor cost of providing and maintaining same would be offset by timely and reduced requests for openings and enhanced safety.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal because of the reason stated above in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C.

605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federal Assessment.

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Section 2.B.2.g.(5) provides that Bridge Administration Program actions relating to the promulgation of operating requirements or procedures for drawbridges are excluded. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES".

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117, as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.793 is revised to read as follows:

#### § 117.793 Hutchinson River (Eastchester Creek)

(a) The following requirements apply to all bridges across Hutchinson River (Eastchester Creek):

(1) The owners of each bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provision of § 118.160 of this chapter.

(2) Trains and locomotives shall be controlled so that any delay in opening the draw shall not exceed ten minutes except as provided in § 117.31(b). However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(3) Except as provided in paragraphs (b) and (c) of this section each draw shall open on signal.

(b) The draws of the Hutchinson River Parkway Bridge, mile 0.9, and the New England Thruway (I-95) Bridge, mile 2.2, both at New York City, shall open on signal if at least six hours notice is given.

(c) The draw of the South Fulton Avenue Bridge, mile 2.9, shall open on signal from three hours before to three hours after the predicted high tide. For the purposes of this section, predicted high tide occurs four hours after predicted high water for New York (Battery), as given in the tide tables published by the National Oceanic and Atmospheric Administration (NOAA).

(i) At all other times, the bridge shall open on signal if at least four hours advance notice is given to the Westchester County Road Maintenance Division during normal work hours or to the County's Parkway Police at all other times.

(ii) The bridge tender shall honor requests for opening within six hours after predicted high water if such request is given to the bridge tender while he or she is on station (three hours before to three hours after predicted high tide).

Appendix A to part 117 is amended to revise Hutchinson River entries under the State of New York to read as follows:

## APPENDIX A TO PART 117—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
New York:						
Hutchinson River .....	0.4	New York City .....	Pelham Bay New York City ....	KU 9758 ...	13	13
	0.5	Amtrak-Pelham .....	Bay New York City .....	KU 6095 ...	13	13
	2.2	Eastchester .....	New England Thruway, I-85 ..	KXS 298 ..	13	13
	2.9	Eastchester .....	Westchester County DPW .....	KU 6089 ...	13	13

Dated: April 28, 1993.

K.W. Thompson,

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

[FR Doc. 93-10962 Filed 5-7-93; 8:45 am]

BILLING CODE 4810-14-M

### 33 CFR Part 165

#### CGD1 93-023

#### Safety Zone: Troy Fourth of July Fireworks, Troy, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a safety zone in the Upper Hudson River for the Troy Fourth of July Fireworks program. The event, sponsored by the City of Troy Recreation Department, will take place on Saturday, July 3, 1993 from 8:30 p.m. until 10 p.m. This safety zone in the Upper Hudson River is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

**DATES:** Comments must be received on or before June 24, 1993.

**ADDRESSES:** Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 108, Governors Island, New York 10004-5096, or may be delivered to the Waterways Management Office, Bldg. 109, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Waterways Management Office at (212) 668-7933 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant (junior grade) J. J. Gleason, Waterways Management Officer, Coast Guard Group New York (212) 668-7933.

SUPPLEMENTARY INFORMATION: .

#### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1-93-023) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under "ADDRESSES." If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

#### Drafting Information

The drafters on this notice are LTJG J. J. Gleason, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

#### Background and Purpose

On March 24, 1993, the City of Troy Recreation Department submitted a request to hold a fireworks program in the Upper Hudson River, Troy, New York. This safety zone is needed to protect boaters from the hazards associated with the exploding of pyrotechnics in the area.

#### Discussion of Proposed Amendments

The Coast Guard proposes to establish a temporary safety zone that will include all waters shore to shore from the Congress Street Bridge to the southern most end of Adams Island in

the Upper Hudson River. This safety zone will be in effect from 8:30 p.m. until 10 p.m. on July 3, 1993. This closure is needed to protect the boating public from the hazards that accompany a fireworks program. No vessel will be permitted to enter or move within this area unless authorized by the Coast Guard Captain of the Port, New York or the sponsor.

#### Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Due to the limited duration of the event and the extensive advisories that will be made to the affected maritime community, the Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), The Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).



**Federalism**

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under this Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 165**

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

**Proposed Regulations**

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

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

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

2. A temporary section, 165.T01-023 is added to read as follows:

**§ 165.T01-023 Troy Fourth of July Fireworks, New York.**

(a) *Location.* The safety zone will include all waters shore to shore from the Congress Street Bridge to the southern most end of Adams Island in the Upper Hudson River.

(b) *Effective period.* This regulation will be effective from 8:30 p.m. until 10 p.m. on July 3, 1993.

**(c) Regulations.**

(1) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless authorized by the U.S. Coast Guard Captain of the Port, New York or the sponsor.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed.

Dated: April 12, 1993.

**R.M. Larrabee,**  
Captain, U.S. Coast Guard, Captain of the Port, New York.  
[FR Doc. 93-10961 Filed 5-7-93; 8:45 am]  
BILLING CODE 4910-14-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[FRL-4653-2]

**National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 14**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

The Environmental Protection Agency ("EPA") proposes to add new sites to the NPL. This 14th proposed revision to the NPL includes 19 sites in the General Superfund Section and 7 in the Federal Facilities Section. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action does not affect the 1,202 sites currently listed on the NPL (1,079 in the General Superfund Section and 123 in the Federal Facilities Section). However, it does increase the number of proposed sites to 54 (44 in the General Superfund Section and 10 in the Federal Facilities Section). Final and proposed sites now total 1,256. This number reflects five deletions identified in section I and EPA's decision to voluntarily remove Lehigh Portland Cement Co., Mason City, Iowa from the NPL.

**DATES:** Comments must be submitted on or before June 9, 1993 for Hanscom AFB (Bedford, Massachusetts) and Natick Laboratory Army Research, Development and Engineering Center (Natick, Massachusetts). EPA is under a

court-ordered deadline for these two sites. For the remaining sites in this proposal, comments must be submitted on or before July 9, 1993.

**ADDRESSES:** Mail original and three copies of comments (no facsimiles) to Docket Coordinator, Headquarters; U.S. EPA CERCLA Docket Office; OS-245; Waterside Mall; 401 M Street, SW.; Washington, DC 20460; 202/260-3046. For additional Docket addresses and further details on their contents, see Section I of the "Supplementary Information" portion of this preamble. **FOR FURTHER INFORMATION CONTACT:** Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-5204G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

**SUPPLEMENTARY INFORMATION:**

- I. Introduction
- II. Purpose and Implementation of the NPL
- III. Contents of This Proposed Rule
- IV. Regulatory Impact Analysis
- V. Regulatory Flexibility Act Analysis

**I. Introduction****Background**

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, 100 stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action." As defined in CERCLA section 101(24), remedial action tends to be long-term in nature and involves response actions

that are consistent with a permanent remedy for a release.

Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") and financed by other persons are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which is appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants, and contaminants to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above 28.50, if all of the following conditions are met:

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

EPA determines that the release poses a significant threat to public health.

EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA promulgates a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of

40 CFR part 300, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites." CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1).

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 14, 1992 (57 FR 47180).

The NPL includes two sections, one of sites being evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining if the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

#### *Deletions/Cleanups*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 49 sites from the General Superfund Section of the NPL, including five since October 14, 1992: Pioneer Sand Co., Warrington, Florida (58 FR 7492, February 8, 1993); Arrcom (Drexler Enterprises), Rathdrum, Idaho (57 FR 61005, December 23, 1992); Metal Working Shop, Lake Ann, Michigan (57 FR 61004, December 23, 1992); Adrian Municipal Well Field, Adrian, Minnesota (57 FR 62231, December 30, 1992); Waste Research & Reclamation Co., Eau Claire, Wisconsin (58 FR 7189, February 5, 1993).

EPA also has developed an NPL construction completion list (CCL) to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when: (1) Any necessary physical construction is

complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 48 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 113 sites are also in the NPL CCL, all but one from the General Superfund Section. Thus, as of April 1, 1993, the CCL consists of 161 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of March 1, 1993, EPA had conducted 822 removal actions at NPL sites, and 2067 removals at non-NPL sites. Information on removals is available from the Superfund hotline.

Pursuant to the NCP at 40 CFR 300.425(c), this document proposes to add 26 sites to the NPL. The General Superfund Section includes 1,079 sites, and the Federal Facilities Section includes 123 sites, for a total of 1,202 sites on the NPL. Final and proposed sites now total 1,256.

#### *Public Comment Period*

The documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional offices. The dockets are available for viewing, by appointment only, after the appearance of this rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours. Note that the Headquarters docket, although it will be moving during the comment period, will remain open for viewing of sites included in this rule.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/260-3046.

Ellen Culhane, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203-2211, 617/573-5729.

Ben Conetta, Region 2, 26 Federal Plaza, 7th Floor, room 740, New York, NY 10278, 212/264-6696.

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-7904.

Beverly Fulwood, Region 4, U.S. EPA Library, room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347-4216.

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7-J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886-6214.

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740.

Steven Wyman, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551-7241.

Greg Oberley, Region 8, U.S. EPA 969 18th Street, suite 500, Denver, CO 80202-2466, 303/294-7598.

Lisa Nelson, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744-2347.

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW-114, Seattle, WA 98101, 206/553-2103.

The Headquarters docket for this rule contains HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record. Each Regional docket for this rule contains all of the information in the Headquarters docket for sites in that Region, plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. Interested parties may view documents, by appointment only, in the Headquarters or the appropriate Regional docket or copies may be requested from the Headquarters or appropriate Regional docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider

and how it affects individual HRS factor values. See *Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (D.C. Cir. 1988). After considering the relevant comments received during the comment period, EPA will add sites to the NPL if they meet requirements set out in CERCLA, the NCP, and any applicable listing policies.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 57 FR 4824 (February 7, 1992)). Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments postmarked by the close of the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

## II. Purpose and Implementation of the NPL

### Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency

may initiate CERCLA-financed remedial action.

### Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment (PA), is a low-cost review of existing information to determine if the site poses a threat to public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA will generally perform a more extensive study called the Site Inspection (SI). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites which warrant placement on the NPL and further study. EPA may perform removal actions at any time during the process. To date EPA has completed approximately 34,000 PAs and approximately 17,000 SIs.

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990). EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using

CERCLA's limited resources as efficiently as possible.

Although the ranking of sites by HRS scores is considered, it does not, by itself, determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(b)(2), 55 FR 8845, March 8, 1990). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those presenting significant risk or sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it was already underway.

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study (RI/FS) that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990)). It takes into account the amount of contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 (55 FR 8842, March 8, 1990) and 40 CFR 300.430 (55 FR 8846, March 8, 1990). After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

#### RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the Federal Register for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as

outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Trust Fund-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

#### Facility (Site) Boundaries

The purpose of the NPL is merely to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The Agency believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. Knowledge of the geographic extent of sites will be refined as more information is developed during the RI/FS and even during implementation of the remedy.

Because the NPL does not assign liability or define the geographic extent of a release, a listing need not be amended if further research into the contamination at a site reveals new information as to its extent. This is further explained in preambles to past NPL rules, most recently February 11, 1991 (56 FR 5598).

#### Limitations on Payment of Claims for Response Actions

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at 58 FR 5460 (January 21, 1993), 40 CFR part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or "preauthorization," from EPA.

#### III. Contents of This Proposed Rule

Table 1 identifies the 19 NPL sites in the General Superfund Section and Table 2 identifies the 7 NPL sites in the Federal Facilities Section being proposed in this rule. Both tables follow this preamble. All these sites are proposed based on HRS scores of 28.50 or above. The sites in Table 1 are listed alphabetically by State, for ease of identification, with group number identified to provide an indication of relative ranking. To determine group number, sites on the NPL are placed in groups of 50; for example, a site in Group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the General Superfund Section of the NPL. Sites in the Federal Facilities Section are also presented by group number based on groups of 50 sites in the General Superfund Section.

#### Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this proposed rule cover sites subject to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901-6991i) and Federal facility sites. These policies and requirements are explained below and have been explained in greater detail in previous rulemakings (56 FR 5598, February 11, 1991).

#### Releases From Resource Conservation and Recovery Act (RCRA) Sites

EPA's policy is that non-Federal sites subject to RCRA Subtitle C corrective action authorities will not, in general, be placed on the NPL. However, EPA will list certain categories of RCRA sites subject to Subtitle C corrective action authorities, as well as other sites subject to those authorities, if the Agency concludes that doing so best furthers the

aims of the NPL/RCRA policy and the CERCLA program. EPA has explained these policies in detail in the past (51 FR 21054, June 10, 1986; 53 FR 23978, June 24, 1988; 54 FR 41000, October 4, 1989; 56 FR 5602, February 11, 1991).

Consistent with EPA's NPL/RCRA policy, EPA is proposing to add two sites to the General Superfund Section of the NPL that may be subject to RCRA Subtitle C corrective action authorities. One is the Onondaga Lake site in Lake Onondaga, NY. Material has been placed in the public docket confirming that the owner at the site who is subject to RCRA authorities is bankrupt. The other owner has no RCRA involvement.

The second is the National Zinc Corp. site in Bartlesville, OK. The Agency believes that offsite contamination and air deposition of contamination at and from this site will be better addressed under CERCLA authorities. Material has been placed in the docket indicating that not all site-related contamination may be addressable under RCRA corrective action authorities.

#### *Releases from Federal Facility Sites*

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

This rule proposes to add seven sites to the Federal Facilities Section of the NPL. One site not listed in the Federal Facilities Section, the Blackbird Mine site in Lemhi, ID, is located in part on federally owned land. There is no separate category for mixed-ownership sites, and the facts at this site are such that EPA considers it more appropriate to propose the site in the General Superfund section of the NPL. In particular, the sources of contamination on the Federal portion of the site are few compared to the sources on private land, and contamination is not the result of activities of the U.S. Forest Service, which currently manages the Federal portion of the site. EPA emphasizes that the designation of a site as Federal or non-Federal for listing purposes has no legal significance and is purely informational in nature. In particular, such designation does not determine, or limit, the extent of any Federal agency's obligations under section 120 of CERCLA. EPA solicits comment on the most appropriate designation of the site.

#### *Name Changes*

EPA proposes to change the name of the Del Amo Facility, a proposed site in Los Angeles, California, to the Del Amo Pits. EPA proposes to change the name of the American Shizuki Corp./Ogallala Electronics and Manufacturing, Inc., a proposed site in Ogallala, Nebraska to the Ogallala Groundwater Contamination. EPA believes these names more accurately reflect the sites, and solicits comment on these proposed name changes.

#### *Clarification of Prior NPL Listing*

The Indian Bend Wash Superfund Site, located in Scottsdale-Tempe-Phoenix, Arizona, was placed on the NPL on September 8, 1983 (48 FR 40667). The purpose of this clarification of the original listing is to provide additional information about the releases of hazardous substances that are currently being investigated.

The 1982 HRS analysis in the original listing docket for Indian Bend Wash (cross-referenced as NPL-2-630) provides the following general description of the facility:

"Groundwater contamination has been detected in an area approximately two miles by five miles along the Indian Bend Wash in Scottsdale and Tempe. Municipal drinking water supply wells serving the cities of Scottsdale, Phoenix and Tempe have been tainted by trichloroethylene. Chromium contamination has also been found to be present in the aquifer of concern." The HRS analysis also includes "approximate boundaries" of "Scottsdale Road (west), Salt River channel (south), Pima Road (east), and Chapparal Road (north)." However, documented releases at that time also included contaminated wells south of the Salt River.

During the investigation of groundwater at Indian Bend Wash, EPA has identified several apparently noncontiguous areas of groundwater contamination, both north and south of the Salt River. While it cannot be stated with certainty because of the hydrological impacts of the river flow, it appears that the releases of hazardous substances south of the river may originate in sources other than those north of the river. This notice is to clarify that the Indian Bend Wash Superfund Site has always included all releases discovered during the course of the RI/FS, both north and south of the Salt River, and that the RI/FS has, from the beginning, investigated releases documented in the original HRS analysis both north and south of the Salt River. The approximate boundaries of

the study area where EPA is currently responding to releases of hazardous substances are as follows: Rural Road (Tempe)/ Scottsdale Road (Scottsdale) (west), Chaparral Road (north), Price Road (Tempe)/Pima Road (Scottsdale)(east), and Apache Boulevard (south).

Two Records of Decision were issued, on September 21, 1988 and September 12, 1991, for the portion of the site located north of the Salt River, which EPA has informally designated as "North Indian Bend Wash" or "Indian Bend Wash (North)". The portion of the site located south of the Salt River has been informally designated as "South Indian Bend Wash", or "Indian Bend Wash (South)", and is now in the RI/FS study phase.

The above definition of the site is consistent with EPA's policy for listing noncontiguous facilities. Section 104(d)(4) of CERCLA authorizes EPA to "treat two or more noncontiguous facilities as one for the purposes of response, if such facilities are reasonably related on the basis of geography or their potential threat to public health, welfare, or the environment." EPA published a policy (49 FR 37076, September 21, 1984) identifying the factors which it would consider in determining whether noncontiguous facilities should be aggregated.

The results of the RI (available in the Region IX docket for this site) indicate that the Indian Bend Wash Superfund Site meets the aggregation criteria. Indian Bend Wash North and Indian Bend Wash South each contain many potentially noncontiguous facilities. It is appropriate to address all facilities within both North Indian Bend Wash and South Indian Bend Wash in aggregation. Several factors support this. First, there are similar constituents of concern so that a single strategy for cleanup is appropriate. Second, the contamination from the releases is threatening the same aquifer and there is no evidence of any geologic discontinuity between the sources. Lastly, the target populations affected by the noncontiguous releases are substantially overlapping with a number of drinking water wells located within both the northern and southern portions of the site. Based on the above considerations, the multiple noncontiguous sources in both the north and south areas are most logically considered as a single site for NPL purposes. EPA has consistently addressed the areas north and south of the river as a single site since the original listing of the Indian Bend Wash site.

This clarification of the extent of releases being evaluated by EPA at the Indian Bend Wash site is intended to provide notice of same to all persons. Although EPA properly has regarded contamination south of the Salt River, referred to as Indian Bend Wash (South), as part of the site since it was listed on the NPL in 1983, EPA will consider comments addressed to the inclusion of that area as part of the site. EPA will not consider comments addressed to other aspects of the original listing decision.

#### IV. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites to the NPL. EPA believes that the kinds of economic effects associated with this proposed revision to the NPL are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

#### Costs

This proposed rulemaking is not a "major" regulation because it does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine any party's liability for site response costs. Costs that arise out of responses at sites in the General Superfund Section result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs that may be associated with responding to all sites in this rule. The proposed listing of a site on the NPL may be followed by a search for potentially responsible parties and a Remedial Investigation/Feasibility Study (RI/FS) to determine if remedial actions will be undertaken at a site. Selection of a remedial alternative, and design and construction of that alternative, may follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may enter into consent orders or agreements to conduct or pay the costs of the RI/FS, remedial design and remedial action, and O&M, or EPA and the States may share costs up front and subsequently bring an action for cost recovery.

The State's share of site cleanup costs for Trust Fund-financed actions is governed by CERCLA section 104(c). For privately-owned sites, as well as publicly-owned but not publicly-operated sites, EPA will pay from the Trust Fund for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs of the remedial action, leaving 10% to the State. For sites operated by a State or political subdivision, the State's share is at least 50% of all response costs at the site, including the cost associated with the RI/FS, remedial design, and construction and implementation of the remedial action selected. After construction of the remedy is complete, costs fall into two categories:

For restoration of ground water and surface water, EPA will pay from the Trust Fund a share of the start-up costs according to the cost-allocation criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years. 40 CFR 300.435(f)(3). After that, the State assumes all O&M costs. 40 CFR 300.435 (f)(1).

For other cleanups, EPA will pay from the Trust Fund a share of the costs of a remedy according to the cost-allocation criteria in the previous paragraph until it is operational and functional, which generally occurs after one year. 40 CFR 300.435(f)(2), 300.510(c)(2). After that, the State assumes all O&M costs. 40 CFR 300.510(c)(1).

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average-per-site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, costs for individual sites vary widely, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost Category	Average Total Cost Per Site <sup>1</sup>
RI/FS .....	1,300,000
Remedial Design .....	1,500,000
Remedial Action .....	<sup>2</sup> 25,000,000
Net present value of O&M <sup>2</sup> .	3,770,000

<sup>1</sup> 1988 U.S. Dollars

<sup>2</sup> Assumes cost of O&M over 30 years, \$400,000 for the first year and 10% discount rate

<sup>3</sup> Includes State cost-share

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Possible costs to States associated with today's proposed rule for Trust Fund-financed response action arise from the required State cost-share of: (1) For privately owned sites at which remedial action involving treatment to restore ground and surface water quality are undertaken, 10% of the cost of constructing the remedy, and 10% of the cost of operating the remedy for a period up to 10 years after the remedy becomes operational and functional; (2) for privately-owned sites at which other remedial actions are undertaken, 10% of the cost of all remedial action, and 10% of costs incurred within one year after remedial action is complete to ensure that the remedy is operational and functional; and (3) for sites publicly-operated by a State or political subdivision at which response actions are undertaken, at least 50% of the cost of all response actions. States must assume the cost for O&M after EPA's participation ends. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the non-Federal sites proposed for the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions at all non-Federal sites in today's proposed rule, but excluding O&M costs, would be approximately \$36 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share start-up costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately \$32 million. As with the EPA share of costs, portions of the State share will be borne by responsible parties.

Placing a site on the NPL does not itself cause firms responsible for the site

to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, these effects cannot be precisely estimated. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the National level, as was the case in the 1982 RIA.

**Benefits**

The real benefits associated with today's proposal to place additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of

potential hazards. In addition to the potential for more federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate before the RI/FS is completed at these sites.

**V. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes to revise the NCP, it is not a typical regulatory change since it does not automatically impose costs. As stated above, proposing sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to

predict. A site's proposed inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

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

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

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

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

**NATIONAL PRIORITIES LIST PROPOSED RULE #14  
GENERAL SUPERFUND SECTION**

State	Site Name	City/County	NPLGr <sup>1</sup>
AL	Monarch Tile Manufacturing, Inc.	Florence	17
CO	ASARCO, Inc. Globe (Globe Plant)	Denver	1
CO	Summitville Mine	Rio Grande County	4/5
FL	Plymouth Avenue Landfill	DeLand	4/5
HI	Del Monte Corp. (Oahu Plantation)	Honolulu County	4/5
ID	Blackbird Mine	Lemhi	4/5
ID	Triumph Mine Tailings Piles	Triumph	1
MD	Ordnance Products, Inc.	Cecil County	13
MS	Potter Co.	Wesson	4/5
NJ	Horseshoe Road	Sayreville	4
NY	Onondaga Lake	Syracuse	4
NY	Pfohl Brothers Landfill	Cheektowaga	4
OH	Diamond Shamrock Corp. (Painesville Works)	Painesville	4/5
OH	Dover Chemical Corp.	Dover	4/5
OK	National Zinc Corp.	Bartlesville	4/5
OR	East Multnomah County Ground Water Contamination	Multnomah County	4/5
TN	ICG Iselin Railroad Yard	Jackson	4/5
TX	RSR Corp.	Dallas	4/5
WA	Pacific Sound Resources	Seattle	1

Number of Sites Proposed to General Superfund Section: 19

<sup>1</sup> Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

**NATIONAL PRIORITIES LIST PROPOSED RULE #14  
FEDERAL FACILITIES SECTION**

State	Site Name	City/County	NPLGr <sup>1</sup>
KY	Paducah Gaseous Diffusion Plant (DDE)	Paducah	2
MA	Hanscom AFB	Bedford	4/5
MA	Natick Laboratory Army Research, Development and Engineering Center.	Natick	4/5
MD	Beltsville Agriculture Research Center (USDA)	Beltsville	4/5
VA	Langley Air Force Base/NASA Langley Research Center	Hampton	4/5
VA	Marine Corps Combat Development Command	Quantico	4/5
WA	Puget Sound Naval Shipyard Complex	Bremerton	4/5

Number of Sites Being Proposed to the Federal Facilities Section: 7

<sup>1</sup> Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

#### List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

**Authority:** 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12580, 3 CFR, 1987 Comp., p. 193.

Dated: May 4, 1993.

Richard J. Guimond,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 93-10867 Filed 5-7-93; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

##### National Highway Traffic Safety Administration

##### 49 CFR Part 571

[Docket No. 93-31; Notice 01]

RIN 2127-AE78

##### Federal Motor Vehicle Safety Standards; Warning Devices

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to amend Federal Motor Vehicle Safety Standard No. 125, *Warning Devices*. That standard specifies requirements for non-powered warning devices designed to be carried in all types of motor vehicles and set out on the roadway to warn oncoming traffic of a stopped vehicle in or near the roadway. As amended, the standard would apply only to warning devices that are designed to be carried in buses and trucks that have a gross vehicle weight

rating (GVWR) greater than 10,000 pounds (4,536 kilograms).

The agency is proposing to exclude from the standard warning devices for vehicles with a GVWR of 10,000 pounds or less because it has determined tentatively that no longer applying Standard No. 125 to non-powered warning devices carried on such vehicles would provide warning device manufacturers with greater design freedom and would relieve an unnecessary regulatory burden on industry. The standard would continue to apply to trucks and buses with higher GVWRs because the agency has long-term plans to amend Standard No. 125 to make it more performance oriented for warning devices designed to be carried on those vehicles.

**DATES:** *Comments.* Comments must be received on or before June 24, 1993.

**PROPOSED EFFECTIVE DATE:** The proposed amendment would become effective 30 days after publication of a final rule in the *Federal Register*.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth O. Hardie, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-6987).

##### SUPPLEMENTARY INFORMATION:

##### I. Background

Federal Motor Vehicles Safety Standard (FMVSS) No. 125, *Warning Devices*, establishes requirements for devices, without self-contained energy sources, that are designed to be carried in motor vehicles and used to warn approaching traffic of the presence of a stopped vehicle, except for devices

designed to be permanently affixed to the vehicle. The purpose of the standard is to reduce deaths and injuries due to rear-end collisions between moving traffic and disabled or stopped vehicles. The warning devices are required to be triangular with an open center, covered with orange fluorescent and red reflex reflective material, and capable of being erected on the roadway. These performance characteristics are intended to assure that the warning devices can be readily observed during daytime and nighttime lighting conditions, have a standardized shape for quick message recognition, and perform properly while deployed.

Standard No. 125 has been the subject of several rulemaking actions because it contains extensive detail specifying the warning device's performance and physical characteristics as well as the related test procedures. As a result of the Standard, manufacturers are prohibited from marketing other non-powered warning devices, which may vary significantly in performance and configuration from the Standard's specifications. Some have contended that the Standard is too design restrictive since its specifications prohibit other warning devices, which may be capable of adequately warning approaching drivers of a disabled vehicle, even though they differ from a Standard No. 125 warning triangle.

##### A. Regulatory History

On October 14, 1967, the National Highway Safety Bureau, the predecessor to NHTSA, published an advance notice of proposed rulemaking (ANPRM) concerning a possible safety standard requiring warning devices for stopped vehicles. (32 FR 14278) That notice discussed such devices as flares, fuseses, cloth flags, electric lanterns, and emergency reflectors.

On November 11, 1970, NHTSA proposed issuing a new Federal Motor Vehicle Safety Standard (FMVSS) that would specify performance



requirements and test procedures applicable to fluorescent and retroreflective, triangular, non-powered warning devices similar to those now specified in Standard No. 125. (35 FR 17350). These devices were intended to supplement the vehicular warning signal lamps required by Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to minimize the likelihood of rear-end collisions between moving vehicles and disabled vehicles. The notice proposed that passenger cars and multipurpose passenger vehicles be equipped with one such device and trucks and buses with three such devices as standard equipment upon the first consumer sale.

On March 1, 1972, NHTSA issued Standard No. 125, a safety standard that specifies shape, size, and performance requirements for warning devices that do not have self-contained energy sources. (37 FR 5038). The agency decided to issue an equipment standard instead of a vehicle standard because the available information did not justify the additional cost of mandating the warning device in all new vehicles. Accordingly, these devices were not required as standard vehicle equipment. The notice also stated that it would be necessary to collect further data regarding the effectiveness of warning triangles and frequency of use by consumers so that a more accurate cost-benefit analysis could be made of a vehicle standard.

On June 22, 1972, NHTSA responded to petitions for reconsideration that resulted in minor modifications to Standard No. 125. (37 FR 12323). The notice also clarified the Standard's applicability to emphasize that it applied to all non-powered warning devices, including those placed on the vehicle's roof.

On January 30, 1973, in response to additional petitions for reconsideration, NHTSA decided to allow the use of dual purpose material (simultaneously fluorescent and retroreflective). (38 FR 3760) In response to petitions, the agency also decided to amend the Standard to include a provision expressly prohibiting any attachments to the warning device. The agency believed that such attachments would detract from the device's standardized triangular shape and thus decrease its effectiveness as a nationally and internationally recognizable warning signal. Further changes were made in performance and test requirements were at the request of manufacturers.

NHTSA issued several additional notices related to Standard No. 125. On August 9, 1974, NHTSA amended the test procedure to use a xenon arc lamp

instead of the original illuminant and prescribed the color specification for the orange and red materials used in the warning triangles. (39 FR 28636) On January 2, 1975, the agency amended the Standard to allow the distributor's name to be used on the device in addition to the manufacturer's name. (40 FR 4). On September 22, 1988, NHTSA denied a petition for rulemaking submitted by Burke Communications requesting that Standard No. 125 be amended to allow the petitioner's alternative warning device, an inflatable safety cone. (53 FR 36871).

#### *B. Federal Motor Carrier Safety Regulations*

The Federal Highway Administration, through the Federal Motor Carrier Safety Standards, requires commercial motor vehicles engaged in interstate commerce to carry three emergency warning triangles that comply with Standard No. 125 (49 CFR 393.95(f)). The FHWA requires that the triangles be used under the conditions specified in § 392.22.

Section 1041(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240, 105 Stat. 1914, 1993, December 18, 1991) requires that "Section 393.95 of title 49 of the Code of Federal Regulations shall applied so that fuseses and flares are given equal priority with regard to use as reflecting signs." As a result, the FHWA is considering a rulemaking to implement the Congressional mandate. Such a rulemaking would allow the use of flares or fuseses in lieu of warning triangles and could impact the market for warning triangles.

#### *C. Effectiveness of Warning Devices*

The benefits derived from emergency warning devices are difficult to assess. The agency is unaware of any studies that conclusively show that a Standard No. 125 or any other type of emergency warning device, even when properly used, is effective in reducing the likelihood of accidents involving disabled vehicles. The agency notes that it is difficult to evaluate the effectiveness of emergency warning devices given the difficulty in determining a motorist's thoughts when he or she sees a deployed warning device. Studies about warning devices have evaluated the response of passing motorists to such devices based on the assumption that measurable changes in passing vehicle speed and lateral separation between the moving and disabled vehicle signify a decrease in accident potential. While studies based on this assumption may not fully evaluate warning device effectiveness,

they do evaluate the response of some drivers when confronted with a warning device.

Two of those studies support the conclusion that warning triangles may not be effective in changing motorist behavior. (Study of Safety-Related Devices—Emergency Warning Devices for Disabled Vehicles, prepared in response to section 219, Public Law 98-554, Motor Carrier Safety Act of 1984, National Highway Traffic Safety Administration, U.S. Department of Transportation (August 19, 1986) under Ulmer, Richard; Leaf, William; and Blomberg, Richard, Analysis of the Dismounted Motorist and Road-Worker Model Pedestrian Safety Regulation, DOT HS-806-445, National Highway Traffic Safety Administration, U.S. Department of Transportation (August 1982). The August 1986 study said that

(a) although accident rate and severity are the ultimate dependent variables of interest, effectiveness in reducing accident rates must be inferred from effectiveness in producing cautionary responses in passing motorists.

The study concluded that—

(e) emergency warning devices had only limited effects in reducing vehicle speeds and increasing lateral separation between moving and disabled vehicles. Thus, the actual number of lives saved and injuries avoided would most likely be significantly lower than the target population \* \* \*

of vehicle operators and occupants in struck disabled vehicles. (Page 52)

Both these studies discussed field experiments conducted by M.J. Allen, S.D. Miller, and J.L. Short of Indiana University that evaluated mock disabled vehicle situations along a roadway shoulder. The experiment was designed to evaluate the effects of triangles and flares on passing motorists. The study determined that during nighttime conditions, triangles reduce the speed of passing vehicles an average of only 1.5 mph compared to the disabled-vehicle-only condition. In contrast, flares reduced passing vehicle speed by an average of 12.2 mph at night. During daytime, none of the emergency warning devices had a significant effect in reducing passing vehicle speed or increasing lateral separation compared to the disabled-vehicle-only condition. Even the most effective daytime measure, i.e., placing three triangles at distances 2, 48, and 100 paces behind the vehicle, only reduced speed by 3-4 mph compared to the disabled-vehicle-only condition, when the speed limit was 65 mph. In a follow-up study, Miller concluded that warning triangles had no effect on reducing passing motorist speed either at night or during the day. That study also indicated that,

at night, four-way flashers are more effective than triangles.

## II. Petitions

NHTSA has received petitions to amend Standard No. 125 from P.C.S. Safety Corporation, a manufacturer of a warning device, and the Transportation Safety Equipment Institute (TSEI), a trade association representing manufacturers of vehicle safety equipment.

On April 3, 1992, P.C.S. Safety Corporation petitioned the agency to allow its warning device, which it calls a "Collapsible Safety Marker." This product, which does not comply in significant respects with Standard No. 125's requirements, is constructed of tempered spring steel in coil form, with a thick fluorescent mylar coating and with reflective strips woven through the coils. The coils are attached to a plastic base. The petitioner claimed that its device is better than or equal to the current Standard No. 125 warning triangle because it is more visible, is more stable, and is easier to store.

On September 21, 1992, TSEI petitioned the agency to commence a comprehensive rulemaking proceeding to amend Standard No. 125. Among the issues that the petitioner requested the agency to consider were (1) clarification of the testing procedures in Standard No. 125, (2) modification of the container requirement so that it would better protect the warning device's fluorescent material, (3) specification of the laboratory testing procedures used to determine the color of retroreflective material, (4) correction of the Standard's provisions for testing and measuring the orange fluorescent material, (5) clarification of the retroreflectivity test provisions so that they are keyed to relevant ASTM test procedures, (6) revision of the luminance factor testing provision to achieve more accurate test results with closer correlation between testing laboratories, (7) amendment of the stability test to make it repeatable and consistent with the current wind test's intent, and (8) incorporation of additional figures to depict with specificity the recommended positioning of the devices.

## III. Agency's Proposal

NHTSA has decided to propose narrowing the application of Standard No. 125 so that the only non-powered warning devices it would apply to are those designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) of 10,001 pounds (4,536 kilograms) or more. Standard No. 125, section S5.1.4(c) requires that the symbol DOT, or the statement that the

warning device complies with all applicable Federal motor vehicle safety standards be permanently and legibly marked on the warning device. This required marking will identify Standard No. 125 complying triangles.

The agency tentatively concludes that Standard No. 125 should continue to apply to warning devices for use in vehicles subject to the Federal Motor Carrier Safety Regulations (FMCSRs) and comparable State regulations because the FMVSSs and FMCSRs complement each other. While the FMVSSs apply to the manufacture of warning devices, the FMCSRs and comparable State motor carrier regulations apply to the use of these devices in highway situations.

With respect to vehicles with a GVWR of 10,000 pounds or less (which are not subject to FHWA's regulations), the agency has tentatively concluded that no longer applying Standard No. 125 to warning devices which may be carried on such vehicles would provide greater freedom for manufacturers in designing warning devices for the general public and would relieve an unnecessary regulatory burden on industry.

NHTSA notes that by proposing to amend Standard No. 125's applicability, the NPRM supplements the grants of the petitions from P.C.S. Safety Corporation and TSEI. As explained above, the petition from P.C.S. Safety Corporation requested that its collapsible safety marker be allowed for the purpose of warning traffic of a stopped vehicle. The proposal to modify Standard No. 125 would allow manufacturers to market and sell this and other types of warning devices for use with vehicles having a GVWR of less than 10,000 pounds.

The petition from TSEI requested that Standard No. 125's test procedures be clarified and improved. NHTSA has granted the TSEI petition because further review of the issues raised in the petition appears to have merit.

NHTSA emphasizes that granting TSEI's position does not necessarily mean that Standard No. 125 will be revised as requested by the petitioner. During the course of the separate rulemaking proceeding regarding that petition, the agency will determine the extent to which the Standard needs to be amended, consistent with the statutory criteria. The agency anticipates that after it reviews and evaluates the public comments on this NPRM, the agency will issue a separate NPRM to make Standard No. 125 more performance oriented. The agency welcomes comments in response to this notice about ways to minimize design restrictive language and to make the standard more performance oriented.

NHTSA is aware that there may be concern about potential problems if Standard No. 125 is amended so that warning devices to be used in passenger cars are no longer subject to Standard No. 125. For instance, it would become permissible to manufacture and sell warning devices that would not comply with the Standard were it otherwise applicable. The agency invites comments and supporting technical information about any potential problems which interested parties may believe would exist.

In reviewing the petitions to amend Standard No. 125, NHTSA also considered whether to require motor vehicles to be equipped with warning devices. The agency notes that each Standard No. 125 warning triangle has a retail unit cost of about \$10.00 (with the unit cost to a vehicle manufacturer about \$2.50). Accordingly, the cost to consumers for each new vehicle to be equipped with a warning triangle would be \$120 million to \$150 million per year and to vehicle manufacturers \$30 million to \$37.5 million per year depending on model year production level.

NHTSA has not required that vehicles be equipped with Standard No. 125 warning triangles because it has never conclusively determined whether such devices are effective. NHTSA might be able to obtain data related to the use and effectiveness of warning triangles, but only after significant expenditures of agency resources. Such a data collection effort would likely need to be done using survey and observational techniques, instead of through the normal crash information data collection typically conducted by NHTSA. Such an effort would be expensive and may not yield results sufficient to conclusively demonstrate a significant benefit. Therefore, the agency has not proposed such a requirement.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**IV. Rulemaking Analyses and Notices****A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures**

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. With respect to warning devices for vehicles with a GVWR greater than 10,000 pounds, the proposal would not result in any cost changes. With respect to warning devices for passenger cars and multipurpose passenger vehicles and for trucks and buses with a GVWR of 10,000 pounds or less, the proposal would permit the manufacture of warning devices of different designs and potentially lower costs.

**B. Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. While some warning device manufacturers would be small entities, the agency believes that the proposal would not result in any cost changes for those entities that presently manufacture warning triangles that comply with Standard No. 125, or to those entities that would continue to manufacture Standard No. 125 triangles, because this proposal requires no change to the specifications of Standard No. 125. The agency further believes that since the proposal would permit manufacturers the option of manufacturing warning devices that differ in design from Standard No. 125 devices, that the design differences could result in a lower manufacturing cost. Small organizations and governmental jurisdictions which purchase motor vehicle equipment could realize a small cost savings in the purchase of warning devices for vehicles of 10,000 pounds or less. Accordingly, a regulatory flexibility analysis has not been prepared.

**C. Executive Order 12612 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

**D. National Environmental Policy Act**

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

**Public Comments**

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 571**

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend, in title 49 of the Code of Federal Regulations at part 571 as follows:

**PART 571—[AMENDED]**

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.125 [Amended]**

2. In § 571.125, S3 would be revised to read as follows:

**S3 Application.** This standard applies to devices, without self-contained energy sources, that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds (4,536 kilograms). These devices are used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicle.

Issued on: May 4, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-10884 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-50-M

**49 CFR Part 571**

[Docket No. 74-14; Notice 81]

RIN 2127-AE79

**Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Seat Belt Assemblies**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to allow manufacturers of replacement seat belt assemblies a choice of two means of providing information regarding the seating positions and vehicle models for which the assemblies are appropriate: Either on the assembly or in the installation instruction sheet currently required to accompany the assembly. This notice also proposes to remove the labeling requirement for two types of seat belt assemblies when they are installed as original equipment in a new motor vehicle. NHTSA believes that these proposals would provide manufacturers more flexibility in the manner of providing this information without decreasing the likelihood that belts will be correctly installed.

**DATES:** Comments must be received by June 24, 1993. If adopted, the proposed amendments would become effective 30 days following publication of the final rule.

**ADDRESSES:** Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.—4 p.m., Monday through Friday.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel S. Cohen, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4911.

**SUPPLEMENTARY INFORMATION:** On April 16, 1991, NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection*, and Standard No. 209, *Seat Belt Assemblies*, to exclude all safety belts that are subject to the dynamic testing requirements from some of the static testing requirements for safety belts (56 FR 15295). The final rule also clarified that the term "dynamically tested" referred to all automatic manual belts that are the only occupant restraint system at a seating position.

That final rule had been preceded by a notice of proposed rulemaking (NPRM) published on January 18, 1990 (55 FR 1681). The NPRM proposed to require information on the seating positions and vehicle models for which the assembly is appropriate (position/model information) to be labeled on all dynamically tested manual belt systems. At the time, position/model information was required to be labeled on dynamically tested manual belt systems intended for installation in trucks and multipurpose passenger vehicles with a gross vehicle weight rating of 8500 pounds or less (LTVs), but not in passenger cars. Although comments were received regarding the issue of extending the labeling requirements to dynamically tested safety belts in passenger cars, the final rule did not address that issue. Instead, NHTSA announced that it intended to initiate rulemaking proposing that the position/model information currently required to be labeled on dynamically tested manual belts for use in LTVs instead be required to be provided in the installation instruction sheet for all dynamically tested safety belts, both automatic and manual, including those for passenger cars.

Ford and Volkswagen (VW) petitioned for reconsideration of the April 16, 1991, Final Rule. Both asked for clarification of the scope of the labeling requirement for dynamically tested belts for LTVs. VW claimed that the labeling requirements for dynamically tested belts are inconsistent. Minor changes

were made in response to these petitions on November 4, 1991 (56 FR 56323).

VW also asked that its petition for reconsideration be treated as a petition for rulemaking to the extent that it could not be addressed as part of a petition for reconsideration. VW asked that S4.5(c) and S4.6(b) of Standard No. 209 be amended so that they do not apply to a safety belt installed in any new motor vehicle. Section S4.5(c) of Standard No. 209 requires all dynamically tested belts with load limiters to be labeled with position/model information. Section S4.6(b) of Standard No. 209 requires all dynamically tested manual belts installed in LTVs to be labeled with position/model information. VW also asked that Standard No. 209 be amended

To require that replacement belts either be labeled in accordance with S4.5(c) or S4.6(b) as applicable, or be accompanied by detailed installation instructions (to be specified in an amended S4.1(k) of FMVSS 209) including the make, model and seating position of the vehicle for which the seat belt, as identified by part number, may be used.

Section S4.1(k) of Standard No. 209 requires that replacement belts be accompanied by an installation instruction sheet which includes information on appropriate models.

In response to VW's request, the agency examined the differing requirements for providing position/model and installation information for various types of belts. Standard No. 209 requires some belts to be labeled with position/model information, some to be both labeled and accompanied by an installation instruction sheet, and some to be accompanied by an installation instruction sheet. The following belts are required to be labeled:

- Dynamically tested belts with load limiters installed in new motor vehicles (section S4.5(c)); and

- Dynamically tested manual belts installed in new LTVs (section S4.6(b)).

The following belts are required to be both labeled and accompanied by an installation instruction sheet:

- Dynamically tested replacement belts with load limiters (sections S4.1(k) and S4.5(c)); and

- Dynamically tested manual replacement belts for LTVs (sections S4.1(k) and S4.6(b)).

All other replacement belts are required to be accompanied by an installation instruction sheet (section S4.1(k)).

NHTSA tentatively concludes that seat belt assemblies installed as original equipment in new motor vehicles need not be required to be labeled with position/model information. This

information is only useful if the assembly is removed with the intention of using the assembly as a replacement in another vehicle. NHTSA does not believe this is a common practice.

NHTSA also tentatively concludes that replacement belts need not be labeled with position/model information if alternative means are provided to ensure correct installation. NHTSA does not believe that information labeled on belts is used by vehicle manufacturers or by trained service technicians at authorized repair facilities or dealerships. The agency is not aware that safety belts are being replaced incorrectly by non-authorized repair facilities or by owners who replace belts themselves. NHTSA's Auto Safety Hotline records show only one complaint referring to "wrong" belt type. If the information is provided with the belt, correct belt replacement should not be a problem.

Therefore, NHTSA is proposing to remove sections S4.5(c) and S4.6(b), the position/model labeling requirements for certain original equipment belts, from Standard No. 209. NHTSA is also proposing to amend S4.1(k) of Standard No. 209 to permit manufacturers of replacement belts currently subject to that section to provide position/model information either in a label on the belt or in the installation instruction sheet currently provided with the belt. Also NHTSA is proposing to amend Standard No. 208 to clarify that replacement automatic belts are required to comply with the installation instruction requirements of S4.1(k) of Standard No. 209. Finally, the reference to retractors in S4.1(k) of Standard No. 209 is being deleted because NHTSA believes that retractors are usually replaced only as part of a seat belt assembly.

Since this proposal would remove a labeling requirement for belts installed in new vehicles and provide manufacturers with additional flexibility in providing position/model information for replacement belts, NHTSA believes a 30 day leadtime is sufficient. All belts that comply with the current requirements would comply with the requirements in this proposal.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured

for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### Rulemaking Analyses and Notices

##### *Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The agency has analyzed the economic and other effects of this proposal and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the proposed amendment are so minimal that a full regulatory evaluation is not required. This proposal would allow manufacturers an option of either providing position/model information with seat belt assemblies or labeling the seat belt assemblies. Seat belt assemblies currently are required to comply with one of these options. Therefore, the agency does not expect any significant additional costs or cost savings for manufacturers.

##### *Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic effect on a substantial number of small entities. As stated above, the agency does not expect any significant cost impact as a result of this proposal.

##### *Executive Order 12612 (Federalism)*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), there are no requirements for information collection associated with this proposed rule.

#### *National Environmental Policy Act*

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment.

#### *Submission of Comments*

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

#### *List of Subjects in 49 CFR Part 571*

Imports, Motor vehicle safety, Motor vehicles.

#### **PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 of title 49 would continue to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by adding a new S4.5.3.5 to read as follows:

##### **§ 571.208 Standard No. 208; Occupant crash protection.**

\* \* \* \* \*

S4.5.3.5 A replacement automatic belt shall meet the requirements of S4.1(k) of Standard No. 209.

\* \* \* \* \*

3. Section 571.209 would be amended by removing S4.5(c) and S4.6(b), and by revising S4.1(k) to read as follows:

##### **§ 571.209 Standard No. 209; Seat Belt Assemblies.**

\* \* \* \* \*

##### **S4.1**

\* \* \* \* \*

(k) *Installation Instructions.* A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, "Motor Vehicle Seat Belt Installations," November 1973. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in (insert specific seating position(s), e.g., "front right") in (insert specific vehicle make(s) and model(s)).

\* \* \* \* \*

Issued on May 5, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93-10971 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-69-M

# Notices

Federal Register

Vol. 58, No. 88

Monday, May 10, 1993

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 COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Annual Trade Survey.

*Form Number(s):* B-450, B-451.

*Agency Approval Number:* 0607-0195.

*Type of Request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

*Burden:* 2,036 hours.

*Number of Respondents:* 5,200.

*Avg Hours Per Response:* 23 and one-half minutes.

*Needs and Uses:* The Bureau of the Census conducts the Annual Trade Survey to collect annual sales, purchases, year-end inventory, inventory valuation methods, legal form of organization, cost of goods sold, and gross margin data from a sample of wholesalers who are contained in the Bureau's Standard Statistical Establishment List. We tabulate the annual wholesale trade data to benchmark data from our Monthly Wholesale Trade Survey. The Bureau of Economic Analysis incorporates the wholesale trade data in its calculations of the Gross National Product. Other government agencies and businesses use the published estimates to gauge the current trends of the economy.

*Affected Public:* Businesses or other for-profit organizations, Small businesses or organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by

calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 5, 1993.

Edward Michals,

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 93-11006 Filed 5-7-93; 8:45 am]

BILLING CODE 3510-07-F

### International Trade Administration

[A-580-812]

**Antidumping Duty Order and Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482-3464.

### Scope of Order

The products covered by this investigation are dynamic random access memory semiconductors of one megabit and above (DRAMs) from the Republic of Korea. For purposes of this investigation, DRAMs are all one megabit and above dynamic random access memory semiconductors, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea but packaged, or assembled into memory modules, in a third country are included in the scope; however, wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this investigation includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this investigation also includes video random access memory (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this investigation also includes removable memory modules placed on motherboards, with or without a CPU, unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation.

The scope of this investigation does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this investigation are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026 and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Amendment of Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on March 23, 1993, the Department of Commerce (the Department) published its final determination that dynamic random access memory semiconductors of one megabit and above from the Republic of Korea were being sold at less than fair value (58 FR 15467).

On March 26, 1993, Goldstar Electron Co., Ltd (Goldstar), and Hyundai

Electronics Co., Ltd. (Hyundai) alleged that the Department made clerical errors in its final calculations. First, Goldstar argued that the Department erroneously added home market weighted average bank charges to constructed value (CV) instead of deducting the home market bank charges from CV. Second, Goldstar argued that the Department's inclusion of a certain product on the U.S. side in its margin calculation was in error, since the identical comparison model for this product was completely eliminated from the home market database based on the Department's arm's-length test.

We agreed that the addition of home market weighted average banking charges to CV was a clerical error and have corrected for this error. However, we did not agree that the inclusion of the certain product on the U.S. side of the margin calculation was a clerical error and therefore made no adjustment.

Hyundai argued that the Department overstated the amount of interest expense, research and development expenses (R&D) and general and administrative expenses (G&A). Hyundai claimed that the Department's intention was to only adjust cost of goods sold (COGS) for the revised depreciation related to the products under investigation and that the Department's revised calculation of depreciation which was added to semiconductor COGS was inadvertently understated. This had the effect of understating the COGS and overstating the percentage of interest expense, R&D and G&A.

We agreed that the Department intended to revise the COGS for only those cost of manufacturing (COM) adjustments related to the products under investigation. Therefore, we corrected the calculation of the depreciation.

On April 2, 1993, petitioner alleged that the Department made several clerical errors in its final calculations. Regarding Goldstar, petitioner argued that the Department erred in adding an adjustment to the net home market price when comparing it to the COP.

We did not agree that adding this adjustment to home market price was a clerical error and made no alteration.

Regarding Hyundai, petitioner argued that the revised COGS was overstated due to the addition of spare parts attributable to production of non-subject merchandise, overstating the COGS and, thus, understating the percentage calculations of interest expense, R&D and G&A. Petitioner, like Hyundai, claimed that the Department intended to revise semiconductor COGS for only

those manufacturing costs related to the products under investigation.

Second, petitioner contended that Hyundai's failed to include certain manufacturing costs which the company incurred to produce the merchandise. Petitioner asserted that the Department should have included these additional manufacturing costs in the reported COPs and CVs.

Third, petitioner claimed that when the Department calculated the interest expense for the semiconductor line of business based on its proportional share of the company's total fixed asset value, it failed to calculate a value for all the semiconductor assets. Therefore, the amount of interest expense attributed to semiconductors was understated.

Regarding petitioner's first argument, we agreed that it was the Department's intention to revise the financial statement semiconductor COGS for only those COM adjustments related to the products under investigation. Therefore, we made this correction to the calculation of semiconductor COGS.

As to petitioner's second argument, at verification the Department established that the reported COPs and CVs included the amount for these certain manufacturing costs. Therefore, no change was made to the COPs and CVs.

We agreed with petitioner's third argument and corrected the value of semiconductor assets in this calculation.

Petitioner also argued that the Department made some clerical errors in its calculations for Samsung. First, petitioner stated that the Department erred in including negative credit expenses in the credit expense calculation. In its second argument, petitioner claimed that material costs were understated because of a mathematical error. Third, petitioner alleged that the calculation of the revised depreciation expense was mathematically incorrect because the Department calculated two percentages, one for 1991 and one for 1992, and added these percentages to determine a composite percentage. Petitioner believes that the Department should have determined the amount of revised depreciation for each year and then calculated the percentage. Fourth, petitioner alleged that the Department made a ministerial error because the amount used as best information available (BIA) for depreciation expense did not have an adverse effect on the dumping margin.

Regarding the first argument, we did not agree that this was a clerical error since we made a methodological decision to calculate credit expense this way. Regarding the second and third arguments, we agreed with petitioner

and corrected the adjustment factor used to calculate material cost and depreciation. Finally, regarding the fourth argument, the Department determined that it should use BIA for the depreciation expense because the accounting principles applied and the basis used by Samsung for its calculation of depreciation expense did not capture an appropriate amount of the expense of the equipment used to manufacture the subject merchandise. The Department restated depreciation using a methodology, as BIA, to reflect Samsung's depreciation costs. Our method of recalculating Samsung's depreciation for the final determination does not constitute a ministerial error and therefore, no change has been made for depreciation costs.

A decision was made on all of the clerical error allegations listed above on April 21, 1993 (see April 21, 1993 clerical error allegations memorandum from Richard Lutz and David L. Binder to Richard W. Moreland). After this date, the Department disclosed the methodology used to deal with these clerical error allegations to petitioner and the three respondents.

On April 27, 1993, Hyundai, after an analysis of the Department's clerical error methodology, alleged that further clerical errors were made by the Department. First, Hyundai argues that the Department did not include all spare parts, which constitute an expense, in the COGS. Hyundai argues that this was an error since the total COGS for all semiconductor products is used as the allocation base for R&D, interest and G&A expense.

Second, Hyundai argues that the Department erroneously changed the interest expense calculation based on a flawed allegation made by the petitioner and on a misunderstanding of the facts. Moreover, Hyundai argues that there was no need for the Department to estimate the value for certain semiconductor fixed assets in its final determination calculation because the actual information was available on the record.

Finally, Hyundai claims that the Department failed to recalculate the interest offset for constructed values when it recalculated the interest expense, because the offset varies by the amount of interest.

On April 28 and 30, 1993, petitioner objected to Hyundai's April 27 clerical error allegations. In its April 28 submission, petitioner argues that Hyundai's submission was untimely and that it should not be considered. In its April 30 submission, petitioner contends that many of Hyundai's arguments related to the revised COGS

and interest expense had been previously raised by Hyundai and that other arguments are irrelevant to the nature of the issues. Additionally, petitioner claims that the interest expense calculation presented by Hyundai is based on a verification exhibit which does not present adequate data and still does not address deficiencies of the calculation used by the Departments in its final determination (e.g., valuation of land and administrative buildings associated with the subject merchandise).

We do not agree with petitioner that Hyundai's allegations were untimely submitted. These allegations were submitted within five days of disclosure of our corrections for clerical errors. We are treating the clerical error correction disclosure as a regular disclosure with the appropriate opportunity to submit comments. See 19 CFR 353.28(b).

Regarding Hyundai's first allegation, the Department addressed this argument previously and has therefore made no adjustment.

Regarding Hyundai's second argument, we have examined this issue and find that the use of the semiconductor asset value Hyundai recommends in its April 27 submission would not produce a more accurate estimation of interest expense than that which we had calculated previously, since the interest expense would not be allocated only to Hyundai's various lines of business. Additionally, we found that Hyundai's other arguments related to the Department's calculation of interest expense used in the final determination were previously considered. Therefore, we have made no adjustment to the calculation of interest expense.

Finally, regarding Hyundai's third argument, we agree that in our revised calculations we inadvertently offset the interest expense by the amount used for the final determination and have therefore corrected this offset. For a detailed discussion of these issues, see the May 7, 1993, memorandum from Barbara R. Stafford to Joseph A. Spetrini.

After correcting all calculations, the final estimated margins published in the final determination for Hyundai and Samsung change from 7.19 percent and 0.74 percent, respectively, to 11.16 percent and 0.82 percent, respectively. The rate published for Goldstar did not change. The "All Others" rate changes from the 3.19 percent published in the final determination to 3.85 percent.

On May 3, 1993, in accordance with section 735(d) of the Act, the ITC notified the Department that such

imports materially injure a U.S. industry.

Accordingly, pursuant to section 735(e) of the Act, we are correcting the ministerial errors in the final determination of sales at less than fair value. The cash deposit rates for Goldstar, Hyundai and Samsung are now 4.97 percent, 11.16 percent and 0.82 percent, respectively. The cash deposit rate for the "All Others" category is now 3.85 percent.

#### Antidumping Duty Order

In accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of dynamic random access memory semiconductors of one megabit and above from the Republic of Korea. These antidumping duties will be assessed on all unliquidated entries of dynamic random access memory semiconductors of one megabit and above from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or before October 29, 1992, the date on which the Department published its preliminary determination notice in the Federal Register (57 FR 49006). On or after the date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Margin percentage
Goldstar Electron Co., Ltd. ....	4.97
Hyundai Electronics Co., Ltd. ....	11.16
Samsung Semiconductor Co., Ltd. ..	0.82
All Others .....	3.85

This notice constitutes the antidumping duty order and amended final determination with respect to dynamic random access memory semiconductors of one megabit and above from the Republic of Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: May 6, 1993.

Joseph A. Spetrini,  
Acting Assistant Secretary for Import Administration.

[FR Doc. 93-11102 Filed 5-7-93; 8:45 am]

BILLING CODE 3510-08-M

[A-307-807]

#### Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1776.

#### Final Determination

We determine that ferrosilicon from Venezuela is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

#### Case History

Since the publication of our affirmative preliminary determination on December 29, 1992, (57 FR 61879) the following events have occurred.

On January 4, 1993, we issued a supplemental cost questionnaire to the respondent in this investigation, CVG Venezolana de Ferrosilicio C.A. (CVG-FESILVEN). We received the responses to this questionnaire on January 19 and January 21, 1993.

On January 8, 1993, we received a request for a public hearing from the petitioners in this case (AIMCOR; Alabama Silicon, Inc.; American Alloys, Inc.; Globe Metallurgical, Inc.; Silicon Metaltech, Inc.; United Autoworkers of America Local 523; United Steelworkers of America Locals 2528, 5171, 3081, and 12646; and Oil Chemical and Atomic Workers Local 389).

On January 13, 1993, CVG-FESILVEN requested a postponement of the final determination. We granted this request, and on February 2, 1993, we postponed the final determination until not later than May 3, 1993 (58 FR 11586, Feb. 26, 1993).

From February 1 through February 5, 1993, we conducted verification in Venezuela of CVG-FESILVEN's



responses to the Department's questionnaires.

Both petitioners and respondent filed case briefs on March 30, 1993, and rebuttal briefs on April 6, 1993. A public hearing was held on April 12, 1993.

In addition, on December 8, 1992, CVG-FESILVEN requested that the Department investigate whether certain of the petitioners in this investigation (AIMCOR; Alabama Silicon, Inc.; American Alloys, Inc.; Globe Metallurgical, Inc.; and Silicon Metaltech, Inc.) have standing to file the petition on "behalf of" the U.S. ferrosilicon industry. We have determined that such an investigation is not warranted. For further discussion of this topic, see the "Standing" section of this notice.

#### Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent

silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

#### Standing

On December 8, 1992, CVG-FESILVEN requested that the Department investigate whether certain of the petitioners in this investigation have standing to file the petition on "behalf of" the U.S. ferrosilicon industry. In this request, CVG-FESILVEN stated that one U.S. producer has affirmatively opposed this proceeding. This statement was incorrect, because we only received a standing challenge from a domestic producer in three of the companion antidumping investigations involving ferrosilicon (i.e., from Kazakhstan, Russia, and Ukraine). Those investigations are, however, separate and distinct from this proceeding.

In issues regarding standing, the Department does not require a petitioner to establish affirmatively that it has the support of a majority of the domestic industry. This approach has been upheld by both the Court of Appeals for the Federal Circuit and the Court of International Trade. (See *Suramerica de Aleaciones Laminada C.A. v. United States*, 966 F.2d 660, 666-67 (Fed. Cir. 1992); and *Mineba Company, Ltd. v. United States*, Fed. Cir. Slip Op. 92-1289 (January 26, 1993).) Rather, the Department accepts a petitioner's representation that it is filing on behalf of the domestic industry unless the petitioner's standing is challenged by a domestic producer who is able to demonstrate otherwise. (See, e.g., *3.5 Inch Microdisks and Coated Media Thereof From Japan*, 54 FR 6433 (Feb. 10, 1989).) Accordingly, because no domestic producer challenged petitioners' standing in this specific proceeding, we determined that no investigation as to whether petitioners have standing to file on behalf of the domestic ferrosilicon industry was necessary.

#### Period of Investigation

The period of investigation (POI) is December 1, 1991, through May 31, 1992.

#### Such or Similar Comparisons

We have determined that the product covered by this investigation comprises a single category of "such or similar" merchandise. We made similar merchandise comparisons on the basis of: (1) Silicon content range, (2) grade, and (3) sieve size, as described in Appendix V of the questionnaire.

#### Fair Value Comparisons

To determine whether sales of ferrosilicon from Venezuela to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

#### United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

After correcting the data used in our calculations for errors and omissions found at verification, we calculated purchase price based on packed F.O.B. prices to unrelated customers. We increased USP by the amount of a price addition claimed by respondent on certain transactions. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight and pier rental charges.

In accordance with section 772(d)(1)(B) of the Act, respondent requested an addition to USP for the amount of duty drawback claimed by respondent from the Venezuelan government. We disallowed this adjustment, because not only did respondent not show that it actually received drawback on the exports in question, but it also failed to demonstrate that it had a reasonable expectation of ever receiving the drawback amounts claimed. (See Comment 3 in the "Interested Party Comments" section of this notice.)

#### Foreign Market Value

In order determine whether there were sufficient sales of ferrosilicon in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of ferrosilicon to the volume of third country sales of the same product, in accordance with section 773(a)(1)(B) of the Act. CVG-FESILVEN had a viable home market with respect to sales of ferrosilicon during the POI.

As stated in our preliminary determination, the Department initiated an investigation to determine whether CVG-FESILVEN made home market sales at less than their cost of production (COP).

If over 90 percent of respondent's sales of a given product type were at prices above the COP, we did not disregard any below-cost sales because we determined that the below-cost sales were not made in substantial quantities. If between ten and 90 percent of the sales of a given product type were made at prices below the COP, and such sales were made over an extended period of time, we discarded only the below-cost sales. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales for that product type and calculated FMV based on constructed value (CV). Insufficient evidence was presented to indicate that below-COP prices would permit recovery of all costs within a reasonable period of time in the normal course of trade. (See Comment 24.)

In order to determine that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

Respondent requested that the Department not apply the above test to determine whether below-cost sales had been made in substantial quantities. (See Comment 25.) Respondent further requested that, in the event that the Department found it appropriate to exclude below-cost sales, the Department should calculate FMV based on the prices of the next most similar model before resorting to CV. (See Comment 26.) However, as both of these requests require departures from the Department's standard methodology, we have denied them.

In order to determine whether home market prices were below the COP, we calculated the COP based on the sum of the respondent's cost of materials, fabrication, and general expenses. We corrected the COP and CV data reported for errors and omissions found at verification. We relied on the submitted COP and CV data, except in the following instances where the costs

were not appropriately quantified or valued:

1. We used best information available (BIA) to determine the cost for electrode paste used in both COP and CV because respondent was unable to substantiate the reported cost at verification. (See Comment 19.)

2. Although respondent and its related parties are members of a related group of businesses in Venezuela (known as the "CVG Group"), respondent failed to allocate any of the selling, general and administrative expenses (SG&A) incurred by the parent company of the group (CVG) to its related parties. As BIA for these costs, we used the amount of fees designed to cover CVG's administrative costs which these companies paid to the parent. Because the related electricity supplier, EDELCA, failed to report these fees, we increased its costs to account for them, based on our findings at verification. (See Comment 11.)

3. Respondent also did not include an allocated portion of CVG's SG&A in its own SG&A expenses. Accordingly, as with the related parties, we used the amount of the fee paid to CVG as BIA. However, because respondent paid no fees during five months of the POI, we also had to use BIA to determine the amount of these fees. As BIA for each month in which respondent paid no fee, we used the amount of the fee reported for the one remaining month of the POI. (See Comment 11.)

4. We increased respondent's SG&A expenses for certain expenses recorded in its books under the account "Expenses Related to Previous Years," because respondent was unable to demonstrate adequately that these expenses did not relate to the POI. (See Comment 14.)

5. We used BIA to determine an amount for respondent's 1992 year-end adjustment to the inventory value of spare parts. As BIA, we applied a certain percentage to the respondent's 1992 cost of manufacture (COM), based on the percentage that this adjustment represented in 1991. (See Comment 15.)

6. We excluded freight expenses from the cost of iron ore supplied by FERROMINERA, a related party, based on our findings at verification. (See Comment 22.)

7. We adjusted the retirement bonus reported by FERROMINERA, based on our findings at verification.

8. We adjusted the costs reported for EDELCA to account for losses made during the transmission of electricity to its customers.

9. As its production cost for December 1991, EDELCA reported its 1991 average monthly cost. In order to express this as

a per unit cost, however, EDELCA divided the 1991 average by the actual output of electricity in December 1991. Accordingly, we also revised EDELCA's per unit cost reported for December 1991 by dividing its 1991 average monthly cost by its average monthly output for 1991, in order to more accurately reflect the actual per unit cost incurred.

10. We determined that the transfer prices paid to EDELCA were not at arm's length. Accordingly, for CV purposes, we used the average price charged by EDELCA to its unrelated customers located in the same region as respondent. (See Comment 10.)

11. Respondent based its reported financial expenses and interest income on data recorded in its accounting system during the POI. Moreover, respondent reduced the expenses reported to take into account the anticipated results of a renegotiation of the terms of certain of its debts. We recalculated these expenses based on data taken from respondent's most recent annual financial statement (in this case for 1991). (See Comments 16 and 17.) We then reduced these expenses by the ratio of trade accounts receivable to total assets, in order to avoid double-counting certain imputed interest expenses included in CV (for CV only).

In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of respondent's reported general expenses, adjusted as detailed above, or the statutory minimum of ten percent of COM. For profit, we used the statutory minimum of eight percent of total COM and general expenses because actual profit on home market sales was less than eight percent. See section 773(e)(1)(B)(ii) of the Act.

In cases where we made price-to-CV comparisons, we made circumstance-of-sale adjustments, where appropriate, for bank charges and credit expenses. Respondent calculated U.S. credit expenses based on the period between invoicing and payment by the customer. We recalculated U.S. credit expenses based on the period between shipment from the factory and payment.

In cases where we made price-to-price-comparisons, we adjusted the home market data reported for errors and omissions found at verification. We then calculated FMV based on packed F.O.T. (free on truck) prices to unrelated customers in the home market. We excluded sales to related customers, pursuant to 19 CFR 353.45, as respondent failed to demonstrate that the prices paid by those customers were comparable to the prices paid by unrelated customers. Pursuant to 19

CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges. We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

#### Currency Conversion

Because certified exchange rates from the Federal Reserve were unavailable, we made currency conversions based on the official monthly exchange rates in effect on the dates of the U.S. sales as certified by the International Monetary Fund.

#### Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

#### Interested Party Comments

##### Comment 1

Petitioners argue that the Department cannot rely on respondent's home market sales listing in order to determine FMV because respondent used an incorrect date of sale methodology. According to petitioners, the Department found at verification that a number of home market sales were made pursuant to "open" orders which do not set an amount or number of shipments, but merely indicate a price and a maximum quantity. Therefore, petitioners state that, respondent improperly reported its home market sales pool because the date of the "open" order is not the correct date of sale. As such, petitioners argue that the Department should either reject respondent's home market sales listing or obtain and verify additional data.

Respondent maintains that its home market sales listing is reliable. According to respondent, it reported as the date of sale the date on which the material terms of the transaction were established. Respondent states that, although a customer may not have required the full quantity of merchandise specified in the purchase order, this fact does not invalidate the date of sale that respondent reported (and the Department verified) for merchandise shipped in accordance with the purchase order.

##### DOC Position

We agree with petitioners that respondent improperly reported home market date of sale. Based on the

information before us, we find that the appropriate date is date of shipment, because this is the date on which the material terms of the transaction (i.e., quantity and price) are fixed.

We disagree, however, that this error is significant enough to warrant rejection of respondent's entire home market sales listing. When the Department follows its normal practice of calculating period-average FMVs, home market date of sale is used only to determine the pool of sales which comprise the FMVs. Therefore, the question is to what extent do we believe that the pool of sales reported is unrepresentative of the company's pricing practices during the POI? To answer this question, we looked at the home market sales listing. Of the transactions included, we found that only a small number was shipped outside the period. Therefore, the vast majority of the home market sales reported were properly included in the database. We also found that the company accurately reported the prices and quantities for these sales.

We note that by using an incorrect date of sale methodology, respondent failed to report its shipments made pursuant to purchase orders issued prior to the POI. Nonetheless, in this case we find that this reason is not compelling enough to reject the home market sales listing. We have no reason to believe that lack of this data skews the results of this investigation to respondent's advantage. On the contrary, to the extent that prices increased in the home market during the POI, as petitioners allege, using the sales data reported would actually be to respondent's detriment because we would be excluding lower priced sales made at the beginning of the POI and including higher priced ones at the end. (Petitioners' allegation is addressed in Comment 2, below.) Consequently, we are using the home market sales data reported by respondent for purposes of the final determination.

Finally, we note that petitioners' argument that the Department should collect additional data is unworkable in this case. Given the statutory time frame under which the Department is required to conduct this investigation, we would be unable to accept petitioners' solution and still meet the deadline for the final determination set out under the law. In any event, we have determined that collection of additional data is unnecessary in this case because we find that the use of the reported data is reasonable.

##### Comment 2

Petitioners argue that the Department should compare only contemporaneous home market and U.S. sales in making price-to-price comparisons. According to petitioners, under the statute the Department is required to ensure that the calculation of an average (such as a weighted-average FMV) yields a result that is representative of the transactions under investigation. Petitioners argue that using a period average of home market prices in this case does not result in a representative number, because both price fluctuations and home market price increases occurred during the POI. As support for their position, petitioners cite Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360, (June 24, 1992) ("AFBs"), where the Department stated that it uses annual weighted-average FMVs only when a firm's pricing practices are stable over time.

Respondent argues that the Department should continue to follow its administrative practice for fair value investigations of calculating a period average FMV for each control number. According to respondent, the Department's legal obligation in an investigation is to determine only whether the subject merchandise is being, or is likely to be, sold in the United States at less than fair value; however, in an administrative review, the statute requires more precision due to the fact that the results of the review determine specific liquidation rates for individual entries. Therefore, respondent contends that petitioners' reference to AFBs is inapposite. Finally, respondent notes that, in conducting investigations, the Department frequently encounters situations where U.S. and home market prices fluctuate over time in response to changing market conditions. Therefore, the fact that prices fluctuated during the POI in this investigation does not provide a compelling reason for the Department to deviate from its practice of calculating period FMVs.

##### DOC Position

We disagree with petitioners. The purpose of an investigation is to determine if there have been sales at less than fair value and to calculate an estimated antidumping duty deposit rate. We consider period weighted-average FMVs to be representative of home market selling practices, and, hence, of fair value for purposes of

calculating an antidumping duty deposit rate.

It is common for prices to fluctuate in accordance with market activity in a given period. Such fluctuations do not necessarily render the weighted-average FMV unrepresentative of home market selling practices during the period.

Given the time constraints in an antidumping duty investigation, the Department will depart from its normal practice of calculating period average FMVs and use averages covering a smaller time period when the issue is raised by a party to a proceeding and that party provides credible evidence that the period averages are not representative of home market pricing practices in the POI. (See, e.g., Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and above From the Republic of Korea, 58 FR 15476 (March 23, 1993) ("DRAMs").) For example, the party could show that there is a significant time-price correlation for the sales base and that significant price variances between the POI weighted-averages or the other-period averages exist.

Specifically in this case, although petitioners have raised this issue, they have failed to show a correlation between time and price for a significant portion of the home market sales base or have not explicitly shown there is a significant variation from the mean for the price of any product. Accordingly, we have continued to use our standard practice of comparing weighted-average FMVs to individual U.S. prices for purposes of the final determination.

#### *Comment 3*

Respondent maintains that the Department erred in its preliminary determination by disallowing its claim for duty drawback, even though, by its own admission, respondent has not yet received duty drawback on any sale and it is unlikely that it ever will.

Respondent bases its argument on the premise that the Department should consider certain commercial considerations which it claims were valid at the time that it set its prices to the United States. Specifically, respondent argues that not only did it expect to receive duty drawback on export sales at the time that it set its U.S. prices, but also it considered this factor when negotiating with U.S. customers. Respondent claims that, had it known that duty drawback would not be available, it would have refused the sale or negotiated a higher price. Consequently, respondent argues it should not be penalized because the commercial circumstances underlying

the sale (i.e., the drawback program) changed after the transaction was consummated.

Moreover, respondent argues that the Department verified that it filed for duty drawback after its U.S. shipments were made. Respondent implies, therefore, that this serves as proof that it believed the program to be viable at the time that it set its prices.

Petitioners state that respondent is ineligible under section 772(d)(1)(B) of the Act for a duty drawback adjustment. This provision states that a company is allowed a claim only for the "amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States." Petitioners note that respondent failed to show that it actually received duty drawback and, further, failed to demonstrate it had a reasonable expectation of ever receiving the amounts claimed. Accordingly, petitioners contend that, consistent with its practice and with the plain language of the statute, the Department should continue to disallow this adjustment for the final determination.

#### *DOC Position*

We agree with petitioners. According to section 772(d)(1)(B) of the Act, in order to qualify for duty drawback, a company must show that either it actually received a rebate of import duties or the government did not collect duties on its imports by reason of subsequent exports to the United States. In this case, respondent has admitted not only that it did not actually receive a refund of any import duties from the government of Venezuela, but also that it paid no import duties on any input (and therefore these duties could not be "not collected by reason of subsequent exports"). Accordingly, we find that respondent is ineligible for duty drawback under section 772(d)(1)(B).

We disagree with respondent that we should allow an adjustment based upon its belief or expectation. The measurement of less than fair value sales must be based on actual, measurable events. Indeed, the statute clearly lays out the conditions that must be met in order to qualify for an adjustment. Consequently, we have continued to disallow respondent's claim for duty drawback for purposes of the final determination.

#### *Comment 4*

At verification the Department found that respondent incorrectly calculated the interest rate used in the calculation of U.S. credit expense. Accordingly,

petitioners contend that the Department should recalculate U.S. credit expense using BIA for this interest rate. As BIA, petitioners state that the Department should use the highest rate found for any loan examined at verification.

Respondent agrees that it misreported its U.S. interest rate. However, according to respondent, the rate that it reported was higher than the correct rate. Therefore, respondent contends that the Department should use the rate that it originally reported as BIA.

#### *DOC Position*

We agree with respondent and have accepted the rate initially reported, as BIA. At verification, our review of the relevant documentation revealed that the reported rate was higher than the rate paid during the POI. It would have been appropriate to use the more adverse number suggested by petitioners only if we had found that CVG-FESILVEN was uncooperative or that the mistake was intentional. However, the error in question appears to have been inadvertent and was not in the company's favor. Moreover, respondent has cooperated fully in this investigation. Accordingly, we have used the rate reported for purposes of the final determination.

#### *Comment 5*

According to petitioners, the Department found at verification that CVG-FESILVEN reported its home market prices net of the price charged for packing. Therefore, petitioners contend that the Department should increase these home market sales prices by the amount of profit realized on sales of packing materials.

#### *DOC Position*

In our calculations, we included the price of packing materials invoiced by respondent to its customer as part of the gross price. Following our normal methodology, we then deducted the cost of these materials from the gross price, thereby including the profit realized on the sale of packing materials in the net price. Nonetheless, because we found at verification that CVG-FESILVEN correctly included the price of packing materials in the gross unit prices reported in its home market sales listing for all but one sale during the POI, the adjustment requested by petitioners is not necessary for the majority of home market sales. For the one sale in question, however, we added to the gross price the price of packing materials shown on the customer invoice, before deducting the cost of these materials.

*Comment 6*

Respondent claims that the Department's postponement of the preliminary determination in this investigation was unlawful. For this reason, respondent maintains that (1) petitioners' allegation that respondent made home market sales at prices below cost was untimely and (2) the resulting COP investigation is invalid.

Respondent further contends that the Department has the ability to remedy this procedural error by rescinding the initiation of the COP investigation and returning respondent's cost data.

Specifically, respondent alleges that petitioners' request that the Department postpone the preliminary determination did not comport with the statute, legislative history, or the Department's regulations regarding the specific limitations on the authority to postpone preliminary determinations. According to respondent, the Department has the authority to postpone a preliminary determination only (1) very infrequently so as not to avoid the clear and reasonable deadlines required by the law, (2) upon a showing of good cause, and (3) in the absence of compelling reasons to deny the request.

According to respondent, not only did petitioners not show good cause for the postponement, but the Department ignored respondent's compelling reasons to deny the request: That respondent was entitled to a prompt completion of the investigation to minimize commercial uncertainty attendant to the investigation; that postponing the preliminary determination negated respondent's procedural right not to be subject to a COP investigation; and that the postponement would not further the Department's investigation.

Petitioners state that respondent's argument regarding the postponement ignores the Department's established standard for granting postponements requested by petitioners. Moreover, they assert that respondent's argument confuses the two independent statutory provisions for postponement of preliminary determinations (sections 733(c)(1)(A) and 733(c)(1)(B) of the Act, which deal with requests by petitioners and extraordinarily complicated investigations, respectively). According to petitioners, only section 733(c)(1)(A), the section on which the Department relied for the postponement, applies. Petitioners note that under this section the burden is on respondent to show compelling cause to deny a petitioner's request. In this case, petitioners submit that respondent's reasons were not compelling. Petitioners conclude that,

because the Department properly postponed the preliminary determination, their COP allegation was timely and the resulting cost investigation was legal.

*DOC Position*

We agree with petitioners. Section 353.15(c) of the Department's regulations (19 CFR 353.15(c)) reads as follows:

If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reason for the request, the Secretary will postpone the preliminary determination to not later than 210 days after the date of filing of the petition, unless the Secretary finds compelling reasons to deny the request.

See section 733(c)(1) of the Act.

Because petitioners' request for a postponement was timely under sections 733(c)(1)(A) and 19 CFR 353.15(c), and because we determined that respondent's reasons for denying the request were not sufficiently compelling, our postponement conformed to the requirements set out in the Act. Consequently, because the postponement of the preliminary determination was lawful, we determine that petitioners' COP allegation was timely. Accordingly, we have not rescinded the COP investigation, nor have we returned respondent's data.

*Comment 7*

Petitioners argue that the Department should increase respondent's reported depreciation, using BIA, because respondent incompletely reported the depreciation expenses recognized in its accounting system during the POI. Petitioners note the following: Under Venezuelan Generally Accepted Accounting Principles (GAAP) in effect during (and before) the POI, Venezuelan companies were required to record depreciation expense based on the historical cost of their fixed assets. However, in deviation from Venezuelan GAAP and prior to the POI, respondent revalued its fixed assets and began recording depreciation based on this higher amount. After the POI, respondent reconsidered this decision and reversed the depreciation taken on the revalued portion of the assets. In its questionnaire response, respondent reported depreciation based on historical cost. Petitioners contend that respondent should be required to report the depreciation that it actually recognized in its books and records during the POI (i.e., the amount based upon the value of its revalued assets). According to petitioners, this amount more accurately reflects respondent's

true costs of operation. Moreover, petitioners state that the Department has the authority to reject use of a country's GAAP if they do not reasonably reflect the costs incurred by a company.

Petitioners seem to imply that respondent reversed its method of calculating depreciation solely for the purpose of reducing the production costs reported to the Department. In addition, petitioners state that there is no evidence on the record to indicate that respondent reversed the revaluation of the assets themselves, but only that it reversed the depreciation expense related to those assets.

In order to calculate the additional expense, petitioners suggest a BIA amount based on the amount of revaluation-related depreciation reported in the cost deficiency response.

Respondent contends that it correctly based its depreciation expenses on historical costs, in accordance with both Venezuelan and U.S. GAAP. According to respondent, this method is also consistent with both the legislative history of the antidumping law and Department practice. In support of this premise, respondent cites Final Results of Antidumping Duty Administrative Review: Stainless Steel Hollow Products from Sweden, 57 FR 21389, (May 20, 1992), where the Department accepted depreciation expenses based on historical cost, even though the respondent recorded depreciation in its own accounting system based on replacement costs.

Finally, respondent states that the historical cost reflects the actual cost that the company incurred when it purchased its assets. Consequently, respondent contends that using historical costs to calculate depreciation creates no distortion in the costs used for the final determination.

*DOC Position*

We agree with respondent that depreciation in this case should be based on CVG-FESILVEN's historical asset cost. It is the Department's practice to follow GAAP used in the home country of the respondent, unless it is shown that the foreign GAAP materially differs from U.S. GAAP and that the difference distorts the respondent company's actual production costs. (See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937 (May 26, 1992) ("Minivans"), Final Determination of Sales at Less Than Fair Value: Stainless Steel Hollow Products from Sweden, 52 FR 37810 (Oct. 9, 1987).) Therefore, because respondent calculated depreciation in accordance with Venezuelan GAAP in effect during the

POI and because there is no indication that determined that this calculation is distortive, we have accepted it for purposes of the final determination.

#### *Comment 8*

Petitioners argue that, because respondent incurred expenses during the POI related to the modernization of two of its furnaces, the Department should include depreciation expenses related to this project in its calculation of COP. Petitioners argue that the existing furnaces were used in production during the POI; therefore, they state that any capital improvements to either furnace would have been related to production of subject merchandise during the POI. Accordingly, petitioners state that respondent's failure to report depreciation on these assets is not in accordance with GAAP, under which the costs related to the modernization of respondent's furnaces would be recognized as soon as the improvements may be used.

Respondent claims that its treatment of modernization expenses comports with GAAP. Respondent claims that only certain storage facilities were completed and used by the company during the POI and that it reported the depreciation expense related to those facilities in its questionnaire response. Thus, respondent states that it properly included in the depreciation calculation only those assets used during the POI.

#### *DOC Position*

We agree with respondent. Under GAAP, a company is not required to recognize depreciation expense on an asset until the company begins to use that asset in its production. At verification, we confirmed that the only assets related to respondent's modernization and expansion project used during the POI were the storage facilities noted above. Moreover, we confirmed that respondent reported depreciation expense related to these facilities in its cost response. Therefore, we find that respondent properly reported its depreciation expenses related to the project and determine that no additional adjustment is necessary.

#### *Comment 9*

According to petitioners, the Department should depart from its general practice of using related-party production costs in the calculation of respondent's COP, and instead use the reported transfer prices, or BIA as applicable, for those costs. Petitioners base this contention on the fact that both respondent and its related parties are members of a business group,

consisting of a number of companies having the same parent (Corporacion Venezolana de Guayana (CVG)), additional intertwined ownership, and mutual business dealings. Petitioners state that construction of a COP for each of CVG-FESILVEN's five related suppliers would require the Department to track through COPs for a number of other companies and that this would involve an endless series of circular calculations. Petitioners imply that CVG-FESILVEN has not appropriately tracked its related-supplier costs through this system. Moreover, petitioners maintain that CVG-FESILVEN has inconsistently and inadequately allocated CVG's costs to each of the five companies (and to itself). (See Comment 11, below.)

As BIA, petitioners contend in general that the Department should use the higher of the transfer prices reported or the price information contained in the record for unrelated parties.

Respondent contends that Department precedent requires the calculation of its COP using related-party costs. According to respondent, the Department uses costs in its analysis in order to eliminate intracorporate profits that might be earned on transfer prices. Further, respondent states that it provided detailed COPs for all of its related suppliers (except CONACAL, a minor supplier of limestone), and that the Department successfully verified the costs reported by three of these companies.

#### *DOC Position*

We disagree with petitioners that it is appropriate to reject the related-party costs reported in this investigation. The Department's normal practice is to accept related supplier costs based, in part, upon transfer prices between the supplier and its related companies. In past cases, the Department has departed from this practice by investigating the transfer prices and COPs of the related party's related supplier, as petitioners imply is called for here, but we have done so only when petitioners have supplied timely, credible evidence that such an approach was warranted. (See, e.g., *Minivans*) We note that if petitioners in this investigation wanted the Department to further investigate the potential upstream transfers that they allege are occurring, they should have raised the issue earlier in the proceeding than in their case brief.

Moreover, to the extent that we observed that CVG-FESILVEN's related suppliers purchase inputs used in their own production from CVG group members, we noted that the transfer prices were higher than the costs

reported for the group member. For example, we noted at verification that FERROMINERA (CVG-FESILVEN's related iron ore supplier) purchases energy from EDELCA (the related electricity company) at a price higher than EDELCA's reported production costs. Therefore, to the extent that FERROMINERA included the transfer price for energy in its reported costs, its COP is higher than it would have been had it reported EDELCA's costs.

Accordingly, we find that it would be inappropriate to reject respondent's related-party costs. Consequently, we have used them for purposes of the final determination.

#### *Comment 10*

According to petitioners, respondent bears the burden of showing that the transfer prices paid to related parties are at arm's length for purposes of calculating CV. Petitioners state that respondent failed to meet its burden for all of its related suppliers.

Specifically, petitioners question the validity of the methodology offered by respondent to demonstrate the arm's length nature of purchases from four of the five related party suppliers (i.e., FERROMINERA, CONACAL, PROFORCA (a supplier of woodchips) and SIDOR (a supplier of electrode paste)). According to petitioners, a comparison of two (or more) selected invoices is not sufficient; rather, petitioners contend that CVG-FESILVEN should have provided a detailed analysis, comparable to the type required to determine whether sales to a related party are at arm's length (e.g., accounting for differences in credit terms and direct selling expenses), especially since related parties in this case apparently are not required to pay for goods or services within any set time period.

Moreover, regarding the remaining related supplier, EDELCA, petitioners state that, not only did the Department find at verification that EDELCA charges higher rates to unrelated parties, but also the transfer price charged to CVG-FESILVEN was preliminarily found to be preferential in the companion countervailing duty (CVD) case. Therefore, petitioners assert that these prices also are not at arm's length.

Accordingly, petitioners argue that the Department should reject the transfer prices reported because CVG-FESILVEN failed to demonstrate that they were at arm's length. Rather, petitioners state that the Department should use BIA to determine the appropriate price and that it should use this price in both COP and CV.

Petitioners propose the following alternatives to use as BIA: (1) FERROMINERA—the transfer price on the invoice used in CVG—FESILVEN's arm's-length comparison; (2) PROFORCA—the average price paid to an unrelated woodchip supplier; (3) EDELCA—the average rate charged to unrelated customers; and (4) SIDOR—complete BIA (see Comment 19).

Respondent contends in general that its arm's-length test was sufficient and that, applying this test, it adequately demonstrated that the transfer prices that it paid were comparable to market prices. Specifically regarding EDELCA, respondent states that not only is the rate that it pays very close to the rates charged to two of EDELCA's unrelated customers, but also that its rate for the first six months of 1992 is higher than the average rate charged to other customers in the same general region during the same period. Moreover, respondent notes that the preferential rates found in the CVD case were based on an analysis of 1991 rates, not the rates in effect during the POI in this investigation, and that it is contesting the Department's decision for final determination in that case.

#### *DOC Position*

In general, in determining whether related party supplier transactions are at arm's length, the Department accepts a comparison of gross invoice prices, absent a compelling reason not to do so. (See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy, 53 FR 27187 (July 19, 1988).) In this case, we find that the data provided by respondent to demonstrate that its transfer prices reflected market value was sufficient.

Accordingly, regarding FERROMINERA and PROFORCA, because (1) the prices paid by respondent to FERROMINERA and PROFORCA were at or above the prices either charged by these companies to unrelated customers or paid by respondent to an unrelated party, and (2) there is no evidence on the record of this investigation that leads us to believe that the terms of sale between these related parties are materially different from the terms of sale to unrelated parties, we have determined that they were at arm's length. Consequently, we have used these prices in our calculation of CV.

Regarding EDELCA, however, because the price paid by respondent during December 1991 through May 1992 was lower than the price charged by EDELCA to its unrelated customers in the same region and the same period, we have determined that this price was

not at arm's length. Accordingly, in our CV calculation, we used the average price charged by EDELCA to its unrelated customers in the same region during the POI.

Finally, regarding SIDOR, we found that this company was unable to substantiate its reported costs at verification. Therefore, as BIA, we have determined that the transfer price reported for electrode paste was not at arm's length. Accordingly, we have used the same cost for electrode paste in both COP and CV. (See Comment 19.)

We recognize that our arm's length test for supplier transactions differs from the test performed to determine whether sales transactions are at arms-length. However, the arm's length nature of related supplier transactions generally has less of an impact on the results of an investigation than that of related party sales transactions for the simple reason that related supplier prices are used only in the calculation of CV and then generally only for a small number of inputs. Therefore, it is the Department's position that the additional administrative burden created by performing the same test is not justified in every cost investigation.

Moreover, to perform the same test, the Department would be required to collect the same type of data (i.e., on credit periods, direct selling expenses, etc.) related to both the related and unrelated party supplier transactions. While this data is already part of the record for sales transactions, it is not part of the information routinely solicited in a cost investigation. Therefore, without specifically requesting this data in cost cases, the Department does not have the same ability to perform a similar analysis. This is not to say, however, that the Department will never solicit this data or perform a more detailed test; when we have reason to believe that a comparison of gross prices is inadequate early enough in an investigation to request additional data from the respondent, we will do so. In this case, however, petitioners have raised this issue too late in the proceeding for us to request supplemental data or to perform a different analysis. Accordingly, we have used the data already available to us to make the company-specific determinations noted above.

#### *Comment 11*

Petitioners contend that the costs reported for both respondent and its related-party suppliers are understated because respondent failed to allocate properly to these companies selling,

general, and administrative expenses (SG&A) incurred by CVG.

Petitioners maintain that it was inappropriate for respondent to report the fees paid to CVG as a surrogate for allocating CVG's actual costs. Petitioners reason that use of this method implies that the services provided by CVG are proportional to the income of CVG Group members and that group members do not benefit from CVG's services if they are not profitable in any given year. Petitioners note that respondent did not report any fee for 1992 because it did not make an operating profit in that year. Moreover, petitioners note that respondent failed to report this fee altogether for certain of its related suppliers (e.g., EDELCA and PROFORCA).

Respondent contends that use of the fee provides an acceptable allocation methodology. According to respondent, all of its dealings with CVG are on an arm's-length basis; therefore, the fee provides a sufficient distribution of CVG's costs. Moreover, it states that the total fees that CVG receives from its subsidiaries significantly exceed CVG's total operating expenses. Therefore, according to respondent, CVG's costs have been completely allocated to its subsidiaries. Finally, respondent maintains that, while any given company's profits may vary from period to period, over the long term the fee that the company pays will more than cover its share of CVG's costs.

Respondent contends that, if the Department disagrees with its argument that the company pays its fair share of the fees over the long term, it should use the amount of the fee that respondent paid in December 1991 as BIA for each of the five months of the POI for which it reported no cost. It also states that the Department should increase SG&A for its energy supplier, EDELCA, by the actual amount of the fees that EDELCA paid during the POI, because it inadvertently omitted reporting these expenses.

#### *DOC Position*

We agree with petitioners that CVG's SG&A costs should have been allocated to all members of the CVG Group, regardless of profitability. Because we have neither the financial statements of all of the group members nor a consolidated group financial statement, we have no way to allocate CVG's actual SG&A to the respondent and its related suppliers. However, because the fees paid to CVG allowed it to more than recover its costs (both in 1991 and 1992), we have used them, as BIA.

Regarding CVG—FESILVEN, even though the company made no profit in

1992 (and therefore was not required to pay a fee to CVG), under Department practice it still should have reported an allocated portion of CVG's SG&A for the five months of the POI that fell in 1992. Consequently, we have used BIA to determine an amount for each of these five months. As BIA, we used the amount of the fee that respondent paid in December 1991.

Regarding EDELCA, we increased EDELCA's costs by the amount of the fee found at verification. Regarding PROFORCA, however, we did not add an amount to the cost of the woodchips produced by this company because the woodchips are produced as a by-product of PROFORCA's normal production process. Because the Department's practice regarding by-products is to examine only incremental costs (and because a parent company's SG&A is not an incremental cost), we made no adjustment to the costs reported to account for PROFORCA's proportional share of CVG's SG&A. (See Comment 20.)

#### *Comment 12*

Petitioners contend that the financing expenses reported for both respondent and its related-party suppliers are understated because respondent failed to allocate a portion of CVG's financing expenses to these companies. According to petitioners, the Department has a well-established practice of calculating financing expenses based on the borrowing experience of the consolidated group of companies. Because CVG has the power to determine the capital structure of each of its subsidiaries, petitioners contend that it is necessary to use the consolidated expenses of the CVG Group in each company's COP calculation.

Respondent argues that it properly reported its financing expenses because (1) it obtains no financing through CVG, and, accordingly, it received no benefit from any financing that CVG has received and (2) the fee that it and the other subsidiaries pay covers the CVG's full operational costs, including CVG's total financing costs. Therefore, respondent states that to include both the CVG fee and an additional amount for CVG's financing costs would result in the Department's double-counting these expenses.

#### *DOC Position*

According to CVG's financial statements, the fees that it collects from its subsidiaries is sufficient to cover both its SG&A and financing costs. Because we have included the amount of the fees paid by respondent and its

related parties during the POI in our calculations, we find that including an additional amount for financing expenses would result in our double-counting of these costs. Accordingly, we determine that no additional adjustment is necessary for purposes of the final determination.

#### *Comment 13*

Petitioners contend that respondent either deducted excessive amounts of movement expenses from its reported SG&A costs or understated the movement expenses reported in its U.S. sales listing. According to petitioners, large discrepancies exist between the two amounts. Therefore, petitioners maintain that the Department should either disallow the adjustment to COP or increase U.S. movement expenses accordingly.

Respondent argues that no inconsistency exists. According to respondent, the movement expenses reported as a reduction to SG&A are larger than those reported in the U.S. sales listing because they also relate to third country and pre-POI shipments, as well as to U.S. sales during the POI. Moreover, respondent notes that the reduction to SG&A expenses also includes packing materials and sales commissions paid on third country sales. Thus, respondent maintains that it correctly reported both its reduction to SG&A and its U.S. movement expenses.

#### *DOC Position*

We agree with respondent. At verification, we examined both the reduction to SG&A noted above and U.S. movement expenses. Because we found that they had been properly reported, we have accepted them for purposes of the final determination.

#### *Comment 14*

Petitioners contend that the Department should increase respondent's SG&A expenses for certain expenses recorded in its books during the POI under an account entitled "Expenses Related to Previous Years." According to petitioners, at verification respondent was unable to demonstrate adequately that these expenses did not relate to the POI.

#### *DOC Position*

We agree. At verification, we found that certain of these expenses did, in fact, relate to the POI. Consequently, because respondent was unable to support its exclusion of these expenses, we have increased the reported SG&A expenses by their full amount.

#### *Comment 15*

At verification, the Department noted that respondent did not report an amount for a 1992 year-end adjustment to the inventory value of spare parts, as it had for 1991. Petitioners contend that, because CVG-FESILVEN was unable to estimate this expense for the remaining five months of the POI at verification, the Department should use BIA to determine it. As BIA, they state that the Department should use the amount reported for December 1991, multiplied by five.

#### *DOC Position*

We agree that CVG-FESILVEN improperly did not estimate the amount of this adjustment related to 1992. Throughout the investigation, the Department requested that respondent provide estimations for all year end adjustments made at the end of 1992. Accordingly, we used BIA to determine the appropriate amount for this adjustment. As BIA, however, we determined the percentage of the respondent's December COM represented by the adjustment, and then applied this percentage to the COM of the remaining five months of the POI. We did not use petitioners' methodology because the use of a percentage of COM is reasonably adverse and respondent, overall, has cooperated in this investigation.

#### *Comment 16*

Petitioners contend that the Department should disallow, either in whole or in part, the interest income claimed by respondent as an offset to interest expenses during the POI. According to petitioners, respondent reported only a subset of its interest expenses (i.e., the company did not report interest associated with an expansion and modernization project); therefore, petitioners contend that it would be inappropriate to offset this subset of expenses with the full amount of interest income. Rather, at a minimum, petitioners propose that the Department disallow the amount of the income which should have been offset against the expansion and modernization project interest.

Moreover, petitioners note that the Department found at verification that some of the interest income claimed in December 1991 related to interest earned prior to the POI. Therefore, petitioners contend that there is a basis for completely disallowing the offset.

Respondent concedes that the Department should reduce its December income to account for pre-period interest earnings; however, it argues that



the Department should allow the remainder of the offset, in accordance with the Department's past practice. Specifically, respondent states that the Department's practice is to offset interest income from operations against interest expense from operations. Respondent notes that, under GAAP, capitalized interest expense is not a current (i.e., operating) expense, and, as such, properly does not form part of the expenses against which short-term interest income should be offset. Therefore, because the interest expense associated with its expansion and modernization project was capitalized, it followed the Department's practice. Accordingly, respondent maintains that the Department should allow the offset.

#### *DOC Position*

We disagree with petitioners. It is the Department's practice to offset current interest expense with short-term interest income. Accordingly, not only would it be inappropriate to offset short-term interest income against both current and capitalized interest expenses, but it would also be against the Department's practice to do so.

Regarding petitioners' other argument (on the December 1991 portion of the offset), the Department calculates net financial expenses using data from respondent's most recently completed fiscal year (in this case, 1991) since we determine that interest expense and revenue are not fully accounted for until year-end adjustments are made. Therefore, because we do not base our offset calculation on expenses or income recorded in the POI, this argument is not relevant.

#### *Comment 17*

Petitioners argue that the Department should use the actual amount of interest recorded in respondent's books during the POI in the calculation of COP and CV. According to petitioners, respondent impermissibly reduced these expenses based on its belief that the actual interest that the company will pay once its payments are resumed will be a lower rate than the amount accrued, due to the fact that the Venezuelan government is in the process of renegotiating the interest rate applicable to the company's long-term debt. (Service of this debt was suspended at the beginning of the renegotiation process.) Consequently, in accordance with the Department's general practice of using actual costs, the Department should reject any adjustment of accrued interest expense to account for the proposed results of the renegotiations.

Respondent argues that it properly reported its interest expenses because (1) the expenses reported reflect the rate that is most likely to apply once the negotiations are concluded, and (2) they overstate of the company's actual costs during the POI. On this last point, respondent notes that it actually paid no interest during the POI, and therefore it incurred no actual costs.

#### *DOC Position*

We agree with petitioners. In accordance with the Department's practice, we have used the actual expenses reflected in the company's books for purposes of the final determination.

#### *Comment 18*

According to petitioners, EDELCA has not reported a fully allocated COP. Specifically, petitioners provide two arguments: First, EDELCA reported in the companion CVD investigation that it is in the process of imposing rapid rate increases on its customers in order to allow it to recover its long-term average incremental costs. According to petitioners, therefore, if the 1992 transfer prices are designed to cover EDELCA's long-term costs, then these transfer prices should be approximately the same amount as (or at least be no less than) EDELCA's fully allocated COP. However, petitioners note that the COP calculated is, in fact, less than the average transfer price reported.

Second, petitioners state that EDELCA's reported COP cannot be reconciled with either its own financial statements or EDELCA's public statements. Specifically, petitioners state that EDELCA did not fully report the depreciation expenses reflected on its financial statements. In addition, petitioners cite a newspaper article which asserts that EDELCA's costs are significantly different than those reported to the Department.

As BIA, petitioners contend that the Department should use the average rate charged to EDELCA's unrelated customers. Petitioners maintain that this methodology is appropriate because the transfer prices between EDELCA and respondent are not at arm's-length.

Respondent contends that the Department's practice is to require companies to report their average costs during the POI, not their marginal or incremental costs. According to respondent, because EDELCA has done this, the Department should accept these costs.

Respondent states that rate increases referenced by petitioners are part of EDELCA's long-term policy of phasing in higher rates. According to

respondent, EDELCA is currently building an additional generating facility; therefore, its rate increases are designed to allow its customers to adjust to the higher rates which will be necessary in the future in order for EDELCA to cover the costs of constructing this new facility. Respondent notes that, under GAAP, EDELCA is not required to recognize the costs associated with this future facility until it goes on line in 1995.

Moreover, respondent states that EDELCA's verified cost data are consistent with its financial statements. Respondent notes that the depreciation referenced by petitioners was distributed among several cost categories; therefore, because petitioners compared depreciation reported for one category to the total amount shown on the financial statements, their contention that this expense was understated was in error.

Finally, regarding the newspaper article cited by petitioners, respondent questions its legitimacy because petitioners fail to cite not only the source of the article, but also the time period to which the article refers. Nonetheless, respondent maintains that the data in the article also are not inconsistent with the costs reported to the Department. Respondent notes that the expenses referenced by the article include both expenses related to current operations and capital investment activities. According to respondent, it properly excluded investment-related costs because they were capitalized by EDELCA and were not recognized as expenses during the POI.

#### *DOC Position*

We agree with CVG-FESILVEN. In antidumping duty investigations, the Department's policy is to require respondents to report their average costs during the POI, not their marginal costs. This policy is in accordance with GAAP, which does not require companies to recognize capitalized costs related to investments until the investments are used in the companies' production. By requiring respondent to report EDELCA's long-term average incremental costs, the Department would be departing from its practice and from GAAP. Therefore, because we found at verification that, with the exception of the fees paid to CVG, EDELCA had completely reported its average production costs during the POI (including depreciation), we have accepted these costs for purposes of the final determination.

*Comment 19*

Petitioners contend that the Department should reject the COP reported by respondent's related party supplier of electrode paste (SIDOR) because this company was unable to substantiate its costs at verification. Accordingly, petitioners contend that the Department should use BIA for the COP of this input. As BIA, petitioners maintain that the Department should use either the cost provided in their below-cost allegation or the highest reported price charged by SIDOR to its unrelated customers for electrode paste.

Respondent agrees that SIDOR was unable to substantiate its cost data at verification. As BIA, respondent contends that the Department should use SIDOR's highest price to unrelated customers.

*DOC Position*

We agree that SIDOR's costs failed verification and have therefore used BIA to determine these costs. As BIA, we have used the highest price charged by SIDOR to any of its unrelated customers. This number is more appropriate than the cost for electrode paste provided in the below-cost allegation because CVG-FESILVEN has cooperated fully in this investigation.

In addition, because the BIA number is higher than the transfer price, we determine that the transfer price is not at arm's length. Accordingly, we have used the BIA amount in both our COP and CV calculations.

*Comment 20*

Petitioners contend that respondent underreported the costs provided by its related party supplier of woodchips (PROFORCA). According to petitioners, although PROFORCA produces woodchips as a by-product during the production of its main product, lumber, the company still incurs certain costs associated with the woodchips themselves (e.g., collecting the woodchips and moving them to a silo for storage, depreciation on the silo, etc.). Because respondent did not report these costs, petitioners contend that the Department must use BIA to determine them. As BIA, they state that the Department should use the average price that respondent paid to its unrelated woodchip supplier, PROMASO.

Respondent disagrees. According to respondent, PROFORCA demonstrated during verification that woodchips are a waste product that the company routinely hauls away to a local landfill. Since the sale of woodchips eliminates the need for PROFORCA to haul the

waste material away, PROFORCA saves money by selling woodchips. Therefore, respondent maintains that the transportation-only cost that PROFORCA reported is conservative, because this material actually has a negative cost for the company.

*DOC Position*

In determining the cost that should be reported for by-products, generally incremental costs incurred to produce or sell the product are the only costs considered because by-products are products which result from the manufacturing of the primary product and have little residual value. Therefore, we have used PROFORCA's costs as reported (i.e., only the costs associated with transportation to CVG-FESILVEN's factory) because this is the only incremental cost that PROFORCA incurs.

*Comment 21*

Petitioners contend that the Department should reject the costs supplied by FERROMINERA because they were improperly based on the cost of goods sold (COGS) during the POI, rather than the cost of goods produced.

CVG-FESILVEN maintains that it reported FERROMINERA's COP, not COGS. However, it contends that, even if it had reported FERROMINERA's COGS, these costs would not have been distortive because FERROMINERA's inventory level was small and declined during the POI; therefore, inventory would have had little impact on the reported cost data even if such data were based on COGS. Moreover, CVG-FESILVEN notes that the Department has found COGS to be an appropriate source for cost data in other cases.

*DOC Position*

After reviewing FERROMINERA's financial statements, as well as the data reported, we believe that FERROMINERA's data were based on COGS. However, we agree with respondent that the Department has found COGS to be an appropriate source for cost data in the past. Moreover, in this case, given FERROMINERA's small inventory level, we do not believe that use of COGS results in distortion of the margin analysis performed for the final determination. Accordingly, we have accepted the data reported.

*Comment 22*

According to the cost verification report, respondent double-counted freight costs when reporting FERROMINERA's production cost for iron ore, because it included (1) delivery costs incurred outside the POI as part of

FERROMINERA's costs, and (2) the costs associated with picking up the iron ore itself as part of its own SG&A.

Petitioners disagree that these costs were double-counted. Rather, petitioners contend that these expenses may have been excluded completely because the weighted-average price reported for iron ore in respondent's COP does not include freight costs. Further, petitioners imply that freight expenses on purchases are not reported as part of respondent's SG&A, because they state that it is unclear that respondent's adjustment to SG&A for movement expenses relates only to sales (as opposed to purchases of materials).

*DOC Position*

We disagree. At verification, we found that during the POI respondent used its own trucks to transport its purchases of iron ore to its factory. We also verified that these types of transportation costs not only were reported as part of respondent's SG&A, but also that they did not form part of the reduction to SG&A for movement expenses.

The discrepancy arose because, after the POI, FERROMINERA began delivering the merchandise using an outside delivery service. In its questionnaire response, respondent misreported the amount paid to the delivery company as part of the cost of production of iron ore. Consequently, because we found that respondent incorrectly reported freight costs that it did not incur during the POI, we have reduced the costs reported for iron ore accordingly.

*Comment 23*

According to CVG-FESILVEN, the company experienced unusual production problems during the POI which resulted in abnormally high costs that distort its COP. Therefore, respondent requests that the Department "normalize" its POI costs by using its reported production costs, adjusted for pre-period efficiency rates. As precedent for its request, respondent cites Oil Country Tubular Goods From Canada: Final Determination of Sales at Less Than Fair Value, 51 FR 15029 (April 22, 1986) ("OCTG"), where yield rates were normalized to reflect "learning curve" efficiencies that the company had achieved.

Petitioners contend that CVG-FESILVEN does not qualify for the use of "normalized" costs under Department precedent because (1) it has provided insufficient evidence to warrant their use and (2) respondent's difficulties during the POI were equivalent to a normal business occurrence. Moreover, petitioners state

that the Department generally only normalizes costs in a start-up situation, which is not the case here.

#### DOC Position

We agree with petitioners. By their very nature, a company's costs are a function of its operating efficiency rates. Under the Department's practice, the Department generally relies on actual costs incurred (and operating efficiencies achieved) during the POI when calculating COP. In past cases where the Department has departed from this practice, it has been to exclude certain costs either that the Department considers to be extraordinary in nature or, like in OCTG, that the Department determines do not relate solely to production during the POI (e.g., costs incurred in start-up cost situations). Because we do not consider the costs in question (See Concurrence Memorandum prepared for the Final Determination dated May 4, 1993.) to have been unusual in nature for a manufacturing concern or to be equivalent to start-up costs, we have not accepted respondent's proposed adjustment.

#### Comment 24

According to respondent, the Department should not exclude any of its sales found to be below-cost because the company's home market prices permit the recovery of all costs within a reasonable period of time in the normal course of trade. Respondent bases its conclusion that the company is recovering costs on a review of its financial statements, as well as on the Department's findings at verification. In the event that the Department finds that these data are inconclusive, respondent urges the Department to consider the POI to be an unreliable period on which to judge the company's ability to recover its costs, due to the fact that the company experienced abnormal production difficulties during the period. Therefore, respondent contends that the Department should place more weight on historical data in its analysis.

Petitioners disagree that the Department should disregard below-cost sales. According to petitioners, the burden is on respondent to prove that it has recovered its costs. In support of this contention, petitioners cite a recent decision issued by the Court of International Trade (CIT) (*Koyo Seiko Co. v. United States*, CIT, Slip. Op. 93-3 (January 8, 1993) ("*Koyo Seiko*"), where the court agreed that the Department has the authority to place the burden of proof on respondent. Petitioners maintain that in this case CVG-FESILVEN has not met its burden.

Petitioners provide the following evidence that respondent will not be able to recover its costs: In 1990 and 1991 CVG-FESILVEN's net sales were not sufficient to cover its costs and in 1991 the company was not able to pay preferred dividends because of inadequate profits. In addition, CVG-FESILVEN is in the middle of a large expansion and modernization project which it is unable to complete by its own admission due to cash flow problems.

#### DOC Position

We agree with petitioners. The burden of demonstrating that a company will be able to recover its costs over a reasonable period of time is on the respondent. (See *Koyo Seiko*.) In this case, we find that respondent has not met that burden.

The Department has developed the practice of comparing a respondent's fully-allocated average actual COP with home market selling prices for purposes of determining that sales are below cost. If those prices are below the COP, we determine that respondent is not able to fully recover its costs within a reasonable period of time. If a respondent can demonstrate adequately that this determination is unreasonable, then we would reconsider our position.

In this case, however, CVG-FESILVEN did not sufficiently demonstrate that it would recover its costs on its below-cost sales made during the POI. We find that a simple analysis of financial statement profitability is inadequate in this instance, because these statements do not unambiguously show that respondent will be able to recover its costs on its home market below-cost sales. Moreover, we note that respondent's reliance on verification findings as proof of its POI profitability is misplaced, because respondent misinterpreted a statement in the cost verification report. (See Cost Verification Report dated March 9, 1993 on page 24.)

Accordingly, we find that CVG-FESILVEN presented insufficient evidence that it would be able to recover its costs over a reasonable period of time. Consequently, we have not included in our analysis below-cost sales which were made in substantial quantities over an extended period of time.

#### Comment 25

Respondent claims that, when considering its home market database as a whole, it did not make below-cost sales in substantial quantities during the POI. According to respondent, the

Department should perform the substantial quantities test on a such or similar category basis, rather than a product-specific basis. In addition, respondent argues that the Department should also include sales to related and unrelated parties in its test, because it generates revenue to both categories of customers.

In support of its argument, respondent cites the final determination in Final Determination of Sales At Less Than Fair Value: Gray Portland Cement and Clinker from Mexico, 55 FR 29244 (July 18, 1990) ("*Mexican Cement*"), where the Department rejected a COP allegation because it covered only one product representing a small percentage of sales in a such or similar category.

#### DOC Position

We disagree. Since the decision in Mexican Cement, the Department has changed its practice. In determining whether below cost sales were made in substantial quantities, the Department's current policy is to perform its analysis on a model-specific basis, rather than a such or similar or a class or kind basis. (See, e.g., DRAMS; Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipes from the Republic of Korea, 57 FR 42942 (Sept. 17, 1992) ("*Korean Pipe*").)

We believe that this policy is in accordance with the intent of section 773(b) of the Act, which sets forth the circumstances under which the Department has the authority to disregard below-cost sales. Because the purpose of this provision is to avoid basing FMV on prices below cost, we believe that this interpretation is accurate since it focuses on the prices actually used for FMV. FMV itself is based on a model-specific comparison, that of the most similar model, rather than on an aggregate comparison of all models in the such or similar category. Therefore, in price-to-price comparisons, the prices of models that are not used in the comparison are irrelevant to the determination of FMV. Similarly, in the cost test, the fact that models not used for comparison are priced above or below cost is irrelevant to determining if the prices to be used for FMV are above or below cost.

Consequently, we have performed the cost test in this investigation on a model-specific basis, in accordance with the Department's policy.

Regarding respondent's request that we perform the cost test using both related and unrelated party sales transactions, we have determined that either using or excluding the related party transactions in question would not

change the results of the test. Accordingly, this issue is moot.

#### Comment 26

Respondent states that if the Department applies the COP test to individual types of ferrosilicon, it should not automatically resort to CV if it finds insufficient above-cost sales of certain sizes or grades of product. Rather, it should calculate FMV using Venezuelan sales of the next size or grade of ferrosilicon. Respondent cites Koyo Seiko, which stated that the Department must use all potential home market similar merchandise and avoid whenever possible the use of CV. Respondent also cites Final Determination of Sales at Not Less Than Fair Value: Tubes for Tires, Other than for Bicycles, from the Republic of Korea, 49 FR 26780 (June 29, 1984) ("Tubes for Tires"), where the Department determined that if, within a particular size category, insufficient home market sales were made at prices above the cost of production, it would use prices for the next most similar home market merchandise made at or above the COP for comparison purposes.

#### DOC Position

We disagree. Since the determination in Tubes for Tires, the Department has changed its policy with regard to this issue. (See, e.g., Korean Pipe and AFBs.)

According to section 773(b):

Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than the cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a) of this section, the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

Therefore, the issue that respondent has raised is, when the sales of a given model cannot be used, whether the Department should use the next most similar model, in order to follow the price preference specified in section 773(a), or go directly to CV as indicated in 773(b).

Prior to determining FMV under section 773(a), the Department must first select the most similar merchandise. Section 771(16) of the Act defines such or similar merchandise and provides a hierarchy of preferences for determining which merchandise sold in the foreign market is most similar to the merchandise sold in the United States. Section 771(16) also expresses a preference for the use of identical over similar merchandise, stating categorically that such or similar merchandise is the merchandise that

falls into the first hierarchical category in which comparisons can be made. The cost test is not conducted until after the most similar model match is found under section 771(16).

Section 771(16) requires us to descend through successive levels of the hierarchy until sales of such or similar merchandise are found. However, it does not condition the determination of such or similar on any basis other than similarity of the merchandise. In particular, section 771(16) directs the Department only to use "the first of the following categories \* \* \*" and not to use the next category when the first match is below cost. If this were not the case, the cost test would inappropriately become part of the basis for determining what constitutes such or similar merchandise, which is clearly not the purpose of the cost test. Therefore, because section 771(16) specifies the determination of such or similar merchandise on the similarity of the merchandise only and not on whether the most similar model is sold above cost, section 771(16) directs us to the use of CV when the most similar model is sold below cost.

Moreover, the use of CV lessens the burden on the Department of calculating the dumping margin. If the next most similar match is used, it would require the Department, after rejecting the below cost model, to conduct successive searches of home market sales for the next most similar model until all similar models have been exhausted. This process would have to be followed in all cases in which less than 90 percent of the home market sales were sold below cost.

For the reasons noted above, therefore, we followed our current practice and based FMV on CV for below cost sales, rather than searching for the next most similar home market model.

#### Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of ferrosilicon from Venezuela that are entered, or withdrawn from warehouse, for consumption on or after December 29, 1992, the date of publication of our affirmative preliminary determination in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the USP, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
CVG-Venezolana de Ferrosilicio C.A. ....	9.55
All Others .....	9.55

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

#### Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: May 3, 1993.

Joseph A. Spetrini,  
Acting Assistant Secretary for Import Administration.  
[FR Doc. 93-11010 Filed 5-7-93; 8:45 am]  
BILLING CODE 3510-D9-P

[A-357-807]

#### Final Determination of No Sales at Less Than Fair Value: Ferrosilicon from Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1776.

#### Final Determination

We determine that ferrosilicon from Argentina is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act).

#### Case History

Since the publication of our negative preliminary determination on December

29, 1992 (57 FR 61879), the following events have occurred:

On January 8, 1993, we received a request for a public hearing from the petitioners in this case (AIMCOR; Alabama Silicon, Inc.; American Alloys, Inc.; Globe Metallurgical, Inc.; Silicon Metaltech, Inc.; United Autoworkers of America Local 523; United Steelworkers of America Locals 2528, 5171, 3081, and 12646; and Oil Chemical and Atomic Workers Local 389).

On January 14, 1993, petitioners requested a postponement of the final determination. We granted this request, and on February 2, 1993, we postponed the final determination until not later than May 3, 1993 (58 FR 11586, Feb. 26, 1993).

On February 8, 1993, we conducted verification in Argentina of the section A response to the Department's questionnaire made by Industrias Siderúrgicas Grassi (Grassi), the respondent in this investigation.

Petitioners filed a case brief on March 29, 1993. Grassi filed a rebuttal brief on April 5, 1993. A public hearing was held on April 12, 1993.

#### Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocilium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium.

Ferrocilium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium.

Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

#### Period of Investigation

The period of investigation (POI) is June 1, 1991, through May 31, 1992.

Prior to issuing the questionnaire in this case, the Department received information from the U.S. Embassy in Buenos Aires that no Argentine company had exported ferrosilicon to the United States during the Department's "standard" six-month POI, and that only Grassi had exported during the year prior to the initiation of the investigation. Because these exports were made within one year of the date of the initiation of this investigation (June 11, 1992), the Department determined that they were sufficiently current to serve as a basis for a dumping investigation. Therefore, the Department expanded the POI from six months to one year. (See memorandum dated July 21, 1992, from Richard W. Moreland, Director, Office of Antidumping Investigations, to Francis J. Sailer, Deputy Assistant Secretary for Investigations.)

However, on July 27, 1992, Grassi informed the Department that the dates of sale for its two shipments during the expanded POI were both outside the expanded period. Consequently, petitioners requested that the Department expand the POI further in order to have U.S. sales on which to base a less than fair value analysis. After analyzing the circumstances surrounding this issue in light of the department's practice in this area, the Department determined that there were no compelling reasons on the record of this investigation that would have justified extending the POI back further than one year. For further discussion of this issue, see memorandum dated July 31, 1992, from David L. Binder, Director, Antidumping Division II, Office of Antidumping Investigations, to Richard W. Moreland, Acting Deputy

Assistant Secretary for Investigations ("the July 31 memorandum"), as well as the "Interested Party Comments" section of this notice.

#### Fair Value Comparisons

In order to determine whether sales of subject merchandise to the United States by a respondent were made at less than fair value, the Department compares the United States prices to foreign market value. Grassi reported no sales of subject merchandise during the POI. Accordingly, there are no United States prices with which to compare foreign market value and, thus, no dumping margins.

#### Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

#### Interested Party Comments

##### Comment 1

Petitioners contend that the Department's finding of no sales at less than fair value was mistaken because the Department should have extended the POI to more than the one year period chosen in order to capture a large volume, low-priced sale of Argentine ferrosilicon that entered the United States during the period. Petitioners request that the Department remedy the situation by expanding the POI by a minimum of ten days.

Specifically, petitioners argue that the Department misapplied its "rule of thumb" regarding the age of sales (i.e., sales made over a year prior to the filing of a petition are considered "stale" from the Department's perspective and, thus, are not considered sufficiently current to form the basis for conducting an investigation). According to petitioners, although the reported date of sale of Grassi's last shipment to the United States was more than one year prior to the initiation of the investigation, it was exactly one year prior to the filing of the petition. Therefore, not only would extending the POI by only ten days be consistent with the Department's practice, but it also would result in the Department's capturing a large volume shipment of subject merchandise sold at a significant dumping margin.

Petitioners also argue that the Department's decision not to expand the POI was based on an incorrect application of Departmental precedent. According to petitioners, this case is

clearly distinguishable from other cases where the Department has not extended the POI when it found that there were no sales during the period. Specifically, petitioners state that, unlike both Electrolytic Manganese Dioxide from Ireland; Final Determination of No Sales at Less Than Fair Value (54 FR 8776, March 2, 1989) ("EMD") and Notice of Preliminary Determination of Sales at Not Less Than Fair Value; High Tenacity Rayon Filament from the Netherlands (57 FR 6091, Feb. 20, 1992) ("Rayon Filament"), where the last entry of subject merchandise into the United States was made more than twelve months prior to the filing of the petition, in this case there were in fact entries during the POI.

Finally, petitioners argue that this case is not distinguishable from Offshore Platform Jackets and Piles from Japan: Final Determination of Sales at Less Than Fair Value (51 FR 11788, April 7, 1988) ("Offshore Platform Jackets"), where the Department determined that it was appropriate to extend the POI when certain circumstances peculiar to the industry in question existed (i.e., sales involving special orders for merchandise with long production times). Petitioners maintain that in the instant investigation, the long delay between sales and shipment was due mainly to the fact that Grassi did not maintain a sufficient inventory to meet large orders and that, consequently, Grassi had to produce the merchandise after making the sale.

Nor, petitioners contend, is this case distinguishable from two other cases (Carbon Steel Wire Rod From Venezuela: Final Determination of Sales at Less Than Fair Value (47 FR 58328, Dec. 30, 1982) ("Carbon Steel Wire Rod") and Oil Country Tubular Goods from Taiwan: Final Determination of Sales at Less Than Fair Value (51 FR 19371, May 24, 1986) ("OCTG")), where the Department decided to extend the POI beyond one calendar year to capture additional sales.

Grassi counters that the Department has already extended the POI to the maximum extent permissible. According to Grassi, petitioners provided no support for their assertion that the Department misapplied the "one year rule." Rather, Grassi states that the Department articulated this rule in its July 31 memorandum, where the Department defined the one year period as the year prior to the initiation of an investigation. Therefore, Grassi maintains that the POI in this case was extended in accordance with the "one year rule."

According to Grassi, the Department's "one year rule" policy reflects the intent of the antidumping statute, which requires the Department to determine whether merchandise under investigation is being or is likely to be sold at less than fair value. In support of its point, Grassi cites the July 31 memorandum, which interprets the language of the statute to mean that the Department is charged with determining a future dumping margin based on past practice; this memorandum then goes on to question whether sales which were made over a year prior to the initiation of a case provide a reasonable basis upon which to determine a prospective dumping margin. According to this document, the Department considers that sales which were made over a year before initiation of a case do not provide a reasonable basis to determine that dumping is, or is likely to be, occurring.

Grassi contends that dumping is neither occurring, nor is it likely to occur in this case. Grassi states that the Department found at verification that the company had decided to cease sales in the United States until prices in the U.S. domestic market recovered to a profitable level. Moreover, Grassi states that the Department also confirmed at verification that Grassi made neither sales nor offers to sell to the United States during the POI and that its total production (both actual and projected) has declined steadily over the past two years.

Regarding petitioners' argument that exceptional circumstances under which the Department would depart from its "one year rule" are present here, Grassi disagrees. According to Grassi, unlike the product in Offshore Platform Jackets, ferrosilicon is a fungible commodity which requires no special production time, requires no special orders, and is not produced by an industry which has circumstances peculiar to itself.

Moreover, Grassi states that the decisions made in *Carbon Steel Wire Rod* and *OCTG* are not comparable to the decision taken in this investigation, because unusually long sales cycles were present in the first case and respondents requested a one-day extension to capture an additional sale in the second.

On the other hand, Grassi states that both *EMD* and *Rayon Filament* do apply, because, as in this case, there were no shipments within the standard six month POI in those investigations, nor were there any contracts, offers to sell, open contracts requiring shipments during the POI, or resales from third

countries requiring shipments to the United States.

Accordingly, Grassi contends that the Department should issue a final determination of no sales at less than fair value.

#### *DOC Position*

After considering all of the arguments raised by the parties to this investigation, we have determined that the appropriate POI is June 1, 1991, through May 31, 1992, as stated in our preliminary determination.

According to section 735 of the Act, the administering authority must make a final determination of whether the merchandise subject to an investigation "is being, or is likely to be, sold in the United States, at less than fair value." At verification, we confirmed that Grassi had no sales to the United States during the POI, nor had it made any offers for such sales during or after the extended POI. Because we recognize that a company's selling practices may change over time, we do not initiate cases which are based on home market or U.S. prices which are over a year old, as it is believed that these prices would not provide a reasonable basis to believe or suspect that sales are being, or are likely to be, made at less than fair value. By the same logic, except in the most unusual circumstances, the Department will not determine that a company is selling merchandise in the United States at less than fair value if that company's last sale to the United States was made outside of a one year period (i.e., six months prior to the "normal" POI, as established under § 353.42(b) of the Department's regulations). (See the July 31 memorandum.) In this investigation, petitioners have not shown that there are any unusual circumstances about this product or company which would justify extending the POI beyond one year.

Similarly, in *EMD* and *Rayon Filament* we found no sales at less than fair value rather than extending the POI in order to capture sales on which to base a dumping analysis. As in the instant investigation, petitioners in those cases did not provide sufficient justification for further expansions of the POIs in question. We note that our determination not to expand the POI in *EMD* was upheld by the Court of International Trade. (See *Kerr-McGee Chemical Corp. v. United States*, 739 F. Supp. 613 (1990) (remanded on other grounds).)

Moreover, we disagree with petitioners that the distinction in *EMD* and *Rayon Filament* (i.e., that there were no entries of merchandise into the United States during the POIs in those

cases, while there were entries here) is meaningful. Petitioners have not explained why entries, in and of themselves, provide a sufficient basis to expand the POI further. Therefore, we find that this case is not distinguishable from EMD or Rayon Filament in any significant way.

In cases where the Department has extended the POI beyond one year, it has been to get a more representative picture of a respondent's sales cycle or selling practices (and, by extension, a more representative dumping margin), not to establish that dumping may have occurred in isolated instances in the past. Accordingly, this case is clearly distinguishable from OCTG, in which there were already sales to the United States during the unextended POI, and from Carbon Steel Wire Rod, in which unusually long sales cycles were present. Thus, the Department's determinations of sales at less than fair value in both OCTG and Carbon Steel Wire Rod were based on the particular selling practices of the companies under investigation which were deemed to be reasonably representative of their future actions. In this investigation, however, there were neither sales during the standard POI, nor were there unusual circumstances which would lead the Department to believe that a longer period would allow us to capture an entire sales cycle.

Regarding petitioners' argument that the relatively long time between sale and shipment of Grassi's last order makes the circumstances of this case factually similar to those in Offshore Platform Jackets, we disagree. There is no information on the record of this investigation which would indicate that the products produced by the ferrosilicon industry require long production times or that there are any other characteristics of the industry which would differentiate it from the majority of industries examined in less than fair value investigations.

Consequently, in accordance with the Department's practice in this area, we have not extended the POI in this investigation to include more than one year.

#### Comment 2

Petitioners maintain that the Department should collect additional data from Grassi, based on an expanded POI, in order to allow the Department to calculate an appropriate dumping margin. In the alternative, petitioners contend that the Department should use the price information collected at verification, or that provided in the petition, as the best information

otherwise available (BIA) for its determination of the margin.

#### DOC Position

As we have not expanded the POI beyond the one year period initially determined to be appropriate, the issue of whether to collect additional information is moot.

Regarding the issue of whether to determine the final dumping margin using BIA, we find that Grassi has furnished, in proper form and in timely manner, all information requested by the Department. Based on the information reported, we have determined that Grassi did not sell ferrosilicon to the United States during the POI. For these reasons, the Department has no reason to resort to the use of BIA as suggested by petitioners.

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

#### Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: May 3, 1993.

Joseph Spetrini,  
Acting Assistant Secretary for Import  
Administration.  
[FR Doc. 93-11011 Filed 5-7-93; 8:45 am]  
BILLING CODE 3510-05-P-M

#### [A-351-804]

#### Industrial Nitrocellulose from Brazil; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request by respondent, Companhia Nitro Quimica Brasileira, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial nitrocellulose from Brazil. The review covers one manufacturer/

exporter of this merchandise to the United States, and the period July 1, 1991, through June 30, 1992. The review indicates the existence of a dumping margin during the period:

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results of review.

**EFFECTIVE DATE:** May 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-5255.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 9, 1992, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (57 FR 30465) of the antidumping duty order on industrial nitrocellulose from Brazil (55 FR 28266; July 10, 1990). On July 30, 1992, the respondent, Companhia Nitro Quimica Brasileira ("Nitro Quimica"), requested an administrative review of the antidumping duty order. We initiated the review, covering July 1, 1991, through June 30, 1992, on August 26, 1992 (57 FR 38667). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

##### Scope of the Review

The product covered by this review is industrial nitrocellulose, currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3912.20.00.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this review does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent, and was excluded from the antidumping duty order.

HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

##### Product Comparisons

Nitro Quimica sold one model of industrial nitrocellulose in the U.S.

during the period of review. That model has an exact model match in the home market, except for the percentage of the wetting agent. We calculated foreign market value (FMV) on the sales of that model, making a difference-in-merchandise adjustment for the difference in the wetting agent percentage.

#### United States Price

In calculating United States price, the Department used purchase price, as defined in section 772(b) of the Tariff Act. Purchase price was based on the packed, C.I.F. U.S. port, price to an unrelated customer in the United States. We made adjustments for foreign inland freight, foreign brokerage and handling expenses, marine insurance, ocean freight, import duties, U.S. harbor and processing fees, and U.S. brokerage and handling expenses. To compensate partially for hyperinflation in Brazil, charges for foreign inland freight, foreign brokerage and handling, ocean freight, and, where possible, packing costs, were converted to U.S. currency using the exchange rate in effect on the date the cost was incurred, rather than on the date of the U.S. sale to which the charges pertain.

We made an addition to U.S. price for taxes under section 772(d)(1)(C) of the Tariff Act. On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade in *Zenith Electronics Corporation v. United States*, Slip Op. 92-1043, -1044, -1045, -1046, ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer make a circumstance-of-sale adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will add to U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

In addition, we plan to propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated

as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation.

#### Foreign Market Value

In order to determine whether there were sufficient sales of covered merchandise in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of covered merchandise to the volume of third country sales of covered merchandise, in accordance with section 773(a)(1) of the Tariff Act. Nitro Quimica's home market sales were greater than five percent of the aggregate volume of third country sales. Therefore, we determined that Nitro Quimica's home market was viable for the purpose of calculating FMV.

In accordance with section 773(a)(1)(A) of the Tariff Act, we calculated FMV based on packed, ex-factory, sales prices to unrelated customers in the home market. Where applicable, we made adjustments for inland freight, insurance, and credit. We deducted home market packing costs from FMV and added the cost of packing the merchandise sold in the U.S. We subtracted from the home market price the commissions paid in the home market, and added to home market price Nitro Quimica's U.S. indirect selling expenses, comprised of its U.S. export selling expenses and inventory carrying costs, limited to the amount of home market commissions. We also made an adjustment for differences in physical characteristics between the U.S. and Brazilian models.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine that a margin of 5.81 percent exists for Nitro Quimica for the period July 1, 1991, through June 30, 1992. Parties to the proceeding may request disclosure within five days of the date of publication of this notice, and any interested party may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results

of this administrative review, including an analysis of issues raised in any written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of industrial nitrocellulose from Brazil, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Nitro Quimica will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the manufacturer or exporter in the final determination; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the final determination from the less than fair value investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this review and who are unrelated to the reviewed firm or any other firm investigated in the original investigation, will be the "all others" rate established in the final results of this administrative review. This rate represents the rate for the sole firm reviewed in this administrative review, for which we have not applied the best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and the subsequent assessment of double antidumping duties.



This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act and section 353.22 of the Department's regulations.

Dated: April 29, 1993.

Richard W. Moreland,  
Acting Assistant Secretary for Import  
Administration.

[FR Doc. 93-11007 Filed 5-7-93; 8:45am]  
BILLING CODE 3510-05-M

[C-307-808]

**Final Affirmative Countervailing Duty  
Determination: Ferrosilicon From  
Venezuela; and Countervailing Duty  
Order for Certain Ferrosilicon From  
Venezuela**

AGENCY: Import Administration,  
International Trade Administration,  
Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT:  
Paulo F. Mendes, Office of  
Countervailing Investigations, Import  
Administration, U.S. Department of  
Commerce, 14th Street and Constitution  
Avenue, NW., Washington, DC 20230;  
telephone (202) 482-5050.

**Final Determination**

The Department determines that benefits which constitute bounties or grants within the meaning of the countervailing duty (CVD) law are being provided to manufacturers, producers, or exporters in Venezuela of ferrosilicon.

For information on the estimated net bounties or grants, please see the "Suspension of Liquidation" section of this notice.

**Case History**

Since the publication of the preliminary determination (57 FR 38482, August 25, 1992), the following events have occurred.

We conducted verification from September 22 through 29, 1992. On September 18, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended ("the Act"), we aligned the final determination in this investigation with the final determination in the companion antidumping (AD) duty investigation of the subject merchandise.

The parties submitted case and rebuttal briefs on November 17 and November 24, 1992, respectively. A public hearing was not requested. On February 26, 1993, we postponed the final CVD and AD determinations until May 3, 1993.

**Scope of Investigation**

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocadium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocadium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

**Analysis of Programs**

For purposes of this final determination, the period for which we are measuring bounties or grants (the period of investigation—POI) is calendar year 1991.

In determining the benefits received under the various programs described

below, we used the following calculation methodology. We first calculated the *ad valorem* benefit received by C.V.G. Venezolana de Ferrosilicio C.A. (FESILVEN) for each program. The benefits for all programs were then summed to arrive at FESILVEN's total bounty or grant rate, which, because FESILVEN is the only respondent company in this investigation, serves as the country-wide rate.

Based upon our analysis of the petition, responses to our questionnaires, verification, and written comments from the interested parties, we determine the following:

**I. Programs Determined to Confer Bounties or Grants**

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Venezuela of ferrosilicon as follows:

**A. Preferential Power Rates**

The petitioners allege that C.V.G. Electrificación del Caroní C.A. (EDELCA), a government-owned hydroelectric power company, charges preferential electricity rates to FESILVEN.

The Department's practice in determining whether electricity is being provided at preferential rates is described in Final Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946 (July 13, 1992). As explained in that notice, "the first step the Department takes in analyzing the potential preferential provision of electricity—assuming a finding of specificity—is to compare the price charged with the applicable rate on the power company's non-specific rate schedule. If the amount of electricity purchased by a company is so great that the rate schedule is not applicable, we will examine whether the price charged is consistent with the power company's standard pricing mechanism applicable to such companies. If the rate charged is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other industries which purchase comparable amounts of electricity, we would probably not find a countervailable subsidy."

We verified that EDELCA did not have a rate schedule for its large industrial customers, nor did it follow any consistent policy in setting these rates. Instead, EDELCA negotiated individual electricity contracts with its large industrial customers without regard to any particular formula.

Because EDELCA does not have a rate schedule or a consistent methodology for setting rates to these customers, it was necessary to examine alternative measures to determine whether EDELCA was providing electricity to FESILVEN at preferential rates. Because EDELCA is owned by the Government of Venezuela (GOV) and the GOV directly regulates electricity rates charged by other utilities in Venezuela, we have concluded that it is appropriate to consider electricity rates outside of EDELCA's service area as possible benchmarks.

In regulating the rates of other utilities, the GOV establishes tariff rate schedules which specify rates/rate formulas for different classes of customers, including customers which consume comparable amounts of electricity to FESILVEN. We have chosen as our benchmark the lowest rate set in accordance with an established rate schedule for a customer of FESILVEN's size. According to the practice articulated in Magnesium, this rate would be non-preferential.

Because we were not provided with the GOV rate schedule for 1991, the period of investigation, we adjusted the rate for large industrial consumers shown in the 1992 tariff rate schedule, as best information available. The adjustment was calculated using EDELCA's average rate increase between 1991 and 1992.

The resulting benchmark rate is higher than the average 1991 rates EDELCA charged FESILVEN. Moreover, FESILVEN is the only company to receive this rate. Therefore, we determine that the GOV, through EDELCA, is providing electricity to a specific enterprise at preferential rates.

To calculate the benefit, we first multiplied FESILVEN's total electricity consumption during the POI by the adjusted electricity rate derived from the 1992 tariff schedule. From that, we subtracted the amount FESILVEN was charged for electricity during the POI. The difference was divided by FESILVEN's total sales.

During verification we also learned that the terms on which FESILVEN pays its electricity bills provide a separate benefit. This issue is not discussed in this notice due its proprietary nature; however, a complete analysis of this issue is included in the proprietary concurrence memorandum dated April 29, 1993, which is part of the official record for this investigation.

Taking into account both the preferential rate received by FESILVEN and the beneficial payment terms, we calculated an estimated bounty or grant of 22.08 percent *ad valorem*.

#### B. Export Bond Program

This program was designed to provide partial compensation for the requirement that exporters convert foreign currency export earnings to bolivars at an official rate significantly lower than the free market rate. The value of the export bond is based on a percentage of the FOB value of the product exported.

Consistent with prior investigations (see, e.g., Final Affirmative Countervailing Duty Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, 53 FR 24763 (June 30, 1988)), we determine that the export bond program is countervailable. Because the only information on the record related to this program was gathered from the company's financial statements, to calculate the benefit for the POI, we divided the bolivar amount of bonds shown on FESILVEN's 1991 financial statements by the company's total export sales. On this basis, we calculated estimated net bounty or grant to be 1.69 percent *ad valorem*.

We verified that the export bond program was amended as of June 15, 1991, to cover only agricultural products. Therefore, consistent with our policy of taking into account any measurable program-wide changes that occur before the preliminary determination, we are adjusting the duty deposit rate to reflect that exports of the subject merchandise have ceased to benefit from this program. (See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Circular Welded Non-Alloy Steel Pipe from Venezuela, 57 FR 42,964 (September 7, 1992); § 355.50 of the Department's Proposed Regulations.) Therefore, the duty deposit rate for this program is zero for all manufacturers, producers, and exporters in Venezuela of ferrosilicon.

#### II. Program Determined Not To Be Countervailable

##### GOV's Restructure of Debt

The petitioners alleged that the GOV assumed a portion of FESILVEN's debt in 1986, and the remaining portion in 1990.

After several devaluations of the Bolivar during the 1980's, several companies experienced difficulties in meeting their foreign financial obligations. Thus, the GOV decided to consolidate and restructure the foreign loans of all of these companies. During the restructuring process, the GOV (1) renegotiated the repayment terms of the foreign debt, (2) made payments on behalf of the affected companies, and (3)

informed the companies that they would have to repay the GOV.

We verified that the GOV rather than assuming FESILVEN's foreign debt, simply restructured it. The company's financial records reflect that FESILVEN continues to carry the debt. Further, at verification, we examined the debt restructuring of a number of companies across a broad array of industries (e.g., banking, tourism, telecommunications, aluminum, electricity, transportation, etc.) and confirmed that each company's debt was restructured on identical terms.

Accordingly, because the GOV action was not specific to a group of industries, we determine the program to be not countervailable.

#### III. Programs Determined Not To Be Used

##### A. Sales Tax Exemption

We verified that, during the POI, FESILVEN made its sales tax payments in accordance with requirements of the local municipality.

##### B. Preferential Short-Term Financing—FINEXPO

We verified that FESILVEN had no outstanding FINEXPO loans during the POI.

##### C. GOV Grants

We verified that FESILVEN did not receive any grants.

#### Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

##### Comment 1

Petitioners argue that the Department did not use the proper benchmark to calculate the power rate subsidy received by FESILVEN in the preliminary determination and that, consequently, the Department understated the magnitude of the subsidy received by FESILVEN. Petitioners contend that the benchmark rate used by the Department in the preliminary determination based on EDELCA's rates is inappropriate because EDELCA's rates are significantly lower than the rates charged similar industrial customers by other Venezuelan electricity companies.

Respondents argue that electricity rates charged by electricity companies outside Ciudad Guayana are not appropriate benchmarks because they reflect transmission and distribution costs which are not included in the rates EDELCA charges the customers located

in Ciudad Guayana. Further, respondents argue that these rates should not be used because they are set by government mandate and do not reflect the interaction between supply and demand.

*DOC Position:* We do not agree with petitioners that lower electricity rates in Ciudad Guayana, the area serviced by EDELCA, necessarily mean that those rates are preferential. Instead, as explained in section I.A. of this notice, we have looked first to determine whether EDELCA's rate to FESILVEN is taken from a rate schedule or otherwise set in accordance with a generally applied policy for setting rates. It is only because: (1) EDELCA's rates are not set in this manner, and (2) the GOV owns EDELCA and sets rates for other utilities in Venezuela, that we considered rates outside of Ciudad Guayana.

With respect to respondents' argument, differing transmission costs may affect the rates charged in different areas of Venezuela. However, no specific information was provided to demonstrate that the different rates resulted from transmission costs. Thus, we had no basis to reject the rates outside Ciudad Guayana as a possible benchmark, nor were we able to adjust for any differences caused by differing transmission costs.

Regarding respondents' claim that prices charged outside Ciudad Guayana are regulated, we do not agree that this should preclude us from using those prices. Under the Department's practice as set forth in § 355.44(f) of the Department's Proposed Regulations (54 FR 23366, 23380 (May 31, 1989)), the preferred benchmark for measuring preference will normally be the nonselective price the government charges to the same or other users of the good or service within the same political jurisdiction.

#### Comment 2

Respondents state that because EDELCA's rates are being adjusted to reflect its long-term marginal costs and, therefore, have increased substantially, the Department should consider the 1992 rate increase as a program-wide change.

Petitioners state that a program-wide change cannot be limited to individual firms, and further that individually negotiated power rate increases do not constitute a program-wide change.

*DOC Position:* While FESILVEN did pay a higher rate for electricity in 1992, we agree with petitioners that a rate increase for an individual company or individually negotiated increases with a number of companies does not represent a program-wide change. Moreover,

without any statutory or regulatory requirements for rate increases, the changes may only be temporary.

#### Comment 3

Petitioners argue that EDELCA provides electricity free of charge to FESILVEN by repeatedly relieving FESILVEN from its obligation to pay its electricity bills. In support of this claim, petitioners submit that according to EDELCA's 1986 Annual Report, EDELCA "charged off" receivables in 1985 in connection with FESILVEN's accumulated energy bills. In addition, petitioners claim that EDELCA canceled FESILVEN's unpaid electricity bills in return for shares in 1989 and 1991.

Respondents state that FESILVEN pays EDELCA through direct payments and by issuing shares in the company to EDELCA. Furthermore, respondents state that because FESILVEN has been profitable in recent years, and because it is an important customer of EDELCA, EDELCA acted as a reasonable investor fostering its own commercial interests.

*DOC Position:* We verified that FESILVEN has made direct payments to EDELCA and has converted a portion of its accounts payable to EDELCA into equity. Where payment was in the form of shares, we viewed the transaction as an equity investment by the GOV in FESILVEN. With respect to the FESILVEN stock received by EDELCA in 1989, we have determined that petitioners provided insufficient evidence to support their claim that FESILVEN was unequityworthy. See memorandum dated June 9, 1992, which is part of the public record for this investigation. With respect to the 1991 transaction, FESILVEN's financial situation was no different than it was in 1989. Therefore, we have concluded that the 1991 equity investment was consistent with commercial considerations.

#### Comment 4

Petitioners argue that the Department should have initiated an investigation of what they allege to be a general interest rate subsidy. Petitioners contend that their allegation, based on a comparison of FESILVEN's reported financial expenses, FESILVEN's plant expansion debt and the Venezuelan discount rate, provides sufficient information for the Department to countervail the interest rate subsidy received by FESILVEN.

Respondents object by stating that FESILVEN's debt cannot be estimated by multiplying the end-of-year debt by an interest rate because most of FESILVEN's debt is denominated in foreign currencies, which FESILVEN revalues on a monthly basis to reflect

exchange rate fluctuations.

Additionally, rather than being recorded in the company's income statement, interest payments related to FESILVEN's expansion plan were capitalized because the expansion has not yet been completed.

*DOC Position:* Petitioners have provided no information to show that FESILVEN received subsidized loans under any program operated directly or indirectly by the GOV. Moreover, during the course of this case we did not find anything that would lead us to believe that the company benefitted from such a program. Therefore, we have no basis to believe that subsidized loans are being specifically provided within the meaning of section 771(5) of the Act and, hence, no basis to investigate FESILVEN's borrowing activity.

#### Comment 5

Petitioners argue that the Department should have initiated an investigation of FESILVEN's equityworthiness in 1989 and countervailed the equity infusion it received in that year because the infusion was made on terms inconsistent with commercial considerations.

Respondents argue that FESILVEN was a consistently profitable company in the years preceding and subsequent to 1989, despite serious economic turmoil in Venezuela since the late 1980's and the cyclical nature of the ferrosilicon industry.

*DOC Position:* As stated in response to comment 3, petitioners provided no reasonable basis to believe or suspect that FESILVEN was unequityworthy in 1989.

#### Comment 6

Petitioners submit that in August 1991, the Venezuelan Investment Fund (FIV) transferred all its shares in FESILVEN, including an allotment which had been purchased only nineteen months earlier, to Corporación Venezolana Guayana (CVG) for less than 8 percent of their par value. Petitioners argue that the extensive relationship between CVG and FESILVEN requires the Department to treat them as a single entity and view CVG's purchase of these shares as a redemption by FESILVEN. Because the shares were redeemed at a fraction of their par value, the difference between the par value and the redemption value is a subsidy to FESILVEN. In addition, petitioners argue that the transfer of the shares to CVG resulted in a cancellation of FESILVEN's dividend obligation on these shares and that the Department should countervail this dividend subsidy.

Respondents argue that FESILVEN's legal responsibilities regarding the payment of dividends and other shareholders rights remain in effect regardless of who owns the shares. Consequently, FIV's sale confers no subsidy to FESILVEN.

**DOC Position:** We have continued to treat CVG as a separate entity from FESILVEN. While CVG does have extensive control over FESILVEN, FESILVEN has other shareholders. Moreover, CVG is merely a holding company with ownership interest in other companies producing other products. Therefore, we do not see an identity of interests sufficient to warrant treating CVG and FESILVEN as a single company. Given this, we have not viewed CVG's purchase of shares in FESILVEN from FIV as a redemption of shares.

Finally, there is no evidence on the record to support petitioners' argument that this transfer canceled FESILVEN's dividend obligation.

**Comment 7**

Petitioners argue that the Department should treat the 1991 equity infusion received by FESILVEN as a grant because the stock issued in exchange for the capital infusions, class "E" common shares, was worthless. Petitioners submit that no reasonable investor would take on the risk associated with the class "E" common shares because the stock will probably pay no dividends, and because restrictions on the sale of the stock further reduce the potential for a return on investment.

Respondents submit that class "E" shares entitle their holders to the same dividends that the holders of common stock receive.

**DOC Position:** While the class "E" shares do not entitle their holders to the same level of return as other shares, holders of class "E" shares have voting rights and are eligible for dividends. Therefore, our conclusion that the 1991 equity investments were consistent with commercial considerations would extend to the class "E" shares.

**Verification**

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central

Records Unit (room B-099) of the Main Commerce Building.

**Suspension of Liquidation**

In accordance with section 705(c) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of entries of ferrosilicon from Venezuela which are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**, and require a cash deposit or bond for the nondutiable merchandise. In addition, this notice constitutes the countervailing duty order on the dutiable merchandise, in accordance with section 706(a) of the Act. Accordingly, we are directing the U.S. Customs Service to require a cash deposit for this merchandise. The estimated countervailing duties are as follows:

Company	Ad valorem rate (percent)
FESILVEN .....	22.08.
Country-wide rate .....	22.08.

**ITC Notification**

In accordance with section 705(d) of the Act we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

On August 31, 1990, Venezuela became a contracting party to the General Agreement on Tariffs and Trade (GATT). Since qualification as a "country under the Agreement" under section 701(b)(3) requires a finding that the GATT does not apply between the United States and the country from which the subject merchandise is imported, Venezuela is no longer eligible for treatment as a "country under the Agreement" within the meaning of section 701(b)(3). However, because Venezuela is a GATT contracting party, and merchandise within the scope of the petition which is imported under HTSUS subheadings 7202.21.1000, 7202.21.5000, 7202.29.0010, and 7202.29.0050 is nondutiable, the ITC is required to determine whether, pursuant to section

303(a)(2), imports of this nondutiable merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry. The remaining HTSUS items, as described in the "Scope of Investigation" section of this notice, are dutiable. Accordingly, we are issuing an order with respect to this merchandise. Therefore, for these items, the ITC is not required to determine whether, pursuant to section 303(a)(2), imports from Venezuela of these products materially injure, or threaten material injury to, a U.S. industry.

If the ITC determines that material injury, or the threat of material injury, does not exist for the above referenced nondutiable merchandise, the proceedings will be terminated with respect to the nondutiable merchandise, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on entries of ferrosilicon from Venezuela entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

**Return or Destruction of Proprietary Information**

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)) and 19 CFR 355.20(a)(4).

Dated: May 3, 1993.  
 Joseph A. Spetrini,  
 Acting Assistant Secretary for Import Administration.  
 [FR Doc. 93-11009 Filed 5-7-93; 8:45 am]  
 BILLING CODE 3510-09-P

**Scope Rulings**

**AGENCY:** International Trade Administration / Import Administration, Department of Commerce.

**ACTION:** Notice of Scope Rulings.

**SUMMARY:** The International Trade Administration (ITA) hereby publishes a list of scope rulings completed between January 1, and March 31, 1993. In conjunction with this list, the ITA is

also publishing a list of pending requests for scope clarifications. The ITA intends to publish future lists within thirty days of the end of each quarter.

**EFFECTIVE DATE:** May 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor or Sandra Yacura, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4851.

#### Background

Sections 353.29(d)(8) and 355.29(d)(8) of the Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8) (1992)) provide that on a quarterly basis the Secretary will publish in the Federal Register a list of scope rulings completed within the last three months. The lists are to include the case name, reference number, and brief description of the ruling.

This notice lists scope rulings completed between January 1, and March 31, 1993, and pending scope clarification requests. The ITA intends to publish in July 1993 a notice of scope rulings completed between April 1, 1993, and June 30, 1993, as well as pending scope clarification requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

#### Scope Rulings Completed Between January 1, 1993 and March 31, 1993

##### Country: Thailand

A-549-502: Certain Circular Welded Carbon Pipes and Tubes Intrepid, Inc.—British Standard (BS) light pipe 1387/67, Class A-1 are within the scope of the order—11/12/92 (Remand)

##### Country: Singapore

C-559-802: Antifriction Bearings (Other than Tapered Roller Bearings) Sunstrand Aerospace—certain cylindrical roller bearings are within the scope of the order—02/04/93

##### Country: People's Republic of China

A-570-003: Shop Towels of Cotton Venus Textiles, Inc.—certain 18"x30" dish towels are within the scope of the order—02/19/93

A-570-504: Petroleum Wax Candles Simcha Candle Co.—certain "utility/household" candles are not within the scope of the order; tealight and candles over six inches in height are within the scope of the order—

02/12/93

A-570-806: Silicon Metal Petitioners (American Alloys, Inc.; Elkm Metals Company; Globe Metallurgical, Inc.; Silicon Metaltech Inc.; SiMETCO Inc.; and SKW Alloys, Inc.)—silicon metal, with a high aluminum content and a silicon content of at least 89.00 percent but less than 99.99 percent, is within the scope of the order—02/03/93

##### Country: Japan

A-588-815: Cement Surecrete, Incorporated—"Nittetsu Super Fine" cement is found not within the scope of the order—02/19/93

#### Scope Inquiries Terminated Between January 1, 1993 and March 31, 1993

##### Country: Argentina

C-357-404: Certain Apparel FBM S.R.L., Proteo S.A., Desatex S.A., and Four Seasons Wear Inc.—men's knit cotton T-shirts, men's knit cotton tank tops, boys' knit cotton tank tops, women's knit cotton tank tops, men's knit cotton pants, boys' knit cotton pants, men's knit cotton shorts, boys' knit cotton shorts, women's knit cotton pants, girls' knit cotton pants, women's knit cotton shorts, and girls' knit cotton shorts—terminated by request—10/13/92

#### Pending Scope Clarification Requests as of March 31, 1993

##### Country: Canada

A-122-601: Brass Sheet and Strip Hussey Copper Ltd., The Miller Company, Olin Corp. (Brass Group), Outokumpu American Brass, Revere Copper Products, the International Association of Machinists & Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL-CIO/CLC)—anti-circumvention inquiry to determine whether a producer of brass in Canada and a U.S. importer of brass are circumventing the antidumping order by importing Canadian brass plate, a product not included within the antidumping duty order, into the United States where it is rolled down slightly into brass sheet and strip—preliminary affirmative ruling—02/01/93

##### Country: United Kingdom

A-412-801: Antifriction Bearings, and Parts Thereof Sinclair International—SAR series of

ball bearings

Country: Federal Republic of Germany A-428-801: Antifriction Bearings INA Walzlager Schaeffler KG and INA Bearing Company, Inc.—Certain series of bearings

##### Country: Italy

A-475-703: Granular Polytetrafluoroethylene (PTFE) Resin E.I. DuPont de Nemours & Company, Inc.—anti-circumvention inquiry to determine whether imports of granular PTFE raw polymer are circumventing the order—preliminary affirmative ruling—08/31/92

##### Country: People's Republic of China

A-570-504: Petroleum Wax Candles Trade Advisory Group—certain terra cotta candles San Francisco Candle Company—certain ball-shaped, holiday and/or value-added candles Garrett-Hewitt, International—certain "Giorgio" candles Primark International—certain candle tins A-570-803: Heavy Forged Hand Tools Forrest Tool Company—MAX Multipurpose Tool

##### Country: Japan

A-588-014: Tuners Alpine Electronics, Inc., Alpine Electronics of America, Inc., and Alpine Electronics of America, Inc., and Alpine Electronics Manufacturing of America, Inc.—certain replacement parts and certain car radio/stereo parts Fujitsu Ten Corporation of America—certain electronically-tuned car stereos A-588-055: Acrylic Sheet Sekisui America Corp.—ESLON DC PLATE manufactured by Sekisui Chemical Co., Ltd. A-588-087: Portable Electric Typewriters Swintec Corporation—PET Model numbers 4000, 4040, 7000, 7001, 7003, and 7040 A-588-405: Cellular Mobile Telephones and Subassemblies Matsushita Communication Industrial Co., Ltd. and its related entities (Matsushita)—Panasonic models EB-3530 and EB-3531 portable cellular telephones, including their accessories and their subassemblies and/or components Fujitsu Limited, Fujitsu America, Inc. and Fujitsu Network Transmission Systems, Inc.—hand-held portable cellular telephone, model F8OP-172, and its accessories Sanyo North America Corporation—hand-held portable cellular

telephone, model CMP350 and ANTEL brand model STR2000 Mitsubishi Electric Corporation, Mitsubishi Electronics Incorporated, Mitsubishi Consumer Electronic America, Inc.—hand-held portable cellular telephone models MT896FOR6A and MT892FOR6A

Matsushita Communication Industrial Co. of America (Matsushita)—all parts imported for use in portable cellular telephones

NEC America, Incorporated—P110/P120/TalkTime 180 Series of hand-held portable cellular telephones  
A-588-804: Antifriction Bearings Nippon Pillow Block Sales Co., Ltd.—certain eccentric locking collars which are part of housed bearing units

A-588-807: Industrial Belts and Components

Nitta Industries Corp. and Nitta International Inc.—“conveyor belts”

Tower Group International, Inc. and Epson America, Inc.—closed loop synthetic timing belt used in Epson LX-800 desktop personal computer printer

BRECOflex Corp.—anti-circumvention inquiry to determine whether the order is being circumvented by the processing of belting into belts in Mexico before importation into the United States  
A-588-810: Mechanical Transfer Presses

Aida Engineering, Ltd.—FMX series cold forging press

A-588-817: Flat Panel Displays Honeywell, Inc.—certain FPDs used in the B-777 Display Unit

Rockwell International Corporation, Collins Air Transport Division—certain FPDs, “AD” and “DD,” used in avionics products

International Digital Electronics—certain FPDs used in the Graphic Control Panel

Tektronix, Incorporated—certain plasma-addressed liquid crystal FPDs

A-588-818: Personal Work Processors Smith Corona Corporation—allegation of circumvention by virtue of the importation, completion and assembly of personal word processor parts and components by Brother Industries (USA), Inc.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, 14th Street

and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 30, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-11008 Filed 5-7-93; 8:45 am]

BILLING CODE 3510-05-M

### National Oceanic and Atmospheric Administration

#### Pacific Fishery Management Council; Emergency Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a telephone conference on May 10, 1993, beginning at 3 p.m., Pacific Standard Time. The purpose of the telephone conference is to modify measures for the 1993 ocean salmon fisheries. The Council's original measures adopted on April 9 were disapproved by the Secretary of Commerce on April 29. The Departments of Commerce and Interior have agreed to set the 1993 Klamath River tribal fishery at 18,500 fall chinook salmon and the spawning escapement goal at 38,000 naturally spawning fish. The Council's plan anticipated a Klamath tribal catch of 17,400 and a spawning escapement goal of 35,000. The Council will need to devise additional restrictions for the ocean fisheries to increase the ocean escapement of Klamath River fall chinook.

The Department of Commerce issued an emergency rule on April 30 to implement the Council's May fisheries with two exceptions: the Council's May 1-6 troll fishery in the Fort Bragg area will not open and the May-June sport quota in the Klamath management zone will be reduced from 12,000 to 8,000 chinook.

Members of the public that wish to participate in this conference may do so at the following locations:

NMFS, Northwest Region, 7600 Sand Point Way, NE., Bldg. 1, Seattle, WA 98115-6300

NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213

California Department of Fish & Game, 1416 Ninth Street, Room 1205, Sacramento, CA 95814-5560

Pacific Fishery, Management Council, 2000 SW. First Avenue, Suite 420, Portland, OR 97201

Oregon Department of Fish & Wildlife, 2501 SW. First Avenue, Portland, OR 97201

Humboldt Fishermen's, Marketing Association, 216 H Street, Eureka, CA 95501

Coos County Extension Office, Courthouse Annex, Extension Conference Room, 290 N. Central Avenue, Charleston, OR 97423

Port of Brookings, Administration Office, Brookings, OR 97415

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: May 4, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-11017 Filed 5-7-93; 8:45 am]

BILLING CODE 3510-22-M

### COMMODITY FUTURES TRADING COMMISSION

#### Speculative Position Limits—Exemptions From Commission Rule 1.61 for COMEX Copper; Proposed Amendments to COMEX Rules 4.47 and 4.48

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed exchange rule changes; request for comments.

SUMMARY: The Commodity Exchange, Inc. (“COMEX”), by letter dated April 21, 1993, submitted for the Commission's approval, under section 5a(a)(12) of the Commodity Exchange Act and Commission Rule 1.41(b), proposed amendments to its speculative position limit rules for copper. COMEX is proposing to replace speculative position limits in the non-spot months with a position accountability standard for copper futures and options on copper futures.

The Director of the Division of Economic Analysis (Division) of the Commission is of the view that obtaining public comment on these proposed rule amendments is in the public interest and will aid the Commission in considering the views of interested persons. Accordingly, the Division, pursuant to the authority delegated by Commission Rule 140.96, is hereby providing notice of, and requesting public comment on, these proposed exchange rule amendments. DATES: Comments must be received by June 9, 1993.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Reference should be made to proposed speculative position limit exemptions for COMEX copper.

FOR FURTHER INFORMATION CONTACT:

Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K. St. NW., Washington, DC 20581, (202) 254-3201.

**SUPPLEMENTARY INFORMATION:** With respect to the replacement of speculative position limits with position accountability standards, the Commission previously stated that exchanges could substitute for speculative position limits a position accountability rule meeting specified criteria for the non-spot months of futures and option contracts on certain metals and energy products consistent with the exemption in Rule 1.61(e) (see the Federal Register notice of June 30, 1992, 57 FR 29064). In particular, the standards for this category of exemptions require the exchange to include a reporting requirement at a specified triggering level and the authority to order a trader whose position exceeds the triggering level to halt further increases in the position. The Commission further stated that, for physical commodities, this exemption from position limits would be appropriate only for the deferred trading months. Accordingly, the spot-month limit would continue to be applicable to such commodities and would continue to be set under the criteria of Commission Rule 1.61 based upon the deliverable supply underlying the contract.<sup>1</sup>

Consistent with the policies discussed in the above Federal Register notice, the Commission, on August 28, 1992, approved the deletion of non-spot-month speculative position limits and the adoption of position accountability standards for the COMEX's gold and silver futures and futures option contracts.<sup>2</sup> The COMEX now is

<sup>1</sup> The Commission further noted that an exemption under this category must include appropriate plans for the continued surveillance and exchange supervision of trading in the applicable contracts. In this regard, the Commission noted that any exemptions which it grants will be closely monitored and the operation of the exemption will be reviewed by the Commission after an appropriate, initial period.

<sup>2</sup> The COMEX's position accountability rules currently applicable only to these contracts provide for a reporting requirement at a specified triggering level of 6,000 contracts in all months combined. The rules also provide that the owner or controller of a position which reaches or exceeds this level must agree to promptly supply to the Exchange such information as the Exchange may request "pertaining to the nature and size of the position, and the position owner's or controller's hedging requirements, provided however, that if the position owner or controller fails to provide such information as and when requested, the President or his designee may request, and the Board or, upon delegation, the Control Committee may order the reduction of such positions." The rules further provide that a trader whose position exceeds 6,000

proposing that its existing position accountability standards also be applied to its copper futures and option contracts, the first industrial metal proposed to be subject to position accountability standards under this exemption. The triggering level for copper would be the same as that currently applicable to gold and silver, 6,000 contracts in the non-spot months. The existing 2,500-contract spot-month speculative position limit for the copper futures contract would not be modified under the proposal.

The Division is requesting public comment on the proposed rule amendments to assist it in its review of the current COMEX proposal.

Issued in Washington, DC, on May 5th, 1993.

Gerald D. Gay,  
Director.

[FR Doc. 93-10972 Filed 5-7-93; 8:45 am]

BILLING CODE 8351-01-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Domestic Issues Task Force will meet June 2-3, 1993, from 9 a.m. to 5 p.m. in Alexandria, Virginia.

The purpose of this meeting is to continue efforts to forecast emerging demographic and sociological trends and their effect on the Navy of the future. The agenda of the meeting will consist of discussions to begin preparations of the initial draft report to the CNO, as well as continuing briefings and evaluations of managing diversity in the future Naval force.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, VA 22302-0268, Telephone: (703) 756-1205.

contracts must agree, upon request by the COMEX Board or the Control Committee, not to increase the position owned or controlled as of the time the request was received and "agree to comply with any prospective limit prescribed by the Board. . . ." Finally, the rules maintain the previously existing spot-month speculative position limits for the gold and silver futures contracts.

Dated: April 30, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-10919 Filed 5-7-93; 8:45 am]

BILLING CODE 3810-AE-F

## DEPARTMENT OF ENERGY

### Noncompetitive Financial Assistance Award

AGENCY: Department of Energy (DOE) Albuquerque Operations Office (AL).

ACTION: Notice of noncompetitive financial assistance award to the Southern States Energy Board (SSEB).

**SUMMARY:** The DOE-AL in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award a Cooperative Agreement, No. DE-FC04-93AL82966, concerning the safe interstate transportation of transuranic (TRU) waste to the Waste Isolation Pilot Plant (WIPP), to the SSEB, Atlanta, Georgia, on a noncompetitive basis.

**SUPPLEMENTARY INFORMATION:** The objective of this award is to provide funding to the SSEB to implement the recommendations included in a September 1990 report entitled, "TRU Waste Transportation: States' Interests and Needs Assessment." The report summarizes the concerns of the southern and midwestern states and provided recommendations in developing safety programs to be used in the interstate transportation of TRU waste from temporary storage sites in southern and midwestern states to a permanent repository. The Catalog of Federal Domestic Assistance Number is 81.106, Transport of Transuranic Wastes to the WIPP: States and Tribal Concerns and Proposed Solutions.

Safety issues to be addressed and coordinated between the southern states, midwestern states, and DOE will include, but will not be limited to: (1) accident prevention through driver and carrier compliance with regulations and contract requirements; (2) development of uniform inspection standards necessary for a truck to cross the 13 southern and midwestern states; (3) safe parking requirements; (4) procedures for avoiding bad weather; (5) emergency preparedness/response plans and procedures; (6) state and federal public information system; and (7) other issues identified in the report of states' interests and needs. This activity reflects the "new culture" of openness and cooperation, and recognizes that safe transportation is shared national responsibility, as well as the importance

of states' input into the DOE decision-making process.

The DOE has determined that restriction to the SSEB is appropriate based on the following information:

- A discretionary award will be made on a noncompetitive basis pursuant to 10 code Federal Regulation (CFR) 600.6(a)(5). A general evaluation and a Determination of Noncompetitive Financial Assistance has been prepared pursuant to 10 CFR 600.7(b)(2)(i) and (ii). The proposed award satisfies criteria (C), identified in 10 CFR 600.7(b)(2)(i).

- The previously identified report was prepared at the request of the DOE. The report, entitled "TRU Waste Transportation: States' Interests and Needs Assessment: A Summary of Concerns of Southern and Selected Midwestern TRU Waste Shipment Corridor States," contains information on states' preliminary concerns about TRU waste shipments through their states, anticipated TRU waste shipments along southern and midwestern routes, and a list of state radiological health, emergency management and state police officials who serve on the TRU Waste Transportation Working Group, a committee formed by the SSEB to discuss state concerns in this area.

- The southern governors authorized the SSEB to act as their agent to negotiate and administer a cooperative agreement between the DOE and the 13 southern and midwestern state governments.

- The proposed effort is inappropriate for a competitive solicitation because the SSEB is the only organization authorized and capable of fulfilling the requirements of this effort as set forth in Public Law 87-563, Southern Interstate Nuclear Impact. The SSEB is an organization representing the southern and midwestern states on various political, environmental, educational, and social affairs. The SSEB has in the past supported the WIPP Project Site Office in organizing and coordinating meetings with the southern and midwestern states to discuss issues revolving around the transportation of TRU waste. The use of the SSEB is performing this effort is appropriate because of its unique expertise, its relationship with the southern and midwestern states, and its sensitivity to issues dealing with TRU waste transportation.

The total estimated cost of this project for the first year is \$160,000. It is anticipated that the agreement will be funded annually for a total project period of five years. No cost sharing is anticipated. The distribution and

availability of funds is subject to budget limitations.

**FOR FURTHER INFORMATION CONTACT:** M. Laurene Dubuque, Department of Energy, Albuquerque Operations Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, New Mexico 87185-5400, Telephone: (505) 845-4301.

Issued in Albuquerque, New Mexico on April 28, 1993.

**Richard A. Marquez,**  
*Assistant Manager for Management and Administration.*

[FR Doc. 93-11001 Filed 5-7-93; 8:45 am]

BILLING CODE 6450-01-M

### DOE Response to Recommendation 93-1 of the Defense Nuclear Facilities Safety Board Concerning Standards Utilization in Defense Nuclear Facilities

**AGENCY:** Department of Energy.

**ACTION:** Notice and request for public comment.

**SUMMARY:** Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93-1 of the Defense Nuclear Facilities Safety Board, published in the Federal Register on January 28, 1993, [58 FR 6389] concerning standards utilization in defense nuclear facilities.

**DATES:** Comments, data, views, or arguments concerning the Secretary's response are due on or before June 9, 1993.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington DC 20585.

Issued in Washington, DC, on May 4, 1993.

**Mark B. Whitaker,**

*Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.*

The Honorable John T. Conway  
*Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004*

Dear Mr. Conway: Your letter of January 21, 1993, forwarded the Defense Nuclear Facilities Safety Board Recommendation 93-1 regarding Standards Utilization in Defense Nuclear Facilities.

The Department accepts the Board's Recommendation. We will conduct an

analysis of operations and facilities at sites where we assemble, disassemble, and test nuclear weapons. The Department will: (1) Review its Nuclear Safety Orders and Directives to determine applicability to those facilities and sites; (2) provide a clear explanation of the attributes of the Department's Nuclear Safety Orders and Nuclear Explosive Safety Orders and how they are applied by identifying those critical safety elements of operations and how those elements are addressed by each order and directive; (3) identify the areas of inconsistency or discontinuity between the sets of Nuclear Safety Orders and Nuclear Explosive Safety Orders, if any; (4) where appropriate, identify areas where the orders and directives can and should be strengthened; and (5) expedite its Order Compliance Review at the Pantex Plant.

The Acting Assistant Secretary for Defense Programs will develop the Department's Implementation Plan for this Recommendation by July 20, 1993. The Implementation Plan will provide specific milestones and dates for accomplishing the commitments described in the preceding paragraph.

Sincerely,

Hazel R. O'Leary

[FR Doc. 93-11004 Filed 5-7-93; 8:45am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Docket No. QF86-398-002]

#### Pomona Cogeneration Limited Partnership; Petition for Temporary Waiver of Qualifying Cogeneration Facility Efficiency Standard

April 30, 1993.

On April 21, 1993, Pomona Cogeneration Limited Partnership (Applicant), file a petition with the Federal Energy Regulatory Commission for a temporary waiver of the efficiency standard for the period between August 17, 1987 and May 23, 1990 pursuant to § 292.205(c) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 4.1 MW combined-cycle cogeneration facility which is located in Pomona, California consists of a combustion turbine generator, a heat recovery boiler and an extraction/condensing steam turbine generator. Steam recovered from the facility is used for the manufacturing of printed circuit boards, and for space heating and cooling. The primary energy source is natural gas. The facility was placed in service in October, 1987. Applicant filed notices of self-certifications in Docket QF86-398-000 and QF86-398-001.

Applicant states that the temporary waiver is requested due to (1) erratic



steam use by a host resulting in a boiler rupture, (2) the shutdown, rebuilding and testing of the facility following the boiler failure, (3) permitting delays and engineering problems experienced by another host, and (4) loss of a host.

Any person desiring to be heard or objecting to the granting of the petition for temporary waiver of qualifying cogeneration efficiency standard should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the *Federal Register* and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10892 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Project Nos. 2366-000 & 2367-000, Maine]

**Maine Public Service Co.; Availability of Environmental Assessment**

May 4, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Aroostook River Hydroelectric Project located on the Aroostook River in Piscataquis County and Aroostook County near the City of Caribou, Maine, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff analyzed the environmental impacts of the project and concluded that approval of the project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices

at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10902 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2373-001 Illinois]

**South Beloit Water, Gas, and Electric Co.; Availability of Environmental Assessment**

May 4, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new minor license for the existing Rockton Hydroelectric Project, located on the Rock River in Winnebago County, Illinois, in the city of Rockton, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental effects of the project and concludes that approval of the project would not be a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10901 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. EG93-49-000, et al.]

**Clarke Generating Company, L.P., et al.; Applications for Determination of Exempt Wholesale Generator Status**

April 30, 1993.

Take notice that the following filings have been made with the Commission:

**1. Clarke Generating Company, L.P.**

[Docket No. EG93-49-000]

On April 23, 1993, Clarke Generating Company, L.P. ("Clarke"), a Delaware limited partnership with its principal place of business at 7475 Wisconsin Avenue, Bethesda, Maryland 20814-3422, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Clarke intends to own a natural gas-fired electric generating facility with a

maximum net power production capacity of between approximately 327 MW and 338 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

*Comment date:* May 14, 1993, in accordance with Standard Paragraph W at the end of this notice.

**2. Haralson Generating Company, L.P.**

[Docket No. EG93-48-000]

On April 23, 1993, Haralson Generating Company, L.P. ("Haralson"), a Delaware limited partnership with its principal place of business at 7475 Wisconsin Avenue, Bethesda, Maryland 20814-3422 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Haralson intends to own a natural gas-fired electric generating facility with a maximum net power production capacity of between approximately 320 MW and 332 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

*Comment date:* May 14, 1993, in accordance with Standard Paragraph W at the end of this notice.

**3. Muscogee Generating Company, L.P.**

[Docket No. EG93-47-000]

On April 23, 1993, Muscogee Generating Company, L.P. ("Muscogee"), a Delaware limited partnership with its principal place of business at 7475 Wisconsin Avenue, Bethesda, Maryland 20814-3422 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Muscogee intends to own a natural gas-fired electric generating facility with a maximum net power production capacity of between approximately 224 MW and 226 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

*Comment date:* May 14, 1993, in accordance with Standard Paragraph W at the end of this notice.

**4. Richmond Generating Company, L.P.**

[Docket No. EG93-46-000]

On April 23, 1993, Richmond Generating Company, L.P. ("Richmond"), a Delaware limited

partnership with its principal place of business at 7475 Wisconsin Avenue, Bethesda, Maryland, 20814-3422, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Richmond intends to own a natural gas-fired electric generating facility with a maximum net power production capacity of between approximately 330 MW and 342 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

*Comment date:* May 14, 1993, in accordance with Standard Paragraph W at the end of this notice.

#### Standard Paragraphs

W. Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 and 383.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10891 Filed 5-7-93; 8:45 am]

BILLING CODE 6718-01-M

[Project Nos. 5264-054, et al.]

#### Hydroelectric Applications [Pacific Oregon Corporation, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Transfer of License.

b. *Project No.:* 5264-054.

c. *Date filed:* April 15, 1993.

d. *Applicant:* Pacific Oregon Corporation.

e. *Name of Project:* Stone Creek Project.

f. *Location:* On Shellrock Creek in Clackamas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Martin W. Thompson, Vice President, suite 310,

19515 North Creek Parkway, Bothell, WA 98011, (206) 788-1372.

i. *FERC Contact:* Hank Ecton (202) 219-2678.

j. *Comment Date:* June 16, 1993.

k. *Description of Proposed Action:* Pacific Oregon Corporation proposes to transfer the license for the project to The City of Eugene Water & Electric Board. The propose is for the Board to assume ownership and operation of the project in conjunction with its other facilities.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

2 a. *Type of Application:* Minor License.

b. *Project No.:* 10873-002.

c. *Date filed:* January 17, 1992.

d. *Applicant:* Michael P. O'Brien and Robert A. Davis, III.

e. *Name of Project:* Cullasaja River Project.

f. *Location:* On the Cullasaja River, Macon County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael P. O'Brien, 390 Timber Laurel Lane, Lawrenceville, GA 30243; (404) 995-0891.

i. *FERC Contact:* Mary Golato (202) 219-2804.

j. *Deadline Date:* See Paragraph D10. (June 28, 1993).

K. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The proposed project facilities would consist of: (1) An existing concrete arch dam which has an overall length of 208 feet and a maximum height of 23 feet; (2) a reservoir which has a surface area of about 67 acres and a volume of 462 acre-feet at a normal water surface elevation of 3,606 feet mean sea level; (3) an intake facility with trashracks at the right abutment of the dam; (4) a proposed 3.0-foot-diameter penstock 2,045 feet long; (5) an existing stone masonry powerhouse containing one 900-kilowatt generating unit; (6) a 2.3-kilovolt transmission line about 150 feet long; and (7) appurtenant equipment and facilities.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at

941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219-1371. A copy is also available for inspection and reproduction at Mr. Michael P. O'Brien or Robert A. Davis, III, 390 Timber Laurel Lane, Lawrenceville, GA 30243 (404) 995-0891.

3 a. *Type of Application:* Minor License.

b. *Project No.:* 11351-000.

c. *Date filed:* October 7, 1992.

d. *Applicant:* Old Columbia Dam Electric Facility.

e. *Name of Project:* Old Columbia Dam Project.

f. *Location:* On the Duck River, Columbia Township, Maury County, Tennessee.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Debra Whitehead, 841 McCord Hollow Road, Hohenwald, TN 38462, (615) 796-4139.

i. *FERC Contact:* Mary C. Golato (202) 219-2804.

j. *Deadline Date:* July 7, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D8.

l. *Description of Project:* The proposed project consists of the following features: (1) An existing dam 22 feet high and 572 feet long; (2) an existing reservoir with a surface area of 80 acres; (3) an existing powerhouse containing two turbine-generating units at a total rated capacity of 800 kilowatts; (4) an existing 0.1-mile, 46-kilovolt transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 4 megawatt-hours. The dam is owned by the City of Columbia Water and Power Department.

m. *Purpose of the Project:* All project energy generated would be utilized by the applicant for sale.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D8.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219-1371. A copy is also available for inspection and reproduction at Ms. Debra Whitehead, 841 McCord Hollow Road, Hohenwald, TN 38462 (615) 796-4139.

4 a. *Type of Application:* Minor License.

b. *Project No.:* 11313-000.

c. *Date filed*: July 30, 1992.

d. *Applicant*: Edward M. Clark, dba White Mountain Hydroelectric Power Company.

e. *Name of Project*: Apthorp Dam Project.

f. *Location*: On the Ammonoosuc River, near Littleton, Grafton County, New Hampshire.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact*: William K. Fay, P.E., P.O. Box 581, Bolyston, Massachusetts 01505, (508) 869-6091.

i. *FERC Contact*: Mary C. Golato (202) 219-2804.

j. *Comment Date*: See Paragraph D4. (June 28, 1993).

k. *Status of Environmental Analysis*: This application is accepted for filing and is ready for environmental analysis at this time—see attached D4.

l. *Description of Project*: The proposed project consists of the following features: (1) An existing dam 20 feet high and 180 feet long; (2) an existing reservoir with a surface area of 20 acres and an estimated gross storage of 210 acre-feet; (3) an existing penstock; (4) an existing powerhouse containing one 425-kilowatt turbine-generating unit and a new 175-kW unit; (5) a short transmission line; and (6) appurtenant facilities.

m. *Purpose of the Project*: All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs*: A3, A9, B1, and D4.

5. a. *Type of Application*: New License.

b. *Project No.*: 2239-004.

c. *Date Filed*: July 31, 1991.

d. *Applicant*: Tomahawk Power & Pulp Company.

e. *Name of Project*: Kings Dam Project.

f. *Location*: On the Wisconsin River, Lincoln County, Wisconsin.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contract*: Mr. John L. Laughlin, Tomahawk Power & Pulp Company, 610 Jackson Street, Wausau, WI 54401, (715) 453-5376.

i. *FERC Contact*: Michael Dees (202) 219-2807.

j. *Deadline Date*: See paragraph D9. (June 28, 1993).

k. *Status of Environmental Analysis*: This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9. Except that comments, recommendations, terms and conditions, or prescriptions pertaining to entrainment are not being solicited because a decision has not been made

on whether the data and results from the entrainment studies completed for the Rothschild Project No. 2212, Centralia Project No. 2255, and Wisconsin River Division Project No. 2590 can be extrapolated to an environmental analysis of this project. However, comments are welcome on the extrapolation of results from the above three entrainment studies to this project.

l. *Description of Project*: The project structures consist of earth dikes, a powerhouse, and a Taintor gate spillway. Earth dikes on each side of the concrete powerhouse/spillway structure, constructed of poorly graded sands and gravelly sands, are up to 30 feet high and have a total length of 1,190 feet. The 190.6 foot wide powerhouse/spillway structure includes three 20-foot-wide by 15-foot-high Taintor gates and four 22.5-foot-wide intake bays. Three of the intakes are equipped with twin horizontal turbines (two are connected to 800-kW generators). The fourth intake is equipped with a vertical turbine connected to a 300-kW generator. The applicant proposes to add an 800-kW generator to the third twin horizontal turbine. At the normal project headwater elevation of 1,458.4 feet, the reservoir surface area is 1,420 acres and the storage volume is 18,200 acre feet. Normal head on the turbines is 23 feet.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project*: The purpose of the project is to generate electric power for sale to Wisconsin Public Service Corporation.

n. *This notice also consists of the following standard paragraphs*: A4 and D9.

o. *Available Location of Application*: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Tomahawk Power & Pulp Company, 610 Jackson Street, Wausau, WI 54401, (715) 453-5376.

6 a. *Type of Application*: New Major License.

b. *Project No.*: 2255-003.

c. *Date Filed*: July 29, 1991.

d. *Applicant*: Nekoosa Papers Inc.

e. *Name of Project*: Centralia.

f. *Location*: On the Wisconsin River, Wood County, Wisconsin.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact*: Mr. Richard J. Grund, Nekoosa Papers Inc., 100 Wisconsin River Drive, Port Edwards, WI 54469, (715) 887-5481.

i. *FERC Contact*: Michael Dees (202) 219-2807.

j. *Deadline Date*: See paragraph D9. (June 28, 1993).

k. *Status of Environmental Analysis*: This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project*: The project as licensed consists of the following: (1) A 1,325.5-foot-long dam containing (a) a 340-foot-long cast-in-place gated spillway containing 13 steel Taintor gates: 3 gates, 16 feet wide by 11 feet 9 inches high and 10 gates, 18 feet wide by 11 feet 8 inches high; (b) a 530-foot-long emergency overflow spillway with collapsible wooden flashboards approximately 3.5 feet high; (2) a reservoir with a surface area of 250 acres; (3) a 216 feet-3 inches wide and 78 feet-7 inches tall powerhouse; (4) a 3,200 kilowatt Allis Chalmers generator-turbine set; (5) an existing 2.4/14.4-kilovolt (kV) step-up transformer and a 2.5 mile 14.4-kV three phase over-head transmission line connecting to Port Edwards Mill Substation which ties to Wisconsin Power & Light Company's transmission line; and (6) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 25.2 GWh and owns all existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project*: The purpose of the project is to generate electric power for industrial use by the applicant.

n. *This notice also consists of the following standard paragraphs*: A4 and D9.

o. *Available Location of Application*: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Nekoosa Papers Inc., 100 Wisconsin River Drive, Port Edwards, WI 54469, (715) 887-5481.

7 a. *Type of Application*: New Major License (> 5MW).

b. *Project No.*: 2256-001.

c. *Date Filed*: July 26, 1991.

d. *Applicant*: Consolidated Water Power Company.

e. *Name of Project*: Wisconsin Rapids.

f. *Location*: On the Wisconsin River, Wood County, Wisconsin.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Kenneth K. Knapp, Consolidated Water Power Company, 231 First Avenue North, P.O. Box 8050, Wisconsin Rapids, WI 54495, (715) 422-3073.

i. *FERC Contact*: Michael Dees (202) 219-2807.

j. *Deadline Date*: See paragraph D9. (June 28, 1993).

k. *Status of Environmental Analysis*: This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9. Except that comments, recommendations, terms and conditions, or prescriptions pertaining to entrainment are not being solicited because a decision has not been made on whether the data and results from the entrainment studies completed for the Rothschild Project No. 2212, Centralia Project No. 2255, and Wisconsin River Division Project No. 2590 can be extrapolated to an environmental analysis of this project. However, comments are welcome on the extrapolation of results from the above three entrainment studies to this project.

l. *Description of Project*: The project as licensed consists of the following: (1) A dam which has a total length of about 6,136 feet and is comprised of (a) an earth dike which has a length of 3,000 feet and a height of about 9 feet; (b) three sections of masonry gravity wall which have lengths of 1,024 feet, 138 feet, and 386 feet and a maximum height of about 20 feet; (c) three sections of concrete gravity wall which have lengths of 105 feet, 220 feet, and 450 feet and heights ranging from 22 to about 40 feet; (d) three gated spillways, one which has a length of 355 feet and contains ten 30-foot-wide by 15-foot-high Taintor gates, one which has a length of 252 feet and contains six 34-foot-wide by 13.75-foot-high Taintor gates, and one which has a length of 130 feet and contains three 30-foot-wide by 12.5-foot-high Taintor gates; and (e) a powerhouse with a length of 76 feet; (2) a reservoir with a surface area of about 455 acres, a storage capacity of about 4,660 acre-feet (AF), and a normal maximum water surface elevation of 1,011.3 feet mean sea level (msl); (3) a main powerhouse constructed of brick and steel with dimensions of 76.0 feet by 59.8 feet, equipped with two vertical shaft Francis turbine-generator units which have a total rated capacity of

4,680 kilowatts (kW), a combined maximum hydraulic capacity of 2,200 cubic feet per second (cfs), and a net head of 30 feet; (4) a second powerhouse located on the lower floor of a grinder building, which is integral with a masonry wall section of the dam and has dimensions of 184 feet by 57 feet, and which is equipped with eight horizontal Francis turbines, which have an aggregate hydraulic capacity of 2,400 cfs and a head of 30 feet, and which are connected to synchronous motors which have a total rated capacity of 4,430 kW; (5) a 220-foot-wide tailrace channel which is located immediately downstream of the powerhouse and grinder building; (6) a substation; and (7) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. However, the Applicant is proposing to include the eight synchronous motors, which are connected to the eight horizontal turbines, as a part of the project. The Applicant estimates the average annual generation would be 53.6 GWh and owns all existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the license expiration of July 31, 1993, the Applicant's estimated net investment in the project would amount to \$1,123,000.

m. *Purpose of Project*: All project energy generated would be utilized by Consolidated Papers, Inc., primarily in the adjoining Wisconsin Rapids mill.

n. *This notice also consists of the following standard paragraphs*: A4 and D9.

o. *Available Location of Application*: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Consolidated Water Power Company, 231 First Avenue North, P.O. Box 8050, Wisconsin Rapids, WI 54495, (715) 422-3073.

8. a. *Type of Application*: New Major License.

b. *Project No.*: 2291-001.

c. *Date Filed*: July 29, 1991.

d. *Applicant*: Nekoosa Papers Inc.

e. *Name of Project*: Port Edwards.

f. *Location*: On the Wisconsin River, Wood County, Wisconsin.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Richard J. Grund, Nekoosa Papers Inc., 100

Wisconsin River Drive, Port Edwards, WI 54469, (715) 887-5481.

i. *FERC Contact*: Michael Dees (202) 219-2807.

j. *Deadline Date*: See paragraph D9. (June 28, 1993).

k. *Status of Environmental Analysis*: This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9. Except that comments, recommendations, terms and conditions, or prescriptions pertaining to entrainment are not being solicited because a decision has not been made on whether the data and results from the entrainment studies completed for the Rothschild Project No. 2212, Centralia Project No. 2255, and Wisconsin River Division Project No. 2590 can be extrapolated to an environmental analysis of this project. However, comments are welcome on the extrapolation of results from the above three entrainment studies to this project.

l. *Description of Project*: The project as licensed consists of the following: (1) An existing dam with a total length of 1,215 feet which is comprised of (a) an uncontrolled overflow timber crib spillway which has a length of 524.6 feet, a height of about 16 feet, crest elevations of 960.06 and 960.49 feet mean sea level (msl), and which is surmounted by 3.3 foot-high flashboards; (b) a gated spillway section which has a length of 190 feet, and which contains three 17.5-foot-high by 30-foot-wide and two 14-foot-high by 20-foot-wide Taintor gates which have sill elevations of 947.7 feet and 950.74 feet msl, respectively; (c) an emergency timber crib spillway capped with concrete which has a total length of 238.7 feet and crest elevations of 963.83 feet and 963.97 feet msl; (d) a timber crib guard lock section with a length of 184 feet located at the entrance of the forebay channel; and (e) nonoverflow abutment sections; (2) a reservoir with normal pool elevation of 963.3 feet msl, a surface area of 150 acres, and a length of about one mile; (3) a forebay channel that extends approximately one mile from the guard lock section of the dam to the powerhouse; (4) an existing 166-foot by 129-foot powerhouse located at the end of the forebay channel and discharging into the Wisconsin River, and which contains eight flumes and five turbine/generator units—four are horizontal "camel-back" turbines and one is a vertical Francis unit—with a combined nameplate rating of 3,592 kilowatts (kW), an average head of 17.5 feet, and a total hydraulic capacity of 3,124 cubic feet per second (cfs); and (5) appurtenant facilities.

The project would have no switchyard, switchgear, or transmission line included in the project facilities. Additionally, the adjoining paper mill would not be a part of the project licensed facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 19.7 GWh and owns all existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

*m. Purpose of Project:* The purpose of the project is to generate electric power for industrial use by the applicant.

*n. This notice also consists of the following standard paragraphs:* A4 and D9.

*o. Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Nekoosa Papers Inc., 100 Wisconsin River Drive, Port Edwards, WI 54469, (715) 887-5481.

*9-a. Type of Application:* New Major License.

*b. Project No.:* 2292-001.

*c. Date Filed:* July 29, 1991.

*d. Applicant:* Nekoosa Papers Inc.

*e. Name of Project:* Nekoosa.

*f. Location:* On the Wisconsin River, Wood County, Wisconsin.

*g. Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

*h. Applicant Contact:* Mr. Richard J. Grund; Nekoosa Papers Inc., 100 Wisconsin River Drive, Port Edwards, WI 54469, (715) 887-5481.

*i. FERC Contact:* Michael Dees (202) 219-2807.

*j. Deadline Date:* See paragraph D9. (June 28, 1993).

*k. Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9. Except that comments, recommendations, terms and conditions or prescriptions pertaining to entrainment are not being solicited because a decision has not been made on whether the data and results from the entrainment studies completed for the Rothschild Project No. 2212, Centralia Project No. 2255, and Wisconsin River Division Project No. 2590 can be extrapolated to an environmental

analysis of this project. However, comments are welcome on the extrapolation of results from the above three entrainment studies to this project.

*l. Description of Project:* The project as licensed consists of the following: (1) An existing dam with a total length of 1,075 feet which is comprised of (a) an uncontrolled overflow timber crib spillway which has a length of 638.2 feet, a height of about 21 feet, crest elevations of 942.01 and 942.41 feet mean sea level (msl), and which is surmounted by 4.1 foot-high flashboards; (b) a 12-foot-long nonoverflow section between the timber crib spillway and the gated spillway; (c) a gated spillway section which has a length of 110 feet and contains three 17.5-foot-high by 30-foot-wide Taintor gates with a sill elevation of 930.11 feet msl; (d) a nonoverflow reinforced concrete/sheet pile wall section about 30 feet long located between the gated spillway and the powerhouse; (e) a 146-foot-long powerhouse; (f) a water-retaining wall or bulkhead located upstream of the paper mill which has a length of about 40 feet; and (g) nonoverflow abutment sections; (2) a reservoir with a normal pool elevation of 946.3 feet msl, a surface area of 400 acres, and a length of about 3 miles; (3) a 146-foot-long by 97.7-foot-wide powerhouse which contains seven flumes and five turbine/generating units—three are vertical Francis turbines and two are horizontal "camel-back" units—with a combined nameplate rating of 3,780 kilowatts (kW), an average head of 21.9 feet, and a total hydraulic capacity of 3,225 cubic feet per second (cfs); and (4) appurtenant facilities.

The project would have no switchyard, switchgear, or transmission line included in the project facilities. Additionally, the adjoining paper mill would not be a part of the project licensed facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 27.3 GWh and owns all existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

*m. Purpose of Project:* The purpose of the project is to generate electric power for industrial use by the applicant.

*n. This notice also consists of the following standard paragraphs:* A4 and D9.

*o. Available location of Application:* A copy of the application, as amended and supplemented, is available for

inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Nekoosa Papers Inc., 100 Wisconsin River Drive, Port Edwards, WI, 54469, (715) 887-5481.

*10. a. Type of Application:* Subsequent License.

*b. Project No.:* 2476-001.

*c. Date Filed:* December 19, 1991.

*d. Applicant:* Wisconsin Public Service Corporation.

*e. Name of Project:* Jersey Hydro Project.

*f. Location:* On the Tomahawk River in Lincoln County, Wisconsin.

*g. Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

*h. Applicant Contact:* Mr. Richard A. Krueger, Senior Vice President, Wisconsin Public Service Corporation, 700 North Adams, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1598.

*i. FERC Contact:* Mike Dees (202) 219-2807.

*j. Deadline Date:* See paragraph D10. (June 28, 1993).

*k. Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D10. Except that comments, recommendations, terms and conditions, or prescriptions pertaining to entrainment are not being solicited because a decision has not been made on whether the data and results from the entrainment studies completed for the Rothschild Project No. 2212, Centralia Project No. 2255, and Wisconsin River Division Project No. 2590 can be extrapolated to an environmental analysis of this project. However, comments are welcome on the extrapolation of results from the above three entrainment studies to this project.

*l. Description of Project:* The project as licensed consists of the following: (1) Two existing earthen dikes, 330 feet long and 261 feet long; (2) an existing concrete sluiceway and Taintor gate section about 34 feet high and 148 feet long, containing (a) a 9 foot by 5.5 foot sluice gate, and (b) four steel Taintor gates, 30 feet by 12 feet; (3) an existing reservoir with a surface area of 709 acres and a total volume of 1,794 acre-feet at the normal maximum surface elevation of 1,450.00 NGVD; (4) an existing concrete powerhouse, 62 feet long, 26 feet wide and 16 feet high, containing (a) three vertical Francis turbines with a combined hydraulic capacity of 568 cfs, manufactured by S. Morgan Smith

and rated at 180 hp, 250 hp and 262 hp, and (b) three generators rated at 120 kW, 192 kW and 200 kW for a total of 512 kW; (5) and existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 2,868 MWh. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC, 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation, 700 North Adams, Green Bay, WI or calling (414) 433-1268.

11 a. *Type of Application:* New Major License.

b. *Project No.:* 2590-001.

c. *Date Filed:* June 26, 1991.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Project:* Wisconsin River Division.

f. *Location:* On the Wisconsin River, Portage County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Kenneth K. Knapp, Consolidated Water Power Company, 231 First Avenue North, P.O. Box 8050, Wisconsin Rapids, WI 54495, (715) 422-3073.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* See paragraph D9. (June 28, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) An existing dam which is comprised of (a) an earthfill dam with a length of 345 feet and a maximum height of about 20 feet, and (b) an earthen dike with a length of 550 feet and a maximum height of about 8 feet; (2) a spillway which is comprised of (a) a gated section 484 feet long containing 20 radial gates, each 17 feet high by 20 feet

wide with a sill elevation of 1,053 feet National Geodetic Vertical Datum (NGVD), and (b) an uncontrolled overflow section with a length of 108 feet and a crest elevation of 1,069 feet NGVD; (3) a reservoir with a normal maximum water surface elevation of 1,069 feet NGVD, a surface area of 240 acres, and a total volume of about 1,120 acre-feet; (4) a powerhouse with maximum width of 24 feet and an approximate length of 70 feet which contains one horizontal-shaft hydroelectric turbine/generating unit with nameplate rating of 1,800 kilowatts (kW) and a hydraulic capacity of 1,265 cubic feet per second (cfs); (5) a grinder building with a width of 255 feet and a length of 49 feet, which is adjacent to the powerhouse and which contains nine operating horizontal-shaft hydromechanical turbines that have a combined equivalent capacity of 4,600 kW and a total hydraulic capacity of 3,885 cfs; and (6) appurtenant facilities. The project would have a total installed capacity of 6,400 kW. The project would have no switchyard, switchgear, or transmission line included in the project facilities. Additionally, the grinders and motors attached to the hydromechanical turbines are not part of the project facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 32.2 GWh and owns all existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the license expiration of June 30, 1993, the Applicant's estimated net investment in the project would amount to \$575,000.

m. *Purpose of Project:* All project energy generated would be utilized by the adjoining paper mill owned by Consolidated Papers, Inc.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC., 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Consolidated Water Power Company, 231 First Avenue North, P.O. Box 8050, Wisconsin Rapids, WI 54495, (715) 422-3073.

12 a. *Type of Application:* New Major License.

b. *Project No.:* 2212-001.

c. *Date Filed:* July 29, 1991.

d. *Applicant:* Weyerhaeuser Company.

e. *Name of Project:* Rothschild Hydro Project.

f. *Location:* On the Wisconsin River in Marathon County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. William V. Dohr, Weyerhaeuser Company, 200 Grand Avenue, Rothschild, WI 54475, (715) 359-3101.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* See paragraph D9. (June 29, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) A 631-foot-long concrete and timber crib dam having, from west to east, (a) a 276-foot-long timber crib dam with 17 stoplog bays, timber crib apron located immediately downstream, and a concrete retaining wall extending 180 feet downstream, which adjoins a short segment of an earth embankment section tied into the natural ground; (b) a 100-foot-long concrete overflow spillway section with concrete and timber crib aprons located immediately downstream; (c) a 255-foot-long concrete sluice section with ten 20-foot-wide bays controlled by 13.75-foot-high taintor gates, and concrete and timber crib aprons located immediately downstream; (d) a 32-foot-wide fish ladder and trash sluice section, where the fish ladder is sealed with concrete; (e) a 6-foot-wide section of a retaining wall, training wall, piling cells and timber crib wall, which separates the fish ladder and trash sluice section from the powerhouse and from the tailrace, extends about 650 feet downstream; (2) a 167-foot-long powerhouse, located contiguous to the east bank of the river, with seven flumes equipped with rack bars and head gates, which houses seven turbine-generators with total installed capacity of 4,660 kW; and (3) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 24.4 GWh and owns all existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* All project energy generated would be utilized by the Applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Weyerhaeuser Company, 200 Grand Avenue, Rothschild, WI 54475, (715) 359-3101.

13 a. *Type of Application:* Major License.

b. *Project No.:* 10805-001.

c. *Date filed:* September 25, 1992.

d. *Applicant:* Midwest Hydraulic Company.

e. *Name of Project:* Hatfield Hydro Project.

f. *Location:* On the Black River, in Jackson and Clark Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Peter H. Bruno, R.R. #2, Box 345, Edgerton, WI 53534, (608) 884-9416.

i. *FERC Contact:* Mary C. Golato (202) 219-2804.

j. *Deadline Date:* July 22, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D8.

l. *Description of Project:* The proposed project consists of the following: (1) An existing diversion dam 3,100 feet long and 48 feet high; (2) an existing reservoir with a surface area of 945 acres with a gross storage capacity of 10,800 acre-feet; (3) an existing penstock approximately 140 feet long by 100 feet wide; (4) an existing powerhouse containing two existing turbine-generator units at a total capacity of 6,000 kilowatts (kW) and two proposed low flow units at a total rated capacity of 532 kW; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 20,000,000 kilowatthours. The dam is owned by Hatfield Hydro Partnership.

m. *Purpose of the Project:* All project energy generated would be utilized by the applicant for sale.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D8.

o. *Available Locations of Application:* A copy of the application is available for

inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219-1371. A copy is also available for inspection and reproduction at Mr. Peter H. Bruno, R.R. #2, Box 345, Edgerton, WI (608) 884-9416.

14 a. *Type of Application:* New Major License.

b. *Project No.:* 2390-002.

c. *Date filed:* December 16, 1991.

d. *Applicant:* Northern States Power Company-Wisconsin.

e. *Name of Project:* Big Falls.

f. *Location:* On the Flambeau River near Big Falls in Rusk County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2621.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219-2814.

j. *Deadline Date:* See paragraph D9. (July 2, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9. Except that comments, recommendations, terms and conditions, or prescriptions pertaining to instream flows are not being solicited because additional information concerning an instream flow study is still outstanding. Comments will be solicited on the instream flows after the additional information is filed.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 22-foot-high earth embankment dam; (2) a 320-foot concrete spillway; (3) a reservoir with a surface area of 370 acres at surface elevation 1,234 feet m.s.l. and a storage area of 6,500 acre-feet; (4) a powerhouse containing three generating units with a total rated capacity of 7.78MW; and, appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 37,318,036 kWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under section 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Location of Application:*

A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Northern States Power Company-Wisconsin, 100 Barstow Street Eau Claire, WI 54702, or by calling (715) 839-2621.

#### Standard Paragraphs

A2. *Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.*

A3. *Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.*

A4. *Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.*

A9. *Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development*

application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

**B. Comments, Protests, or Motions to Intervene**—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

**B1. Protests or Motions to Intervene**—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

**C. Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

**D2. Agency Comments**—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time

specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**D4. Filing and Service of Responsive Documents**—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (June 28, 1993 for Project No. 11313-000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (August 11, 1993 for Project No. 11313-000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene

must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

**D8. Filing and Service of Responsive Documents**—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

**D9. Filing and Service of Responsive Documents**—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (See Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the



issuance date of this notice. (June 28, 1993 for Project Nos. 2234-004, 2255-003, 2256-001, 2291-001, 2292-001, and 2590-001; June 29, 1993 for Project No. 2212-001; and July 2, 1993 for Project No. 2390-002). All reply comments must be filed with the Commission within 105 days from the date of this notice. (August 12, 1993 for Project Nos. 2234-004, 2255-003, 2256-001, 2291-001, 2292-001, and 2590-001; August 13, 1993 for Project No. 2212-001; and August 16, 1993 for Project No. 2390-002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2208.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

**D10. Filing and Service of Responsive Documents.**—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the

Commission within 60 days from the issuance date of this notice. (June 28, 1993 for Project Nos. 10873-002 and 2476-001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (August 11, 1993 for Project No. 10873-002 and August 12, 1993 for Project No. 2476-001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: May 5, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10934 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. JD93-07629T, Louisiana-22]

**State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation.**

May 4, 1993.

Take notice that on April 29, 1993, the Office of Conservation of the Department of Natural Resources for the

State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Haynesville Formation, underlying a portion of the East Haynesville Field in Claiborne Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area covers the NW/4 of Section 26, N/2 of Sections 27 and 28, and NE/4 of Section 29, all in Township 23 North, Range 7 West.

The notice of determination also contains Louisiana's findings that the referenced part of the Haynesville Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10903 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. TM93-13-20-000]

**Algonquin Gas Transmission Co., Proposed Changes in FERC Gas Tariff**

May 4, 1993.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 30, 1993, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

*Proposed To Be Effective April 1, 1993*

2 Rev 12 Rev Sheet No. 41.

2 Rev 12 Rev Sheet No. 42.

Algonquin states that the revised tariff sheets flow through rate changes in Texas Eastern Transmission Corporation's ("Texas Eastern's") Rate Schedules SS-2 and SS-3, which underlie Algonquin's Rate Schedules STB and SS-III, respectively. Pursuant to Section 10 of Rate Schedule STB and Section 9 of Rate Schedule SS-III in Algonquin's FERC Gas Tariff, Third Revised Volume No. 1, Algonquin is hereby filing the above sheets to track the latest changes filed by Texas Eastern on April 12, 1993 ("April 12 filing").

Algonquin further states that Texas Eastern made its April 12 filing to flow

through a change in CNG Transmission Corporation's ("CNG") Rate Schedule GSS rate which underlies the rates for Texas Eastern's Rate Schedules SS-2 and SS-3. The Texas Eastern filing reduces the SS-2 and SS-3 Demand rates.

Algonquin requests that the Commission approve the tariff sheets to become effective on April 1, 1993.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**  
Secretary.

[FR Doc. 93-10915 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-261-000]

**Algonquin Gas Transmission Co.; Site Visit**

May 4, 1993.

On May 12 and 13, 1993, the staff of the Federal Energy Regulatory Commission will conduct a site visit of:

- The proposed pipeline replacements near Mahwah, New Jersey and Southeast, New York;
- The proposed pipeline looping in Brockton, Massachusetts; and
- The site of the proposed compressor station upgrade at the Cromwell Compressor Station in Cromwell, Connecticut.

For further information, contact Mr. Howard Wheeler at (202) 208-1237.

**Lois D. Cashell,**  
Secretary.

[FR Doc. 93-10909 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-113-000]

**Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff**

May 4, 1993.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 30, 1993 tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, six copies of the following tariff sheet, with proposed effective of June 1, 1993.

*Third Revised Volume No. 1:*

Original Sheet No. 95

Algonquin states that the purpose of this filing is to establish the balance and the allocation of transition costs to be paid by Algonquin to Texas Eastern Transmission Corporation ("Texas Eastern") pursuant to Texas Eastern's initial direct bill of Account No. 191 purchased gas costs filed on April 30, 1993, contemporaneously with Algonquin's filing. Algonquin requests that the Commission waive \$ 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect on the same date as the effective date of Texas Eastern's direct bill of its Account No. 191 expense.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions shown on Algonquin's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

Secretary.

[FR Doc. 93-10916 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-6-48-000]

**ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff**

May 4, 1993.

Take notice that ANR Pipeline Company ("ANR"), on April 30, 1993, tendered for filing as part of its FERC Gas Tariff, six copies of the following tariff sheets which ANR proposes to be effective May 1, 1993:

*First Revised Volume No. 1*

Fifth Revised Sheet No. 6

*First Revised Volume No. 1-A*

Fifth Revised Sheet No. 4

*Original Volume No. 2.*

2nd Revised Twentieth Revised Sheet No. 16

2nd Revised Twentieth Revised Sheet No. 17

2nd Revised Twentieth Revised Sheet No. 18

2nd Revised Twentieth Revised Sheet No. 19

2nd Revised Twenty-second Revised Sheet No. 20

2nd Revised Twenty-First Revised Sheet No.

21

2nd Revised Nineteenth Revised Sheet No.

22

*Original Volume No. 3*

Eighteenth Revised Sheet No. 5

ANR states that the referenced tariff sheets are being submitted as required in Sections 17.7 of ANR's FERC Gas Tariff First Revised Volume No. 1 to adjust the Volumetric Buyout Buydown Surcharge and Upstream Pipeline Surcharge, commencing May 1, 1993.

ANR states that each of its Volume Nos. 1, 1-A, 2 and 3 customers and interested State Commissions has been apprised of this filing via U.S. Mail.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by May 11, 1993 in accordance with Rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

Secretary.

[FR Doc. 93-10913 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP93-88-002 and RP91-49-007]

May 4, 1993.

**Arkla Energy Resources Co.; Filing**

Take notice that on April 30, 1993, Arkla Energy Resources Company ("AER") tendered for filing six copies of the following revised tariff sheets to become effective June 1, 1993:

Second Revised Volume No. 1,  
Nineteenth Revised Sheet No. 11

Second Revised Volume No. 1,  
Nineteenth Revised Sheet No. 16

First Revised Volume No. 1-A,  
Seventh Revised Sheet No. 5

These revised tariff sheets are filed in compliance with the Stipulation and Agreement ("Stipulation") approved by Commission order in Docket No. RP91-49-000 on March 31, 1992. 58 FERC ¶ 61,359 (1992).

Pursuant to the Stipulation, the proposed tariff sheets reflect the elimination of the CSC Rate Credit.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 11, 1993. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10897 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-110-000]

**Carnegie Natural Gas Co.; Request for Waivers of Regulations and Tariff, and for Expedited Action**

May 4, 1993.

Take notice that on April 30, 1993, Carnegie Natural Gas Company ("Carnegie") filed a request for waiver of § 154.305(i) of the Commission's regulations and the relevant provisions of Carnegie's FERC gas tariff to permit Carnegie (1) to temporarily withhold from three of its four jurisdictional firm sales customers (UGI Utilities, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Ohio, Inc.) their allocable shares of the February 28,

1993 balance of the demand refund subaccount of Carnegie's Account No. 191, and (2) to clear the February 28, 1993 balance of the commodity refund subaccount of Carnegie's Account No. 191 by offsetting it against the current amortizing subaccount balance.

Carnegie requests that the Commission grant the requested waiver to withhold refunds from the three above customers until the date the Commission issues a final order approving implementation of Carnegie's restructured services pursuant to Order Nos. 636 and 636-A in Docket No. RS92-30-000. Carnegie states that its request for waiver to withhold the balance of its demand refund subaccount is in accordance with an Agreement in Principle concerning the disposition of Carnegie's Account No. 191 costs, and does not apply to its fourth jurisdictional sales customer, New Jersey Natural Gas Company, which is not a signatory.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10912 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-5-21-000]

**Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

May 4, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on April 30, 1993, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective:

May 1, 1993

Thirty-sixth Revised Sheet No. 26  
Twenty-ninth Revised Sheet No. 26.1

Thirty-fourth Revised Sheet No. 26A  
Twenty-ninth Revised Sheet No. 26A.1  
Twenty-fourth Revised Sheet No. 26B.1  
Eighteenth Revised Sheet No. 26C.1  
Twenty-fifth Revised Sheet No. 26D  
Thirty-second Revised Sheet No. 163

Columbia states the sales rates set forth on Twenty-ninth Revised Sheet No. 26.1 reflect an overall increase of 37.96¢ per Dth in the April 1, 1993 CDS commodity rate. In addition, the transportation rates set forth on Eighteenth Revised Sheet No. 26C.1 and Twenty-fifth Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.89¢ per Dth.

Columbia states that copies of the filing are being mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 11, 1993. 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10898 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP93-108-000]

**El Paso Natural Gas Co.; Tariff Filing**

May 4, 1993.

Take notice that on April 30, 1993, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in accordance with Sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso's First Revised Volume No. 1-A and Second Revised Volume No. 1 FERC Gas Tariffs, respectively, certain tariff sheets to become effective June 1, 1993. The tendered tariff sheets reflect a revision to the Monthly Direct Charge and Throughput Surcharge based on additional buyout and buydown costs associated with contracts that were in

litigation or arbitration as of March 31, 1989. El Paso states that these costs have not been included in any of El Paso's previous filings to recover certain buyout and buydown costs.

El Paso states that it has proposed to amortize the direct bill portion (25%) of such additional amount included in its filing over a twelve (12) month amortization period extending through May 31, 1994. El Paso proposed that the Throughput Surcharge attributable to the recovery of the amount in the filing be amortized over a period commencing June 1, 1993 through March 31, 1996 which is consistent with El Paso's authorization at Docket No. RP92-115-000 to consolidate the amortization periods for the volumetric surcharge from each previous take-or-pay filing into a single amortization period terminating March 31, 1996. El Paso states that the Throughput Surcharge has increased \$0.0007 per dth, from \$0.0415 per dth to \$0.0422 per dth.

Pursuant to section 21.6 of El Paso's Volume No. 1 Tariff, El Paso is required to file with the Commission certain information supporting the buyout and/or buydown amounts paid. Accordingly, El Paso states that it is submitting concurrently, under separate cover letter, the schedules reflecting such information for which El Paso has requested confidential treatment.

El Paso requested that the Commission accept the tendered tariff sheets to become effective June 1, 1993.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10900 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP93-16-001]

**El Paso Natural Gas Co.; Motion To Place Tariff Sheets Into Effect**

May 4, 1993.

Take notice that on April 30, 1993, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Rule 212 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 CFR 385.212, a motion to place into effect on May 1, 1993 certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1-A and Third Revised Volume No. 2, which establish procedures to protect the operating integrity of El Paso's pipeline system in the event of a supply underperformance.

El Paso states that on October 30, 1992 at Docket No. RP93-16-000, it filed with the Commission tariff sheets which establish certain terms and conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1-A and Third Revised Volume No. 2, to protect the operating integrity of El Paso's pipeline system in the event of a supply underperformance. El Paso states that on November 30, 1992 the Commission issued its order in this proceeding accepting and suspending those tariff sheets filed by El Paso to become effective on the earlier of the Commission's action as a result of a scheduled technical conference on May 1, 1993. El Paso states that the order also directed that a technical conference be convened within thirty (30) days, followed by a Staff report to the Commission within ninety (90) days.

El Paso states that on January 28, 1993 a technical conference was convened to address certain issues raised by El Paso's filing. El Paso states that inasmuch as the Commission has taken no further action since the technical conference, El Paso is moving to place the tendered tariff sheets into effect on May 1, 1993, as permitted by ordering paragraph (A) of the Commission's November 30, 1992 order.

El Paso states that copies of the document were served upon all interstate pipeline system transportation customers of El Paso, each person designated on the official service list compiled by the Secretary in Docket No. RP93-16-000, and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be

filed on or before May 11, 1993. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10904 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP93-325-000]

**Granite State Gas Transmission, Inc.; Application**

May 4, 1993.

Take notice that on May 3, 1993, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed in Docket No. CP93-325-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authorization to abandon a direct firm sale of natural gas to the United States Air Force at Pease Air Force Base (Pease) and to reallocate equivalent volumes of gas to its distribution affiliate, Northern Utilities, Inc. (Northern Utilities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Granite State proposes to abandon the firm, direct sale of 1,248 dekatherms of natural gas per day to Pease in Portsmouth, New Hampshire. Granite State states that the decommissioning of Pease began in 1990 and that Pease has not taken any firm natural gas since May 1992. Granite State further states that Pease will discontinue taking interruptible natural gas later in 1993.

Granite State further proposes to reallocate the 1,248 dekatherms of natural gas per day to Northern Utilities for service to the Pease Development Authority which is developing Pease for commercial use in the private sector.

Granite State asserts that it is experiencing a revenue loss of approximately \$50,000 per month due to unrecovered costs that were allocated to the non-jurisdictional sale. Therefore, Granite State also proposes to revise its Purchased Gas Cost Adjustment and Transportation Cost Adjustment, Sections 19 and 20 of its FERC Gas Tariff, Second Revised Volume No. 1, to reflect the proposed amendment and reallocation of capacity.

Any person desiring to be heard or to make any protests with reference to said application should on or before May 19,

1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Granite State to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10908 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. TQ93-2-53-000]

#### **K N Energy, Inc.; Proposed Changes in FERC Gas Tariff**

May 4, 1993.

Take notice that K N Energy, Inc. ("K N") on April 30, 1993 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (Section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1-B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity .....	\$0.0692	\$0.0692
D1 Demand .....	0.0007	0.0010
D2 Demand .....	0.0154	0.0169
WPS Demand .....	0.0014	0.0020
IOR Commodity .....	0.0853	0.0871

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending August 31, 1993. The proposed effective date for the rate changes is June 1, 1993.

K N states that copies of the filing were served upon K N's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before May 11, 1993, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10918 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-3-15-000]

#### **Mid Louisiana Gas Co.; Proposed Change of Rates**

May 4, 1993.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on April 29, 1993, tendered for filing a part of First Revised Volume No. 1 of its FERC Gas Tariff the Tariff Sheet and proposed effective date as set forth below:

Ninety-sixth revised sheet Sheet No. 3a superseding: Ninety-fifth revised Sheet No. 3a, May 1, 1993.  
May 1, 1993

Mid Louisiana states that the purpose of the filing of Ninety-Sixth Revised Sheet No. 3a is to reflect current gas costs for the month beginning May 1, 1993, in compliance with the Commission's Regulations issued in Order Nos. 483 and 483-A.

Mid Louisiana states that Ninety-Sixth Revision Sheet No. 3a is to reflect an increase of \$0.7379 in Mid Louisiana's current cost of gas, exclusive of surcharge.

Mid Louisiana states that the tariff sheet was filed as an out-of-cycle PGA to reflect the latest estimated gas cost to Mid Louisiana from its various suppliers. Mid Louisiana states that the majority of these suppliers have contracts with Mid Louisiana which contain pricing provisions which are tied to the spot market price of gas.

Mid Louisiana states that copies of this filing have been mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10894 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket TQ93-4-15-000]

#### **Mid Louisiana Gas Co.; Proposed Changes of Rates**

May 4, 1993.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on April 30, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninety-Seventh Revised Sheet No. 3a, with a proposed effective date of June 1, 1993.

Mid Louisiana states that the purpose of the filing of Ninety-Seventh Revised Sheet No. 3a is to reflect a \$0.0393 per Mcf increase in its current cost of gas.

Mid Louisiana states that copies of the filing were served upon all of Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10906 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. TQ93-10-25-000 TM93-6-25-000]

**Mississippi River Transmission Corp.; Rate Change Filing**

May 4, 1993.

Take notice that on April 30, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing First Revised Eighty-Fifth Revised Sheet No. 4 and First Revised Forty-Fourth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective May 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that First Revised Eighty-Fifth Revised Sheet No. 4 and First Revised Forty-Fourth Revised Sheet No. 4.1 reflect an increase of 75.45 cents per MMBtu in the commodity cost of purchased gas from PGA rates contained in the out-of-cycle filing to be effective April 1, 1993 in Docket No. TQ93-9-25-000. MRT also states that since the March 30, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 11, 1993. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10895 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. TQ93-11-25-000]

**Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff**

May 4, 1993.

Take notice that on April 30, 1993 Mississippi River Transmission Corporation (MRT) tendered for filing First Revised Eighty-Sixth Revised Sheet No. 4 and First Revised Forty-Fifth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective June 1, 1993.

MRT states that the instant filing suspends the commodity surcharge adjustment required by 18 CFR 154.305(d) and paragraph 17.31 of MRT's FERC Gas Tariff, Second Revised Volume No. 1. MRT requests the necessary waivers of the Commission's regulations and MRT's FERC Gas Tariff so that the sheets filed may become effective June 1, 1993. MRT states that this surcharge suspension is fully consistent with those approved in recent Commission orders in Texas Eastern Transmission Corporation, 62 FERC ¶ 61,177 (1993) and CNG Transmission Corporation, 63 FERC ¶ 61,049 (1993).

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10896 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER93-114-000]

**Montana Power Co.; Filing**

April 30, 1993.

Take notice that on April 27, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission a supplement to its original filing of a Transmission Agreement executed by the United States of America, Department of Energy, acting by and through the Bonneville Power Administration and Montana Intertie Users.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10893 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP89-137-011]

**Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff**

May 4, 1993.

Take notice that on April 30, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets:

**First Revised Volume No. 1**  
Second Sub First Amended Fifty-Seventh Revised Sheet No. 10  
Sub Sixtieth Revised Sheet No. 10  
Sub Sixty-First Revised Sheet No. 10  
Sub Sixty-Second Revised Sheet No. 10  
Sub Sixty-Third Revised Sheet No. 10  
First Revised Sixty-Fourth Revised Sheet No.

Second Sub Sixty-Fourth Revised Sheet No. 10  
 Sub Sixty-Sixth Revised Sheet No. 10  
 First Revised Sixty-Seventh Revised Sheet No. 10  
 Second Sub Sixty-Seventh Revised Sheet No. 10  
 First Revised Sixty-Eighth Revised Sheet No. 10  
 Second Sub Sixty-Eighth Revised Sheet No. 10  
 Sub Sixty-Ninth Revised Sheet No. 10  
 Sub Seventieth Revised Sheet No. 10  
 Sub Seventy-First Revised Sheet No. 10  
 Sub First Revised Sheet No. 10.1  
 First Revised Second Revised Sheet No. 10.1  
 Second Sub Second Revised Sheet No. 10.1  
 Sub Third Revised Sheet No. 10.1  
 Sub Fourth Revised Sheet No. 10.1

The purpose of this filing is to reverse the 13.95¢ per MMBtu negative Supplier Settlement Payment ("SSP") surcharge adjustment, that applied to Northwest's sales rates between November 1, 1989 and October 31, 1990. Upon approval of this filing, Northwest shall invoice all affected sales customers an amount that is computed by multiplying 13.95¢ per MMBtu by each customer's purchase volumes during the aforementioned collection period. Such billings shall also include interest calculated from each invoice payment date, during the under-collection period, through the invoice mailing date associated with the 13.95¢ reversal.

This filing has been served upon Northwest's jurisdictional customers and state regulatory commissions in Northwest's market area.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 11, 1993. 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. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-10899 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-107-000]

**Panhandle Eastern Pipe Line Co.;  
 Filing in Compliance with § 18.9 of  
 Panhandle's Tariff**

May 3, 1993.

Take notice that on April 29, 1993, Panhandle Eastern Pipe Line Company

(Panhandle) filed in compliance with the provisions of § 18.9 of the General Terms and Conditions of Original Volume No. 1 of its FERC Gas Tariff to recover from the City of Hazelton, Kansas (Hazelton) its proportional share of the total unrecovered amounts remaining in Panhandle's Account 191 at the time Section 18 through 18.8 of Panhandle's General Terms and Conditions became inapplicable to Hazelton. Panhandle requests immediate authority to direct bill the amount included in Appendix A of its filing, without further notice, notice of the applicability of this tariff provision having already been provided.

Panhandle states that it has previously filed for and received authority to abandon sales service to Hazelton and thus, the provisions of Section 18.9 of its tariff are applicable to Hazelton. Panhandle has included in its filing workpapers setting forth the calculation of Hazelton's direct bill responsibility to Panhandle. Panhandle states that its filing is without prejudice to its rights to the full recovery of the costs encompassed by Section 18.9 of the General Terms and Conditions in the event of changes in Commission orders.

Panhandle states that a copy of the filing was mailed to Hazelton and the affected state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before May 10, 1993. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-10911 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-8-000]

**South Georgia Natural Gas Co.;  
 Proposed Changes in FERC Gas Tariff**

May 4, 1993.

Take notice that on April 30, 1993, South Georgia Natural Gas Company (South Georgia) tendered for filing the following revised sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Tenth Revised Sheet No. 4C

South Georgia states that the proposed tariff sheet is being filed with a proposed effective date of June 1, 1993. The aforesaid tariff sheet reflects changes in South Georgia's fixed take-or-pay surcharge to reflect the prevailing interest rates approved by the Commission. The referenced tariff sheet reflects revised monthly take-or-pay charges which apply to customers electing to amortize their obligation over monthly payments.

South Georgia states that copies of the filing were served upon South Georgia's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-10907 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-3-7-000]

**Southern Natural Gas Co.; Proposed  
 Changes in FERC Gas Tariff**

May 4, 1993.

Take notice that on April 30, 1993, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

One Hundred Twenty-Eighth Revised Sheet No. 4A

Forty-First Revised Sheet No. 4B

Forty-Seventh Revised Sheet No. 4J

Southern states that the proposed tariff sheets and supporting information are being filed with a proposed effective date of June 1, 1993, pursuant to the Purchased Gas Adjustment clause of its FERC Gas Tariff. This filing represents an out-of-cycle PGA adjustment, which Southern has submitted to reflect the unanticipated increases in its purchased gas costs as a result of the recent rise in gas prices. Southern has stated that the projections made in its most recent annual PGA filing of February 1, 1993 in Docket No. TA93-1-7-000, which the Commission accepted effective April 1, 1993, are below current prices.

Southern has requested such waivers of the Commission's Regulations as are necessary to allow such out-of-cycle PGA adjustment to become effective June 1, 1993.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such petitions and protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10914 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-112-000]

**Texas Eastern Transmission Corp.;  
Proposed Changes in FERC Gas Tariff**

May 4, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on April 30, 1993 tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, six copies of the following tariff sheets:

Original Sheet No. 156

Original Sheet No. 157

Original Sheet No. 158

The proposed effective date of these tariff sheets is June 1, 1993.

Texas Eastern states that the above tariff sheets are filed pursuant to § 15.2(B) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and

as a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. section 717c (1988), Order Nos. 636, *et seq.* issued in Docket No. RM91-11, the orders accepting Texas Eastern's Order No. 636 compliance filing, subject to conditions, issued January 13, 1993, and April 22, 1993, in *Texas Eastern Transmission Corp.*, Docket Nos. RS92-11-000, RS92-11-003, RS92-11-004, RP88-67-000, *et al.* (Phase I/Rates), and the Rules and Regulations of the Federal Energy Regulatory Commission ("Commission").

In the April 22 Order, the Commission accepted Texas Eastern's Sixth Revised Volume No. 1, subject to conditions, and permitted Texas Eastern to implement its restructured services in compliance with Order No. 636 effective June 1, 1993. Texas Eastern states that the filing constitutes its initial filing to recover its Account 192 Costs, attributable to gas purchases made prior to June 1, 1993, that were incurred as a consequence of Texas Eastern providing a bundled merchant function.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10917 Filed 5-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-160-016, RP92-165-014, and RP89-114-001]

**Trunkline Gas Co.; Compliance Tariff Filing**

May 4, 1993.

Take notice that on April 30, 1993, Trunkline Gas Company (Trunkline) tendered for filing revised *pro forma* tariff sheets applicable to its sales and

transportation services contained in Appendix A to its filing, in conformity with Ordering Paragraph (C) of the Commission's March 2, 1993 Order Affirming in Part and Modifying in Part Initial Decision, 62 FERC ¶61,198 (1993). Trunkline states that the *pro forma* tariff sheets are to become effective upon their approval by the Commission, after the issuance of a "final order" in Docket Nos. RP89-160-000, *et al.*

Trunkline further states that in addition to the *pro forma* tariff sheets contained in Appendix A, its compliance filing also includes revised tariff sheets in the appendices described below:

Appendix B consists of revised tariff sheets to be effective November 1, 1992, December 1, 1992 and January 1, 1993, which reflect the approved settlement rates set forth in the Docket No. RP92-165-000 Settlement; and,

Appendix C consists of revised tariff sheets to be effective November 1, 1989, December 1, 1989, January 1, 1990, March 1, 1990, June 1, 1990, September 1, 1990, October 1, 1990, November 1, 1990, December 1, 1990, January 1, 1991, March 1, 1991, June 1, 1991, September 1, 1991, October 1, 1991, and November 1, 1991, which reflect the approved settlement rates set forth in the Docket No. RP89-160-000 Settlement, adjusted to reflect PGA, GRI and ACA filings, as permitted by Section 3 of Article III of that Settlement.

Trunkline also states that these Appendices B and C tariff sheets are submitted for historical purposes—since all have since been superseded—to assist in the calculation of refunds to be provided in accordance with the Settlement Agreements filed in each of Docket No. RP89-160-000, *et al.* and Docket No. RP92-165-000.

Trunkline states that it has served a copy of the filing on its jurisdictional customers, interested state commissions and parties to the proceeding in the above-referenced docket numbers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 11, 1993. 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. Copies of this filing are on file with the



Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-10905 Filed 5-7-93; 8:45 am]  
BILLING CODE 6717-01-M

**Office of Fossil Energy**  
[FE Docket No. 93-36-NG]

**Pawtucket Power Associates Limited Partnership; Order Granting Blanket Authorization To Import Natural Gas From Canada**

AGENCY: Office of Fossil Energy, DOE.  
ACTION: Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order on May 3, 1993, granting Pawtucket Power Associates Limited Partnership authorization to import up to 10.584 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 100 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 4, 1993.  
Clifford B. Tomaszewski,  
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.  
[FR Doc. 93-11003 Filed 5-7-93; 8:45 am]  
BILLING CODE 6450-01-M

[FE Docket No. 93-34-NG]

**TransCanada Pipelines Limited and Great Lakes Gas Transmission Limited Partnership; Order Granting Authorization to Import and Export Natural Gas From and to Canada**

AGENCY: Office of Fossil Energy, DOE.  
ACTION: Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting TransCanada Pipelines Limited authorization to import and export 1,405,000 Mcf per day of natural gas over a period beginning the date of this order and extending through November 1, 2005. Since the import and export volumes were previously authorized to Great Lakes Gas Transmission Limited Partnership (Great Lakes) in DOE/FE Decision and Order No. 425, this order

substitutes TransCanada for Great Lakes and vacates Order No. 425.

The order is available for inspection and copying in the Office of Fuels of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 30, 1993.  
Clifford P. Tomaszewski,  
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.  
[FR Doc. 93-11002 Filed 5-7-93; 8:45 am]  
BILLING CODE 6450-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL 4654-1]

**Clean Air Act; Acid Rain Provisions; 1993 EPA SO<sub>2</sub> Allowance Auctions Results**

AGENCY: Environmental Protection Agency.  
ACTION: Notice.

**SUMMARY:** Pursuant to title IV of the Clean Air Act and 40 CFR part 73, the EPA is responsible for implementing a program to reduce emissions of sulfur dioxide (SO<sub>2</sub>), a precursor of acid rain. The centerpiece of the SO<sub>2</sub> control program is the allocation of transferable allowances, or authorizations to emit SO<sub>2</sub>, which are distributed in limited quantities to existing utility units and which eventually must be held by virtually all utility units to cover their SO<sub>2</sub> emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden.

EPA is directed under Section 416 of the Act to conduct annual sales and auctions of a small portion of allowances (2.8%) withheld from the total allowances allocated to utilities each year. Sales and auctions are expected to stimulate and support the allowance market and to provide a public source of allowances, particularly to new units for which no allowances are allocated. In the Fall of 1992, EPA delegated the administration of the EPA allowance auctions and sales to the Chicago Board of Trade (CBOT). Today, the Acid Rain Division is giving notice of the results of the first annual SO<sub>2</sub> allowance auctions that were conducted by CBOT on March 29, 1993.

For rules governing the conduct of the auctions and sales see 40 CFR part 73, subpart E.

**I. Offers**

**A. Total Allowances for Sale**

In the spot auction (year 1995 allowances sold), a total of 145,010 allowances were offered for sale: 50,000 that were withheld from the utilities and an additional 95,010 that were voluntarily contributed from utilities. In the advance auction (year 2000 allowances sold), a total of 130,500 allowances were offered for sale: 100,000 that were withheld from the utilities and an additional 30,500 that were contributed. The minimum prices that utilities would accept for allowances are listed in Table 1.

TABLE 1.—OFFER DATA FOR THE 1993 AUCTIONS

Spot auction		Advance auction	
Quantity offered	Minimum price	Quantity offered	Minimum price
10 .....	\$10.00	10,000 .	\$200.00
5,000 ...	210.00	2,000 ...	200.00
5,000 ...	210.00	40 .....	280.00
5,000 ...	225.00	1,500 ...	282.00
2,500 ...	230.00	45 .....	285.00
2,500 ...	235.00	50 .....	290.00
2,500 ...	240.00	55 .....	295.00
2,500 ...	245.00	5,000 ...	297.00
2,500 ...	250.00	60 .....	300.00
2,500 ...	255.00	2,000 ...	300.00
1,000 ...	361.00	65 .....	305.00
10,000 .	375.00	5,000 ...	307.00
5,000 ...	400.00	70 .....	310.00
45,000 .	600.00	75 .....	315.00
1,900 ...	1,900.00	80 .....	320.00
2,100 ...	1,900.00	85 .....	325.00
		90 .....	330.00
		95 .....	335.00
		100 .....	340.00
		105 .....	345.00
		110 .....	350.00
		115 .....	355.00
		120 .....	360.00
		125 .....	365.00
		130 .....	370.00
		135 .....	375.00
		1,000 ...	377.00
		140 .....	380.00
		145 .....	385.00
		150 .....	390.00
		155 .....	395.00
		160 .....	400.00
		1,000 ...	400.00
		250 .....	449.00
		250 .....	449.00

**II. Bids**

**A. Spot Auction Results**

CBOT received 106 bids requesting 321,354 year 1995 allowances. 36 bids were successful and 50,010 allowances were sold (see Table 2). Of the 50,010 that were sold 10 allowances were

contributed from a utility that offered 10 allowances at a minimum price of \$10 per allowance. These 10 allowances were sold to American Electric Power Service for \$131 per allowance after the EPA withheld allowances sold out. Spot auction proceeds totaled \$7,831,684.

TABLE 2.—SPOT AUCTION BID AND PURCHASE DATA  
[1995 Allowances]

Bid/allowance	Quantity bid	Firm/Individual bidding	Cumulative total bid of quantities
\$450.00	1	Ecotech International	1
369.00	1	P. Eric Ralston	2
350.00	1	National Healthy Air License Exchn.	3
280.00	1	Energy Planning Tools, Inc.	4
251.00	1	World Charitable Trust	5
234.00	1	Babcock & Wilcox	6
225.00	1	Victor Niemeier	7
208.00	2	Energy Planning Tools, Inc.	9
201.00	1,000	Kentucky Utilities Company	1,009
200.00	500	Hoosier Energy REC, Inc.	1,509
200.00	1	Fieldston Co.	1,510
200.00	1	William Brady, III	1,511
200.00	1	Van Horn Consulting	1,512
176.00	3,000	Kentucky Utilities Company	4,512
175.00	5,000	Illinois Power	9,512
175.00	1	Fieldston Co.	9,513
173.00	70	Savannah Electric and Power Co.	9,583
171.00	604	Carolina Power & Light Company	10,187
170.00	2,572	Cantor Fitzgerald	12,759
162.00	1,277	Carolina Power & Light Company	14,036
158.00	3	Energy Planning Tools, Inc.	14,039
157.00	2,636	Carolina Power & Light Company	16,675
156.00	446	Gulf Power Company	17,121
152.00	4,085	Carolina Power & Light Company	21,206
152.00	45	Jemison Investment Co., Inc.	21,251
151.00	3,300	American Electric Power Service	24,551
151.00	8,900	Kentucky Utilities Company	33,451
150.00	10,000	PSI Energy, Inc.	43,451
150.00	69	Savannah Electric and Power Co.	43,520
150.00	500	Hoosier Energy REC, Inc.	44,020
150.00	1	Fieldston Co.	44,021
142.00	2,914	Carolina Power & Light Company	46,935
141.00	48	Jemison Investment Co., Inc.	46,983
138.00	972	Mississippi Power Company	47,955
132.00	1,567	Carolina Power & Light Company	49,522
131.00	*3,800	American Electric Power Service	53,322
130.00	1		53,323
130.00	10,000		63,323
128.00	729		64,052
128.00	3		64,055
126.00	81		64,136
122.00	848		64,984
122.00	27,709		92,693
120.00	100		92,793
108.00	3		92,796
106.00	128		92,924
101.00	5,000		97,924
101.00	1,000		98,924
100.00	1,000		99,924
100.00	20,000		119,924
100.00	500		120,424
100.00	10		120,434
100.00	2		120,436
100.00	50		120,486
100.00	200		120,686
96.00	142		120,828
92.00	35,400		156,228
90.00	3		156,231
88.00	2,750		158,981

TABLE 2.—SPOT AUCTION BID AND PURCHASE DATA—Continued  
[1995 Allowances]

Bid/allowance	Quantity bid	Firm/Individual bidding	Cumulative total bid of quantities
85.00	851		159,832
81.00	20		159,852
80.00	500		160,352
78.00	5		160,357
77.00	2,500		162,857
77.00	2,500		165,357
77.00	2,500		167,857
77.00	2,500		170,357
77.00	2,500		172,857
77.00	2,500		175,357
76.00	1,000		176,357
76.00	134		176,491
66.00	103		176,594
65.00	4		176,598
60.00	1,400		177,998
58.00	10		178,008
52.00	2,675		180,683
52.00	2,665		183,348
52.00	2,665		186,013
52.00	2,665		188,678
52.00	2,665		191,343
52.00	2,665		194,008
51.00	80		194,088
51.00	133		194,221
50.00	25,000		219,221
50.00	11,750		230,971
50.00	5,000		235,971
50.00	4,000		239,971
50.00	2,000		241,971
50.00	1		241,972
50.00	100		242,072
38.00	50		242,122
26.00	10		242,132
11.00	100		242,232
11.00	2,272		244,504
10.00	1,000		245,504
10.00	1,000		246,504
6.00	1,000		247,504
5.00	50,000		297,504
3.00	300		297,804
2.60	100		297,904
2.00	200		298,104
2.00	5,000		303,104
1.00	7,000		310,104
1.00	10,000		320,104
1.00	250		320,354
0.26	1,000		321,354

\* Awarded a partial fill of 488 out of 3,800; 478 EPA reserve allowances and 10 offered allowances.

**B. Advance Auction Results**

CBOT received 65 bids requesting 283,406 year 2000 allowances. 30 bids

were successful and 100,000 allowances were sold (see Table 3). Advance auction proceeds totaled \$13,618,630.

TABLE 3.—ADVANCE AUCTION BID AND PURCHASE DATA  
[2000 Allowances]

Bid/allowance	Quantity bid	Firm/Individual bidding	Cumulative total of bid quantities
\$310.00	1	C/O Resources For The Future	1
275.00	1	Fieldston Co.	2
251.00	1	Charles Kolstad	3
240.00	100	Emissions Exchange Company	103
207.00	1	United Engineers & Constructors	104

TABLE 3.—ADVANCE AUCTION BID AND PURCHASE DATA—Continued  
[2000 Allowances]

Bid/allowance	Quantity bid	Firm/individual bidding	Cumulative total of bid quantities
200.00	1	Natural Resources Defense Council	105
200.00	1	Fieldston Co.	106
171.00	24	William Herrington	130
171.00	1,209	Carolina Power & Light Company	1,339
166.00	30	William Herrington	1,369
162.00	2,554	Carolina Power & Light Company	3,923
161.00	37	William Herrington	3,960
157.00	5,272	Carolina Power & Light Company	9,232
156.00	45	William Herrington	9,277
152.00	8,170	Carolina Power & Light Company	17,447
151.00	300	Paul Wedel	17,747
151.00	54	William Herrington	17,801
147.00	25,000	Duke Power Company	42,801
146.00	64	William Herrington	42,865
142.00	5,830	Carolina Power & Light Company	48,695
141.00	709	Gulf Power Company	49,404
141.00	75	William Herrington	49,479
136.00	87	William Herrington	49,566
132.00	3,135	Carolina Power & Light Company	52,701
131.00	100	William Herrington	52,801
128.00	1,234	The Cincinnati Gas & Electric Co.	54,035
126.00	114	William Herrington	54,149
125.00	1	Victor Niemeyer	54,150
122.00	1,696	Carolina Power & Light Company	55,846
122.00	*55,416	Carolina Power & Light Company	111,262
117.00	41		111,303
101.00	500		111,803
101.00	2,500		114,303
85.00	2,282		116,585
82.00	58		116,643
78.00	5		116,648
76.00	10,000		126,648
62.00	5,000		131,648
61.00	5,000		136,648
56.00	128		136,776
52.00	7,000		143,776
51.00	100		143,876
50.00	2,000		145,876
45.00	2		145,878
43.00	10		145,888
41.00	8,000		153,888
41.00	117		154,005
40.00	25,000		179,005
31.00	5,000		184,005
26.00	138		184,143
23.00	50		184,193
20.00	1		184,194
11.00	2,272		186,466
11.00	100		186,566
6.00	1,000		187,566
6.00	830		188,396
5.00	75,000		263,396
3.00	1,000		264,396
3.00	500		264,896
2.00	5,000		269,896
1.00	1,010		270,906
1.00	7,000		277,906
1.00	250		278,156
1.00	250		278,406
0.01	5,000		283,406

\* Awarded a partial fill of 44,154 out of 55,416.

C. Who Bid in the Auctions

The affiliations of bidders and purchasers are summarized below.

	Bidders (In percentages)		Purchasers (In percentages)	
	Spot	Advance	Spot	Advance
Utilities .....	52	32	95	99
Brokerage Firms .....	8	12	5	1
Public Interest Groups .....	6	9	< 1	< 1
Private Investors .....	20	38	< 1	< 1
Other .....	14	9	< 1	< 1

**FOR FURTHER INFORMATION CONTACT:**  
Linda Reidt Critchfield, EPA/OAP/Acid Rain Division (6204J), 401 M St., SW. Washington, DC 20460, (202) 233-9087.

Dated: April 29, 1993.

**Brian J. McLean,**  
Director, Acid Rain Division.

[FR Doc. 93-10987 Filed 5-7-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4653-6]

**Pre-Solicitation Alert for Environmental Education Grants; Important Pre-Application Scheduling Information**

To accommodate the schedule of many environmental educators, EPA plans to solicit and award environmental education grants earlier in 1994 than in previous years. In Mid-July, EPA intends to publish in the *Federal Register* a solicitation for the third year of this annual program. Grant pre-applications must be submitted by mid-October 1993. Subject to the availability of funds, the target date for the award of Environmental education grants is April 1, 1994. Although deadlines and priorities will differ from those of the 1993 program, general information about the program will be similar and can be found in last year's solicitation notice published in the *Federal Register* on October 16, 1992.

**How can I receive information on the Fiscal Year 1994 Environmental Education Grants Program?**

After the Fiscal Year 1993 Solicitation was published, EPA started a new mailing list for the Fiscal Year 1994 Solicitation. If you did not submit a pre-application or have not mailed in your address this year and you wish to receive information on the 1994 Environmental Education Grants Program, you must mail your request along with your name, organization, address, and phone number to: Environmental Education Grants—1994 (A-107), U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

Information about the 1994 grants program will not be available until after

the solicitation has been published in mid-July. Contact: George Walker at 202-260-3335; or Michael Baker at 202-260-4958.

**Bradley F. Smith,**  
Director, Office of Environmental Education.  
[FR Doc. 93-10986 Filed 5-7-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4653-4]

**Science Advisory Board, Environmental Engineering Committee; Global Climate Change Engineering Research Subcommittee Open Meeting**

May 26-27, 1993.

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Global Climate Change Engineering Research Subcommittee (GCCERS) of the Environmental Engineering Committee (EEC), will meet on Wednesday, May 26, and Thursday, May 27, 1993. The meeting will be at the U.S. Environmental Protection Agency (EPA), Air and Energy Engineering Research Laboratory (AEERL) at Research Triangle Park, North Carolina 27711. The meeting will begin at 9 am on Wednesday, May 26th and 8:30 am on Thursday, May 27th and will adjourn no later than 4 pm on May 27th.

At this meeting, the GCCERS will receive briefings from Agency staff, and comment on the draft report on the Agency's Global Climate Change Engineering Research Program, which was prepared by the Agency's Office of Research and Development (ORD) staff. Copies of this draft report on the Agency's Global Climate Change Engineering Research Program may be obtained by contacting Ms. Lynn Pendergraft, Secretary to the Global Warming Control Branch of the Global Emissions Control Division (Mail Drop 63) at the U.S. EPA's Air and Energy Engineering Research Laboratory (AEERL), Research Triangle Park, North Carolina 27711 at (919) 541-2578.

The proposed charge to the SAB's GCCERS from the Agency's ORD is to address the overall global climate

change engineering research program, to evaluate research-in-progress, and to examine strategic directions issues for the research program. The following areas will be addressed in the review: (1) Greenhouse gas emissions characterization and data base management, and (2) methane mitigation research (includes waste methane energy recovery using fuel cells, as well as coal mine methane mitigation), and (3) biomass utilization research for fossil fuel displacement. The AEERL staff will also present its strategy for a more comprehensive future program, assuming that significantly greater resources will become available for engineering research. The following questions are being asked of the SAB/GCCERS: (1) Is the EPA/ORD/AEERL approach to global climate change engineering research, with its focus on the above topical areas, a rational and scientifically sound approach? (2) Is the EPA/ORD/AEERL approach to global climate change engineering research sufficiently rigorous and appropriately practical? (3) Are the current AEERL projects reasonable and scientifically sound? (4) Is the AEERL proposed expanded program and strategic direction reasonable and scientifically sound? (5) If successful, will the AEERL program make a significant contribution to global climate change research? and (6) Is there any aspect of AEERL's proposed strategic directions for the global climate change engineering research program that should be reevaluated?

The meeting is open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Dorothy M. Clark, Secretary to the Global Climate Change Engineering Research Subcommittee, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 260-6552 or FAX (202) 260-7118. Written comments received by May 12, 1993 will be mailed to the SAB/GCCERS; comments received after that

date will be provided to the GCCERS at the meeting. Written comments of any length (at least 35 copies) may be provided to the Subcommittee up until the meeting.

Members of the public who wish to make a brief oral presentation should contact Dr. K. Jack Kooyoomjian no later than May 19, 1992 in order to have time reserved on the agenda. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: April 26, 1993.

**A. Robert Flank,**

*Acting Staff Director, Science Advisory Board (A101F).*

[FR Doc. 93-10989 Filed 5-7-93; 8:45 am]

BILLING CODE 6560-60-P

[FRL-4653-3]

### Idaho: Adequacy Determination of State Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of tentative determination on application of Idaho for full program adequacy determination, public hearing and public comment period.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy

determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Idaho applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Idaho's MSWLF application and made a tentative determination that all portions of Idaho's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Idaho's application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the DATES section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the CONTACTS section below.

**DATES:** All comments on Idaho's application for a determination of adequacy must be received by U.S. EPA Region 10 by the close of business on June 30, 1993. If a public hearing is held, it will be scheduled for June 30, 1993. Idaho will participate in the public hearing held by EPA on this subject.

**ADDRESSES:** Copies of Idaho's application for adequacy determination are available during 8:30 a.m. to 4:30 p.m. during normal working days at the following addresses for inspection and copying: Idaho Division of Environmental Quality, 1410 N. Hilton,

Boise, ID 83706, Attn: Ms. Jolene Carroll, (208) 334-5860; U.S. EPA Region 10 Library, 1200 Sixth Avenue, Seattle, WA, (206) 553-1289. Written comments should be sent to Paula vanHaagen, U.S. EPA, HW-107, 1200 Sixth Avenue, Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Paula vanHaagen, U.S. EPA, HW-107, 1200 Sixth Avenue, Seattle, WA 98101, telephone (206) 553-1847.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA

expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

#### B. Idaho

On April 5, 1993, Idaho submitted an application for adequacy determination. EPA reviewed Idaho's application and tentatively determined that all portions of the State/Tribe's Subtitle D program will ensure compliance with the revised Federal Criteria. Idaho's program is not enforceable on Indian lands.

The public may submit written comments on EPA's tentative determination until June 30, 1993. Copies of Idaho's application are available for inspection and copying at the location indicated in the ADDRESSES section of this notice. If there is sufficient public interest, the Agency will hold a public hearing on its tentative decision on June 30, 1993, from 10:30 a.m. to 1 p.m. at the Idaho Division of Environmental Quality in Boise, Idaho.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Idaho's program. EPA will make a final decision on whether or not to approve Idaho's program by August 30, 1993, and will give notice of it in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

#### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

#### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial

number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

**Dana A. Rasmussen,**

*Regional Administrator.*

[FR Doc. 93-10988 Filed 5-7-93; 8:45 am]

**BILLING CODE 6560-50-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 30, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, suite 140, Washington, DC 20037, (202) 857-3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

**OMB Number:** 3060-0243.

**Title:** Section 74.551, Equipment changes.

**Action:** Extension of a currently approved collection.

**Respondents:** Businesses or other for-profit (including small businesses).

**Frequency of Response:** On occasion reporting.

**Estimated Annual Burden:** 50 responses; 1 hour average burden per response; 50 hours total annual burden.

**Needs and Uses:** Section 74.551(b) requires licensees of aural broadcast studio transmitter links (STL) or intercity relay stations to notify the Commission in writing of minor equipment changes that can be made without prior Commission authorization upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the rules and regulations.

**OMB Number:** 3060-0245.

**Title:** Section 74.537, Temporary authorizations.

**Action:** Extension of a currently approved collection.

**Respondents:** Businesses or other for-profit (including small businesses).

**Frequency of Response:** On occasion reporting.

**Estimated Annual Burden:** 200 responses; 2 hours average burden per response; 400 hours total annual burden.

**Needs and Uses:** Section 74.537 requires licensees of aural broadcast studio transmitter link (STL) or intercity relay station to file an informal request for special temporary authorization for operations of a temporary nature. The data is used by FCC staff to insure that the temporary operation of an STL or intercity relay station will not cause interference to existing stations.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 93-10874 Filed 5-7-93; 8:45 am]

**BILLING CODE 6712-01-M**

[DA 93-508]

#### Deadline to File Pioneer's Preference Requests For Satellite Digital Audio Radio Service GEN Docket No. 90-357 (Ref: RM-7400)

May 3, 1993.

The Chief Engineer announced that June 2, 1993 will be the final day for filing pioneer's preference requests with regard to a petition to allocate the 2310-2360 MHz band for delivery of digital audio radio by means of satellites. Any party filing a pioneer's preference request must reference GEN Docket No. 90-357 and RM-7400 on the cover page of its request. Parties should note that this Public Notice does not apply to delivery of digital audio radio by terrestrial means.

This action is taken pursuant to the Commission's rules, which state that by public notice a date will be announced after which pioneer's preference requests relating to a specific new spectrum-based service or technology will be accepted. 47 CFR 1.402(c) (1992). The rules also state that a tentative preference will not be awarded an applicant that has not submitted a demonstration of technical feasibility or commenced an experiment and reported at least preliminary results. 47 CFR 5.207 (1992). Therefore, June 2, 1993 also will be the final day for a pioneer's preference applicant to submit the demonstration of technical feasibility or experimental results required to be filed.

For further information, contact Damon C. Ladson, Office of Engineering and Technology, (202) 653-8106. Federal Communications Commission. Donna R. Searcy, Secretary. [FR Doc. 93-10875 Filed 5-7-93; 8:45 am] BILLING CODE 4712-01-M

**Travel Reimbursement Program; January 1, 1993—March 31, 1993**

**Summary Report**

Total Number of Sponsoring Events .....	20
Total Number of Sponsoring Organizations .....	19
Total Number of Different Commissioners/Employees Attending .....	25
Total Amount of Reimbursement Expected:	
Transportation .....	\$12,894.00
Subsistence .....	10,129.21
Other Expenses .....	2,420.75
<b>Total .....</b>	<b>\$25,443.96</b>

**Sponsoring Organization:** Association of American Railroads, Operations & Maintenance Dept., Communications and Signal Division, 50 F Street, NW., Washington, DC 20001

**Date of the Event:** January 27-31, 1993  
**Description of the Event:** Meeting of the Communications Liaison Subcommittee, Salt Lake City, Utah  
**Commissioners Attending:** None  
**Other Employees Attending:** Ralph A. Haller, Chief, Private Radio Bureau

**Amount of Reimbursement:**

Transportation .....	\$311.00
Subsistence .....	377.50
Other Expenses .....	30.00
<b>Total .....</b>	<b>718.50</b>

**Sponsoring Organization:** LXE Inc., 303 Research Drive, P.O. Box 926000, Norcross, Georgia 30092.

**Date of the Event:** February 24-25, 1993  
**Description of the Event:** Automatic Identification Manufacturers (AIM) Meeting, Dallas, Texas  
**Commissioners Attending:** None  
**Other Employees Attending:** David R. Siddall, Chief, Frequency Allocation Branch, Office of Engineering & Technology

**Amount of Reimbursement:**

Transportation .....	\$352.00
Subsistence .....	141.92
Other Expenses .....	22.11
<b>Total .....</b>	<b>516.03</b>

**Sponsoring Organization:** American Mobile Telecommunications Assoc.,

1835 K Street, NW., Suite 203, Washington, DC 20006  
**Date of the Event:** January 25-26, 1993  
**Description of the Event:** AMTEX 93, New Orleans, Louisiana  
**Commissioners Attending:** None  
**Other Employees Attending:** Ralph Haller, Chief, Private Radio Bureau  
**Amount of Reimbursement:**

Transportation .....	\$315.00
Subsistence .....	161.50
Other Expenses .....	39.00
<b>Total .....</b>	<b>515.50</b>

**Sponsoring Organization:** Wertheim Schroder & Company, Equitable Center, 787 Seventh Avenue, New York, New York 10019.  
**Date of the Event:** March 23, 1993  
**Description of the Event:** The Business of Entertainment: The Big Picture, New York, New York  
**Commissioners Attending:** James H. Quello  
**Other Employees Attending:** None  
**Amount of Reimbursement:**

Transportation .....	\$133.00
Subsistence .....	247.99
Other Expenses .....	126.21
<b>Total .....</b>	<b>507.20</b>

**Sponsoring Organization:** Cardiff Publishing Company, 214 Massachusetts Avenue NE., Suite 360, Washington, DC 20002.  
**Date of the Event:** March 23-25, 1993  
**Description of the Event:** International Mobile Communications Expo, Anaheim, California  
**Commissioners Attending:** None  
**Other Employees Attending:** Beverly Baker, Deputy Chief, Private Radio Bureau  
**Amount of Reimbursement:**

Transportation .....	\$398.00
Subsistence .....	206.50
Other Expenses .....	88.50
<b>Total .....</b>	<b>693.00</b>

**Sponsoring Organization:** Communications Fraud Control Association, 1990 M Street, NW., Suite 508, Washington, DC 20036.  
**Date of the Event:** March 24, 26, 1993  
**Description of the Event:** Conference on PBX and Voice Mail Fraud, San Francisco, California  
**Commissioners Attending:** None  
**Other Employees Attending:** Gerald Vaughan, Deputy Chief, Common Carrier Bureau  
**Amount of Reimbursement:**

Transportation .....	\$550.00
Subsistence .....	474.00
Other Expenses .....	74.50
<b>Total .....</b>	<b>1,098.50</b>

**Sponsoring Organization:** COMPTEL, 1140 Connecticut Avenue, NW., Suite 220, Washington, DC 20036.  
**Date of the Event:** March 2, 1993  
**Description of the Event:** 1993 Annual Convention & Exposition, Boston, Massachusetts  
**Commissioners Attending:** None  
**Other Employees Attending:** Brian F. Fontes, Chief of Staff, for the Chairman  
**Amount of Reimbursement:**

Transportation .....	\$270.00
Subsistence .....	25.50
Other Expenses .....	6.00
<b>Total .....</b>	<b>301.50</b>

**Sponsoring Organization:** Keller & Heckman, Law Offices, Suite 500, Washington, DC 20001.  
**Date of the Event:** March 21-24, 1993  
**Description of the Event:** ENTELEC '93, New Orleans, Louisiana  
**Commissioners Attending:** None  
**Other Employees Attending:** Thomas P. Stanley, Chief Engineer, Office of Engineering & Technology  
**Amount of Reimbursement:**

Transportation .....	\$418.00
Subsistence .....	52.55
Other Expenses .....	48.50
<b>Total .....</b>	<b>519.05</b>

**Sponsoring Organization:** George Washington University, School of Engineering and Applied Science, Washington, DC 20052.  
**Date of the Event:** January 25-28, 1993  
**Description of the Event:** Workshop on Policy Questions Related to Computer Networks, Jacksonville, Florida  
**Commissioners Attending:** None  
**Other Employees Attending:** Charla Rath, Special Advisor To The Chairman  
**Amount of Reimbursement:**

Transportation .....	\$400.00
Subsistence .....	349.00
Other Expenses .....	71.19
<b>Total .....</b>	<b>820.19</b>

**Sponsoring Organization:** Institute for International Research, 437 Madison Avenue, 23rd Floor, New York, New York 10022.  
**Date of the Event:** February 1-2, 1993  
**Description of the Event:** "Personal Communications Services (PCS): Position Your Company For The Coming Revolution," Dallas, Texas  
**Commissioners Attending:** Andrew C. Barrett  
**Other Employees Attending:** None  
**Amount of Reimbursement:**

Transportation .....	\$368.00
Subsistence .....	123.62



Other Expenses .....	0
Total .....	<u>491.62</u>

**Sponsoring Organization:** Independent Television, INTV Association of Independent Television Stations Inc., 1200 Eighteenth Street, NW., Suite 502, Washington, DC 20036.

**Date of the Event:** January 23-28 1993

**Description of the Event:** NATPE/INTV Conference, San Francisco, California

**Commissioners Attending:**

James H. Quello, Chairman; Andrew C. Barrett, Commissioner; Ervin S. Duggan, Commissioner; Sherrie P. Marshall, Commissioner

**Other Employees Attending:**

Robert Corn-Revere, Senior Advisor to the Chairman James H. Quello; John C. Hollar, Senior Legal Advisor to Commissioner Ervin S. Duggan; Charles W. Kelley, Chief, Enforcement Division, Mass Media Bureau; Elaine C. Lorentz, Confidential Assistant to Chairman Alfred C. Sikes; Byron F. Marchant, Legal Advisor to Commissioner Andrew C. Barret; Robert M. Pepper, Chief, Office of Plans and Policy; Peter D. Ross, Legal Advisor to Commissioner Sherrie P. Marshall; Thomas Stanley, Chief Engineer, Office of Engineering & Technology; Roy J. Stewart, Chief, Mass Media Bureau

**Amount of Reimbursement:**

Transportation .....	\$6,616.00
Subsistence .....	6,000.55
Other Expenses .....	1,196.81
Total .....	<u>13,813.36</u>

**Sponsoring Organization:** Minnesota Broadcasters Association, 3517 Raleigh Avenue, P.O. Box 16030, St. Louis, Minnesota 55416

**Date of the Event:** February 7-9, 1993

**Description of the Event:** Midwest Broadcasters Conference, Minneapolis, Minnesota

**Commissioners Attending:** None

**Other Employees Attending:** Arlan K. Van Doorn, Deputy Chief, Field Operations Bureau

**Amount of Reimbursement:**

Transportation .....	\$471.00
Subsistence .....	239.52
Other expenses .....	43.30
Total .....	<u>753.82</u>

**Sponsoring Organization:** NATPE International, 2425 West Olympic Blvd., suite 550E, Santa Monica, California 90404

**Date of the Event:** January 25-27, 1993

**Description of the Event:** 1993 Program Conference, San Francisco, California

**Commissioners Attending:** None

**Other Employees Attending:** Barbara Kreisman, Chief, Video Services Division, Mass Media Bureau

**Amount of Reimbursement:**

Transportation .....	\$550.00
Subsistence .....	277.50
Other expenses .....	114.00
Total .....	<u>941.50</u>

**Sponsoring Organization:** Satellite Broadcasting & Communication Association, 225 Reinkers Lane, Suite 600, Alexandria, Virginia 22314.

**Date of the Event:** January 12-16, 1993

**Description of the Event:** Satellite Trade Show, San Diego, California

**Commissioners Attending:** None

**Other Employees Attending:** Jonathan D. Levy, Industry Economist, Office of Plans & Policy

**Amount of Reimbursement:**

Transportation .....	\$366.00
Subsistence .....	469.50
Other Expenses .....	72.00
Total .....	<u>907.50</u>

**Sponsoring Organization:** Toy Manufacturers of America, 200 Fifth Avenue, New York, New York 10010

**Date of the Event:** February 10-11, 1993

**Description of the Event:** American International Toy Fair, New York, New York

**Commissioners Attending:** None

**Other Employees Attending:** Barbara Kreisman, Chief, Video Services Division, Mass Media Bureau

**Amount of Reimbursement:**

Transportation .....	\$133.00
Subsistence .....	182.50
Other Expenses .....	150.28
Total .....	<u>465.78</u>

**Sponsoring Organization:** U.S. West, Inc., 1020 Nineteenth Street, NW., Suite 700, Washington, DC 20036

**Date of the Event:** March 10-12, 1993

**Description of the Event:** Public Policy Leadership Conference, Denver, Colorado

**Commissioners Attending:** None

**Other Employees Attending:** Linda Oliver, Legal Advisor to Commissioner Duggan

**Amount of Reimbursement:**

Transportation .....	\$339.00
Subsistence .....	191.60
Other Expenses .....	149.60
Total .....	<u>680.20</u>

**Sponsoring Organization:** United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006

**Date of the Event:** March 8-10, 1993

**Description of the Event:** Three-Way Depreciation Meetings With FCC, State Staff, & New England

Telephone, Boston, Massachusetts

**Commissioners Attending:** None

**Other Employees Attending:** Fatina Franklin, Chief, Depreciation Rates Section, Common Carrier Bureau

**Amount of Reimbursement:**

Transportation .....	\$140.00
Subsistence .....	242.96
Other Expenses .....	38.75
Total .....	<u>421.71</u>

**Sponsoring Organization:** United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006

**Date of the Event:** February 21-24, 1993

**Description of the Event:** Three-Way Depreciation Meetings With FCC, State Staff & Southwest Telephone Company, San Antonio, Texas

**Commissioners Attending:** None

**Other Employees Attending:** Fatina Franklin, Chief, Depreciation Rates Section Common Carrier Bureau

**Amount of Reimbursement:**

Transportation .....	\$446.00
Subsistence .....	280.50
Other Expenses .....	59.00
Total .....	<u>785.50</u>

**Sponsoring Organization:** Virginia Association of Broadcast Educators, Marilou M. Johnson, Assistant Professor, Department of Mass Communication, James Madison University, Harrisonburg, Virginia

**Date of Event:** March 26, 1993

**Description of the Event:** Spring Meeting of Virginia Association of Broadcast Educators, Harrisonburg, Virginia

**Commissioners Attending:** None

**Other Employees Attending:** William H. Hassinger, Assistant Chief, Engineering Mass Media Bureau

**Amount of Reimbursement:**

Transportation .....	0
Subsistence .....	0
Other Expenses .....	\$59.00
Total .....	<u>59.00</u>

**Sponsoring Organization:** West Virginia Broadcasters Association, Marilyn Fletcher, Executive Director, 2120 Weberwood Drive, So. Charleston, West Virginia 25303

**Date of the Event:** January 31-February 1, 1993

**Description of the Event:** West Virginia Broadcasters Association's Winter Conference, So. Charleston, West Virginia

**Commissioners Attending:** None

<b>Other Employees Attending:</b> Roy Stewart, Chief, Mass Media Bureau	
<b>Amount of Reimbursement:</b>	
Transportation .....	\$318.00
Subsistence .....	84.50
Other Expenses .....	32.00
Total .....	434.50

Federal Communications Commission.

**Donna R. Searcy,**  
Secretary.

[FR Doc. 93-10878 Filed 5-7-93; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Information Collection Submitted to OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

**Type of Review:** Extension of expiration date without any change in substance or method of collection.

**Title:** Notices required of government securities dealers or brokers (insured state nonmember banks.)

**Form Number:** G-FIN, G-FINW, G-FIN-4, G-FIN-5.

**OMB Number:** 3064-0093.

**Expiration Date of Current OMB Clearance:** July 31, 1993.

**Frequency of Response:** On occasion.

**Respondents:** Insured State nonmember banks acting as government securities brokers or dealers.

**Number of Respondents:** 254.

**Number of Responses per Respondent:** 1.

**Total Annual Responses:** 254.

**Average Number of Hours Per Response:** 1.

**Total Annual Burden Hours:** 254.

**OMB Reviewer:** Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0093, Washington, DC 20503.

**FDIC Contact:** Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**Comments:** Comments on this collection of information are welcome

and should be submitted on or before July 9, 1993.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** The Government Securities Act of 1986 requires all financial institutions that act as government securities brokers or dealers to notify their designated federal regulatory agencies of their broker-dealer activities, unless exempted from the notice requirement by Treasury Department regulation (17 CFR part 401). Forms G-FIN, G-FINW, G-FIN-4 and G-FIN-5 have been developed to meet the reporting requirements of the Act.

Dated: May 3, 1993.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

Deputy Executive Secretary.

[FR Doc. 93-10887 Filed 5-7-93; 8:45 am]

BILLING CODE 6714-01-M

### Information Collection Submitted to OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

**Type of Review:** Extension of expiration date without any change in substance or method of collection.

**Title:** Notification of Rapid Growth.

**Form Number:** None.

**OMB Number:** 3064-0074.

**Expiration Date of Current OMB Clearance:** July 31, 1993.

**Frequency of Response:** On occasion.

**Respondents:** Insured banks planning to increase assets by more than seven and one-half percent during any three consecutive months.

**Number of Respondents:** 650.

**Number of Responses Per Respondent:** 1.

**Total Annual Responses:** 650.

**Average Number of Hours Per Response:** 2.5.

**Total Annual Burden Hours:** 1,625.

**OMB Reviewer:** Gary Waxman, (202) 395-7340, Office of Management and

Budget, Paperwork Reduction Project 3064-0074, Washington, DC 20503.

**FDIC Contact:** Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**Comments:** Comments on this collection of information are welcome and should be submitted on or before July 9, 1993.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** Insured banks must give the FDIC thirty days' advance notice before increasing assets by more than seven and one-half percent during any three consecutive months. The FDIC will use prompt notice to deter and perhaps forestall imprudent loans and investments.

Dated: May 4, 1993.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

Deputy Executive Secretary.

[FR Doc. 93-10926 Filed 5-7-93; 8:45 am]

BILLING CODE 6714-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; FMG/CSAV/NAV Cooperative Working Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor.

Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

**Agreement No.:** 203-011298-002.

**Title:** FMG/CSAV/NAV Cooperative Working Agreement.

**Parties:** Flota Mercante Grancolombiana - Compania Sud Americana de Vapores - Naviera Interamericana Navicana S.A.

**Synopsis:** The proposed amendment adds a new provision to the

Agreement allowing the parties to file a single tariff, except where a party to the Agreement does not wish to adhere to such rates, charges or conditions. The nonparticipating party will file its own tariff for such rates, charges or conditions.

Dated: May 4, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,  
Secretary.

[FR Doc. 93-10939 Filed 5-7-93; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Aspen Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than June 1, 1993.

**A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:**

1. *Aspen Bancshares, Inc.*, Aspen, Colorado; to acquire Centennial Savings Bank, F.S.B., Durango, Colorado, and engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-10953 Filed 5-7-93; 8:45 am]

BILLING CODE 6210-01-F

### City Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 1, 1993.

**A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:**

1. *City Holding Company*, Charleston, West Virginia; to acquire 67 percent of the voting shares of First National Bank, Beckley, West Virginia.

2. *UBC Holding Company, Inc.*, Charleston, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of United

National Bank, Parkersburg, West Virginia.

3. *United Bankshares, Inc.*, Charleston, West Virginia; to merge with Financial Future Corporation, Ceredo, West Virginia, and thereby indirectly acquire First Bank of Ceredo, Ceredo, West Virginia.

**B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:**

1. *Castle Rock Bank Holding Company*, Castle Rock, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Castle Rock Bank, Castle Rock, Colorado.

2. *Rice Insurance Agency, Inc.*, Strasburg, Colorado; parent of First National Bank of Strasburg, Strasburg, Colorado, to acquire The Byers State Bank, Byers, Colorado.

**C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:**

1. *Central Texas Bankshare Holdings, Inc.*, Columbus, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Columbus State Bank, Columbus, Texas.

2. *Chico Bancorp, Inc.*, Chico, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank of Chico, Chico, Texas.

Board of Governors of the Federal Reserve System, May 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-10956 Filed 5-7-93; 8:45 am]

BILLING CODE 6210-01-F

### Theodore G. and Ann C. Robinson; Change in Bank Control Notice

#### Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the

Board of Governors. Comments must be received not later than May 27, 1993.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Theodore G. and Ann C. Robinson*, Maryville, Missouri; to retain an additional 1.78 percent of the voting shares of Nodaway Valley Bancshares, Inc., Maryville, Missouri, for a total of 25.58 percent, and thereby indirectly acquire Nodaway Valley Bank, Maryville, Missouri.

Board of Governors of the Federal Reserve System, May 3, 1993.

**Jennifer J. Johnson**,

*Associate Secretary of the Board.*

[FR Doc. 93-10957 Filed 5-7-93; 8:45 am]

BILLING CODE 6210-01-F

**George E. Scharpf, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 1993.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *George E. Scharpf*, Colts Neck, New Jersey, and *Ernest Scharpf*, Old Bridge, New Jersey; to acquire 13.05 percent of the voting shares of Amboy Bancorporation, Inc., Old Bridge, New Jersey.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Charles Francis Hebert*, Cameron, Louisiana; to retain 10.31 percent of the voting shares of Cameron Bancshares, Inc., Cameron, Louisiana, and thereby indirectly retain shares of Cameron State Bank, Cameron, Louisiana.

**C. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Linden D. Beckstead*, Preston, Idaho, to retain 26.0 percent; *Newell G. Daines, Jr.*, Logan, Utah, to retain 27.77 percent; and *N. George Daines*, Logan, Utah, to retain 26.0 percent, of the voting shares of Cache Valley Bank, Logan, Utah.

Board of Governors of the Federal Reserve System, May 4, 1993.

**Jennifer J. Johnson**,

*Associate Secretary of the Board.*

[FR Doc. 93-10941 Filed 5-7-93; 8:45 am]

BILLING CODE 6210-01-F

**Signet Banking Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities**

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1993.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation*, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Strategic Capital Corporation, Richmond, Virginia, in providing investment advice as a commodity trading advisor with respect to certain futures contracts and options on futures contracts pursuant to § 225.25(b)(19) of the Board's Regulation Y and *The Hong Kong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990) and *The Long-Term Credit Bank of Japan, Limited*, 79 Federal Reserve Bulletin 347.

Board of Governors of the Federal Reserve System, May 3, 1993.

**Jennifer J. Johnson**,

*Associate Secretary of the Board.*

[FR Doc. 93-10955 Filed 5-7-93; 8:45 am]

BILLING CODE 6210-01-F

**Susquehanna Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company**

This notice corrects a previous notice (FR Doc. 10060) published at page 25989 of the issue for Thursday, April 29, 1993.

Under the Federal Reserve Bank of Philadelphia heading, the entry for Susquehanna Bancshares, Inc. is revised to read as follows:

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Susquehanna Bancshares, Inc.*, Lititz, Pennsylvania; to merge with Central Financial Corporation, Columbia, Pennsylvania, and thereby indirectly acquire Farmers First Savings Bank, Columbia, Pennsylvania, formerly known as Central Savings and Loan Association.

In connection with this application, Central Financial Corporation has applied to become a bank holding company by acquiring Farmers First Savings Bank.

Board of Governors of the Federal Reserve System, May 3, 1993.

**Jennifer J. Johnson**,

*Associate Secretary of the Board.*

[FR Doc. 93-10954 Filed 5-7-93; 8:45 am]

BILLING CODE 6210-01-F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention (CDC)**

[Program Announcement 402]

**Fiscal Year 1994 Grants for Unintentional Injury Prevention and Control Research Amendment**

A notice announcing the availability of Fiscal Year 1994 funds for grants to support Grants for Unintentional Injury Prevention and Control Research was published in the *Federal Register* on April 21, 1993, [58 FR 21466]. The notice is amended as follows:

On page 21468, second column, in the information under the heading, "Where to Obtain Additional Information," the first sentence should be removed and the following added in its place: To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and phone number and will need to refer to

Announcement Number 402. You will receive a complete program description, information on application procedures, and application forms.

All other information and requirements in the notice remain the same.

Dated: May 4, 1993.

Robert L. Foster,

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93-10947 Filed 5-7-93; 8:45 am]

BILLING CODE 4160-10-P

**Food and Drug Administration**

[Docket No. 93N-0162]

**Fujisawa USA, Inc., et al.; Withdrawal of Approval of 26 Abbreviated New Drug Applications**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 26 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

**EFFECTIVE DATE:** June 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8038.

**SUPPLEMENTARY INFORMATION:** The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
18-549 ....	Dopamine Hydrochloride Injection, U.S.P., 40 milligrams (mg)/milliliter (mL).	Fujisawa U.S.A., Inc., 2045 North Cornell Ave., Melrose Park, IL 60160-1002.
70-293 ....	Metoclopramide Hydrochloride Injection, 5 mg/mL, 2 mL vial .....	Do.
80-390 ....	Lidocaine Hydrochloride Injection, U.S.P., 10 mg/mL and 20 mg/mL.	Do.
80-883 ....	Alphalin (vitamin A) Gelseal .....	Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285.
83-075 ....	Cyanocobalamin Injection, U.S.P., 1,000 micrograms/mL, 10 and 30 mL.	Fujisawa U.S.A., Inc.
83-995 ....	Lidocaine Hydrochloride, Ampoule .....	Lilly Research Laboratories.
84-100 ....	Crystodigin (digitoxin) .....	Lilly Research Laboratories.
84-726 ....	THEOPHYL®-225 anhydrous theophylline tablets .....	The R.W. Johnson Pharmaceutical Research Institute, Welsh and McKean Rds., Spring House, PA 19477-0776.
85-056 ....	TYLENOL® with Codeine tablets (acetaminophen and codeine phosphate tablets) (325 mg).	Do.
85-381 ....	Buticaps (butabarbital sodium) Capsules, 15 and 30 mg .....	Wallace Laboratories, 301B College Rd. East, Princeton, NJ 08540.
85-735 ....	Colonaid (diphenoxylate hydrochloride and atropine sulfate) Liquid.	Do.
85-737 ....	Colonaid (diphenoxylate hydrochloride and atropine sulfate) Tablets.	Do.
86-471 ....	THEOPHYL® SR anhydrous theophylline capsules, 250 mg .....	The R.W. Johnson Pharmaceutical Research Institute.
86-480 ....	THEOPHYL® SR anhydrous theophylline capsules, 125 mg .....	Do.
86-485 ....	THEOPHYL® anhydrous theophylline elixir .....	Do.
86-506 ....	THEOPHYL® anhydrous theophylline chewable tablets .....	Do.
87-065 ....	Dexamethasone Sodium Phosphate Injection, USP, 4 mg/mL .....	Fujisawa.
87-066 ....	Diphenhydramine Hydrochloride Injection, USP, 10 mg/mL .....	Do.
87-341 ....	Methylprednisolone Tablets, 4 mg .....	Eon Labs Manufacturing, Inc., 227-15 North Conduit Ave., Laurelton, NY 11413.
87-421 ....	TYLENOL® with Codeine capsules No. 4 (acetaminophen and codeine phosphate capsules).	The R.W. Johnson Pharmaceutical Research Institute.
87-422 ....	TYLENOL® with Codeine capsules No. 3 (acetaminophen and codeine phosphate capsules).	Do.
87-431 ....	Aminophylline Injection, U.S.P., 25 mg/mL .....	Fujisawa.
88-246 ....	TYLOX®-325 capsules .....	The R.W. Johnson Pharmaceutical Research Institute.
88-588 ....	Hydrochlorothiazide™ Intensof, 100 mg/mL .....	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216-6532.
89-024 ....	Hydrocortisone Lotion USP, 1 percent .....	Thames Pharmacal Co., Inc., 2100 Fifth Ave., Ronkonkoma, NY 11779.
89-385 ....	TYCOLET™ (hydrocodone bitartrate, 5 mg and acetaminophen, 500 mg) Caplets.	The R.W. Johnson Pharmaceutical Research Institute.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective June 9, 1993.

Dated: April 19, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93-10886 Filed 5-7-93; 8:45 am]

BILLING CODE 4160-01-F

## National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on June 18, 1993, in the Congressional I & II Ballrooms of the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The entire meeting will be open to the public from 8 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, identify critical gaps/obstacles to progress, and provide concept clearance for proposed research initiatives. Attendance by the public will be limited to space available.

Ms. Jean S. Noe, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, room 2A22, telephone (301) 496-0545, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Noe in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: May 4, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-11000 Filed 5-7-93; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Child Health and Human Development; Meetings

Pursuant to Public Law 92-453, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for June 1993.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and scientific review administrators, for approximately one hour at the beginning of the first session of the first day of the meeting unless otherwise listed. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, room 5E03, National Institute of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meetings and rosters of committee members. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Plummer in advance of the meeting.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator indicated.

Name of Committee: Population Research Committee.

Scientific Review Administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—rm. 5E03, Telephone: 301-496-1696.

Date of Meeting: June 17-18, 1993.

Place of Meeting: Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland.

Open: June 17, 1993, 8 a.m.—9:30 a.m.

Closed: June 17, 1993, 9:30 a.m.—5 p.m.; June 18, 1993, 8 a.m.—adjournment.

Name of Committee: Maternal and Chief Health Research Committee.

Scientific Review Administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—rm. 5E03, Telephone: 301-496-1485.

Date of Meeting: June 22-23, 1993.

Place of Meeting: Woodfin Suites Hotel, 1380 Piccard Drive, Rockville, Maryland.

Open: June 22, 1993, 8:30 a.m.—9:30 a.m.

Closed: June 22, 1993, 9:30 a.m.—5 p.m.; June 23, 1993, 8 a.m.—adjournment.

Name of Committee: Mental Retardation Research Committee.

Scientific Review Administrator: Dr. Norman Chang, 6100 Executive Boulevard—rm. 5E03, Telephone: 301-496-1485.

Date of Meeting: June 23-24, 1993.

Place of Meeting: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland.

Open: June 23, 1993, 8:30 a.m.—9:30 a.m.

Closed: June 23, 1993, 9:30 a.m.—5 p.m.; June 24, 1993, 8 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: May 3, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-10997 Filed 5-7-93; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 4, 1993, in Building 31, room 2A52.

This meeting will be open to the public from 9 a.m. to 12 noon on June 4 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on June 4 from 1 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code (301) 496-1485, will provide a summary of the meeting and a roster of Board members, and

substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer in advance of the meeting.

Dated: May 3, 1993.

Susan K. Feldman,  
Committee Management Officer, NIH.  
[FR Doc. 93-10996 Filed 5-7-93; 8:45 am]  
BILLING CODE 4140-01-M

**National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees**

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on June 2-3, 1993, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public June 2, from 8:30 a.m. to 12 noon and again on June 3, from 10 a.m. to 12 p.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on June 2, from 1 p.m. to 5 p.m.: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on June 3, from 8:30 a.m. to 10 a.m.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory

Council, NIDDK, Westwood Building, room 657, Bethesda, Maryland 20892, (301) 594-7527, at least two week prior to the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6917.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: April 23, 1993.

Susan K. Feldman,  
Committee Management Officer, NIH.  
[FR Doc. 93-10998 Filed 5-7-93; 8:45 am]  
BILLING CODE 4140-01-M

**National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, May 24-25, 1993, in Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will open to the public on May 24 from 9 a.m. to approximately 5 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on May 25, from approximately 8:30 a.m. to adjournment on May 25, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496-3511, will provide summaries of the meeting and rosters of council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should contact Ms. Herrell in advance of the meeting.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, FTS 629-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: April 23, 1993.

Susan K. Feldman,  
Committee Management Officer, NIH.  
[FR Doc. 93-10999 Filed 5-7-93; 8:45 am]  
BILLING CODE 4140-01-M

**Division of Research Grants; Meetings**

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for May through July 1993, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public for approximately one half hour at the beginning of the first session of the first day of the meeting during the discussion of administrative details relating to study section business. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-594-7265 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone

planning to attend a meeting contact the specific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should contact the scientific review administrator at least two weeks in advance of the meeting.

Study section	May-July 1993 meetings	Time	Location
Allergy & Immunology, Mr. Howard M. Berman, Tel. 301-594-7234.	June 7-9 .....	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Tel. 301-594-7226.	June 9-11 .....	8:30	Ramada Inn, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Tel. 301-594-7297.	June 9-11 .....	8:30	Holiday Inn, Chevy Chase, MD.
Behavioral Medicine, Ms. Carol Campbell, Tel. 301-594-7165.	June 2-4 .....	8:30	Holiday Inn, Georgetown, DC.
Biochemical Endocrinology, Dr. Michael Knecht, Tel. 301-594-7247.	June 2-4 .....	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Biochemistry, Dr. Adolphus P. Toliver, Tel. 301-594-7263.	June 16-18 .....	8:30	The Georgetown Inn, Washington, DC.
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, Tel. 301-594-7212.	June 29-July 1 .....	9:00	Holiday Inn, Chevy Chase, MD.
Biophysical Chemistry, Dr. John Belsler, Tel. 301-594-7149.	June 10-12 .....	8:30	Holiday Inn, Governor's House, Washington, DC.
Bio-Psychology, Dr. A. Keith Murray, Tel. 301-594-7145.	May 26-28 .....	9:00	Omni Georgetown Hotel, Washington, DC.
Cardiovascular, Dr. Gordon L. Johnson, Tel. 301-594-7216.	June 16-18 .....	8:00	Holiday Inn Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, Tel. 301-594-7336.	June 7-9 .....	8:30	Holiday Inn, Bethesda, MD.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Tel. 301-594-7365.	June 2-4 .....	8:00	American Inn, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Tel. 301-594-7387.	June 7-9 .....	8:30	Holiday Inn, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Tel. 301-594-7154.	June 16-18 .....	8:00	Residence Inn Marriott, Bethesda, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Tel. 301-594-7295.	June 23-25 .....	8:30	ANA Hotel, Washington, DC.
Endocrinology, Dr. Syed Amir, Tel. 301-594-7229 ....	June 23-25 .....	8:00	Hyatt Regency Hotel, Bethesda, MD.
Epidemiology & Disease Control-1, Dr. Scott Osborne, Tel. 301-594-7060.	June 9-11 .....	8:00	Holiday Inn Crowne Plaza, Rockville, MD.
Epidemiology & Disease Control-2, Dr. H. M. Stiles, Tel. 301-594-7194.	June 7-9 .....	8:30	Embassy Suites Hotel, Alexandria, VA.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Tel. 301-594-7344.	June 16-18 .....	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Experimental Immunology, Dr. Calbert Laing, Tel. 301-594-7190.	June 9-11 .....	8:30	The Latham Hotel, Georgetown, DC.
Experimental Therapeutics-1, Dr. Philip Perkins, Tel. 301-594-7324.	June 16-18 .....	8:30	The Westpark Hotel, Arlington, VA.
Experimental Therapeutics-2, Dr. Marcia Litwack, Tel. 301-594-7366.	June 23-25 .....	8:30	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett V. Keefer, Tel. 301-594-7099.	June 7-9 .....	8:30	NIH, Room 7, Bldg. 31C, Bethesda, MD.
General Medicine A-1, Dr. Harold Davidson, Tel. 301-594-7313.	June 21-23 .....	8:30	NIH, Room 10, Bldg. 31C, Bethesda, MD.
General Medicine A-2, Dr. Mushtaq Khan, Tel. 301-594-7168.	June 9-11 .....	8:30	The Georgetown Inn, Washington, DC.
General Medicine B, Dr. Daniel McDonald, Tel. 301-594-7301.	June 2-4 .....	8:00	Holiday Inn, Chevy Chase, MD.
Genetics, Dr. David Remondini, Tel. 301-594-7202 ..	June 17-19 .....	9:00	Holiday Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, Tel. 301-594-7336 .....	June 28-30 .....	9:00	Holiday Inn, Old Town/Alexandria, VA.
Hearing Research, Dr. Joseph Kimm, Tel. 301-594-7257.	June 14-16 .....	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Hematology-1, Dr. Clark Lum, Tel. 301-594-7260 .....	June 4-6 .....	8:00	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, Tel. 301-594-7261 ..	June 23-25 .....	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging-1, Dr. Teresa Levitin, Tel. 301-594-7141.	June 16-18 .....	9:00	Holiday Inn, Bethesda, MD.
Human Development & Aging-2, Dr. Peggy McCardle, Tel. 301-594-7293.	June 16-18 .....	8:30	Holiday Inn, Bethesda, MD.



Study section	May-July 1993 meetings	Time	Location
Human Development & Aging-3, Dr. Anita Soetek, Tel. 301-594-7358.	June 23-25 .....	9:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Embryology & Development-1, Dr. Arthur Hoversland, Tel. 301-594-7253.	June 24-25 .....	8:00	Holiday Inn, Chevy Chase, MD.
Human Embryology & Development-2, Dr. Arthur Hoversland, Tel. 301-594-7253.	June 3-4 .....	8:00	Holiday Inn, Chevy Chase, MD.
Immunobiology, Dr. Betty Hayden, Tel. 301-594-7310.	June 16-18 .....	8:30	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, Tel. 301-594-7175.	June 9-11 .....	8:30	Holiday Inn, Georgetown, DC.
Lung Biology and Pathology, Dr. Anne Clark, Tel. 301-594-7115.	June 9-11 .....	8:00	Holiday Inn, Chevy Chase, MD.
Mammalian Genetics, Dr. Jerry Roberts, Tel. 301-594-7051.	June 16-18 .....	8:30	Omni Georgetown Hotel, Washington, DC.
Medical Biochemistry, Dr. Alexander Liacouras, Tel. 301-594-7264.	June 10-12 .....	8:30	The Georgetown Inn, Washington, DC.
Medicinal Chemistry, Dr. Ronald Dubois, Tel. 301-594-7163.	June 9-11 .....	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Metabolic Pathology, Dr. Marcelina Powers, Tel. 301-594-7120.	June 29-July 1 .....	8:00	The Georgetown Inn, Washington, DC.
Metabolism, Dr. Krish Krishnan, Tel. 301-594-7156 ..	June 23-25 .....	8:00	Holiday Inn, Georgetown, DC.
Metallochemistry, Dr. Edward Zapolski, Tel. 301-594-7302.	June 24-26 .....	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Tel. 301-594-7176.	June 16-18 .....	8:30	Holiday Inn, Governor's House, Washington, DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, Tel. 301-594-7167.	June 9-11 .....	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, Tel. 301-594-7147.	June 10-12 .....	8:30	Embassy Suites, Chevy Chase Pavilion, Washington, DC.
Molecular Biology, Dr. Robert Su, Tel. 301-594-7320	June 24-26 .....	8:30	The Georgetown Inn, Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, Tel. 301-594-7168.	June 3-4 .....	8:00	Holiday Inn, Chevy Chase, MD.
Neurological Sciences-1, Dr. Andrew Mariani, Tel. 301-594-7206.	June 9-11 .....	8:00	Hotel Washington, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, Tel. 301-594-7356.	June 15-17 .....	8:00	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, Tel. 301-594-7158 .....	June 24-26 .....	8:00	Governor's House, Washington, DC.
Neurology B-1, Dr. Lillian Pubois, Tel. 301-594-7325	June 8-10 .....	8:00	Holiday Inn Capitol Hill, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Tel. 301-594-7245.	June 21-23 .....	8:30	Holiday Inn, Chevy Chase, MD.
Neurology C, Dr. Kenneth Newrock, Tel. 301-594-7123.	June 23-25 .....	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Tel. 301-594-7080.	June 28-30 .....	8:00	Holiday Inn, Chevy Chase, MD.
Nutrition, Dr. Sooja Kim, Tel. 301-594-7174 .....	June 7-9 .....	8:30	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine-1, Dr. Larry Pinkus, Tel. 301-594-7315.	June 21-23 .....	8:30	Holiday Inn Crowne Plaza, MD.
Oral Biology & Medicine-2, Dr. Priscilla Chen, Tel. 301-594-7315.	June 7-9 .....	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Tel. 301-594-7282.	June 16-18 .....	8:30	Ramada Inn, Old Towne, Alexandria, VA.
Pathobiochemistry, Dr. Zakir Bengali, Tel. 301-594-7317.	June 9-11 .....	8:30	The Savoy Suites Hotel, Washington, DC.
Pathology A, Dr. Jaswant Bhorjee, Tel. 301-594-7236.	June 1-4 .....	7:00 pm.	Holiday Inn Crowne Plaza, Rockville, MD.
Pathology B, Dr. Martin Padarathsingh, Tel. 301-594-7192.	June 8-11 .....	7:00 pm	Holiday Inn, Georgetown, MD.
Pharmacology, Dr. Joseph Kaiser, Tel. 301-594-7241.	June 23-25 .....	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Tel. 301-594-7166.	June 21-23 .....	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Jerry Critz, Tel. 301-594-7322.	June 24-26 .....	8:30	Holiday Inn, Chevy Chase, MD.
Physiology, Dr. Michael A. Lang, Tel. 301-594-7332	June 9-11 .....	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Radiation, Dr. Paul Studler, Tel. 301-594-7152 .....	June 7-9 .....	8:30	One Washington Circle Hotel, Washington, DC.
Reproductive Biology, Dr. Syed Amir, Tel. 301-594-7229.	June 2-4 .....	8:30	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar A. Shaikh, Tel. 301-594-7368.	June 6-8 .....	8:00	Holiday Inn Crowne Plaza, Rockville, MD.
Respiratory & Applied Physiology, Dr. Everett Sinnett, Tel. 301-594-7220.	June 9-11 .....	8:30	One Washington Circle Hotel, Washington, DC.

Study section	May-July 1993 meetings	Time	Location
Safety & Occupational Health, Dr. Gopal Sharma, Tel. 301-594-7130.	June 9-11 .....	8:00	Holiday Inn, Chevy Chase, MD.
Sensory Disorders & Language, Dr. Jane Hu, Tel. 301-594-7269.	June 9-11 .....	8:00	Holiday Inn Capitol Hill, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, Tel. 301-594-7340.	June 3-5 .....	8:00	Embassy Suites Hotel, Washington, DC.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Tel. 301-594-7258.	June 14-15 .....	8:00	Holiday Inn, Chevy Chase, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Tel. 301-594-7308.	June 23-25 .....	2:00 pm	Holiday Inn, Bethesda, MD.
Toxicology-1, Dr. Alfred Marozzi, Tel. 301-594-7278	June 9-11 .....	8:00	American Inn, Bethesda, MD.
Toxicology-2, Dr. Alfred Marozzi, Tel. 301-594-7278	June 16-18 .....	8:00	American Inn, Bethesda, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Tel. 301-594-7078.	June 9-11 .....	8:30	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, Tel. 301-594-7108 .....	June 9-11 .....	8:30	Holiday Inn, Chevy Chase, MD.
Visual Sciences A, Dr. Anita Suran, Tel. 301-594-7132.	June 23-25 .....	8:00	Holiday Inn, Bethesda, MD.
Visual Sciences B, Dr. Leonard Jakubczak, Tel. 301-594-7198.	June 9-11 .....	8:30	Omni Georgetown Hotel, Washington, DC.
Visual Sciences C, Dr. Carole Jelsena, Tel. 301-594-7311.	June 9-121 .....	8:30	Omni Georgetown Hotel, Washington, DC.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-10995 Filed 5-7-93; 8:45 am]

BILLING CODE 4140-01-M

### Substance Abuse and Mental Health Services Administration

#### Substance Abuse Prevention Center; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the Substance Abuse Prevention Conference Review Committee and the Drug Testing Advisory Board of the Center for Substance Abuse Prevention for May & June 1993.

The Substance Abuse Prevention Conference Review Committee will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The Drug Testing Advisory Board will be performing reviews of National Laboratory Certification Program inspections and operations; therefore portions of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be

obtained from: Ms. D. Herman, Committee Management Officer, Center for Substance Abuse Prevention, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4783).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

*Committee Name:* Substance Abuse Prevention Conference Review Committee.  
*Meeting Date(s):* May 24-28, 1993.  
*Place:* Residence Inn—Bethesda, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

*Open:* May 24, 1993, 8:30 a.m.—9:30 a.m.  
*Closed:* Otherwise.

*Contact:* Ferdinand W. Hui, Ph.D., Rockwall II Building, suite 630; Telephone: (301) 443-4952.

*Committee Name:* Drug Testing Advisory Board.

*Meeting Date(s):* June 10, 1993.  
*Place:* Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

*Open:* June 10, 1993, 8:30 a.m.—10:15 a.m.  
*Closed:* Otherwise.

*Contact:* Donna M. Bush, Ph.D., room 9A-53 Parklawn Building; Telephone: (301) 443-6014.

Dated: May 3, 1993.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93-10881 Filed 5-7-93; 8:45 am]

BILLING CODE 4162-20-P

### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[WO-660-1-4191-01]

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act (44 U.S.C. Chapter 35)

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0114), Washington, DC 20503, telephone 202-395-7340.

*Title:* Recordation of Location Notices and Annual Filings for Mining Claims, Mill Sites, and Tunnel Sites; Payment of Rental Fees and Service Charges.

*OMB Approval Number:* 1004-0114.

*Abstract:* The information collected is used to determine whether or not mining claimants have met the statutory requirements of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), the Mining Claim Rights Restoration Act of 1955 (30 U.S.C. 621 et seq.), the Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands Act of 1948 (hereinafter called "The O and C Lands Act", Pub. L. 80-477, 62 stat. 162), the General Mining Law of 1872

(30 U.S.C. 22-54), and the Act of October 5, 1992 (Pub. L. 102-381).

Mining claimants must record location notices of mining claims, mill sites, and tunnel sites with the Bureau of Land Management within 90 days of their location (within 60 days if on O and C Lands or Powersite Withdrawals under 30 U.S.C. 623). Each calendar year after the claims and sites are located, the claimants must make an annual filing by December 30. Failure to record the mining claim or site or to submit an annual filing makes the mining claim or site abandoned and void by operation of law.

Enactment of Public Law 102-381 of October 5, 1992 (106 stat. 1374) requires payment of a \$100 per claim or site rental fee for fiscal years 1993 and 1994. Both rental fees must be paid on or before August 31, 1993. Certain "small miners" may file by August 31, 1993 certificates of exemption from payment of the rental fee and file an annual filing as in the past. Failure to pay the fee or file for an exemption by August 31, 1993, makes the mining claim or site abandoned and void by operation of law. Public Law 102-381 expires on September 30, 1994, unless renewed by Congress.

**Bureau Form Numbers:** 3830-1, 3830-2, 3830-3.

**Frequency:** Once for notices and certificates of location. Once each year for annual filings. Once for payment of rental fees or filing of certificates of exemption.

**Description of Respondents:** Respondents may range from an individual to multi-national corporations.

**Estimated Completion Time:** 0.0833 hours for each mining claim.

**Annual Responses:** 600,000.

**Annual Burden Hours:** 49,980.

**Bureau Clearance Officer (alternate):** Marsha Harley (202) 653-6105.

Dated: April 1, 1993.

Carson Culp,

Acting Director.

[FR Doc. 93-10921 Filed 5-7-93; 8:45 am]

BILLING CODE 4310-04-M

[ES-943-01-4110-03-257D; MIES 36377]

#### Michigan: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease MIES 36377, Montmorency County, Michigan, was timely filed by H & H Star Energy (Lessee) and was accompanied by all required rentals and royalties accruing

from May 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$5 per acre and 16% percent, respectively. Payment of a \$500 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective May 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Johnson at (703) 440-1528.

Dated: May 3, 1993.

Denise P. Meridith,

State Director.

[FR Doc. 93-10920 Filed 5-7-93; 8:45 am]

BILLING CODE 4310-04-M

[Co-932-4210-06; COC-54878]

#### Proposed Withdrawal; Opportunity for Public Meeting; CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes to withdraw 695 acres of National Forest System lands for a period of 50 years to protect the unique alpine ecosystem and associated plant life within the proposed Hoosier Ridge Research Natural Area (RNA). This notice will segregate this site from location and entry under the mining laws for a period of 2 years pending final determination on this application. The lands have been and will continue to be open to mineral leasing and Forest Service management. **DATES:** Comments or requests for public meeting should be received on or before August 9, 1993.

**ADDRESSES:** Comments should be addressed to State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Bob Barbour, BLM Colorado State Office, 303-239-3708.

**SUPPLEMENTARY INFORMATION:** The Department of Agriculture filed application on April 5, 1993, to withdraw the following described National Forest System lands from

location and entry under the U.S. mining laws (30 U.S.C. ch. 2):

#### Sixth Principal Meridian

Arapaho and Pike National Forest

T. 8 S., R. 77 W.,

The RNA is an irregular-shaped area within Sections 7, 8, 17, and 18 described as follows:

Beginning at the monument (cairn) marking the southwest corner of S.7, T.8 S., R.77 W., 6th P.M. (which is S 88 degrees E 3188 ft from the centerline of the Highway crossing Hoosier Pass); thence N 20 degrees E 719 ft to a steel pipe just above the forest edge; thence N 81 degrees E 4566 ft to a steel pipe and cairn on a rocky ridge; thence S 56 degrees E 2454 ft to a cairn marking a high point on the Continental Divide (County line) ridge; thence N 78 degrees E 1638 ft to the highest point on the east-west portion of the Continental Divide ridge (marked "12953 ft" on the Alma 7.5' USGS quadrangle); thence S 3 degrees E to a large monument and cairn (shown as "U.S.L.M 541" on older maps); thence S 82 degrees W 2943 ft to a steel pipe and cairn on the broad grassy ridge separating Beaver Creek from the Platte River drainages; thence N 79 degrees W 4459 ft to a rocky point on the ridge; thence N 42 degrees W 1716 ft to a cairn on the Continental Divide ridge; thence N 9 degrees W 1168 ft to the monumented section corner, the point of origin. The areas described aggregate approximately 695 acres of National Forest System lands in Summit and Park Counties, Colorado.

The purpose of this withdrawal is to protect the proposed Hoosier Ridge RNA. This proposed Research Natural Area is an area that is nearly undisturbed by human influence and contains an outstanding example of an alpine ecosystem and seven alpine plant associations. This proposed RNA offers outstanding opportunities for research into the natural ecological processes which affect alpine ecosystems and the ecology of common and rare alpine species which occur in the proposed Research Natural Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal or to request a public meeting may present their views in writing to the Colorado State Director.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the date of publication of this notice. If the authorized officer determines that a meeting should be held, this meeting will be scheduled and conducted in accordance with

Bureau of Land Management Manual, Section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310. For a period of 2 years from the date of publication of this notice in the *Federal Register*, the land will be segregated from operation of the public land laws as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

The land uses which may be permitted during this segregation period are those which the Forest Service determines are consistent with the approved Pike/San Isabel National Forests and White River National Forest Land and Resource Management Plans.

**Robert A. Barbour,**

*Acting Chief, Branch of Realty Operations.*

[FR Doc. 93-10922 Filed 5-7-93; 8:45 am]

BILLING CODE 4310-04-M

[OR-943-4210-06; GP3-209; OR-48744]

### Proposed Withdrawal and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 292.25 acres of public domain lands and 159.41 acres of non-Federal lands, which will be acquired by exchange, for protection of the Eagle Rock and Leaburg Lake Sections of the McKenzie River. The minerals in 53.35 acres of public lands are non-Federal, and will be acquired by exchange. The public lands have not been opened to mineral entry since acquisition, and this notice will continue to close the lands for up to 2 years from surface entry and mining. Upon acquisition, the 159.41 acres of non-federal lands and the 53.35 acres of non-federal minerals will be opened to mineral leasing. The 238.90 acre balance of public lands have been and remain open to mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by August 9, 1993.

**ADDRESSES:** Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208-2965.

**FOR FURTHER INFORMATION CONTACT:** Donna Kauffman, BLM, Oregon State Office, 503-208-7162.

**SUPPLEMENTARY INFORMATION:** On April 19, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands

from settlement, sale, location, or entry under the public land laws, including the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

#### Willamette Meridian

#### Public Domain Lands, Federal Minerals

##### Eagle Rock Section

T. 17 S., R. 3 E.,

Sec. 10, lots 4 and 5, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and that portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$  described as follows: Beginning at the east one quarter corner of said Sec. 10; Thence along the north line of the SE $\frac{1}{4}$  south 89°16'28" west 2,592.50 feet to the center of Sec. 10; Thence along the west line of the SE $\frac{1}{4}$  south 00°51'27" east 230.97 feet; Thence south 71°32'28" east 171.61 feet; Thence south 31°10'49" east 272.59 feet; Thence north 54°03'58" east 150.37 feet; Thence north 44°58'06" east 136.39 feet; Thence north 79°24'46" east 211.20 feet; Thence south 52°08'02" east 156.48 feet; Thence south 78°47'26" east 204.25 feet; Thence north 77°12'21" east 239.97 feet; Thence south 85°25'02" east 249.56 feet; Thence south 64°51'38" east 190.59 feet; Thence south 43°58'08" east 278.95 feet; Thence south 76°45'59" east 72.41 feet; Thence south 61°24'24" east 164.01 feet; Thence south 70°45'40" east 263.35 feet; Thence south 68°01'23" east 206.56 feet; Thence south 63°39'19" east 58.06 feet to the section line; Thence along the section line north 01°10'17" west 996.84 feet to the point of beginning;

Sec. 11, that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  described as follows: Beginning at the west one quarter corner of said Sec. 11; Thence along the section line south 01°10'17" east 996.84 feet; Thence south 63°39'19" east 111.85 feet; Thence north 69°28'36" east 208.20 feet; Thence north 39°02'30" east 199.57 feet; Thence north 82°56'58" east 175.34 feet; Thence south 72°50'23" east 265.76 feet; Thence north 66°07'42" east 298.03 feet; Thence north 79°22'51" east 94.10 feet; Thence north 47°29'53" east 124.60 feet to the east line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of said Sec. 11; Thence along said east line north 0°40'06" west 630.58 feet to the northeast corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; Thence along the north line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; Thence along the north line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  north 89°01'20" west 1,318.99 feet to the point of beginning.

The areas described aggregate 139.20 acres in Lane County.

#### Revested Oregon and California Railroad Grant Lands, Non-Federal Minerals

##### Eagle Rock Section

T. 17 S., R. 3 E.,

Sec. 3, lot 4;

Sec. 9, lot 5.

The areas described aggregate 53.35 acres in Lane County.

#### Revested Oregon and California Railroad Grant Lands, Federal Minerals

##### Eagle Rock Section

T. 17 S., R. 3 E.,

Sec. 10, lot 3 and NW $\frac{1}{4}$ NW $\frac{1}{4}$ ;

Sec. 11, lot 3.

The areas described aggregate 99.70 acres in Lane County.

The areas described aggregate 292.25 acres of federal lands in Lane County.

#### Non-Federal Lands

##### Leaburg Lake Section

T. 16 S., R. 2 E.,

Sec. 31, lot 2.

##### Eagle Rock Section

T. 17 S., R. 3 E.,

Sec. 4, lot 8;

Sec. 9, lot 6;

Sec. 10, SW $\frac{1}{4}$ NW $\frac{1}{4}$ ;

Sec. 11, lot 2 and SE $\frac{1}{2}$ NW $\frac{1}{4}$ .

The areas described aggregate 159.41 acres of non-federal lands in Lane County.

For the entire withdrawal, the areas described aggregate 451.66 acres in Lane county.

The purpose of the proposed withdrawal is to protect the significant scenic, wildlife, fisheries, and recreational values.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the *Federal Register* at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the *Federal Register*, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Temporary land uses that may be permitted by the authorized officer during the period of temporary segregation include licenses, permits, cooperative agreements, rights-of-way, mineral leases, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: April 28, 1993.

Champ C. Vaughan,  
Acting Chief, Branch of Lands and Minerals  
Operations.

[FR Doc. 93-10923 Filed 5-7-93; 8:45 am]

BILLING CODE 4310-33-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-33 (Sub-No. 77X)]

### Exemption and Interim Trail Use or Abandonment; Union Pacific Railroad Co.—Abandonment Exemption—In Solano County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonment to abandon its approximately 22.21-mile line of railroad from milepost 7.86, at or near rail station Cannon, to milepost 0.00, at or near rail station Dozier and thence from milepost 64.33, at or near rail station Dozier<sup>1</sup>, to milepost 49.98, at or near rail station Montezuma in Solano County, CA. The same line segment is the subject of a discontinuance of trackage rights exemption proceeding, Docket No. AB-12 (Sub-No. 160X), brought by Southern Pacific Transportation Company (SPT) at the Commission. By decision served on February 16, 1993, the Commission delayed the processing of this notice of exemption pending SPT's filing of a request to discontinue trackage rights.<sup>2</sup> See also the decision in this proceeding served on December 15, 1992.

UP, in this proceeding, and SPT, in Docket No. AB-12 (Sub-No. 160X), have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7; 49 CFR 1105.8; 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met. Bay Area Electric Railroad Association, Inc. d/b/a Western Railway

Museum (BAERA), a not for profit public benefit corporation, filed a statement of its willingness to assume financial responsibility for the line on December 2, 1992.<sup>3</sup> UP indicated its willingness to negotiate with BAERA for interim trail use in a letter filed December 8, 1992.

While a request for interim trail use need not be filed until ten days after the date the notice of exemption is published in the *Federal Register* (49 CFR 1152.29(b)(2)), the provisions of 16 U.S.C. 1247(d) are applicable and all of the criteria for imposing interim trail use/rail banking have been met. Accordingly, in light of UP's willingness to enter into negotiations, an NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within 180 days, UP may fully abandon the line. See 49 CFR 1152.29(d)(1).

Any other political subdivision, state or qualified private entity interested in acquiring or using the involved right-of-way for interim trail use/rail banking may file an appropriate request by May 20, 1993. UP is directed to respond to all such requests. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As a condition to this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on June 9, 1993,<sup>4</sup> unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>5</sup> any further formal expressions of intent to file an OFA under 49 CFR

<sup>3</sup> BAERA also filed on January 4, 1993, an offer to purchase the line. We will interpret this as a notice of intent to file an offer of financial assistance. BAERA's offer of financial assistance is due June 9, 1993.

<sup>4</sup> This exemption would have normally been effective on June 9, 1993. The filing of BAERA's notice of intent, however, serves to postpone the effective date for ten days.

<sup>5</sup> A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

1152.27(c)(2),<sup>6</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 20, 1993.<sup>7</sup> Any offer of financial assistance must be filed by June 9, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 1, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) issued an environmental assessment (EA) served December 23, 1992, that proposed no environmental conditions. Comments were due January 4, 1993, and none was received. Because we are now issuing this notice we will give individuals 15 days, to May 25, 1993, to file comments to the EA.

Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

*It is ordered:* 1. Subject to the conditions set forth above, UP may discontinue service, cancel tariffs for this line on not less than 10 days' notice to the Commission, and salvage track and related material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice of exemption and NITU by date and docket number.

2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any liability arising out of the transfer or use of (if the user is immune from liability it need only

<sup>6</sup> See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987). As noted, BAERA has already filed a notice of intent to file an OFA. This submission does not preclude other interested parties from also submitting similar formal expressions of intent.

<sup>7</sup> The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

<sup>1</sup> Rail station Dozier is the junction point between two portions of the line with the resultant milepost equation 0.00 = 64.33.

<sup>2</sup> A notice of exemption in Southern Pacific Transportation Company—Discontinuance of Trackage Rights Exemption—In Solano County, CA, Docket No. AB-12 (Sub-No. 160X) was served by the Commission on April 16, 1993.

indemnify UP against any potential liability), and the payment of any taxes that may be levied against the right-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service.

4. If the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specific date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after publication of this notice, interim trail use may be implemented. If no agreement is reached by the 180th day, UP may fully abandon the line.

6. This notice of exemption and NITU will be effective June 19, 1993, provided that SPT has already discontinued service.

Decided: May 4, 1993.

By the Commission, David M. Konschnik,  
Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-11118 Filed 5-7-93; 8:45 am]

BILLING CODE 7036-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-035]

### NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATES: May 17, 1993, 8:30 a.m. to 5:30 p.m.; and May 18, 1993, 8:30 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC-5, 300 E Street, SW., Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/358-2147).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Status of NASA's Organization and Budget.
- Status of Life Sciences Subcommittee Organization and Budget.
- Space Station Redesign.
- Strategy and Plan for Future Advisory Committee Restructuring.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 3, 1993.

Danalee Green,

Chief, Management Controls Office, National Aeronautics and Space Administration.

[FR Doc. 93-10952 Filed 5-7-93; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Cooperative Agreement for Chamber Music Rural Residencies

AGENCY: National Endowment for the Arts.

ACTION: Notification of Availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to a nonprofit organization to administer a Chamber Music Rural Residencies Initiative. The project will place graduate/emerging chamber music ensembles in selected rural communities for the 1993-94 academic year. Duties will include administering and monitoring the progress made throughout the residencies; evaluating the residencies to determine possible modification or expansion of the program for 1994-95; and recruiting and orienting ensembles for the 1994-95 year if the project continues. This project is subject to favorable recommendation of the National Council on the Arts. Those interested in receiving the Solicitation package should reference Program Solicitation PS 93-12 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitations will not be honored.

DATES: Program Solicitations PS 93-12 is scheduled for release approximately May 7, 1993 with proposals due June 7, 1993.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts

Division, Room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 93-10975 Filed 5-7-93; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

### Florida Power and Light Co, Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-250 and 50-251]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company, (the licensee), for operation of the Turkey Point Nuclear Generating Units 3 and 4, located in Dade County, Florida.

#### Environmental Assessment

#### Identification of Proposed Action

The proposed action is in accordance with the licensee's application for exemption dated April 8, 1993, as supplemented April 22, 1993 and provides an exemption from certain requirements of 10 CFR 50.60, "Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation," to allow application of an alternate methodology in determining the acceptable Overpressure Mitigating System (OMS) setpoint for Turkey Point Units 3 and 4. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during low temperature overpressure (LTOP) events. ASME Code Committee approval and publication and NRC endorsement of WGOPC methodology and publication of the ASME Code Case N-514, "Low Temperature Overpressure Protection," are expected in the near future.

#### The Need for the Proposed Action

10 CFR 50.60 states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated

operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent LTOP transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an OMS. The licensee's OMS includes pressure relieving devices, Power Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if a LTOP transient occurred the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

The licensee has determined that the generic methodology used to calculate the OMS setpoint for Turkey Point is deficient and did not account for certain flow-induced differential pressures and piping losses. As a result, the analytical maximum pressure limits for LTOP events for a certain design basis condition exceed the pressure limits of the 10 CFR part 50 Appendix G curves. The licensee proposed that in determining the OMS setpoint for LTOP events for Turkey Point Units 3 and 4, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G. 10 CFR part 50. The alternate methodology is consistent with a proposed ASME Code Case N-514 which is expected to be approved and published in the near future.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the OMS setpoint. By application dated April 8, 1993, as supplemented April 22, 1993, the licensee requested an exemption from 10 CFR 50.60.

#### *Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the licensee's application.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of 2 on the principal membrane (pressure)

stresses, (b) assuming a flaw at the surface with a depth of one quarter of the vessel wall thickness and a length of six times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Turkey Point reactor vessel material.

In determining OMS setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N-514 guidelines. The ASME Code Case N-514 allows OMS setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change involves use of more realistic safety margins for determining the OMS setpoint during LTOP events. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

#### *Alternative to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

#### *Alternative Use of Resources*

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operations of Turkey Point plants, dated July 1972.

#### *Agencies and Persons Consulted*

The NRC staff consulted with the State of Florida regarding the environmental impact of the proposed action.

#### *Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated April 8, 1993 and a supplement dated April 22, 1993, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 4th day of May 1993.

For the Nuclear Regulatory Commission.  
**Herbert N. Berkow,**  
Director, Project Directorate II-2, Division of  
Reactor Projects—III, Office of Nuclear  
Reactor Regulation.  
[FR Doc. 93-10966 Filed 5-7-93; 8:45 am]  
BILLING CODE 7590-01-M

#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Trade Policy Staff Committee (TPSC);  
Generalized System of Preferences  
(GSP); Deadline for Acceptance of  
Petitions Requesting Modifications of  
the List of Articles Eligible for Duty-  
Free Treatment Under the GSP and  
Requests To Review the GSP Status of  
Beneficiary Developing Countries  
Under the 1993 Annual Review**

**AGENCY:** Office of the United States  
Trade Representative.

**ACTION:** Initiation of the 1993 GSP  
Annual Review.

**SUMMARY:** The notice announces the  
deadline for the submission of petitions  
in the 1993 GSP Annual Review.

**FOR FURTHER INFORMATION CONTACT:**  
GSP Subcommittee, Office of the United  
States Trade Representative, 600 17th  
Street, NW., room 517, Washington, DC  
20506. The telephone number is (202)  
395-6971. Public versions of all  
documents relating to this review will  
be available for review by appointment  
with the USTR public reading room  
shortly following filing deadlines.  
Appointments may be made from 10  
a.m. to noon and 1 p.m. to 4 p.m. by  
calling (202) 395-6186.

**SUPPLEMENTARY INFORMATION:****I. Announcement of 1993 GSP Annual Review**

Under section 506(a) of the Trade Act of 1974, as amended (the 1974 Act), duty free treatment provided under the GSP shall not remain in effect after July 4, 1993. On April 27, legislation was forwarded to the Congress on behalf of the President seeking the extension of GSP past its current expiration date.

In anticipation of this extension, and in order to enable parties to comply with the June 1 submission deadline set forth in the GSP regulations (15 CFR 2007.3(a)(1)), the Trade Policy Staff Committee (TPSC) has initiated the 1993 GSP Annual Review. Notice is hereby given that, in order to be considered in the 1993 GSP Annual Review, all petitions to modify the list of articles eligible for duty-free treatment under the GSP and requests to review the GSP status of any beneficiary developing country must be received by the GSP Subcommittee of the TPSC no later than 5 p.m., Tuesday, June 1, 1993. Petitions submitted after the deadline will not be considered for review and will be returned to the petitioner. The GSP provides for the duty-free importation of qualifying articles when imported from designated beneficiary developing countries. The GSP is authorized by title V the 1974 Act (19 U.S.C. 2461 *et seq.*), and has been implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations.

**A. 1993 GSP Annual Review**

Interested parties or foreign governments may submit petitions: (1) To designate additional articles as eligible for GSP; (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; (3) to waive the competitive need limits for individual beneficiary developing countries with respect to specific GSP eligible articles; (4) to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in subsections 502(b) or 502(c) of the 1974 Act (19 U.S.C. 2462 (b) and (c)); and, (5) to otherwise modify GSP coverage.

**B. Identification of Product Requests With Respect to the Harmonized Tariff Schedule of the United States**

The Harmonized Tariff Schedule of the United States (HTS) was

implemented by the United States on January 1, 1989, and replaces the former Tariff Schedules of the United States (TSUS) nomenclature. All product-related petitions must identify the product(s) of interest in terms of the HTS and include a detailed description of the product or products of interest.

**C. Submission of Petitions and Requests**

Petitions and requests to modify GSP treatment should be addressed to GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20508. All such submissions must conform with regulations codified in 15 CFR part 2007. These regulations are also printed in "A Guide to the U.S. Generalized System of Preferences (GSP)" (August 1991), along with a model petition. Information submitted will be subject to public inspection by appointment only with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. An original and fourteen (14) copies of each petition or request must be submitted in English. If the petition or request contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "nonconfidential").

Prospective petitioners and requestors are strongly advised to review the GSP regulations set forth in 15 CFR 2007 and published in the *Federal Register* on Tuesday, February 11, 1988 (51 FR 5035). Prospective petitioners and requestors are reminded that submissions that do not provide all information required by § 2007.1 of the GSP regulations will not be accepted for review except upon a detailed showing in the submission that the petitioner or requestor made a good faith effort to obtain the information required. These requirements will be strictly enforced. In cases where the request has been reviewed previously, petitioners should cite new information concerning the issues examined that would support a reexamination, as cited in 15 CFR 2007.1(a)(4). Petitions with respect to

competitive need waivers must meet the informational requirements for product addition requests in § 2007.1(c). A model petition format is available from the GSP Subcommittee and is included in the publication "A Guide to the U.S. Generalized System of Preferences (GSP)" (August 1991). Prospective petitioners are requested to use this model petition format so as to ensure that all informational requirements are met. Furthermore, interested parties submitting petitions that request action with respect to specific articles should list on the first page of the petition the following information: (1) The requested action; (2) the classification of the article(s) of interest in the HTS; and (3), if applicable, the beneficiary country(ies) of interest. Questions about the preparation of petitions and requests should be directed to the staff of the GSP Subcommittee. The phone number of the GSP subcommittee is (202) 395-6971.

If legislation extending the GSP program is enacted before the July 4 expiration, the TPSC will publish in the *Federal Register* a notice of petitions and requests accepted for review on or about Thursday, July 15, 1993. If the GSP program lapses, the TPSC will not publish this notice until the program is extended. In this event, the notice will be published as soon as practicable after the extension takes effect. The notice will also provide information concerning the opportunity for interested parties to comment on requests accepted for written submissions. Any modifications to the GSP resulting from the 1993 GSP Annual Review will be announced on or about April 1, 1994 and will take effect on July 1, 1994.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 93-10948 Filed 5-7-93; 8:45 am]

BILLING CODE 3001-01-M

**Implementation of the Accelerated Tariff Elimination Provision of the United States-Canada Free-Trade Agreement**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notification of articles proposed for accelerated tariff elimination.

**SUMMARY:** Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("the Act") grants the President, subject to the consultation and lay-over requirements of section 103(a) of the Act, the authority to proclaim any accelerated schedule for duty elimination that may



be agreed to by the United States and Canada under Article 401(5) of the United States-Canada Free-Trade Agreement ("the FTA"). A notice of articles under consideration for accelerated tariff elimination was published in the Federal Register of September 4, 1992 (57 FR 40720). Amendments to the September 4 notice were published in the Federal Register of October 23, 1992 (58 FR 48407). This notice is intended to inform the public of those articles on which the United States Government and the Government of Canada have provisionally agreed to accelerate the elimination of duties under the FTA.

**SUPPLEMENTARY INFORMATION:** Further information on this subject may be found in the Federal Register of November 15, 1991, volume 56, number 221, at pages 58117 through 58119; September 4, 1992, volume 57, number 173, at pages 40720 through 40727; and October 23, 1992, volume 57, number 206, at pages 48407 through 48408.

**FOR FURTHER INFORMATION CONTACT:** Mr. P. Claude Burcky, Office of North American Affairs, Office of the United States Trade Representative, room 501, 600 17th Street, NW., Washington, DC 20506, telephone (202) 395-3412. Inquiries regarding the changes to be made to the Customs Tariff of Canada should be directed to the Interdepartmental Committee on FTA Acceleration, 140 O'Conner Street, 14th

Floor, Ottawa, Ontario, Canada K1A-0G5.

**Proposed Items to Receive Accelerated Duty Elimination**

Articles in the Harmonized Tariff Schedule of the United States that are proposed for accelerated duty elimination are listed in the Annex to this notice. A list of articles in the Customs Tariff of Canada that are proposed for accelerated duty elimination are available, for photocopy, from the Office of Public Affairs, Office of the U.S. Trade Representative, room 101, 600 17th Street, NW., Washington, DC 20506, telephone (202) 395-6186. Charles E. Roh, Jr., Assistant U.S. Trade Representative for North American Affairs.

**General Note**

Goods originating in the territory of Canada provided for in the tariff subheadings listed in this schedule and equipment and repairs of vessels provided for in section 466 of the Tariff Act of 1930 shall be free of U.S. customs duty effective July 1, 1993, except for goods of subheadings 5801.25.00, 5801.35.00, 8540.11.00 and 9905.73.04, on which the duty will be removed effective on the date of the implementation of the North American Free Trade Agreement, and equipment and repairs of vessels, on which the duty will be removed effective on a date to be agreed upon by both Parties.

The provisions of this schedule are expressed in terms of the Harmonized Tariff Schedule of the United States or section 466 of the Tariff Act of 1930. Subheading numbers and product descriptions in this schedule are the same as the subheading numbers and product descriptions of the corresponding provisions in the Harmonized Tariff Schedule of the United States, except in those cases where accelerated elimination of the customs duty will not apply to all goods in a tariff subheading. In such cases, the goods subject to accelerated elimination are provided for in a new subheading in chapter 99 of this schedule, which will be incorporated into the Harmonized Tariff Schedule of the United States.

The product coverage and application of the subheadings listed in this schedule shall be in accordance with the general notes, rules of interpretation, and section and chapter notes contained in the Harmonized Tariff Schedule of the United States.

The bracketed language in this schedule has been included only to clarify the scope of the numbered subheadings, which are the subject of this schedule. Goods described by the bracketed language are not the subject of this schedule and are not receiving accelerated elimination of the customs duty.

**SCHEDULE OF THE UNITED STATES OF AMERICA**

HTS subheading	Article description
020 .....	Meat of bovine animals, frozen:
0202.30 .....	Boneless:
0202.30.20 .....	Processed:
0202.30.40 .....	High-quality beef cuts.
0202.30.60 .....	Other.
0712 .....	Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared:
0712.10.00 .....	Potatoes whether or not cut or sliced but not further prepared.
2208 .....	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages:
2208.10 .....	Compound alcoholic preparations of a kind used for the manufacture of beverages:
2208.10.30 .....	Containing not over 20 percent of alcohol by weight.
2208.10.60 .....	Containing over 20 percent but not over 50 percent of alcohol by weight.
2208.10.90 .....	Containing over 50 percent of alcohol by weight.
2208.20 .....	Spirits obtained by distilling grape wine or grape marc (grape brandy):
2208.20.10 .....	Pisco and singani
2208.20.20 .....	Other:
2208.20.30 .....	In containers each holding not over 4 liters:
2208.20.40 .....	Valued not over \$2.38/liter.
2208.20.50 .....	Valued over \$2.38/liter but not over \$3.43/liter.
2208.20.60 .....	Valued over \$3.43/liter.
2208.20.90 .....	In containers each holding over 4 liters:
2208.50.00 .....	Valued not over \$2.38/liter.
2208.90 .....	Valued over \$2.38/liter.
2208.50.00 .....	[Whiskies; rum and tafia]
2208.90 .....	Gin and Geneve:
2208.90 .....	Other:
2208.90 .....	[Aquavit; bitters; brandy]

## SCHEDULE OF THE UNITED STATES OF AMERICA—Continued

HTS subheading	Article description
2208.90.45 .....	Cordials, liqueurs, kirschwasser and ratafia.
	[Tequila]
	Vodka:
	In containers each holding not over 4 liters:
2208.90.60 .....	Valued not over \$2.05/liter.
2208.90.65 .....	Valued over \$2.05/liter.
2208.90.70 .....	In containers each holding over 4 liters.
	[Imitations of brandy and other spirituous beverages]
	Other:
	Spirits:
	[Mescal in containers each holding not over 4 liters]
2208.90.75 .....	Other.
2208.90.80 .....	Other.
3302 .....	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these
	substances, of a kind used as raw materials in industry:
	Of a kind used in the food or drink industries:
3302.10 .....	Not containing alcohol.
3302.10.10 .....	Containing alcohol:
	Containing not over 20 percent of alcohol by weight.
	Containing over 20 percent of alcohol by weight.
3302.90 .....	Other:
	Containing no alcohol or not over 10 percent of alcohol by weight.
	Containing over 10 percent of alcohol by weight.
3302.90.10 .....	Containing over 10 percent of alcohol by weight.
3302.90.20 .....	Containing over 10 percent of alcohol by weight.
3916 .....	Monofilament of which any cross-sectional dimensions exceeds 1 mm, rods, sticks and profile shapes, whether or not
	surface-worked but not otherwise worked, of plastics:
	[Of polymers of ethylene; of polymers of vinyl chloride]
	Of other plastics:
	[Of acrylic polymers]
	Other:
3916.90 .....	Racket strings.
3918 .....	Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles; wall or ceiling coverings of plas-
	tics, as defined in note 9 to chapter 39 of the HTS:
	Of polymers of vinyl chloride:
	Wall or ceiling coverings:
	With a backing of textile fibers:
	With a backing of man-made fibers:
	Over 70 percent by weight of plastics.
	Other.
3918.10 .....	Other.
3918.10.31 .....	New pneumatic tires, of rubber:
	Of a kind used on motorcycles.
3918.10.32 .....	Of a kind used on motorcycles.
3918.10.40 .....	Other articles of vulcanized rubber other than hard rubber:
	[Of cellular rubber]
	Other:
4016.92.00 .....	Erasers.
5209 .....	Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m <sup>2</sup> :
	Of yarns of different colors:
	Blue denim.
5209.42.00 .....	Blue denim.
5011 .....	Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fi-
	bers, weighing more than 200 g/m <sup>2</sup> :
	Of yarns of different colors:
	Blue denim.
5211.42.00 .....	Blue denim.
5403 .....	Artificial filament yarn (other than sewing thread), not put up for retail sale, including artificial monofilament of less than
	67 decitex:
	High tenacity yarn of viscose rayon:
	Single yarn.
	Multiple (folded) or cabled.
	[Textured yarn]
	Other yarn, single:
	[Of viscose rayon, untwisted or with a twist not exceeding 120 turns/m; of viscose rayon, with a twist exceeding
	120 turns/m]
	Of cellulose acetate.
	Other.
	Other yarn, multiple (folded) or cabled:
	Of cellulose acetate.
5403.33.00 .....	Of cellulose acetate.
5403.39.00 .....	Other.
5403.42.00 .....	Other yarn, multiple (folded) or cabled:
	Of cellulose acetate.
5404 .....	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the
	like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm:
	Monofilament:
	Racket strings.
5404.10 .....	Racket strings.
5404.10.10 .....	Racket strings.
5405.00 .....	Artificial monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the
	like (for example, artificial straw) of artificial textile materials of an apparent width not exceeding 5 mm:
	Monofilament
5405.00.30 .....	Monofilament

## SCHEDULE OF THE UNITED STATES OF AMERICA—Continued

HTS subheading	Article description
5405.00.60 .....	Other.
5408 .....	Woven fabrics of artificial filament yarn, including woven fabrics obtained from materials of heading 5405:
5408.10.00 .....	Woven fabrics obtained from high tenacity yarn, of viscose rayon.
5501 .....	Synthetic filament tow:
5501.10.00 .....	Of nylon or other polyamides.
5501.20.00 .....	Of polyesters.
5501.30.00 .....	Acrylic or modacrylic.
5501.90.00 .....	Other.
5503 .....	Synthetic staple fibers, not carded, combed or otherwise processed for spinning:
5503.10.00 .....	Of nylon or other polyamides.
5503.20.00 .....	Of polyesters.
5503.30.00 .....	Acrylic or modacrylic. [Of polypropylene]
5503.90.00 .....	Other.
5504 .....	Artificial staple fibers, not carded, combed or otherwise processed for spinning: [Of viscose rayon]
5504.90.00 .....	Other.
5605.00.00 .....	Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal.
5801 .....	Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806: Of cotton:
5801.25.00 <sup>1</sup> .....	Warp Pile fabrics, cut. Of man-made fibers:
5801.35.00 <sup>1</sup> .....	Warp pile fabrics, cut.
5902 .....	Tire cord fabric of high tenacity yarn of nylon or other polyamides, polyesters or viscose rayon:
5902.10.00 .....	Of nylon or other polyamides.
5902.20.00 .....	Of polyesters.
5902.90.00 .....	Other.
5905.00 .....	Textile wall coverings: [Backed with permanently affixed paper]
5905.00.90 .....	Other.
6301 .....	Blankets and traveling rugs:
6301.10.00 .....	Electric blankets.
6810 .....	Articles of cement, of concrete or of artificial stone, whether or not reinforced: Tiles, flagstones, bricks and similar articles: [Building blocks and bricks]
6810.19 .....	Other:
6810.19.12 .....	Floor and wall tiles: Agglomerate marble tiles.
6911 .....	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10 .....	Tableware and kitchenware: [Hotel or restaurant ware and other ware not household ware]
6911.10.20 .....	Other: Of bone chinaware.
6911.10.35 .....	Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is not over \$56.
6911.10.39 .....	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is over \$56.
6911.10.41 .....	Other: Steins with permanently attached pewter lids, candy boxes, decanters, punch bowls, pretzels dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers and salt and pepper shaker sets.
6911.10.45 .....	Mugs and other steins.
6911.10.49 .....	Cups valued over \$8 per dozen; saucers valued over \$5.25 per dozen; soups, oatmeals and cereals valued over \$9.30 per dozen; plates not over 22.9 cm in maximum diameter and valued over \$8.50 per dozen; plates over 22.9 but not over 27.9 cm in maximum diameter and valued over \$11.50 per dozen; platters or chop dishes valued over \$40 per dozen; sugars valued over \$23 per dozen; creamers valued over \$20 per dozen; and beverage servers valued over \$50 per dozen.
6911.10.60 .....	Serviette rings.
6911.10.80 .....	Other.
6912.00 .....	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware:
6912.00.10 .....	Of coarse-grained earthenware, or of coarse-grained stoneware; of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked or solidly colored brown to black with metallic oxide or salt.
6912.00.20 .....	Other: Hotel or restaurant ware and other ware not household ware. Other: Available in specified sets:

## SCHEDULE OF THE UNITED STATES OF AMERICA—Continued

HTS subheading	Article description
6912.00.35	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is not over \$38.
6912.00.39	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is over \$38.
6912.00.41	Other: Steins with permanently attached pewter lids; candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers and salt and pepper shaker sets.
6912.00.44	Mugs and other steins.
6912.00.45	Cups valued over \$5.25 per dozen; saucers valued over \$3 per dozen; soups, oatmeals and cereals valued over \$6 per dozen; plates not over 22.9 cm in maximum diameter and valued over \$6 per dozen; plates over 22.9 but not over 27.9 cm in maximum diameter and valued over \$8.50 per dozen; platters or chop dishes valued over \$35 per dozen; sugars valued over \$21 per dozen; creamers valued over \$15 per dozen; and beverage servers valued over \$42 per dozen.
6912.00.46	Serviette rings.
6912.00.48	Other.
6912.00.50	Other.
7007	Safety glass, consisting of toughened (tempered) or laminated glass: Toughened (tempered) safety glass: [Of size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels] Other.
7007.19.00	Other.
7019	Glass fibers (including glass wool) and articles thereof (for example, yarn, woven fabrics):
7019.10	Silvers, rovings, yarn and chopped strands: Yarns: Not colored. Colored. Chopped strands. [Rovings] Other.
7019.10.10	Not colored.
7019.10.20	Colored.
7019.10.30	Chopped strands. [Rovings] Other.
7019.10.60	Thin sheets (voiles), webs, mats, mattresses, boards and similar nonwoven articles: Mats.
7019.31.00	Mats.
7225	Flat-rolled products of other alloy steel, of a width of 600 mm or more: Of silicon electrical steel.
7225.10.00	Of silicon electrical steel.
7226	Flat-rolled products of other alloy steel, of a width of less than 600 mm: Of silicon electrical steel: Of a width of 300 mm or more. Of a width of less than 300 mm.
7226.10	Of silicon electrical steel: Of a width of 300 mm or more.
7226.10.10	Of a width of 300 mm or more.
7226.10.50	Of a width of less than 300 mm.
7307	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel: [Cast fittings] Other, of stainless steel: [Flanges] Threaded elbows, bends and sleeves: Sleeves (couplings) [Butt welding fittings] Other Other: Butt welding fittings: With an inside diameter of less than 360 mm: Of iron or nonalloy steel. Of alloy steel (except stainless steel). With an inside diameter of 360 mm or more.
7307.22	Threaded elbows, bends and sleeves: Sleeves (couplings)
7307.22.10	Sleeves (couplings) [Butt welding fittings]
7307.29.00	Other Other: Butt welding fittings: With an inside diameter of less than 360 mm: Of iron or nonalloy steel. Of alloy steel (except stainless steel). With an inside diameter of 360 mm or more.
7307.93	Other: Butt welding fittings: With an inside diameter of less than 360 mm: Of iron or nonalloy steel. Of alloy steel (except stainless steel). With an inside diameter of 360 mm or more.
7307.93.30	Of iron or nonalloy steel.
7307.93.60	Of alloy steel (except stainless steel).
7307.93.90	With an inside diameter of 360 mm or more.
7411	Copper tubes and pipes: Of copper alloys: Of copper-zinc base alloys (brass): Seamless. Other. Of copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel-silver).
7411.21	Of copper-zinc base alloys (brass): Seamless. Other.
7411.21.10	Seamless.
7411.21.50	Other.
7411.22.00	Of copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel-silver).
8203	Files, rasps, pliers, (including cutting pliers), pincers, tweezers, metal cutting shears, pipe-cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Files, rasps and similar tools: Not over 11 cm in length. Over 11 cm but not over 17 cm in length. Over 17 cm in length.
8203.10	Files, rasps and similar tools: Not over 11 cm in length.
8203.10.30	Not over 11 cm in length.
8203.10.60	Over 11 cm but not over 17 cm in length.
8203.10.90	Over 17 cm in length.
8212	Razors and razor blades (including razor blade blanks in strips), and base metal parts thereof: Razors. Safety razor blades, including razor blade blanks in strips.
8212.10.00	Razors.
8212.20.00	Safety razor blades, including razor blade blanks in strips.
8301	Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Clasps and frames with clasps, incorporating locks.
8301.50.00	Clasps and frames with clasps, incorporating locks.
8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors, with mountings of base metal; automatic door closers of base metal; and base metal parts thereof.

## SCHEDULE OF THE UNITED STATES OF AMERICA—Continued

HTS subheading	Article description
	[Hinges, and parts thereof; castors, and parts thereof; other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof]
	Other mountings, fittings and similar articles, and parts thereof:
8302.41 .....	Suitable for buildings:
8302.41.30 .....	Door closers (except automatic door closers), and parts thereof.
	Other:
8302.41.60 .....	Of iron or steel, of aluminum or of zinc.
8302.41.90 .....	Other.
8302.50.00 .....	Hat-racks, hat pegs, brackets and similar fixtures, and parts thereof.
8409 .....	Parts suitable for use solely or principally with the engines of heading 8407 or 8408:
	[For aircraft engines]
	Other:
	[Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines)]
8409.99 .....	Other:
	[Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery]
	Other:
8409.99.91 .....	For vehicles of subheading 8701.20 or heading 8702, 8703 or 8704.
8416 .....	Furnace burners for liquid fuel, for pulverized solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances; parts thereof:
8416.10.00 .....	Furnace burners for liquid fuel.
8416.20.00 .....	Other furnace burners, including combination burners.
8509 .....	Electromechanical domestic appliances, with self-contained electric motor; parts thereof:
8509.90 .....	Parts:
	[Parts of vacuum cleaners; parts of floor polishers]
8509.90.40 .....	Other parts.
8518 .....	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:
8518.30 .....	Headphones, earphones and combined microphone/speaker sets:
	[Telephone handsets]
8518.30.20 .....	Other.
8518.90 .....	Parts:
8518.90.10 .....	Of telephone handsets and repeaters.
8518.90.30 .....	Other.
8540 .....	Thermionic, cold cathode or photocathode tubes (for example, vacuum or vapor or gas filled tubes, mercury arc rectifying tubes, cathode-ray tubes, television camera tubes); parts thereof:
	Cathode-ray television picture tubes, including video monitor cathode-ray tubes:
	Color.
8540.11.00 <sup>2</sup> .....	
9001 .....	Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked:
9001.40.00 .....	Spectacle lenses of glass.
9001.50.00 .....	Spectacle lenses of other materials.
9018 .....	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
	Other instruments and appliances, used in dental sciences, and parts and accessories thereof:
9018.41.00 .....	Dental drill engines, whether or not combined on a single base with other dental equipment, and parts and accessories thereof.
9506 .....	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in chapter 95 of the HTS; swimming pools and wading pools; parts and accessories thereof:
	Tennis, badminton or similar rackets, whether or not strung; parts and accessories thereof:
	[Lawn-tennis rackets, whether or not strung, and parts and accessories thereof]
9506.59 .....	Other:
9506.59.40 .....	Badminton rackets and parts and accessories thereof.
9506.59.80 .....	Other.
	Goods originating in the territory of Canada under general note 3(c)(viii) of the tariff schedule:
9905.06.10 .....	Bulbs in soil (provided for in subheading 0601.20.90).
9905.07.01 .....	Chinese cabbage ( <i>Brassica rapa, chinensis</i> ) or Chinese lettuce ( <i>Brassica rapa, pekinensis</i> ) (provided for in subheading 0704.90.40.)
9905.07.05 .....	Chinese radishes or daikons ( <i>Raphanus sativus, longipinnatus</i> ) ( provided for in subheading 0706.90.20).
9905.07.15 .....	Green chill peppers, in brine (provided for in subheading 0711.90.60).
9905.16.11 .....	Prepared meals, not dehydrated and not requiring refrigeration, in vacuum-sealed airtight pouches or trays (provided for in subheading 1602.50.90).
9905.21.05 .....	Prepared ingredients for salads, consisting of a salad dressing and other components packaged together for retail sale (provided for in subheading 2103.90.60).
9905.21.10 .....	Conditioning, maturing or nutrient additives for flour; Dry honey coating; Honey flake; and Honey powder (all the foregoing goods provided for in subheading 2106.90.65).
9905.22.10 .....	Citric acid additives containing citric acid, water, and more than 85 percent but not more than 95 percent of alcohol by weight (provided for in subheading 2207.1030).

## SCHEDULE OF THE UNITED STATES OF AMERICA—Continued

HTS subheading	Article description
9905.24.10 .....	Cigar binders (provided for in subheading 2403.91.40).
9905.30.07 .....	Clindamycin palmitate hydrochloride granules; Clindamycin phosphate topical solution; Erythromycin; and Spectinomycin hydrochloride sterile powder, injectable (all the foregoing goods provided for in subheading 3004.20.00).
9905.30.08 .....	Somatropin, injectable (provided for in subheading 3004.30.00).
9905.30.11 .....	Alprostadil sterile solution, injectable; Antiseptic liniment or gel for relief of muscular aches, arthritic pain or bruises; Atapulgite tablets, film-coated; Ciprofloxacin hydrochloride tablets; Ciprofloxacin, intravenous; Ganciclovir sodium; Ivermectin; Ketorolac tromethamine; Methotrexate sodium; Mitoxantrone hydrochloride; Nifedipine tablets; Nimodipine capsules, tablets or intravenous formulation; Nitroglycerin tablets, sublingual; Quinapril hydrochloride; Streptozocin sterile solution, injectable; and Sumatriptan succinate (all the foregoing goods provided for in subheading 3004.90.60).
9905.30.12 .....	Ointment for moisturizing and protecting animal hooves (provided for in subheading 3004.90.60 or 3307.90.00).
9905.30.15 .....	Patches, impregnated with nicotine, used to assist in smoking withdrawal (provided for in subheading 3005.10.10).
9905.30.25 .....	Tablets containing norethindrone acetate or ethinyl estradiol (provided for in subheading 3006.60.00).
9905.33.10 .....	Powders for perfuming or deodorizing rugs or carpets (provided for in subheading 3307.49.00).
9905.39.02 .....	Pintlepin assemblies consisting of a monofilament, braid, or monofilament and braid, with attached threading wire and metal tube (provided for in subheading 3916.90.10, 3916.90.30, 5404.40.80, 5609.00.30 or 5808.10.30); and Monofilament certified by the importer as intended for pintlepins or pintlepin assemblies (provided for in subheading 3916.90.10, 3916.90.30 or 5404.40.80).
9905.39.11 .....	Flat profile shapes of polycarbonates, not less than 100 cm in width, and not less than 4 mm nor greater than 17 mm in thickness, having a cross-section solely of identically sized multiple rectangular voids (provided for in subheading 3916.90.50).
9905.39.15 .....	Tape of polyesters, certified by the importer as intended for use in splicing or holding film during photo processing (provided for in subheading 3916.10.20).
9905.39.16 .....	Polyvinyl chloride film, flexible, certified by the importer as intended for use as computer graphic film; Polyvinyl chloride film certified by the importer as intended for use in graphics for trucks or emergency vehicles; and Retroreflective sheets incorporating glass beads or molded plastic microprisms (all the foregoing goods provided for in subheading 3919.90).
9905.39.17 .....	Polyethylene synthetic paper pulp, in sheets (provided for in subheading 3920.10.00).
9905.39.18 .....	Film, not over 0.025 mm in thickness, with a prismatic surface on one side, certified by the importer as intended for use in lighting fixtures (provided for in subheading 3926.61.00).
9905.39.19 .....	Plates, sheets, film, foil and strip certified by the importer as intended for use in the manufacture of tubes (provided for in subheading 3920.72.00).
9905.39.20 .....	Polyimide film (provided for in subheading 3920.99).
9905.39.25 .....	Bobbins with metal shafts and phenolic heads and bases; Spools for typewriter or business machine ribbons; and Spools for the packaging of pintlepins (all the foregoing goods provided for in subheading 3923.40.00).
9905.39.27 .....	Flooring designed for use in livestock buildings (provided for in subheading 3925.90.00 or 3926.90.95).
9905.39.30 .....	Construction debris chutes; Grommets certified by the importer as intended for use in ballasts for fluorescent lamps; Lip bands (handles) for glass decanters; Microfilm jackets of polyethylene terephthalate; Perforated 8 mm, 16 mm or 35 mm motion picture film leaders of cellulose acetate or polyethylene terephthalate; Perforated release film of polymers of tetrafluoroethylene, certified by the importer as intended to be employed in the manufacture of printed circuit boards; and Teethers and teething rings (all the foregoing goods provided for in subheading 3926.90.95).
9905.40.05 .....	Strip certified by the importer as intended for use in passenger rail cars (provided for in subheading 4008.11).
9905.40.09 .....	Matting or mats certified by the importer as intended for use in passenger rail cars (provided for in subheading 4008.21.00, 4016.99.25 or 4016.99.50).
9905.40.12 .....	Conveyor belt cleats (provided for in subheading 4008.29.00).
9905.40.15 .....	Motorcycle rear drive belts and belt splice kits (provided for in subheading 4010.99).
9905.40.18 .....	Tire treads or retreads (provided for in subheading 4012.90.20, 4012.90.50, 4016.99.25 or 4016.99.50).
9905.40.20 .....	Chalkboard erasers (provided for in subheading 4016.10.00, 6307.90.99 or 9603.90.80).
9905.40.25 .....	Automotive weatherstripping (provided for in subheading 4016.10.00 or 4016.93.00).
9905.40.30 .....	Gaskets certified by the importer as intended for use in sealing steel or plastic drums; Motor seals certified by the importer as intended for use in passenger rail cars; and Seals certified by the importer as intended for use in air conditioners (all the foregoing goods provided for in subheading 4016.93.00).
9905.40.40 .....	Capacitor covers, grommets, flanges, and vibration-absorbing motor mounts, all the foregoing certified by the importer as intended for use in air conditioners; Conveyor belt pegs or lugs; Elasticized tubular bandage and a textile-backed rubber boot, packaged together for retail sale, designed to be worn over an animal hoof; Rubber bands; and Rubber labels certified by the importer as intended to be cured on solid rubber tires during the tires' manufacture (all the foregoing goods provided for in subheading 4016.99.25 or 4016.99.50).
9905.42.12 .....	Ski carrying cases, portable, of polyethylene (provided for in subheading 4202.92.45).
9905.42.15 .....	Golf bags (provided for in subheading 4402.92.15, 4202.92.20, 4202.92.30 or 4202.92.45).
9905.42.25 .....	Golf gloves (provided for in subheading 4203.21.80).
9905.44.08 .....	Brick-veneered panels having a plywood backing (provided for in subheading 4412.19.50).
9905.53.10 .....	Fabrics solely of flax, in the gray or unfinished condition (provided for in subheading 5309.11.00).
9905.54.01 .....	Yarn certified by the importer as intended for use in belts, belting or tire cord fabric (provided for in subheading 5401.10.60).
9905.54.02 .....	Yarn certified by the importer as intended for use in automotive or industrial belts or belting (provided for in subheading 5402.20.60).
9905.54.03 .....	Yarn certified by the importer as intended for use in woven fabrics other than narrow fabrics (provided for in subheading 5402.33).
9905.54.09 .....	Yarn certified by the importer as intended for use in weatherstripping; and Yarn of expanded polytetrafluoroethylene (all the foregoing goods provided for in subheading 5402.49.00).

## SCHEDULE OF THE UNITED STATES OF AMERICA—Continued

HTS subheading	Article description
9905.54.13	Yarn of nylon, certified by the importer as intended for use in tires or reinforced hoses (provided for in subheading 5402.51.00 or 5402.61.00).
9905.54.14	Yarn certified by the importer as intended for use in tires (provided for in subheading 5402.62.00).
9905.54.25	Strip and the like of polytetrafluoroethylene (provided for in subheading 5404.90.00).
9905.55.15	Fibers certified by the importer as intended for use in carpets (provided for in heading 5506).
9905.55.20	Yarn certified by the importer as intended for use in carpets (provided for in subheading 5509.11.00, 5509.12.00 or 5509.21.00).
9905.55.30	Yarn solely of polyesters certified by the importer as intended for use in carpets (provided for in subheading 5509.22.00).
9905.57.10	Axminster floor coverings (provided for in subheading 5702.31.20 or 5702.32.20).
9905.58.15	Braid certified by the importer as intended for pintlepins or pintlepin assemblies (provided for in subheading 5808.10.30).
9905.59.02	Chafar fabric of nylon certified by the importer as intended for use in tires (provided for in subheading 5906.99).
9905.59.11	Pure or prelubricated polytetrafluoroethylene strip (provided for in subheading 5911.90.00).
9905.60.05	Fabrics solely of polyesters certified by the importer as intended for use in gloves (provided for in subheading 6002.43.00).
9905.62.10	Protective clothing accessories of a kind used by chain saw operators (provided for in subheading 6217.10.00).
9905.64.30	Spikes certified by the importer as intended for use in golf shoes (provided for in subheading 6406.99.30 or 6406.99.90).
9905.66.11	Seat-sticks (provided for in heading 6602.00.00).
9905.69.10	Insulators for precipitators (provided for in subheading 6909.19 or 8546.20.00).
9905.72.10	Wire certified by the importer as intended for use in hoses, tires, or conveyor or automotive belting (provided for in subheading 7217.13, 7217.23 or 7217.33).
9905.72.20	Wire certified by the importer as intended for pintlepins or pintlepin assemblies, whether or not fitted with a metal tube (provided for in subheading 7217.31.30 or 7223.00.10).
9905.72.30	Wire certified by the importer as intended for use in reinforced hoses (provided for in subheading 7217.32.10).
9905.73.02	Tubes certified by the importer as intended for use in the manufacture of pintlepin assemblies (provided for in subheading 7304.41.00).
9905.73.04 <sup>3</sup>	Tubes, pipes and hollow profiles of stainless steel containing by weight 24 percent or more of nickel (provided for in subheading 7304.41.00 or 7304.49.00).
9905.73.06	Feedwater heater tubes in U-bend configuration; and Tubes certified by the importer as intended for use in tubular automotive manifolds (all the foregoing good provided for in subheading 7306.40).
9905.73.07	Tubes, pipes and hollow profiles of aluminized welded steel (provided for in subheading 7306.60.10 or 7306.60.50).
9905.73.08	Milking parlor stall systems (provided for in subheading 7308.90.90).
9905.73.09	Steel cord strands certified by the importer as intended for use in tires; Stranded alloy steel wire, of a diameter exceeding 5 mm, certified by the importer as intended for use in tires; Stranded wire certified by the importer as intended for use in conveyor belting; and Tire cord (all the foregoing goods provided for in subheading 7312.10).
9905.73.11	Conveyor belt fastener hinge pins (provided for in subheading 7312.10, 7326.20.00 or 7326.90.90).
9905.73.12	Tire cord fabrics (provided for in subheading 7314.19.00).
9905.73.13	Bead or ball chain (provided for in subheading 7315.89.50).
9905.73.14	Couplings for bead or ball chain (provided for in subheading 7315.90.00).
9905.73.16	Elevator bolts (provided for in subheading 7318.15.20).
9905.73.18	Cotter pins certified by the importer as intended for use in passenger rail cars (provided for in subheading 7318.24.00).
9905.73.19	Breakneck lock fasteners with striated rings (provided for in subheading 7318.29.00).
9905.73.20	Portable workbenches with wooden surfaces (provided for in subheading 7323.99.90 or 7326.90.90).
9905.73.21	Clamping rings and clevis pins certified by the importer as intended for use in passenger rail cars (provided for in subheading 7325.99).
9905.73.22	Bottoms certified by the importer as intended for use in insect control devices and cylindrical nonpressurized containers of deodorizers; Insert cups certified by the importer as intended for use in insect control devices; and stamping for drum tops and bottoms (all the foregoing goods provided for in subheading 7326.19.00).
9905.73.23	Cable ties certified by the importer as intended for use in passenger rail cars (provided for in subheading 7326.20.00).
9905.73.25	Bedpan liner dispenser racks; bedpan support racks; closing rings for drums; conveyor or transmission belt (including V-belt) fasteners; spools for typewriter or business machine ribbons; Urinal holders; and unthreaded collars for breakneck lock fasteners with striated rings (all the foregoing goods provided for in subheading 7326.90.90).
9905.74.40	Continuous cast bronze tubes (provided for in subheading 7411.29).
9905.74.50	Brass bead or ball chain, whether or not nickel-plated (provided for in subheading 7419.10.00).
9905.74.60	Brass forgings (provided for in subheading 7419.91.00).
9905.76.20	Aerosol or piston cans (provided for in subheading 7612.90.10).
9905.76.30	Forgings certified by the importer as intended for use in passenger rail cars (provided for in subheading 7616.90.00).
9905.82.25	Conveyor or transmission belt fastener installation and splicing tools (provided for in subheading 8205.59.55, 8205.59.60, 8205.59.70 or 8205.59.80).
9905.82.30	Vises and clamps, precision, for toolmakers, machinists or metal workers (provided for in subheading 8205.70.00).
9905.82.35	Knives and their handles of stainless steel containing 17 percent or more by weight of chromium (provided for in subheading 8211.91.20, 8211.91.25, 8211.91.30, 8211.91.40, or 8211.91.60).
9905.82.40	Knife blades of stainless steel containing 17 percent or more by weight of chromium (provided for in subheading 8211.94).
9905.82.45	Forks, spoons, spoon blanks and table forks in the rough of stainless steel containing 17 percent or more by weight of chromium (provided for in subheading 8215.99).
9905.83.05	Electronic door locks (provided for in subheading 8301.40.60).

## SCHEDULE OF THE UNITED STATES OF AMERICA—Continued

HTS subheading	Article description
9905.83.10	Parts of electronic door locks; and parts of the goods of subheading 8301.50.00 (all the foregoing provided for in subheading 8301.60.00).
9905.83.35	Gold-plated or silver-plated saddle trim (provided for in subheading 8302.49.20).
9905.83.40	Door handles certified by the importer as intended for use in passenger rail cars (provided for in subheading 8302.49.60 or 8302.49.80).
9905.83.45	Electronic key boxes and parts thereof (provided for in subheading 8303.00.00).
9905.83.50	Eyelets (provided for in subheading 8308.10.00).
9905.83.55	Blind rivets (provided for in subheading 8308.20).
9905.84.03	Windo-type air conditioning machines, less than 2.93 kW per hour (provided for in subheading 8415.10.00) and parts of air conditioning machines for subheading 8415.10.00 or 8415.81.00 (provided for in subheading 8415.90.00).
9905.84.04	Parts of furnace burners of subheading 8416.10.00 or 8416.20.00 (provided for in subheading 8416.90.00).
9905.84.21	Parts of dishwashing machines of subheading 8422.11.00 (provided for in subheading 8422.90.05).
9905.84.31	Parts of washing machines of subheading 8450.11.00 (provided for in subheading 8450.90.00).
9905.85.01	AC electric motors certified by the importer as intended for use in heating, air conditioning or refrigeration units (provided for in subheading 8501.10).
9905.85.16	Isolating transformers for airfield lighting (provided for in subheading 8504.31).
9905.85.19	Dry cell batteries and parts thereof, other than 1.5 volt AA, 1.5 volt C, and 1.5 volt D alkaline batteries and their parts (provided for in subheading 8506.11.00 and 8506.90.00).
9905.85.23	Dry cell batteries and parts thereof, other than 6 volt alkaline lantern batteries and their parts (provided for in subheading 8506.20.00 or 8506.90.00).
9905.85.27	Nickel-cadmium storage batteries certified by the importer as intended for use in passenger rail cars (provided for in subheading 8507.30.00).
9905.85.38	Motorcycle ignition modules and motorcycle spark coils (provided for in subheading 8511.30.00).
9905.85.39	Motorcycle generators (provided for in subheading 8511.50.00).
9905.85.44	Motorcycle alternator kits and regulators; and Motorcycle sensor assemblies (all the foregoing goods provided for in subheading 8511.80).
9905.85.48	Motorcycle distributor contact (breaker point) sets and ignition equipment; and Parts of motorcycle ignition modules, spark coils, generators, alternator kits and regulators, sensor assemblies, distributor contact (breaker point) sets and ignition equipment (all the foregoing goods provided for in subheading 8511.90).
9905.85.54	Motorcycle signaling equipment (including siren kits), and parts thereof (provided for in subheading 8512.20.40, 8512.30.00 or 8512.90.20).
9905.85.56	Hot water dispensers, of a capacity not exceeding 2.5 liters (provided for in subheading 8518.10.00).
9905.85.57	Warm-steam vaporizers (provided for in subheading 8516.10.00 or 8516.79.00).
9905.85.58	Parts of warm-steam vaporizers of subheading 8516.79.00 (provided for in subheading 8516.90.00).
9905.85.59	Amplifiers for telephone headsets (provided for in subheading 8518.40).
9905.85.61	Telephone headsets (provided for in subheading 8518.90.00).
9905.85.62	Unrecorded magnetic tape certified by the importer as intended for automatic data processing uses (provided for in subheading 8523.13.00).
9905.85.63	Unrecorded compact discs specially encoded for the permanent laser beam recording of photographic images (provided for in subheading 8523.90.00).
9905.85.64	Lightning or lighting arresters certified by the importer as intended for use in passenger rail cars (provided for in subheading 8535.40.00).
9905.85.73	Connector kits for isolating transformers for airfield lighting (provided for in subheading 8536.90.00).
9905.85.74	Plug-in busways, fusible or circuit breaker type (provided for in subheading 8536.10.00, 8536.20.00 or 8536.30.00).
9905.85.75	Protectors certified by the importer as intended for use in electric motors (provided for in subheading 8536.20.00).
9905.85.76	Thermal protectors certified by the importer as intended for use in ballasts for fluorescent lamps (provided for in subheading 8536.30.00).
9905.85.77	Connectors certified by the importer as intended for use in passenger rail cars (provided for in subheading 8536.49.00).
9905.85.78	Microswitches rated at 20 amperes or less for use in machinery and other industrial applications (provided for in subheading 8536.50.00).
9905.85.79	Busway connector assemblies; Connector kits for airfield lighting; and Electrical plugs and cylindrical multicontact connectors, certified by the importer as intended for use in passenger rail cars (all the foregoing goods provided for in subheading 8536.69.00).
9905.85.80	Terminals and terminal blocks certified by the importer as intended for use in air conditioning machines; and Y-adaptor connectors for telephone headsets (all the foregoing goods provided for in subheading 8536.90.00).
9905.85.81	Parts of lightning or lighting arresters of subheading 8535.40.00, of contactors of subheading 8536.49.00, and of electrical plugs and cylindrical multicontact connectors of subheading 8536.69.00, all the foregoing certified by the importer as intended for use in passenger rail cars; Parts of connector kits for isolating transformers of subheading 8536.90.00 and parts of connector kits of subheading 8536.69.00, all the foregoing for airfield lighting; Parts of plug-in busways, fusible or circuit breaker type, of subheading 8536.10.00, 8536.20.00 or 8536.30.00; Parts of thermal protectors certified by the importer as intended for use in ballasts for fluorescent lamps, of subheading 8536.30.00; Parts of microswitches rated at 20 amperes or less for use in machinery and other industrial applications, of subheading 8536.50.00; Parts of busway connector assemblies of subheading 8536.69.00; Parts of terminals and terminal blocks certified by the importer as intended for use in air conditioning machines, of subheading 8536.90.00; Parts of Y-adaptor connectors for telephone headsets, of subheading 8536.90.00; Ignition panels for motorcycles; and Parts of paragraphs of subheading 8535.90.00 (all the foregoing goods provided for in subheading 8536.90.00).
9905.85.82	Cable assemblies certified by the importer as intended for use in airfield lighting (provided for in subheading 8544.41.00, 8544.51.00 or 8544.60).
9905.85.83	Cable fitted with connectors for telephone headsets; and Igniter wires certified by the importer as intended for use in heating, air conditioning or refrigeration units (all the foregoing goods provided for in subheading 8544.41.00).



SCHEDULE OF THE UNITED STATES OF AMERICA—Continued

HTS subheading	Article description
9905.85.84	Carbon brushes certified by the importer as intended for use in passenger rail cars (provided for in subheading 8545.20.00).
9905.85.85	Insulation tubes; Insulators for pantographs; and Insulators certified by the importer as intended for use in switchgear (all the foregoing goods provided for in subheading 8546.90.00).
9905.85.86	Electric motor fuse bases certified by the importer as intended for use in passenger rail cars (provided for in subheading 8547.90.00).
9905.87.25	Brake drums for semi-trailers for road tractors (provided for in subheading 8716.90.50).
9905.90.06	Viewfinder eye cushions for cinematographic cameras (provided for in subheading 9007.91.80).
9905.90.13	Mechano-therapy equipment (provided for in subheading 9019.10.20).
9905.90.14	Thermocouple tips (provided for in subheading 9025.90.00).
9905.90.17	Airfield lighting regulators; Automatic voltage controllers; Control instruments under 1000 volts; and Float control switches (all the foregoing goods provided for in subheading 9032.89).
9905.92.05	Lutes (provided for in subheading 9202.90.60).
9905.92.12	Lute strings (provided for in subheading 9209.30.00).
9905.92.14	Tuning pins for lutes (provided for in subheading 9209.92.40).
9905.92.16	Parts of lutes (provided for in subheading 9209.92.80).
9905.94.09	Light-emitting sources for electronic measuring equipment (provided for in subheading 9405.40.60).
9905.94.12	Airfield signs, static nonflashing, having an illuminating light (provided for in subheading 9405.60).
9905.95.01	Golf balls, hollow, for practice (provided for in subheading 9506.32.00 or 9506.39.00).
9905.95.03	Golf club shafts of wood; Golf club heads, of wood, rough cut; and Forged golf club heads of iron or steel, not ground, polished, plated or otherwise finished (all the foregoing goods provided for in subheading 9506.39.00).
9905.95.07	Shuttlecocks (provided for in subheading 9506.99.12).
9905.95.08	Pitching machines (provided for in subheading 9506.99.15 or 9506.99.60).
9905.96.05	Hand-operated mechanical floor sweepers, not motorized (provided for in subheading 9603.90.80).
9905.96.10	Dry erase markers and plastic tip pens (provided for in subheading 9608.20.00).
9905.96.25	Crayons and chalks (provided for in subheading 9609.90.80).
Sec. 466 Tariff Act of 1930.	<b>EQUIPMENT AND REPAIRS OF VESSELS<sup>4</sup></b> (a) <i>Vessels subject to duty.</i> —The equipments, or any part thereof, including boats, purchased for, or the repair parts or the materials to be used, expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty. . . . on the cost thereof in such foreign country.

<sup>1</sup>The removal of the duty on the goods in subheadings 5801.25.00 and 5801.35.00 will be effective on the date of the implementation of the North American Free Trade Agreement.

<sup>2</sup>The removal of the duty on the goods in subheading 8540.11.00 will be effective on the date of the implementation of the North American Free Trade Agreement.

<sup>3</sup>The removal of the duty on goods in subheading 9905.73.04 will be effective on the date of the implementation of the North American Free Trade Agreement.

<sup>4</sup>The removal of the duty on equipment and repairs of vessels under this agreement shall apply with respect to all vessels provided for in headings 8901, 8902, 8904 or 8905 of the Harmonized Tariff Schedule of the United States, except floating docks provided for in subheading 8905.90.10. The removal of the duty will be effective on a date to be agreed upon by both Parties.

[FR Doc. 93-10942 Filed 5-7-93; 8:45 am]  
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**SECURITIES AND EXCHANGE COMMISSION**

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.**

May 4, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

- ACM Municipal Securities Income Fund, Inc.  
Common Stock, \$.01 Par Value (File No. 7-10634)
- American Healthcare Management, Inc.

- Common Stock, \$.01 Par Value (File No. 7-10635)
- Aptar Group, Inc.  
Common Stock, \$.001 Par Value (File No. 7-10636)
- General Growth Properties, Inc.  
Common Stock, \$.10 Par Value (File No. 7-10637)
- Geon Co.,  
Common Stock, \$.10 Par Value (File No. 7-10638)
- Managed High Income Portfolio, Inc.  
Common Stock, \$.001 Par Value (File No. 7-10639)
- Municipal Advantage Fund, Inc.  
Common Stock, \$.001 Par Value (File No. 7-10640)
- MuniVest Fund II, Inc.  
Common stock, \$.10 Par Value (File No. 7-10641)
- Snyder Oil Corp.  
Depository Shares (rep. ¼ sh. of Conv. Exch. Pfd. Stock) (File No. 7-10642)
- TCW/DW Term Trust 2003  
Common Shares of Beneficial Interest, \$.01 Par Value (File No. 7-10643)
- TIG Holdings, Inc.

- Common Stock, \$.01 Par Value (File No. 7-10644)
- Van Kampen Merritt Value Municipal Income Trust  
Common Shares of Beneficial Interest (rep. ½ sh. of 8.10% Cum. Pfd. Stock) (File No. 7-10645)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading

privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10993 Filed 5-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32248; File No. SR-CBOE-92-19]

**Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to OEX RAES Eligibility Standards**

April 30, 1993.

On September 16, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend the eligibility standards under which individuals, member organizations, and joint accounts may participate in the CBOE's Retail Automatic Execution System ("RAES" or "System") for Standard & Poor's ("S&P") 100 Index ("OEX") options, and to include the revised eligibility standards in the Exchange's rules as CBOE Rule 24.17, "RAES Eligibility in OEX."<sup>3</sup>

Notice of the proposed rule change was published for comment and appeared in the *Federal Register* on December 14, 1992.<sup>4</sup> No comments were received on the proposal.<sup>5</sup>

The CBOE's proposal revises the eligibility standards for individual, member organization, and joint account participation in OEX RAES.

Specifically, with regard to an individual Market-Maker's eligibility to participate in RAES, the proposal provides that: (1) The Exchange will consider a Market-Maker's OEX trades for the preceding month, rather than reviewing his OEX and S&P 500 Index ("SPX") trades for the preceding quarter; (2) a Market-Maker must execute at least 75% of his Market-Maker contracts for the preceding month in OEX; and (3) a Market-Maker must execute at least 75% of his trades for the preceding month in person.<sup>6</sup> The proposal states that Market-Makers currently eligible to participate on RAES will have 60 days following the effective date of the proposed rule change to comply with the new eligibility criteria if they desire to continue their participation in OEX RAES. In addition, the proposal requires individuals logged onto RAES to log off the System when they leave the trading crowd; failure to log off RAES after leaving the trading crowd will result in a fee of \$500.00, imposed by the OEX Floor Procedures Committee ("OPEC").<sup>7</sup> Fees imposed under the proposal may be appealed through the procedures provided in Chapter 19 of the CBOE's rules, "Hearings and Review."<sup>8</sup>

For joint accounts, the proposal allows the manager of a joint account to

report concerning its experience with the revised eligibility standards after the first sixty days of operation under the revised standards. The amendment also stated that only if participation in RAES-OEX were to fall below 100 Market-Makers for an extended period of time would it consider calling in additional Market-Makers to log onto RAES. See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Richard L. Zack, Branch Chief, Options Regulation, Division of Market Regulation ("Division"), Commission, dated April 14, 1993 ("Amendment No. 1"). On April 28, 1993, the CBOE amended its proposal to define that an "extended period" of less than 100 Market-Makers participating in OEX RAES would be considered a period of five or more consecutive days. In addition, the CBOE stated that the Commission will be given prompt notice whenever RAES-OEX participation falls below 120 Market-Makers. See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Richard L. Zack, Branch Chief, Options Regulation, Division, Commission, dated April 28, 1993 ("Amendment No. 2").

<sup>6</sup> Currently, to participate in RAES, a Market-Maker must execute 50% of his Market-Maker contracts for the preceding month in OEX or SPX and must execute 25% of his Market-Maker trades for the preceding month in person in OEX or SPX.

<sup>7</sup> Under the Exchange's existing rules, non-compliance with RAES log-on rules is processed by the Index Floor Procedure Committee. The proposal reflects the transfer of the enforcement of the OEX RAES requirements to the OFPC.

<sup>8</sup> Telephone conversation between Joanne Moffic-Silver, Associate General Counsel, CBOE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on March 10, 1993.

log onto RAES all eligible account members present in the OEX trading crowd. In addition, the proposal provides that (1) members of a joint account who are not present in the OEX trading crowd may not be logged onto RAES; (2) a joint account member must log off RAES whenever he leaves the OEX trading crowd; and (3) once a member of a joint account has been logged onto OEX RAES at any time during an expiration cycle, each member of that account must be logged onto the System at any time that he enters the OEX trading crowd from the date of the initial log-on through the business day immediately preceding expiration. The proposed rule change mandates a fee of \$500.00, imposed by the OFPC, for a joint account member who violates the preceding requirements.<sup>9</sup> In addition, a joint account member who fails to log onto the System on the last business day immediately preceding expiration will be disqualified from signing onto OEX RAES for a period of time to be determined by the OFPC.

CBOE Rule 24.17(d)(ii)(B) allows the OFPC to disallow any group from participating in RAES where it appears to the OFPC that such group does not afford each group participant a reasonable participation in profits and losses. The CBOE proposes to add Interpretation and Policy .01 to CBOE Rule 24.17, which provides that the guideline established in paragraph (d)(ii)(B) concerning what constitutes "reasonable participation in profits and losses" assumes each participant is logged onto the RAES System all of the time the System is in operation. In the case of a participant who is logged onto the System for a lesser period of time, a proportionate reduction may be made in such participant's participation in profits and losses.<sup>10</sup>

The CBOE proposes similar rules for members with multiple nominees. Specifically, the proposal allows the manager of a multiple nominee account to log onto RAES all eligible nominees present in the OEX trading crowd. In addition, the proposal provides that (1) nominees not present in the OEX trading crowd may not be logged onto RAES; (2) a participating nominee must log off the System when he leaves the OEX trading crowd; and (3) once a participating nominee has been logged onto OEX RAES at any time during an expiration cycle, each participating nominee of the member organization must be logged onto the System at any time that he enters the OEX trading

<sup>9</sup> See Amendment No. 1, *supra* note 5.

<sup>10</sup> See Amendment No. 1, *supra* note 5.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1992).

<sup>3</sup> The current RAES eligibility standards were approved by the Commission on a pilot basis in Securities Exchange Act Release No. 27378 (October 24, 1989), 54 FR 27378 (order approving File No. SR-CBOE-87-22). Subsequently, the pilot program was extended for two additional six-month periods, through April 22, 1991, and most recently was extended through April 22, 1993. See Securities Exchange Act Release Nos. 27955 (April 27, 1990), 55 FR 18789 (order approving File No. SR-CBOE-90-07); 28566 (October 23, 1990), 55 FR 43423 (order approving File No. SR-CBOE-90-28); and 31423 (November 9, 1992), 57 FR 54269 (order approving File No. SR-CBOE-92-18).

<sup>4</sup> See Securities Exchange Act Releases No. 31571 (December 7, 1992), 57 FR 59187.

<sup>5</sup> The CBOE submitted several amendments to its proposal. On April 15, 1993, the CBOE amended its proposal to, among other things, add Interpretation .01 to CBOE Rule 24.17 and to provide that the Exchange will provide the Commission with a

crowd from the date of the initial log-on through the business day immediately preceding expiration. The proposal mandates a fee, imposed by the OFPC, of \$500.00 for a member whose nominee violates the preceding requirements. In addition, a participating nominee who fails to log onto the System on the last business day immediately preceding expiration will be disqualified from signing onto OEX RAES for a period of time to be determined by the OFPC.

Finally, the proposed rule change authorizes the chairperson of the OFPC, or his or her designee, in consultation with a senior Exchange executive officer, to require Market-Makers who are members of the OEX trading crowd to log onto RAES if there appears to be inadequate RAES participation.

The CBOE states that the proposal is designed to promote (1) greater depth and liquidity in OEX options markets, and (2) more equitable participation in RAES by active Market-Makers in the OEX crowd. The CBOE believes that increasing the in-person and OEX volume quotas, decreasing the length of the review period for OEX RAES eligibility, and restricting RAES participation to members that are present in the trading crowd will promote greater in-person participation in the OEX trading crowd and, concomitantly, greater liquidity and depth in OEX options markets. The Exchange expects that participating Market-Makers generally will trade out of their RAES positions, thereby creating greater liquidity and tighter bid-ask spreads, even in less active series. In addition, the CBOE believes that the mandatory presence of RAES participants in the trading crowd will also promote greater accountability and is consistent with the current standard for participation in RAES in SPX options and in equity options.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).<sup>11</sup> The Commission believes that the proposed modifications of the OEX RAES eligibility standards are designed to strengthen the integrity of the RAES System for OEX options, thereby contributing to the maintenance of fair and orderly markets and the protection of investors. In particular, the revised eligibility standards are designed to ensure that there is adequate Market-Maker participation at all times in OEX

RAES and that Market-Makers are properly logged onto the System. The presence of an adequate number of Market-Makers help the Exchange to maintain the continued availability or RAES for OEX and thus contributes to the effective and efficient execution of public investor orders at the best available prices. At the same time, by increasing the in-person and OEX volume requirements applicable to Market-Makers, decreasing the length of the review period, and restricting RAES participation to members who are present in the trading crowd, the Commission believes that the proposal should result in more equitable participation in RAES by helping to limit OEX RAES eligibility to Market-Makers who regularly assume the responsibility for making markets in the OEX crowd.

Although the proposed eligibility standards may reduce the level of Market-Makers participation in OEX RAES, The Commission does not believe that the potential reduction will adversely affect the efficient functioning of the System. In this regard, the Commission notes, first, that the CBOE has indicated that the level of RAES-OEX participation over the past five years has generally averaged between 150-300 market-makers. Although the CBOE expects that the adoption of the proposed eligibility standards will result in a reduction in participation of up to 20%, the CBOE believes that participation will continue to exceed the number required to assure sufficient market-making capacity.<sup>12</sup> Moreover, if RAES-OEX participation falls below 100 market makers for an extended period,<sup>13</sup> the CBOE will begin to consider whether it may be necessary to exercise the authority to require other market-makers to log onto the System.<sup>14</sup> The Commission notes that if RAES-OEX participation falls below 120 market-makers, the CBOE will notify the Commission promptly, and will advise, the Commission of what action, if any, the CBOE intends to take.<sup>15</sup> In addition, the proposal provides Market-Makers

who are currently eligible to participate on RAES with 60 days following the effective date of the proposed rule change to comply with the new eligibility criteria if they desire to continue their participation in OEX RAES.

Second, the proposal contains several provisions designed to ensure adequate participation in OEX RAES. Specifically, the proposal authorizes the chairperson of the OFPC, in consultation with a senior Exchange executive officer, to require Market-Makers who are members of the OEX trading crowd to log onto RAES if there appears to be inadequate RAES participation. If participation continues to be inadequate, the chairperson of the OFPC, in consultation with a senior Exchange executive officer, may request participation of all Market-Makers whether or not they are members of the OEX crowd. In addition, the proposal provides that once a joint account member or a member organization's participating nominee has been logged onto OEX RAES at any time during the expiration cycle, each participating nominee of the member organization and each joint account member must be logged onto OEX RAES at any time that he enters OEX trading crowd from the date of the initial log on through the business day immediately preceding expiration. The proposal authorizes the OFPC to impose fines for noncompliance with the log-on requirements. In addition, joint account members and participating nominees who fail to log onto the System on the last business day immediately preceding expiration will be disqualified from signing onto OEX RAES for a period of time to be determined by the OFPC.

The Commission believes that these sanctions are sufficient to deter participating RAES Market-Makers from abandoning their commitment to the System for other than good cause and that the log-on provisions applicable to joint account members and participating nominees, together with the increased in-person requirements and the OFPC's authority to request Market-Maker participation in OEX RAES, should help to provide for adequate System participation, thereby benefitting investors and helping to maintain the depth and liquidity of the CBOE's market for OEX options. At the same time, the Commission believes that the right to appeal sanctions under the proposed rule pursuant to Chapter 19 of the CBOE's rules should help to safeguard the procedural rights of individuals upon whom the OFPC imposes fees, or who are disqualified from signing onto OEX RAES, for non-

<sup>12</sup> See Amendment No. 1, *supra* note 5.

<sup>13</sup> The CBOE defines "extended period" as any period greater than five consecutive trading days. See Amendment No. 2, *supra* note 5.

<sup>14</sup> See discussion *infra* for the ability of the CBOE to call in additional Market-Makers.

<sup>15</sup> See Amendment No. 1, *supra* note 5. As a result of these obligations, the Commission and the CBOE will continually be monitoring whether OEX-RAES participation is adequate under the procedures and what, if any, steps need to be taken if participation falls below acceptable levels. If the CBOE were to find that participation was regularly lower than anticipated under the new rules, we would expect the CBOE to consider alternatives, including amending the rule.

<sup>11</sup> 15 U.S.C. 78f(b)(5) (1982).

compliance with the proposal's requirements. Finally, as noted above, the Commission notes that the CBOE has agreed to submit a written report to the Commission concerning its experience under the revised eligibility standards promptly after the first sixty days of operation under the revised standards and to notify the Commission whenever participation levels fall below 120 Market-Makers.<sup>16</sup>

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Because each of these amendments are technical in nature or clarify the proposal without affecting its substance, the Commission believes that they do not raise any new issues.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all-written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 1, 1993.

*It is therefore ordered*, Pursuant to section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-CBOE-92-19), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

<sup>16</sup> See Amendment No. 1, *supra* note 5.

<sup>17</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>18</sup> 17 CFR 200.30-3(a)(12) (1992).

Jonathan G. Katz,

Secretary.

[FR Doc. 93-10932 Filed 5-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32246; File No. SR-NASD-93-14]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change To Delete Part V to Schedule D of the NASD By-Laws Regarding Publication and Dissemination of Quotations to the News Media

April 30, 1993.

On March 18, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The rule change deletes Part V to Schedule D of the NASD By-Laws<sup>3</sup> ("Part V") relating to publication and dissemination of quotations to the news media.

Notice of the proposed rule change, together with its terms of substance, was provided by issuance of a Commission release (Securities Exchange Act Release No. 32038, March 23, 1993) and by publication in the Federal Register (58 FR 16562, March 29, 1993). No comments were received in response to the Commission release. This order approves the proposed rule change.

Part V provided that an Information Committee (the "Committee") recommend two lists of quotations of Nasdaq securities for dissemination to the news media. First, Part V authorized the Committee to recommend a "National List" based on specified initial dissemination and maintenance criteria. In addition, Part V authorized the Committee to recommend an "Additional List" based on a dollar value of daily volume and a minimum bid price of \$1. Also, under Part V, inclusion on the two lists was determined semi-annually on the basis of information available to the Association on the selection date.

As the NASD indicated in its rule filing, under current NASD practice, Part V no longer applies to the dissemination of quotations to the news media of Nasdaq System<sup>4</sup> issuers. The

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1992).

<sup>3</sup> NASD Manual, Schedules to the By-Laws, Schedule D, Part V, (CCH) ¶ 1817.

<sup>4</sup> The Nasdaq System is comprised of both Nasdaq SmallCap Market ("Nasdaq SmallCap") and Nasdaq

NASD discontinued use of the Committee and no longer provides quotations of Nasdaq securities to the news media using the National List and Additional List. Under current practice, the NASD provides certain news media organizations and other market data vendors with two electronic data lines on information regarding all Nasdaq/NMS securities and Nasdaq SmallCap securities contained in the Nasdaq System. One data line provides bid/ask quotes for all Nasdaq System securities, and the other data line provides last sale information for all Nasdaq System securities. Most news media organizations currently receive quotation information regarding all Nasdaq System securities from a media organization or market data vendor that has access to the NASD data lines. Determinations regarding customized publication lists of Nasdaq SmallCap and Nasdaq/NMS securities are currently made by individual news media organizations based on their respective publication criteria. The NASD, therefore, proposes to delete Part V, in its entirety, from Schedule D to the NASD By-Laws.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of section 15A(b)(6) of the Act.<sup>5</sup> Section 15A(b)(6) requires that the rules of a national securities association be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This rule change deletes from the NASD's rules a rule the NASD no longer utilizes; the NASD no longer disseminates quotations of Nasdaq securities to the news media via the National and Additional Lists. Rather, the NASD provides certain organizations with quotations of Nasdaq securities over electronic data lines. Deleting Part V will clarify for readers of the NASD's rules the actual practice of providing quotations of Nasdaq securities.

The Commission does not believe the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*It is therefore ordered*, Pursuant to section 19(b)(2) of the Act, that the

National Market System ("Nasdaq/NMS") securities.

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

proposed rule change SR-NASD-93-14 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10934 Filed 5-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32253; File No. SR-MSRB-93-05]

**Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Book-Entry Delivery of Municipal Securities for Delivery vs. Payment or Receipt vs. Payment Customer Transactions in Depository Eligible Securities**

April 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 2, 1993, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MSRB-93-05) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change amends MSRB Rule G-15(d)(iii), relating to book-entry delivery of municipal securities for delivery vs. payment or receipt vs. payment ("DVP/RVP") customer transactions in depository eligible securities. The proposed rule change would eliminate the exemption in Rule G-15(d)(iii) which currently allows certain transactions to be processed outside the automated clearance and settlement system. MSRB requests that the Commission delay the effectiveness of the proposed rule change until July 1, 1993, to allow dealers sufficient time to make any changes that may be necessary in their settlement practice.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The purpose of the proposed rule change is to require book-entry settlement of all DVP/RVP customer transactions in depository eligible securities, with very limited exceptions such as securities not eligible at certain depositories and transactions in which a trustee or issuer is purchasing securities to retire them. The proposed rule change is part of the second phase of MSRB's overall plan to complete the transition of the municipal securities market to automated techniques of clearance and settlement.<sup>2</sup>

**(1) Background**

The settlement of institutional customer transactions in municipal securities is accomplished in large part through the book-entry delivery systems of securities depositories registered with the Commission. These systems have provided substantial efficiencies and cost savings to the municipal securities market by eliminating much of the time consuming and expensive manual processing associated with deliveries of securities certificates against payment. The book-entry systems also have helped to ensure timely settlements of transactions and to minimize the operational problems associated with high levels of transaction volume. There continue, however, to be some institutional customer transactions that are eligible for processing in the depository systems, but which are settled through the use of physical delivery of securities.

Currently, MSRB Rule G-15(d)(iii) requires the use of book-entry settlement systems for most DVP/RVP customer transactions eligible for

settlement in those systems. When this rule was adopted in 1983, MSRB considered whether this requirement should apply to all eligible DVP/RVP customer transactions. MSRB received comment from the industry which suggested the need for additional time on the part of some dealers and institutional customers to adjust to the automated clearance and settlement systems. Based on these comments, MSRB decided to provide an exemption within Rule G-15(d)(iii) which effectively allows a transaction to be settled outside of a depository if at least one party to the transaction is not a direct participant in a depository. MSRB, however, also stated its intention that, ultimately, the rules should apply to all DVP/RVP customer transactions in order for the market to obtain the maximum benefits and efficiencies possible from the book-entry systems.<sup>3</sup> MSRB believes that based on the movement of the industry in using book-entry settlement systems, it is now time to bring about more universal use of the systems.

**(2) Terms of the Proposed Rule Change**

The proposed rule change would require, with two limited exceptions, that all DVP/RVP customer transactions in depository eligible securities be settled by book-entry delivery. As a practical matter, therefore, all dealers would have to have access to the book-entry delivery services of a depository and would have to ensure that all of their customers receiving DVP/RVP settlement privileges have access to the book-entry settlement services of a depository. Access to book-entry settlement services could be accomplished either by direct membership in a depository or by use of a clearing agent with access to a depository.

Under the proposed rule change, there would be an exemption to the requirement of book-entry settlement for depository eligible transactions for securities which are eligible at some, but not all, depositories. If the securities are ineligible at the exclusive depository or depositories being used by one of the parties to the transaction, the proposed rule change would not require book-entry settlement. The proposed rule change, therefore, would not require that dealers and DVP/RVP customers have access to all depositories just to accommodate the lack of uniformity in eligibility lists at the various depositories. The second exemption relates to physical delivery of an RVP

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> For further details concerning MSRB's overall plan, see Securities Exchange Act Release No. 31645 (December 23, 1992), 57 FR 62407.

<sup>3</sup> Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531.

customer transaction in which an issuer or trustee is purchasing securities in order to retire them.<sup>4</sup> As discussed below, MSRB was persuaded by commenters who believe that such an exemption is sometimes needed so that the issuer or trustee can effectively retire securities prior to maturity by purchasing them on the open market.

MSRB requests that the Commission delay the effectiveness of the proposed rule change until July 1, 1993, to allow dealers sufficient time to make any changes that may be necessary in their settlement practices.

As set forth in section 15B of the Act, MSRB's rules should be designed to foster cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to, and facilitating transactions in, municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.<sup>5</sup> MSRB's role in this area is given additional direction by section 17A of the Act, which mandates the creation of a national system of automated clearance and settlement of securities transactions. Section 17A expressly includes municipal securities within its stated objectives.

MSRB believes that the proposed rule change will facilitate clearance and settlement of municipal securities as required by Section 15B of the Act and also serves one of the explicit purposes of Section 17A of the Act to implement new data processing and communications techniques to create the opportunity for more efficient, effective, and safe procedures for clearance and settlement and to eliminate the physical movement of securities certificates between dealers.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

<sup>4</sup> For example, an indenture trustee may request physical settlement on a DVP/RVP transaction because the trustee is purchasing securities prior to making a partial call and does not want to call certificates that it has purchased. Similarly, an issuer may purchase its own non-callable securities to retire them. The issuer may need to destroy the physical certificates and may not wish to make payment until the physical certificates are presented.

<sup>5</sup> 15 U.S.C. § 78o-4 (1988).

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

##### (1) Comments on Proposed Draft Amendments

In August 1991, MSRB published for comment the proposed rule change as well as other draft amendments to MSRB Rules G-12(f) and G-15(d). Sixteen comment letters were received.<sup>6</sup>

Twelve commenters generally supported the August 1991 draft amendments,<sup>7</sup> two were opposed,<sup>8</sup> and two commenters addressed a possible

<sup>6</sup> See letter from Philip Lanz, Managing Director, Bear, Stearns Securities Corp., to Harold L. Johnson, Deputy General Counsel, MSRB (December 16, 1991); letter from Jan Fenty, President, The Cashier's Association of Wall Street, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from William J. Winter, Vice President, Cashiers Department, A.G. Edwards and Sons, Inc., to Harold J. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Kathleen Graffam, First Chicago Capital Markets, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Steve Harris, Executive Vice President, Golden Harris Capital Group, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (October 7, 1991); letter from John J. Lyach, Jr., Executive Vice President, J.F. Hartfield and Co., Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from John F. Lee, President, New York Clearing House, to Harold L. Johnson, Deputy General Counsel, MSRB (December 16, 1991); letter from Harold Durk, Duke McElroy & Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from Lawrence Morillo, Senior Vice President, Pershing, to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from James H. Pyle, Managing Partner, Terry L. McCullough, Partner, Richard E. Whalen, Partner, and Benita I. Simon, Partner, Elmer E. Powell and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (November 27, 1991); letter from George Brakatselos, Vice President, Public Securities Association, to Harold L. Johnson, Deputy General Counsel, MSRB (November 19, 1991); letter from Thomas Sargent, Vice President, The Regional Municipal Operations Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 12, 1991); letter from George J. Minnig, Chairman, Regulatory and Clearance Committee, Securities Industry Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from Jerome Clair, Managing Director, and Robert Mattel, Assistant Manager, Smith Barney, Harris Upham & Co., Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 9, 1991); letter from Roger Springate, Jr., Springate and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); and letter from Rick Farrell, Assistant Vice President, United Missouri Bank, N.A., to Harold L. Johnson, Deputy General Counsel, MSRB (November 5, 1991).

<sup>7</sup> See *supra*, note 6, letters from Bear, Stearns Securities Corp.; The Cashiers' Association of Wall Street, Inc.; A.G. Edwards and Sons, Inc.; First Chicago Capital Markets; J.F. Hartfield and Co., Inc.; New York Clearing House; Pershing; Public Securities Association; The Regional Municipal Operations Association; Securities Industry Association; Smith Barney; and United Missouri Bank.

<sup>8</sup> See *supra*, note 6, letters from Elmer E. Powell and Company and Springate and Company.

modification without specifically supporting or opposing the draft amendments.<sup>9</sup> The commenters who supported the draft amendments, including the proposed rule change, stated that they generally believed that the amendments would increase the efficiency of book-entry settlement and/or reduce operational costs in the industry. The primary reason cited for this view was that the depository systems provide a quicker and less expensive means for delivering securities certificates against payment. These commenters indicated that a primary benefit of the draft amendment would be the elimination of time consuming exception processing necessary when a transaction is settled outside the depository under one of the exceptions in Rule G-15(d).

One commenter opposed the proposed rule change, stating that certain of its institutional customers wish to continue receiving physical delivery of securities certificates on DVP/RVP trades.<sup>10</sup> While MSRB understands that there may be a few institutional customers remaining who prefer to receive physical delivery of securities, MSRB believes that the overwhelming majority of institutional customers obtain cost advantages from book-entry settlement. In addition, the industry movement towards increased automation and the goal of compressing the settlement cycle suggest that the market, as a whole, will benefit from the efficiencies provided by a general rule requiring book-entry settlement. MSRB agrees with the view expressed by the majority of commenters that the draft amendments would facilitate book-entry settlement of municipal securities by eliminating the need for exception processing and prompting reliance on the less expensive book-entry systems of settlement.

MSRB also agrees with several commenters who suggested the need for an exemption from the requirement of book-entry settlement for certain issues which have sinking fund provisions that require physical delivery of bonds, as in an RVP customer transaction in which a trustee or issuer is purchasing securities in order to retire them.<sup>11</sup> In certain of these situations, it may be necessary for the issuer or trustee to obtain physical delivery of securities in order to record the certificate numbers

<sup>9</sup> See *supra*, note 6, letters from Golden Harris Capital Group, Inc. and Duke McElroy & Company.

<sup>10</sup> See *supra*, note 6, letter from Elmer E. Powell and Company.

<sup>11</sup> See *supra*, note 6, letter from The Cashiers' Association of Wall Street, Inc.; A.G. Edwards and Sons, Inc.; Duke McElroy & Company; Securities Industry Association; and Smith Barney.

of securities purchased prior to calling any additional bonds that may be necessary to satisfy the sinking fund provision. For example, certificate numbers may be needed so that the issuer or trustee can avoid calling certificates that it has already purchased. MSRB accordingly agreed to an exemption in Rule G-15(d) to allow physical settlement in this case.

#### (2) Comments on Proposed Implementation Timetable

MSRB's proposed implementation timetable for the August 1991 draft amendment was published for comment in April 1992. Two comment letters were received.<sup>12</sup> The commenters generally supported the implementation plan as it related to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in

the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSRB. All submissions should refer to the File No. SR-MSRB-93-05 and should be submitted by June 1, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10977 Filed 5-7-93; 8:45 am]

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[Release No. 34-32250; File No. SR-NASD-91-58]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Standards for Partnerships in the NASDAQ/NMS

April 30, 1993.

#### Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted on November 5, 1991, and amended on February 28, 1992 and May 11, 1992,<sup>1</sup> a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4, thereunder.<sup>3</sup> The proposal amends Schedule D to the NASD By-Laws<sup>4</sup> to establish non-quantitative designation criteria for partnerships. The criteria set forth corporate governance standards for NASDAQ National Market System ("NASDAQ/NMS") issuers that are limited partnerships similar to the standards that corporate issuers quoted on NASDAQ/NMS must comply with. Limited partnerships that trade in NASDAQ/NMS will have to have, among other things, independent directors, annual and interim reports, an audit committee, provisions for annual meetings<sup>5</sup> and a requirement to conduct an appropriate review of all related party transactions.

Notice of the proposed rule change together with the terms of substance of the proposal, as amended, was provided

by the issuance of a Commission release (Securities Exchange Act Release No. 30811, June 15, 1992) and by publication in the Federal Register (57 FR 28542, June 25, 1992). No comments were received with respect to the proposed rule change.

#### Background

In 1988, the NASD considered the need to adopt nonquantitative designation criteria for limited partnerships to provide certain protections for investors of publicly-traded partnerships analogous to those enjoyed by shareholders of corporations quoted on NASDAQ/NMS. The NASD decided not to take action on these proposals at that time due to the relatively small number of partnerships quoted on NASDAQ/NMS. In conjunction with the NASD's recent review of practices in partnership reorganizations, the NASD again considered the issue of nonquantitative designation criteria for partnerships and determined that limited partners of partnerships quoted on NASDAQ/NMS should benefit from corporate governance standards similar to the standards provided to corporate shareholders of companies quoted on NASDAQ/NMS.

#### Description of the Proposal

The proposed rule change would require partnerships on NASDAQ/NMS that are subject to Rule 13a-13 of the Act<sup>6</sup> to distribute an annual report containing audited financial statements to their limited partners. The report must be distributed within a reasonable period of time after the close of the partnership's fiscal year and filed simultaneously with the NASD.

The proposal also requires partnerships on NASDAQ/NMS subject to Rule 13a-13 of the Act to make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. The statement of operations contained in the quarterly report would be required to disclose, at a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes, or net income and the amount of estimated federal taxes.

If the form of the quarterly report differs from the Form 10-Q that the

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> Amendment No. 1 completely replaced and superseded the original rule filing. Amendment No. 2 amended the proposal to add a provision concerning conflicts of interest.

<sup>2</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>3</sup> 17 CFR 240.19b-4 (1992).

<sup>4</sup> NASD Securities Dealers Manual, Schedule D to the By-Laws, Part VI, Section 2, CCH ¶ 1819.

<sup>5</sup> See *infra* at 5.

<sup>6</sup> 17 CFR 240.13a-13 (1992). In general, Rule 13a-13 requires any issuer that has securities registered pursuant to section 12 of the Act and that is required to file annual reports pursuant to section 13 of the Act, to file quarterly reports on Form 10-Q.

<sup>12</sup> See letter from Margaret Sullivan, Assistant Vice President, The First National Bank of Chicago, to Harold L. Johnson, Deputy General Counsel, MSRB (May 28, 1992) and letter from Mario P. DeAngelo, Vice President, Alex. Brown and Sons, to Harold L. Johnson, Deputy General Counsel MSRB (April 29, 1992).

partnership filed with the Commission, then the partnership must file one copy of the quarterly report, in addition to the Form 10-Q, with the NASD. If required by state law or regulation of the jurisdiction where the partnership is formed or doing business, or if the partnership's limited partnership agreement requires the distribution of a quarterly report, then under the rule the quarterly report must be distributed to limited partners.

Partnerships on NASDAQ/NMS that are not subject to Rule 13a-13 of the Act, but are required to file with the Commission or other federal or state regulatory authority interim reports (relating primarily to the operations and the financial position of the partnership), would be required to make available to limited partners a report that reflects the information in the interim reports that are filed. If the report to limited partners differs from the interim report filed with the regulatory authority, then the partnership would be required to file with the NASD a copy of the report sent to the limited partners as well as the interim report filed with the appropriate regulatory authority.

If the state where the partnership is formed or doing business requires distribution of reports, or distribution is required by the terms of the partnership's limited partnership agreement, then the proposal requires that the reports be distributed to limited partners. The proposal would require these reports to be distributed to the limited partners either before or as soon as practicable following filing with the appropriate regulatory authority.

The proposal also would require partnerships on NASDAQ/NMS to establish a corporate general partner or corporate co-general partner and to have two independent directors on the board of the corporate general partner. In addition, an audit committee would be required for a partnership on NASDAQ/NMS; a majority of the members of the audit committee would be required to be independent directors. An independent director is defined in the proposal as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

In addition, the proposed rule change specifies that the corporate general partner or the co-general partner that has the independent directors and the audit committee, must have the authority to manage the day-to-day

affairs of the limited partnership. The proposal also allows partnerships to be admitted to NASDAQ/NMS upon the election of a single independent director to the board of the corporate general partner, provided they undertake to obtain a second independent director within a 12-month period. If the limited partnership does not obtain a second independent director within the requisite 12-month period, the partnership would be in violation of the non-quantitative designation criteria and would be subject to NASD delisting procedures.

Under the proposed rule change, partnerships would not be required to hold annual meetings unless a statute or regulation in the state in which the partnership is formed or is doing business requires a meeting or the partnership's limited partnership agreement prescribes meeting requirements. In the event of a meeting, a quorum of 33 1/3% of the limited partnership interests outstanding would be required, and proxy materials or information statements would be required to be distributed.

If a meeting of the partnership, other than an annual meeting, is required either by state law, state regulation, or the partnership's limited partnership agreement, the partnership would be required to provide all limited partners with proxy or information statements. In addition, if a vote is required by state law or regulation, or the partnership's limited partnership agreement, then proxies would be required to be solicited in connection with the voting.

The proposed rule change also includes a "conflict of interest" provision that requires each NASDAQ/NMS issuer which is a partnership to conduct an appropriate review of all related party transactions on an ongoing basis and to utilize when appropriate the Audit Committee or a comparable body for the review of potential material conflict of interest situations.

#### Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, with the requirements of Section 15A(b)(6) of the Act which,<sup>7</sup> among other things, requires that the rules of the NASD be designed to: (1) Prevent fraudulent and manipulative acts and practices; and (2) in general, protect investors and the public interest.

The Commission believes that the establishment of non-quantitative designation criteria for issuers that are

partnerships is beneficial for public investors in these securities. The proposed standards are designed to extend qualitative listing standards for equities to partnerships traded in NASDAQ/NMS.

The new corporate governance standards for limited partnerships will provide limited partners with protections such as independent directors on the corporate general partner's board of directors and an audit committee made up of a majority of independent directors, adding a degree of fairness to the limited partnership decision-making process and allowing for the review of possible conflicts of interest. The Commission believes that the establishment of audit committees serves as a valuable means of ensuring accurate disclosure of information. Because an effective audit committee can assist a board of directors in providing oversight of a limited partnership's management and financial reporting process, requiring limited partnerships traded on NASDAQ/NMS to have audit committees should enhance significantly the integrity of financial information and help to ensure compliance with financial reporting requirements. The Commission also believes that by requiring the majority of directors on the audit committee to be independent directors, compliance with securities laws and regulations should be enhanced and the independence of the internal audit functions strengthened.

Finally, the requirements to distribute annual reports, interim reports, and proxies will assist in providing the limited partner with important information on the operation of the partnership furthering investor protection and the public interest.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-91-58, be, and hereby is, approved, effective October 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jonathan G. Katz,

Secretary.

[FR Doc. 93-10937 Filed 5-7-93; 6:45 am]

BILLING CODE 8010-01-M

<sup>7</sup> 15 U.S.C. 78o-3(b)(6) (1988).

<sup>8</sup> 17 CFR 200.30-3(a)(12) (1992).



[Release No. 34-32251; File No. SR-NASD-92-53]

**Self-Regulatory Organizations;  
National Association of Securities  
Dealers, Inc.; Order Approving  
Proposed Rule Change Relating to  
Codification of Guidelines Regarding  
Communications with the Public About  
Investment Companies and Variable  
Contracts**

April 30, 1993.

On December 8, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change<sup>1</sup> pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder.<sup>3</sup> The proposal deletes the NASD's Guidelines Regarding Communications with the Public About Investment Companies and Variable Contracts ("Guidelines")<sup>4</sup> and amends Article III, Section 35 of the Rules of Fair Practice ("Section 35")<sup>5</sup> to incorporate certain specific standards from the Guidelines.

Notice of the proposed rule change, together with its terms of substance, appeared in the *Federal Register* on February 17, 1993.<sup>6</sup> The Commission received one letter of comment on the proposal. This order approves the rule change.

The NASD adopted the Guidelines in response to the SEC's 1979 repeal of its Statement of Policy on Investment Company Sales Literature. In June 1991, when the SEC amended Rule 482 under the Securities Act of 1933<sup>7</sup> and Rule 34b-1 under the Investment Company Act of 1940<sup>8</sup> relating to statements of investment company performance in communications to the public, many of the provisions of the Guidelines were rendered obsolete. Accordingly, the NASD has proposed to delete the Guidelines and amend Section 35 to incorporate various provisions from the Guidelines that are not addressed in

Rule 482 or Rule 34b-1. These provisions apply to advertisements and sales literature for all types of investments, whereas application of the Guidelines was restricted to investment company and variable contract products.

Section 35 will include those provisions of the Guidelines that impose general standards for communications with the public. These standards provide guidance on when communications may be misleading, including such factors as (1) the overall context in which the statements are made; (2) the audience to which the communication is directed; and (3) the overall clarity of the statement. Section 35 also will include provisions of the Guidelines that impose specific standards for comparisons, predictions and projections, and claims of tax free or tax exempt returns, in communications with the public. In light of its proposal to delete the Guidelines, the NASD believes that the proposed amendments to Section 35 are necessary to protect investors and the public interest.

The Commission received one comment letter on the proposal, from the Investment Company Institute ("ICI").<sup>9</sup> The letter expressed support for the proposal, but recommended clarifying that the provision relating to claims of tax exempt income requires disclosure only of applicable income taxes.<sup>10</sup> The NASD adopted this suggestion in Amendment No. 2 to the filing.

The Commission believes that the rule change will protect investors and the public interest by codifying certain general and specific standards in the Guidelines, and by extending the application of these standards, which currently apply only to investment company securities, to advertisements and sales literature regarding all types of securities. The proposed rule change will thereby prevent the use of misleading statements, inadequate explanations of statements, or statements which have no basis in fact, in connection with such communications to the public.

<sup>9</sup> See letter to Jonathan G. Katz, Secretary, SEC, from Thomas M. Selman, Assistant Counsel, ICI (March 9, 1993).

<sup>10</sup> The ICI comment letter also repeated an earlier suggestion that the NASD permit statements relating to the expected net asset value of certain types of funds for which the net asset value at a certain point is predictable, such as zero coupon bond portfolios. The NASD, however, remains opposed to this suggestion because of the variety of zero coupon bond funds and because of the changes in expectations if the shares are liquidated. See File No. SR-NASD-92-53, at 10 (December 8, 1992).

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A(b)(6) of the Act.<sup>11</sup> Section 15A(b)(6) requires that the NASD's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*It Is Therefore Ordered*, Pursuant to section 19(b)(2) of the Act, that the instant rule change be, and hereby is, approved, effective within 45 days after publication of a NASD Notice to Members announcing approval of the rule change.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>12</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10929 Filed 5-7-93; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-32247; File No. SR-NASD-93-12]

**Self-Regulatory Organizations;  
National Association of Securities  
Dealers, Inc.; Order Granting Approval  
of Proposed Rule Change to Part III to  
Schedule D of the NASD By-Laws  
Relating to Quantitative Designation  
and Maintenance Criteria for Nasdaq  
National Market System ("Nasdaq/  
NMS") Securities**

April 30, 1993.

On March 19, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change<sup>1</sup> pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder.<sup>3</sup> The rule change amends Part III to Schedule D of the

<sup>11</sup> 15 U.S.C. § 78o-3(b)(12).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> The NASD amended the proposed rule change once subsequent to its original filing on March 2, 1993. This amendment clarified and further explained the NASD's statutory basis for the proposed rule change.

<sup>2</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>3</sup> 17 CFR 240.19b-4 (1992).

<sup>1</sup> The NASD has filed two amendments to the proposed rule change with the Commission. Amendment No. 1, filed on January 11, 1993, reported the results of a member vote on the proposed rule change. The results of the vote were as follows: 1768 voting in favor, 154 opposed, and 28 not voting or unsigned, out of 1948 ballots received. Amendment No. 2, filed on April 22, 1993, clarified the proposed standards for claims of tax exempt income.

<sup>2</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>3</sup> 17 CFR 240.19b-4 (1992).

<sup>4</sup> NASD Manual, (CCH) ¶ 5286.

<sup>5</sup> NASD Manual, (CCH) ¶ 2195.

<sup>6</sup> Securities Exchange Act Release No. 31845 (February 10, 1993), 58 FR 8799.

<sup>7</sup> 17 CFR 230.482.

<sup>8</sup> 17 CFR 270.34b-1.

NASD By-Laws<sup>4</sup> ("Part III") relating to initial designation and maintenance criteria of Nasdaq/NMS securities.

Under Part III as amended, as issuer seeking designation as a Nasdaq/NMS issuer under the second of two alternatives must now have a minimum \$3 price per share each of the five business days prior to application. Part III also increases the maintenance criteria for certain Nasdaq/NMS securities, including common and preferred stock, by requiring the issuer to maintain net tangible assets of at least \$1 million. Finally, Part III requires Nasdaq/NMS issuers to maintain a minimum bid price per share of \$1 or, alternatively, a market value of public float of \$3 million and net tangible assets of \$4 million.

Notice of the proposed rule change, as amended, together with its terms of substance, was provided by issuance of a Commission release (Securities Exchange Act Release No. 32041, March 23, 1993) and by publication in the *Federal Register* (58 FR 16721, March 30, 1993). No comments were received in response to the Commission release. This order approves the proposed rule change.

#### Quantitative Designation Criteria

The Nasdaq System is comprised of both the Nasdaq SmallCap Market ("Nasdaq SmallCap") and Nasdaq/NMS. The NASD's rules ("rules") explicitly require issuers seeking initial designation of their securities as Nasdaq SmallCap to comply with the initial designation requirements contained in Part II of Schedule D.<sup>5</sup> For Nasdaq/NMS securities, the rules expressly provide that issuers seeking initial designation must comply with one of two alternative sets of quantitative designation criteria ("Alternative 1" or "Alternative 2")<sup>6</sup> contained in Part III. While the rules do not expressly require issuers seeking initial designation as Nasdaq/NMS to comply with the initial designation requirements of Nasdaq SmallCap securities, the NASD does in fact require these issuers to satisfy the Nasdaq SmallCap initial designation requirements.<sup>7</sup>

<sup>4</sup> *NASD Manual*, Schedules to the By-Laws, Schedule D, Part III, Secs. 2(b) & 4(a), (CCH) ¶¶1809 & 1811.

<sup>5</sup> *NASD Manual*, Schedules to the By-Laws, Schedule D, Part II, Secs. 1 & 2, (CCH) ¶¶1803 & 1804.

<sup>6</sup> For Alternatives 1 & 2, see, *NASD Manual*, Schedules to the By-Laws, Schedule D, Part III, Secs. 2 (a) & (b), (CCH) ¶1809.

<sup>7</sup> NASD staff provide determinations regarding issuer compliance with Nasdaq/NMS and Nasdaq SmallCap qualifications criteria; these determinations are subject to appeal pursuant to Article IX of the NASD's Code of Procedure.

The NASD's proposed rule change clarifies its current practice by amending the initial designation criteria for Nasdaq/NMS securities. In particular, while the NASD's rules expressly require Nasdaq SmallCap securities to have a \$3 minimum bid price per share for initial designation<sup>8</sup> and Alternative 1 of the Nasdaq/NMS initial designation criteria requires a \$5 minimum bid price per share, Alternative 2 does not set a minimum bid price per share. As indicated in its rule filing and noted above, the NASD nonetheless applies the Nasdaq SmallCap \$3 minimum bid price per share for issuers seeking designation of their securities as Nasdaq/NMS under Alternative 2. Thus, the NASD proposes to amend Alternative 2 to require a \$3 minimum bid price per share for designation in Nasdaq/NMS. This rule change clarifies current NASD practice and ensures that the quantitative initial designation criteria for Nasdaq/NMS securities is, at a minimum, that required of Nasdaq SmallCap securities.

#### Quantitative Maintenance Criteria

##### *Net Tangible Assets*

The rules currently require Nasdaq SmallCap issuers to maintain minimum net tangible assets<sup>9</sup> of \$1 million,<sup>10</sup> but do not require Nasdaq/NMS issuers to maintain minimum net tangible assets, unless the issuer sustained certain losses in past years. Specifically, a Nasdaq/NMS issuer must maintain net tangible assets of at least \$2 million if the issuer sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years, or \$4 million if it experienced such losses in three of its four most recent fiscal years.<sup>11</sup>

The NASD believes that all Nasdaq issuers should maintain, at a minimum, \$1 million in net tangible assets in the current fiscal year, regardless of past earnings performance. The NASD, therefore, proposed to amend Section 4(a) to Part III to require Nasdaq/NMS issuers to maintain at least \$1 million in net tangible assets. This proposed rule change eliminates the possibility of a Nasdaq/NMS issuer violating the \$1 million capital and surplus maintenance requirement applied to Nasdaq SmallCap issuers while remaining in

<sup>8</sup> *NASD Manual*, Schedules to the By-Laws, Schedule D, Part II, Sec. 1(c)(4), (CCH) ¶1803.

<sup>9</sup> Net tangible assets equals capital and surplus minus goodwill.

<sup>10</sup> See, *NASD Manual*, Schedule to the By-Laws, Schedule D, Part II, Secs. 1(c)(3) & 2(e)(3), (CCH) ¶¶1803 & 1804.

<sup>11</sup> *NASD Manual*, Schedules to the By-Laws, Schedule D, Part III, Sec. 4(a)3, (CCH) ¶1811.

compliance with Nasdaq/NMS maintenance requirements.

##### *Minimum Bid Price or the Alternative Public Float and Net Tangible Assets Criteria*

The rules require Nasdaq SmallCap issuers to maintain a minimum bid price of \$1 or, alternatively, a \$1 million public float and \$2 million in capital and surplus.<sup>12</sup> The rules, however, do not explicitly require Nasdaq/NMS issuers to maintain a minimum bid price per share or, alternatively, to maintain a higher minimum public float or net tangible assets. Nonetheless, the NASD applies to Nasdaq/NMS securities the Nasdaq SmallCap \$1 minimum bid price maintenance criteria.

The NASD believes the Nasdaq/NMS maintenance criteria should clarify the NASD's actual practice. In addition, the NASD believes Nasdaq/NMS maintenance criteria should provide for an alternative public float and net tangible assets requirement similar to, but higher than, the levels required for Nasdaq SmallCap issuer. To this end, the NASD concluded that if a Nasdaq/NMS issuer fails to meet a \$1 minimum bid price, it should be required to meet an alternative public float test of \$3 million and an alternative net tangible assets test of \$4 million. The NASD, therefore, proposed to amend Section 4 to Part III to require a Nasdaq/NMS issuer to maintain a \$1 minimum bid price per share, or in the alternative, maintain a market value of public float of \$3 million and \$4 million of net tangible assets. This rule change clarifies current NASD practice and ensures that the quantitative initial designation criteria for Nasdaq/NMS securities is, at a minimum, that required of Nasdaq SmallCap securities.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.<sup>13</sup> Section 15A(b)(6) requires, in part, that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. This rule change requires Nasdaq/NMS issuers to comply with, at a minimum, the initial designation and maintenance criteria applied to Nasdaq SmallCap issuers. These criteria provide protection for investors and the public

<sup>12</sup> *NASD Manual*, Schedule to the By-Laws, Schedule D, Part II, Sec. 1(c)(4), (CCH) ¶1803.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

interest; this rule change clarifies the NASD's current practice in certain areas, in particular, the need for Nasdaq/NMS issuers to meet the Nasdaq SmallCap designation criteria.

The Commission does not believe that the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change SR-NASD-93-12 be, and hereby is, approved, effective within 45 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10933 Filed 5-7-93; 8:45 am]  
BILLING CODE 8010-01-M

**Self-Regulatory Organizations;  
Applications for Unlisted Trading  
Privileges and of Opportunity for  
Hearing; Philadelphia Stock Exchange,  
Inc.**

May 4, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

CNL Realty Investor, Inc.

Common Stock, \$.01 Par Value (File No. 7-10624)

Coastal Corporation

Cum. Pfd. Stock, 33 $\frac{1}{2}$ % Par Value (File No. 7-10625)

Royal Caribbean Cruises Ltd.

Common Stock, \$.01 Par Value (File No. 7-10626)

SunDowner Offshore Services, Inc.

Common Stock, \$.01 Par Value (File No. 7-10627)

NTN Communications

Common Stock, \$0.005 Par Value (File No. 7-10628)

Nuevo Energy Corporation

Common Stock, \$.01 Par Value (File No. 7-10629)

West Corp., Inc.,

Common Stock, \$.01 Par Value (File No. 7-10630)

ACM Municipal Securities Income Fund, Inc.  
Common Stock, \$.01 Par Value (File No. 7-10631)

Managed High Income Portfolio, Inc.

Common Stock, \$.001 Par Value (File No. 7-10632)

Geon Company

Common Stock, \$.10 Par Value (File No. 7-10633)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10991 Filed 5-7-93; 8:45 am]  
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[Release No. 34-32249; File No. SR-MSTC-93-05].

**Self-Regulatory Organizations;  
Midwest Securities Trust Company;  
Notice of Filing and Immediate  
Effectiveness of Proposed Rule  
Change Relating to the Deposit of  
Nontransferable Securities Not in  
Good Deliverable Form**

April 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 19, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MSTC-93-05) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's  
Statement of the Terms of Substance of  
the Proposed Rule Change**

The proposed rule change establishes procedures for the deposit at MSTC, for safekeeping purposes only, of nontransferable securities that are not in good deliverable form.

**II. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**(A) Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

The purpose of the proposed rule change is to establish procedures for the deposit at MSTC, for safekeeping purposes only, of nontransferable securities that are not in good deliverable form. MSTC participants currently hold as custodian large numbers of nontransferable securities which are technically not in good deliverable form and which cannot be put into good deliverable form. The proposed rule change permits participants to deposit these securities at MSTC for safekeeping purposes only, where MSTC will act as custodian instead of the participant. These securities will not be eligible for any depository services other than safekeeping.

Specifically, the proposed procedures are as follows. Participants that desire to deposit nontransferable securities that are not in good deliverable form will be permitted to physically deposit these securities at MSTC solely for safekeeping services if they use a deposit ticket marked "NTRN-Pledge". This will ensure that the nontransferable securities will be placed in a pledged position, ineligible for all depository services other than safekeeping. Under MSTC's pledge procedures, only MSTC will be capable of releasing the securities from this position. The participant cannot request or require the securities to be moved from the pledged position. Once in a pledged position, a nontransferable security cannot be moved except to be returned to the participant by MSTC.

Nontransferable securities held pursuant to the program will be listed as a separate position in the participant's inventory. A deposit ticket marked "NTRN-Pledge" must accompany all such securities deposits.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78e(b)(1).

In addition, these securities will be physically separated from all other securities so that no commingling can occur between these and other securities. Finally, prior to accepting any of these securities, MSTC will inquire of the Securities Information Center ("SIC") regarding each particular security that the security has not been reported to SIC as lost, stolen, missing or counterfeit.

MSTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(A) and (F) of the Act, and the rules and regulations thereunder, in that it will facilitate the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds in its custody or control or for which it is responsible.

**(B) Self-Regulatory Organization's Statement on Burden on Competition**

MSTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

**(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

MSTC has not solicited written comments with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder, because it effects a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to the File No. SR-MSTC-93-05 and should be submitted by June 1, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 93-10978 Filed 5-7-93; 8:45 am]  
BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated**

May 4, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(10)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Glamis Gold, Ltd.

Common Stock, No Par Value (File No. 7-10620)

Parker & Parsley Petroleum

Common Stocker, \$.01 Par Value (File No. 7-10621)

TIG Holdings, Inc.

Common Stock, \$.01 Par Value (File No. 7-10622)

Transportacion Maritima Mexicana S.A. DE C.V.

American Depository Shares—Series 2 (File No. 7-10623)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1993,

written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 93-10979 Filed 5-7-93; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. IA-1370 ; 803-88]

**The Advisors Fund L.P., et al.; Notice of Application**

April 30, 1993.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Advisers Act of 1940 (the "Advisers Act").

**APPLICANTS:** The Advisors Fund L.P. (the "Fund"), Shearson Lehman Brothers Inc. ("Shearson Lehman"), Shearson Lehman Investment Strategy Advisors Inc. ("Strategy Advisors"), Ardsley Advisory Partners, Hellman Jordan Management Co., Inc., Mark Asset Management Corporation, Woodward & Associates Inc., and Tremont Partners, Inc.

**RELEVANT ADVISERS ACT SECTIONS:** Order requested under sections 205(b)(2) and 206A of the Advisers Act for exemptions from section 205(b)(2) and rule 205-1.

**SUMMARY OF APPLICATION:** Applicants seek to permit the calculation of a performance-based advisory fee for the Fund based on the performance of one class of Fund shares upon the implementation of a proposed multiple class distribution arrangement. The requested exemption would apply not only to the named Applicants but also to other investment advisers that may be engaged by the Fund in the future.

**FILING DATES:** The application was filed on September 25, 1992, and amended and restated applications were filed on December 1, 1992, and February 19, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm., on May 25, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants: The Fund and Strategy Advisors, Two World Trade Center, New York, New York 10048; Shearson Lehman, American Express Tower, World Financial Center, New York, New York 10285; Ardsley Advisory Partners, 450 Park Avenue, Suite 3003, New York, New York 10022; Hellman Jordan Management Co., Inc., 75 State Street, Boston, Massachusetts 02109; Mark Asset Management Corporation, 767 Fifth Avenue, New York, New York 10153; Woodward & Associates Inc., 17 State Street, 26th Floor, New York, New York 10004; Tremont Partners, Inc., One Corporate Center at Rye, 555 Theodore Fremd Avenue, Rye, New York 10850.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel, at (202) 272-3030, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### Applicants' Representations and Analysis

1. The Fund is a Delaware limited partnership that is an open-end, non-diversified management investment company. Its investment objective is to maximize total return. In seeking to achieve this objective, the Fund allocates its assets among different portfolio managers. This allocation is made at the discretion of Strategy Advisors, a registered adviser under the Advisers Act and a wholly-owned subsidiary of Shearson Lehman.

2. The Fund currently has four portfolio managers: Ardsley Advisory Partners; Hellman, Jordan Management

Co., Inc.; Mark Asset Management Corporation; and Woodward & Associates Inc. In addition, Strategy Advisors has engaged Tremont Partners, Inc. to act as a consultant to provide research concerning investment advisers to be retained by the Fund as portfolio managers, to monitor and assist Strategy Advisors with the periodic reevaluation of existing portfolio managers, and to make periodic reports regarding the portfolio managers' performance to Strategy Advisors and the Fund. Shearson Lehman, a broker-dealer and investment adviser registered with the SEC, serves as the principal underwriter for the Fund.

3. The Fund pays Strategy Advisors a monthly advisory fee for its services based upon the Fund's performance compared to that of the Standard & Poor's 500 Composite Stock Price Index (the "S&P 500"). The maximum monthly advisory fee after the monthly performance adjustment is 4.0% per annum of the value of the Fund's average daily net assets if the Fund outperforms (after payment of all expenses, including advisory fees) the S&P 500 by six percentage points or more and the absolute performance of the Fund is positive. If the Fund underperforms the S&P 500 by four percentage points or more (after payment of all expenses, including advisory fees) the monthly advisory fee would be 0% per annum of the value of the Fund's average daily net assets. Strategy Advisors retains ten percent of the monthly investment advisory fee and the remaining ninety percent is available for payment to the portfolio managers. Strategy Advisors pays each portfolio manager a monthly management fee based upon the portfolio manager's performance compared to the performance of the S&P 500.

4. The Fund, together with other funds sponsored by Shearson Lehman, has obtained an SEC exemptive order (the "Variable Pricing Order") to permit a multiple class distribution arrangement known as the variable pricing system (the "Variable Pricing System"). Investment Company Act Release No. 18832 (July 7, 1992). Under the Variable Pricing System, the Fund intends to offer investors the option of purchasing shares with either (i) a front-end sales load, together with a plan of distribution adopted pursuant to rule 12b-1 under the Investment Company Act of 1940 providing for a service fee at an annual rate of up to 0.25% of average daily net assets ("Class A shares") or (ii) subject to a contingent deferred sales charge ("CDSC") and a rule 12b-1 plan providing for a service

fee at an annual rate of up to 0.25%, and a distribution fee at an annual rate of up to 0.75%, of average daily net assets ("Class B shares"). Under the Variable Pricing System the Fund may offer a third class of shares ("Class C shares") without the imposition of either a sales charge or a distribution or service fee. The Fund does not currently intend to offer Class C shares.

5. The Fund, together with other funds sponsored by Shearson Lehman, also has obtained an order amending the Variable Pricing Order (the "Amended Variable Pricing Order") to modify the Variable Pricing System in several respects. Investment Company Act Release No. 19216 (Jan. 19, 1993). The Amended Variable Pricing Order permits the imposition of a CDSC on redemptions within one year of purchase for Class A shares sold pursuant to a complete front-end sales load waiver applicable to large purchases, the establishment of a fourth class of shares to be sold without imposition of a sales charge but subject to a service fee and an ongoing distribution fee ("Class D shares"), and the establishment, from time to time, of one or more additional classes to be sold with different sales load and service and distribution fee structures. The Fund does not currently intend to offer Class D shares or shares of additional classes.

6. Section 205(b)(2) of the Advisers Act permits certain performance fees if the advisory contract provides for compensation based on the asset value of the company averaged over a specified period of time that increases and decreases proportionately with the investment performance of the company in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the SEC may specify. Rule 205-1 under the Advisers Act requires that performance fees permitted under section 205(b)(2) be based on changes in a company's net asset value per share.

7. Because the performance component of the advisory fee is based on changes in net asset value, and because the net asset values of the various classes would differ due to different fees and charges, a question arises as to the proper calculation of the advisory fees under the multi-class regime of the Variable Pricing System. Applicants submit that section 205 of the Advisers Act and rule 205-1 thereunder would seem to require that the advisory fees be based on the net asset values of each class, with the result that shareholders of each class would be charged different advisory fees due to differences in the net asset values

of their shares after deduction of fees and charges applicable to each class.<sup>1</sup>

8. Applicants believe that advisory fees, including performance-based advisory fees, properly should be considered as a fund, rather than a class, expense in the multi-class context. Calculation of an advisory fee based on a class's net asset value is questionable since Strategy Advisors and the portfolio managers are managing a common portfolio and therefore providing the same advisory service to each class. Such calculation of the advisory fee would be in conflict with the basic principle that investment advisers should be compensated on the basis of fund-wide performance. To the extent that performance results are different for each class, they differ only because of the different non-investment advisory expenses of each class and are not related to the efforts of the investment adviser.

9. The Fund therefore proposes to calculate its performance fee based on the net asset value of the class of shares that would provide the lowest advisory fee for all classes. Applicants believe that using the net asset value of the Class B shares, the class having the highest transfer agency and distribution fees, generally will provide the lowest advisory fee among the classes. The fee calculated using the net asset value of the Class B shares would then be applied *pro rata* to all the classes on the basis of their relative net asset values. In the event, however, that use of the net asset values of Class A shares or any other class of shares offered by the Fund would produce a lower advisory fee, the Fund will calculate its performance fee based on the class of shares that will produce the lowest advisory fee.

10. If the net asset value of Class B shares is used in calculating the performance fee of the Fund, Class A shareholders would have the benefit of paying an advisory fee that is based on the lower net asset value of the Class B shares resulting from the higher relative expenses charged to the Class B shares. The Class B shareholders would be charged an advisory fee based on actual net asset value after deducting the expenses applicable to that class as required by section 205(b)(2) and rule 205-1. Applicants submit, however, that the proposed arrangement would not be unfair to any group of shareholders.

<sup>1</sup> Because the per share requirement of rule 205-1 may conflict with the requirement of section 205(b)(2) that a company's investment performance be measured on an aggregate basis, the Commission notes that, absent exemptive relief, any performance fee may be impermissible for multi-class investment companies with share values that vary among classes.

Current shareholders of the Fund (whose shares would become Class A shares upon implementation of the Variable Pricing System) would receive more favorable treatment than under the current fee calculation. New shareholders, regardless of which class of shares they purchase, would not be disadvantaged because their purchases would be made only after full disclosure of the method upon which the Fund's performance fee is calculated. In this regard, all prospective Class B shareholders would be in a position to evaluate the advisory fees in terms of the advantages of the arrangement to the Class A shareholders. Applicants submit that this is no different from investors choosing different funds or series of funds based on differing advisory fees or choosing different classes of shares within the same fund or series based on differing expenses.

11. For the reasons set forth above, Applicants believe that the proposed allocation of investment advisory fees to the different classes of Fund shares in the manner and under the circumstances described above would be fair and in the best interests of shareholders of the Fund. Accordingly, as required by section 206A of the Advisers Act, Applicants submit that the granting of the requested exemptive order would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act. Applicants further submit that the SEC may grant an exemption under the last clause of section 205(b)(2) of the Advisers Act as a measure of investment performance that the SEC may approve by order.

By the Commission.

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10931 Filed 5-9-93; 8:45 am]  
BILLING CODE 8010-01-M

**Issuer Delisting; Application to Withdraw From Listing and Registration; (Pollution Research and Control Corp., Common Stock, \$ .0 Par Value; Warrants Expiring 06/29/94) File No. 1-8137**

May 4, 1993.

Pollution Research and Control Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities

from listing and registration on the Pacific Stock Exchange, Inc. ("PSE" or "Exchange").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, its common stock and warrants are currently listed on the PSE and traded on the National Market System of the National Association of Securities Dealers Automated Quotation System ("NASDAQ/NMS").

According to the Company, in the interest of maintaining a market for common stock and warrants, PRCC has listed its securities on the NASDAQ. PRCC is confident in the NASDAQ's ability to provide a viable trading environment for current and prospective holders of PRCC common stock and warrants.

According to the Company, during the past year, PRCC's has common stock and warrants have had minimal trading activity on the PSE. As a result, the cost of maintaining PRCC's securities on the PSE began to outweigh the prospect of any benefits. Therefore, PRCC has decided to delist its common stock and warrants currently listed on the PSE.

Any interested person may, on or before May 25, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10992 Filed 5-7-93; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 35-25806]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

April 30, 1993.

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 thereunder. 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 amendments thereto is/are available for public inspection through the Commission's Office 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 May 24, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact 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 said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Northeast Utilities, et al. (70-8048)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned subsidiary companies ("Subsidiaries"), Holyoke Water Power Company ("Holyoke"), Canal Street, Holyoke, Massachusetts 01040, Western Massachusetts Electric Company ("WMECO") and Quinnehtuk Company ("Quinnehtuk"), both of 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, Public Service Company of New Hampshire ("PSNH") and North Atlantic Energy Corporation ("North Atlantic"), both of 1000 Elm Street, Manchester, New Hampshire 03105, The Connecticut Light & Power Company ("CL&P"), Northeast Nuclear Energy Company ("Nuclear") and The Rocky River Realty Company ("Rocky River"), each of 107 Selden Street, Berlin, Connecticut 06037, and HEC Inc. ("HEC"), 24 Prime Parkway, Natick, Massachusetts 01760 (all companies collectively, "Applicants"), have filed a post-effective amendment under sections 6(a), 7, 9(a) and 10 of the Act and Rules 43 and 50(a)(5) thereunder to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By order dated July 27, 1990 (HCAR No. 25114-A) ("July 1990 Order"), through July 1, 1993: (1) HEC was authorized to borrow up to \$15 million

under a revolving credit/term loan agreement ("HEC Revolver"); and (2) Northeast was authorized to guarantee HEC's borrowings under the HEC Revolver.

By order dated December 16, 1992 (HCAR No. 25710) ("December 1992 Order"): (1) The Applicants (with the exception of HEC, which was not an applicant-declarant at that time) were authorized to make short-term borrowings from time to time after December 31, 1992 and through December 31, 1994, evidenced (a) in the case of Northeast, Holyoke, WMECO, PSNH, North Atlantic, CL&P, Nuclear, and Rocky River, by short-term notes ("Short-Term Notes") issued to banks and non-bank lending institutions through formal and informal credit lines, and (b) in the case of Northeast, WMECO and CL&P, by commercial paper ("Commercial Paper") issued to a dealer or dealers in commercial paper; (2) the Applicants (with the exception of HEC, which was not an applicant-declarant at that time) were authorized to continue the use, through December 31, 1994, of the Northeast Utilities System Money Pool ("Money Pool"), to assist in meeting the Subsidiaries' (except for HEC) respective short-term borrowing needs; (3) Northeast was authorized to make open account advances, through December 31, 1994, to PSNH, Nuclear, North Atlantic, Quinnehtuk and Rocky River; and (4) PSNH was authorized to continue the use, until its termination on May 14, 1994, of a revolving credit facility ("PSNH Facility") entered into before PSNH became subject to Commission jurisdiction.

The Applicants now propose: (1) To add HEC as a participant in the Money Pool for borrowings up to \$11 million<sup>1</sup> pursuant to the same terms and conditions as authorized by the December 1992 Order, but only insofar as funds borrowed by HEC are contributed to the Money Pool by Northeast; and (2) to increase Rocky River's short-term borrowing authorization from \$15 million (which was granted pursuant to the December 1992 Order) to \$25 million.

It is proposed that the aggregate amount of all short-term borrowings to be incurred through December 31, 1994 (collectively, "Limits"), whether through the issuance of Short-Term Notes, Commercial Paper or borrowings from the Money Pool or the PSNH

<sup>1</sup> An order authorizing HEC to borrow up to \$11 million through the Money Pool will supersede both HEC's current authorization to borrow up to \$15 million under the HEC Revolver and Northeast's authorization to guarantee HEC's borrowings under the HEC Revolver.

Facility or pursuant to open account advances and whether pursuant to the authority of the December 1992 Order or the authority requested pursuant to the Applicant's post-effective amendment, will not exceed \$175 million for Northeast, \$375 million for CL&P, \$75 million for WMECO, \$125 million for PSNH, \$8 million for Holyoke, \$65 million for Nuclear, \$50 million for North Atlantic, \$25 million for Rocky River, \$8 million for Quinnehtuk and \$11 million for HEC.

HEC will not borrow through the Money Pool any funds that are attributable to contributions by Money Pool participants other than Northeast. Other than this restriction, HEC, as a borrower or contributor, will be subject to all the terms and conditions of the Money Pool.

Except for loans from the proceeds of external borrowings by Northeast, all loans will be payable on demand, may be prepaid by any borrowing applicant at any time without premium or penalty and will bear interest for both the borrower and lender, payable monthly, equal to the daily Federal Funds Effective Rate as quoted by the Federal Reserve Bank of New York. Loans from the proceeds of external borrowings by Northeast will bear interest at the same rate paid by Northeast on its borrowings, and no such loans may be prepaid (unless Northeast is made whole for any additional costs that may be incurred because of such prepayment). Northeast will be fully reimbursed for all costs that it incurs in relation to other Applicants.

It is stated that HEC will apply funds derived from Money Pool borrowings to: (1) Refinance the amount currently outstanding under the HEC Revolver; (2) carry on its operations as authorized pursuant to the July 1990 Order; and (3) fund activities that will be the subjects of future filings with the Commission.

In addition, Rocky River is requesting authorization of a higher Limit to allow for: (1) The renovation of existing facilities (both capital and expense) for energy conservation, consolidating operations and other organizational purposes; and (2) flexibility in reacting to economic conditions that may warrant refinancing outstanding debt, such refinancing being subject to further Commission approval.

#### New England Electric System (70-8073)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment to its declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

By order dated December 27, 1990 (HCAR Nos. 25232) ("1990 Order"), NEES was granted authorization to make capital contributions to its subsidiary companies, through December 31, 1994, of up to \$40 million to Massachusetts Electric Company ("Mass-Elec"), \$40 million to the Narragansett Electric Company ("Narragansett") and \$2 million to Granite State Electric Company ("Granite"). Subsequently, by order dated December 11, 1992 (HCAR No. 25701) ("1992 Order"), NEES was authorized to make, from time-to-time through December 31, 1994, one or more capital contributions not to exceed, including amounts contributed under the 1990 Order, an aggregate of \$50 million in each case for New England Power Company, Mass-Elec and Narragansett, and \$3 million for Granite. NEES now proposes to make, from time-to-time through December 31, 1994, one or more capital contributions to Mass-Elec in aggregate amounts increased from \$50 million to amounts not to exceed \$75 million, including amounts contributed under the 1992 Order.

Mass-Elec will apply the funds received from the capital contributions toward the cost of, or the reimbursement of the treasury for, the payment of short-term borrowings incurred for retirement of outstanding general and refunding and first mortgage bonds and preferred stock, capital additions and improvements to plant and property or other corporate purposes.

#### Energy Initiatives, Inc. (70-8179)

Energy Initiatives, Inc. ("EII"), One Upper Pond Road, Parsippany, New Jersey 07054, a nonutility subsidiary company of General Portfolios Corporation, a wholly owned subsidiary company of General Public Utilities Corporation, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

EII proposes to acquire an ownership interest in a nonaffiliate, privately held Delaware corporation ("Cogen Corp") engaged in the business of developing, owning and operating cogeneration and independent power generation projects ("Projects") in the United States and foreign countries. The present owners of the common and preferred stock of Cogen Corp are the individual founder of Cogen Corp ("Founder"), the majority stockholder, and a major insurance company, which has a minority equity interest ("Institutional Investor") (collectively, the "Owners").

EII will enter into a stock purchase or similar agreement ("Stock Purchase

Agreement") with Cogen Corp and the Owners. Under the terms of the Stock Purchase Agreement, EII would purchase shares of Cogen Corp common and/or preferred stock ("Stock") representing an aggregate of not more than 26% of the total number of shares of all classes of stock to be outstanding after the transaction for an aggregate purchase price of not in excess of \$7.5 million. The purchase price would be payable over a period of up to five years. The Stock Purchase Agreement may provide that EII's payment obligation will be evidenced by a non-interest bearing promissory note secured by the Stock or other security as the parties may agree.

The shares of Cogen Corp Stock to be acquired by EII will consist of both voting and nonvoting Stock, with the voting Stock constituting not more than 9.9% of the total amount of voting Stock of Cogen Corp to be outstanding after completion of the proposed transactions. It is contemplated that EII and the Owners will enter into an agreement ("Shareholders Agreement") that will delineate the powers of the parties with respect to ownership of Cogen Corp. Under the Shareholders Agreement, the parties would agree, among other things, that certain material transactions would require approval of stockholders owning not less than 91% of the outstanding voting Stock and/or the unanimous consent (or such lesser percentage, as the parties may agree) of the board of directors. All other votes would require approval of a simple majority. It is also contemplated that the Owners and EII would grant each other rights of first refusal with respect to a sale of their shares of Cogen Corp Stock to a third party. It is further contemplated that EII would be entitled to elect one member of Cogen Corp's board of directors, which would consist of at least three members. Except as provided above, actions of the board would require the approval of a simple majority of the directors.

As part of the transaction, EII will obtain certain rights to provide for a fee oversight, operational staff development and long-term operation and administration of Projects developed by Cogen Corp. EII may also provide other services to Cogen Corp, such as permit acquisitions, support, and fuel supply development. EII will also have the right to invest equity in certain Projects developed by Cogen Corp.

EII has agreed to pay up to \$270,000 of Cogen Corp's operating expenses prior to the closing of the transactions under the Stock Purchase Agreement. At the closing, any amounts so paid by EII would be applied toward the purchase

price for the Cogen Corp Stock. If for any reason the closing does not occur, Cogen Corp would refund such amount to EII less \$50,000.

It is presently contemplated that EII will have the right to assign its Cogen Corp Stock and the attendant rights and obligations under the Stock Purchase Agreement and Shareholders Agreement to a wholly owned subsidiary. In that event, EII proposes to acquire for \$1,000 all of the capital stock of a Delaware corporation to be formed for such purpose ("EII Sub") to which it would assign such shares, rights and obligations and would contribute up to \$7.5 million, together with up to \$300,000 for fees and expenses associated with the transactions, to EII Sub to enable EII Sub to perform the obligations so assigned.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-10935 Filed 5-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19444; 812-8368]

#### Donald J. Robinson, et al.; Application for Exemption

April 30, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Donald J. Robinson; The Equitable Funds and The Hudson River Trust (the "Trusts"); Alliance Capital Management L.P. ("Alliance"); and Equitable Capital Management Corporation ("Equitable Capital").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 2(a)(19)(B) for the purposes of section 15(f).

SUMMARY OF APPLICATION: Applicants seek a conditional order exempting Donald J. Robinson from the definition of "interested person" in section 2(a)(19)(B) solely for the purpose of determining whether he is an interested person of Alliance or Equitable Capital for purposes of section 15(f). The exemption would permit applicant investment companies to meet the 75% disinterested director requirement of section 15(f)(1)(A) without reconstituting their boards of trustees following the sale of Equitable Capital's investment advisory business to Alliance.



**FILING DATE:** The application was filed on April 23, 1993. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 25, 1993, 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 such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o J.B. Kittredge, Esq., Ropes & Gray, One International Place, Boston, Massachusetts 02110.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (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 from the SEC's Public Reference Branch.

#### Applicants' Representations

1. The Equitable Funds ("TEF") is a registered open-end management investment company organized as a Massachusetts business trust. TEF has issued ten series of shares of beneficial interest. Equitable Capital serves as the investment adviser to TEF.

2. The Hudson River Trust ("HRT") is a registered open-end management investment company organized as a Massachusetts business trust. HRT has issued ten series of shares of beneficial interest. HRT is used as an investment vehicle in connection with variable life insurance contracts and variable annuity certificates and contracts issued by The Equitable Life Insurance Assurance Society of the United States ("Equitable Life"), Equitable Variable Life Insurance Company, and other insurance companies. Equitable Capital serves as investment adviser to HRT.

3. Equitable Capital, a wholly-owned subsidiary of Equitable Life, is a registered investment adviser. Alliance also is a registered investment adviser. Alliance is a publicly-traded partnership, the limited partnership interests of which are traded on the New York Stock Exchange. Equitable Life owns approximately 54.7% of the limited partnership units of Alliance. A wholly-owned subsidiary of Equitable Life is the sole general partner of Alliance and has exclusive and complete discretion to manage and control the business and affairs of Alliance.

4. On February 23, 1993, Equitable Capital, Alliance, and Equitable Investment Corporation entered into an agreement providing for the transfer of substantially all of the assets comprising Equitable Capital's business to Alliance and certain of its subsidiaries in exchange for newly issued limited partnership interests in Alliance and the assumption by Alliance and such subsidiaries of certain liabilities of Equitable Capital. The completion of this transaction is expected to cause an assignment of the Trusts' investment advisory agreements and, consequently, their termination. The Trusts propose to enter into new investment advisory agreements with Alliance.<sup>1</sup>

5. In connection with implementation of the new advisory agreements, applicants seek an order pursuant to section 6(c) exempting Donald J. Robinson from the definition of "interested person" set forth in section 2(a)(19)(B) with regard to Equitable Capital and Alliance, solely for the purposes of section 15(f).

6. Mr. Robinson has been a member of the board of trustees of HRT since November, 1984. Mr. Robinson also has been a member of the board of trustees of TEF since 1987. Mr. Robinson is a partner in the New York City offices of Orrick, Herrington & Sutcliffe ("Orrick").

7. Since August, 1992, Orrick has rendered certain limited legal services

<sup>1</sup> The trustees of the Trusts approved the new contracts with Alliance in accordance with section 15(c). Approval of the shareholders of HRT was solicited in connection with a special meeting of HRT shareholders held April 23, 1993. Shareholders of certain series of TEF will be asked to approve the new advisory arrangements at a meeting called for May 14, 1993. Shareholders of the other TEF series are expected to vote on new advisory agreements in connection with a proposal to consolidate those series with other funds managed by Alliance. The SEC issued an order permitting Alliance to serve as investment adviser to those series without shareholder approval for an interim period. The Equitable Funds, et al., Investment Company Act Release Nos. 19333 (March 16, 1993) (notice) and 19402 (April 13, 1993) (order).

to Equitable Life in a matter involving a wrongful termination action. The matter is continuing and is being supervised by a partner in Orrick's San Francisco office. Orrick also has provided legal services to Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ"), a registered broker-dealer and an indirect wholly-owned subsidiary of Equitable Life, in connection with equity and debt offerings of corporate and municipal securities. The fees paid to Orrick by Equitable Life and DLJ have, in the aggregate, represented less than 1% of Orrick's total revenues during each of the last four years and Orrick anticipates that the percentage of its total revenues received from Equitable Life, DLJ, or any of their affiliated persons in the foreseeable future will not vary in a significant amount from the prior years.

8. Orrick has never provided legal services to or received legal fees from the Trusts, Equitable Capital, or Alliance. In addition, Mr. Robinson has not participated in Orrick's representation of Equitable Life or DLJ in any manner and will not be involved in such representation for as long as he is a trustee of the Trusts.

#### Applicants' Legal Analysis

1. Section 15(f) creates a "safe harbor" so that an investment adviser may receive a benefit from a transaction that results in the assignment of its advisory contract with a registered investment company. Section 15(f) imposes two conditions: For three years following the assignment, at least 75% of the board of directors of the investment company must be persons who are not interested persons of the investment adviser or its predecessor and the transaction may not impose an unfair burden on the investment company.

2. Section 2(a)(19)(B) defines an interested person with respect to an investment adviser to include "any person or partner or employee of any person who at any time in the last two fiscal years of such investment company has acted as legal counsel for such investment adviser." The staff of the SEC has taken the position that if legal services are provided to an entity under common control with an investment adviser, the investment adviser and the entity under common control are treated as one entity.<sup>2</sup> Consequently, Mr. Robinson could be deemed to be an interested person of Equitable Capital and Alliance as a result of his partner's representation of Equitable Life and DLJ.

<sup>2</sup> See Vestaur Securities, Inc. (publicly available Jan. 4, 1973).

3. HRT currently has ten trustees, seven of whom are not interested persons of either Equitable Capital or Alliance. TEF currently has eight trustees, five of whom are not interested persons of Equitable Capital or Alliance. As a result, applicant funds are unable to satisfy the 75% independent directors requirement of section 15(f) without changing the composition of their boards of trustees as long as Mr. Robinson is considered an interested person of Equitable Capital and Alliance.

4. Section 2(a)(19) was added to the Act in 1970 to strengthen the independent checks on investment company management. This amendment was predicated upon the congressional determination that the Act did not adequately regulate the conduct of investment company directors with "strong ties" to the managers of an investment company or "substantial business or professional relationships with the investment company or its adviser." In recommending the enactment of section 2(a)(19), the Senate Committee on Banking and Currency observed that the SEC had adequate exemptive authority and flexibility under section 6(c) to exempt a person who acted as legal counsel for an investment adviser from the definition of interested person upon an appropriate showing that he or she is in a position to act independently on behalf of the investment company in dealing with its investment adviser.

5. The relief requested pursuant to section 6(c) is reasonable, necessary, and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Neither Mr. Robinson nor Orrick has "strong ties" to the Trusts, Equitable Capital, or Alliance or "substantial business relationships" with any of the foregoing. There is no reason to believe that Orrick's representation of Equitable Life or DLJ would in any manner impair or otherwise affect Mr. Robinson's ability to exercise sound independent business judgment in the fulfillment of his fiduciary duties and obligations to the Trusts. Applicants believe the public interest would be served if the Trusts can continue to rely on Mr. Robinson's experience, judgment, and knowledge.

#### Applicants' Conditions

1. Mr. Robinson will not be involved in Orrick's representation of Equitable Life, DLJ, or any of their "affiliated persons."

2. Fees paid to Orrick by Equitable Life, DLJ and any of their "affiliated

persons" shall not, in the aggregate, exceed 1% of Orrick's total revenues during any fiscal year.

3. Neither of the Trusts will pay the costs of preparing and filing this application.

4. Orrick and Mr. Robinson will not provide any legal services to Equitable Capital or Alliance.

For the SEC, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93-10936 Filed 5-7-93; 8:45 am]

BILLING CODE 8010-01-M

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### THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

#### National Housing Advisory Board; Meeting

**AGENCY:** Thrift Depositor Protection Oversight Board.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act 5 U.S.C. App., announcement is hereby published for a meeting of the National Housing Advisory Board. The meeting is open to the public. Please note that elsewhere in this issue of the Federal Register is a meeting notice for the National Advisory Board which will meet in the morning prior to the National Housing Advisory Board meeting.

**DATES:** The meeting is scheduled for Thursday, May 27, from 1 to 3 p.m.

**ADDRESSES:** The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th St., NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW, Washington, DC 20232, 202/786-9675.

**SUPPLEMENTARY INFORMATION:** In accordance with section 21A(d)(2) of the Federal Home Loan Bank Act, as amended by the Resolution Trust Corporation (RTC) Thrift Depositor Protection Reform Act of 1991, the Thrift Depositor Protection Oversight Board has established a National Housing Advisory Board to advise the Oversight Board on policies and programs related to the provision of affordable housing. The National Housing Advisory Board consists of the Secretary of the Housing and Urban Development and the chairs of the regional advisory boards established under section 21A(d)(3) of the Federal Home Loan Bank Act.

#### Agenda

A detailed agenda will be available at the meeting. The meeting will include briefings from the Board's chair and from the chairs of the six regional advisory boards on their respective meetings held throughout the country between April 22 and May 13, 1993. Discussions will focus on the RTC's single- and multi-family housing dispositions programs.

#### Statements

Interested persons may submit, in writing, data, information, or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating for the open meeting is available on a first come first served basis.

Dated: May 5, 1993.

**Jill Nevius,**

*Committee Management Officer.*

[FR Doc. 93-10973 Filed 5-7-93; 8:45 am]

BILLING CODE 2222-01-M

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#### National Advisory Board Meeting

**AGENCY:** Thrift Depositor Protection Oversight Board.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Board Committee Act, 5 U.S.C. app., announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public. Please note that elsewhere in this issue of the Federal Register is a meeting notice for the National Housing Advisory Board which will meet in the afternoon following the National Advisory Board meeting.

**DATES:** The meeting is scheduled for Thursday, May 27, 9 a.m. to 12 noon.

**ADDRESSES:** The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th St., NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, 202/786-9675.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 21A(d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board had established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

**Agenda**

A detailed agenda will be available at the meeting. The meeting will include briefings from the chairs of the six regional advisory boards on their respective meetings held throughout the country between April 22 and May 13, 1993. Discussion will focus on the key topics from the regional meetings: Local real estate market impact, net real estate recoveries vs. appraised real estate values, opportunities for small investors, contracting, internal controls, information systems, environmentally significant properties and the affordable housing program.

**Statements**

Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: May 5, 1993.

Jill Nevius,  
Committee Management Officer.  
[FR Doc. 93-10974 Filed 5-7-93; 8:45 am]  
BILLING CODE 2222-01-M

**DEPARTMENT OF TRANSPORTATION**

[Notice 93-14]

**Small Business Competitiveness Demonstration Program; New Plan for DOT's Targeted Industry Categories for Fiscal Years 1993-1996**

**AGENCY:** Office of Small Disadvantaged Business Utilization (OSDBU), DOT.  
**ACTION:** Notice.

**SUMMARY:** This notice informs the public of DOT's action to establish a new plan for its Targeted Industry Categories (TICs) under the Small Business Competitiveness Demonstration Program (SBCDP). This action is in coordination with Public Law 102-366, which extended the SBCDP for an additional four years.

**ADDRESSES:** Comments should be addressed to Will Terry Moore, Acting Director, Office of Small Disadvantaged Business Utilization, room 9410, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Brenda L. Harris (202) 366-1902.

**SUPPLEMENTARY INFORMATION:** Title VII of the "Business Opportunity Development Reform Act of 1988", Public Law 100-656, established the SBCDP. Under that program, in May 1989, DOT targeted ten industries for the expansion of Federal contracting

opportunities for small businesses where small business awards historically had been low despite sufficient numbers of small business contractors in the economy. Public Law 102-366 extended the SBCDP through September 30, 1996, and allowed agencies to substitute new targeted industries for any of the industry categories originally targeted for the Program.

**DOT's New Plan for TICs**

The DOT is fully committed to implementing all of the requirements of the demonstration program and for purposes of its new plan the following are DOT's ten TICs:

FPDS codes	Industry name
AT94 .....	Engineering Development.
JO28/JO10 .....	Maintenance Engine/Turbine and Maintenance, Repair, Rebuilding of Weapons.
D302/D305 .....	ADP Teleprocessing and System Development & Programming Service.
R414 .....	Systems Engineering Services only.
2840 .....	Gas Turbines & Jet Engines, Aircraft; and Components.
5820 .....	Radio/TV Communication Equipment.
5840/AT30 .....	Radar Equipment and Navigation & Navigational Aids R&D.
7020/7021/7022	ADP Central Processing Unit, Analog.
	ADP Central Processing Unit, Digital.
	ADP Central Processing Unit, Hybrid.
7035 .....	ADP Accessorial Equipment.
7050 .....	ADP Components.

In this new plan, three of DOT's original targeted industries where there has been little or no DOT procurement awards have been substituted in favor of three new TICs where there is a significant level of DOT awards from which small businesses would be able to participate. The original three categories identified by Product Service Code PSC W070 (Lease/Rental General Purposes Automatic Data Processing (ADP); PSC 1929 (Rescue Vessels); and PSC X119 (Lease/Rental Facilities) are replaced by PSC AT94 (Engineering Development); PSC 2840 (Gas Turbines and Jet Engines, Aircraft; and Components); and PSC 7050 (ADP Components). In addition, PSC 7021 (Automatic Data Processing, Central Processing Unit, Digital) and PSC 7022 (Data Processing, Central Processing

Unit, Hybrid) are added to existing PSC 7020 (Automatic Data Processing, Central Processing Unit, Analog).

**DOT's Plan to Expand Small Business Participation in Ten Targeted Industry Categories**

DOT is committed to assisting all interested small businesses, including emerging small businesses (ESB) to participate fully in the SBCDP. To help accomplish this DOT has compiled and is continuing to update a lists of (1) ESBs and small businesses with capabilities in one or more of the ten TICs and (2) small businesses interested in a joint venture in order to participate in the ten TICs expansion program. These are periodically provided to the various DOT procurement agencies for possible sources.

DOT plans to increase small business participation in the 10 targeted industry categories through its outreach efforts which include the following:

- Requiring that each DOT procurement office carefully evaluate every proposed procurement over \$25,000, in each of the ten TIC FPDS Codes for possible designation as an 8(a) or small business set-aside before considering it for full and open competition.
- Informing small and disadvantaged firms of the SBCDP and TICs through participating in small and minority procurement conferences, seminars, workshops, etc. sponsored by various members of congress, state and local Governments, Chambers of Commerce and Trade Associations. Additionally, information on the TICs will be distributed through the DOT/OSDBU Liaison Outreach and Service Program with Minority Chambers of Commerce and Trade Associations who assist small businesses, (as well as other concerns) interested in doing business with DOT.

- Counseling business persons interested in doing business with DOT with special emphasis on the Small Business Competitiveness Demonstration Program.

Dated: April 30, 1993.

Will Terry Moore,  
Acting Director, Office of Small and Disadvantaged Business Utilization.  
[FR Doc. 93-10882 Filed 5-7-93; 8:45 am]  
BILLING CODE 4910-82-M

**Office of the Secretary****[Order 93-5-3; Docket No. 47963]****Application of Eagle Airlines for Issuance of Certificate Authority****AGENCY:** Department of Transportation.**ACTION:** Notice of order to show cause.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Viking International Airlines, Inc. d/b/a Eagle Airlines fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate and overseas charter air transportation of persons, property and mail.

**DATES:** Persons wishing to file objections should do so no later than May 18, 1993.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 47963 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: May 3, 1993.

Joseph F. Canny,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 93-10883 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-42-M

**Federal Aviation Administration****Aviation Rulemaking Advisory Committee Meeting on General Aviation Operations Issues****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 general aviation operations issues.

**DATES:** The meeting will be held on May 25, 1993, at 2 p.m.

**ADDRESSES:** The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, in room 302.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Myres, Assistant Executive Director for General Aviation Operations, Flight Standards Service (AFS-850), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8150; FAX: (202) 267-5230.

**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 Rulemaking Advisory Committee to discuss general aviation operations issues to be held on May 25, 1993, at the FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, in room 302. The agenda for this meeting will include progress reports from the IFR Fuel Reserve and Operations over the High Seas Working Groups.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, 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. Arrangements may be made by contracting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on May 3, 1993.

Ron Myres,

Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-10980 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-13-M

**Flight Service Station at Barrow, AK; Change in Facility Operations**

Notice is hereby given that on or about May 12, 1993, the Flight Service Station at Barrow, Alaska will be reduced in hours of operation from 24 hours daily to 0600-2200 daily. Services to the general aviation public formerly provided by this facility during the hours of 2200-0600 will be provided by the Automated Flight Service Station at Fairbanks, Alaska. This information will be reflected in the FAA Organization Statement the next time it is reissued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska on April 23, 1993.

David F. Morse,

Deputy Regional Administrator, Alaskan Region.

[FR Doc. 93-10930 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-13-M

**Intent to Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Cheyenne Airport, Cheyenne, WY****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Cheyenne Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before June 9, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager, Denver Airports District Office, DEN-ADO, Federal Aviation Administration, 5440 Roslyn, suite 300, Denver, CO 80216-6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Cheyenne Airport Board, Cheyenne, Wyoming, at the following address: P.O. Box 2210, 200 East 8th Avenue, Cheyenne, Wyoming 82003.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Cheyenne Airport Board, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Phillip Braden, (303) 286-5530; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 5440 Roslyn, suite 300; Denver, Colorado 80216-6026. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Cheyenne Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 30, 1993, the FAA determined that the application to impose and use a PFC submitted by the Cheyenne Airport Board was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 12, 1993.

The following is a brief overview of the application:  
 Level of the proposed PFC: \$3.00.  
 Proposed charge effective date: November 1, 1993.  
 Proposed charge expiration date: July 31, 2000.

Total estimated PFC revenue: \$742,261.00.  
 Brief description of proposed project: Acquire snow removal equipment (SRE); rehabilitate SRE storage building; rehabilitate Taxiway "B", phase I; prepare environmental assessment; acquire land for Runway Protection Zone and compatible land use; rehabilitate electrical vault.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue

SW., suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cheyenne Airport.

Issued in Renton, Washington on April 30, 1993.

**Matthew J. Cavanaugh,**  
 Assistant Manager, Airports Division,  
 Northwest Mountain Region.  
 [FR Doc. 93-10981 Filed 5-7-93; 8:45 am]  
**BILLING CODE 4910-13-M**

**Federal Transit Administration**

**FTA Sections 3 and 9 Grant Obligations**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Department of Transportation and Related Agencies Appropriations Act, 1993, Public Law 102-338, contains a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the Federal Register every 30 days of grants obligated pursuant to sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the

transit property receiving each grant. This notice provides the information as required by statute.

**FOR FURTHER INFORMATION CONTACT:**

Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9395, Washington, DC 20590, (202) 366-2053.

**SUPPLEMENTARY INFORMATION:** The section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

**SECTION 3 GRANTS**

Transit property	Grant No.	Grant amount (dollars)	Obligation date
Regional Transportation District—Denver, CO .....	CO-03-0050-00	11,284,824	03/29/93
Connecticut Department of Transportation—Connecticut .....	CT-03-0089-00	16,960,000	03/19/93
Atlanta Regional Commission—Atlanta, GA .....	GA-03-0041-00	200,000	03/26/93
Cedar Rapids Transit Department—Cedar Rapids, IA .....	IA-03-0067-00	937,500	03/23/93
Wichita Metropolitan Transit Authority—Wichita, KS .....	KS-03-0012-00	3,254,318	03/23/93
Mass Transit Administration—Baltimore, MD .....	MD-03-0058-00	2,142,840	03/30/93
East-West Gateway Coordinating Council—St. Louis, IL-MO .....	MO-03-0036-00	446,625	03/22/93
New Jersey Transit Corporation—New York, NY-Northeastern NJ .....	NJ-03-0091-00	1,507,000	03/29/93
New Jersey Transit Corporation—New York, NY-Northeastern NJ .....	NJ-03-0084-01	1,500,000	03/17/93
Tahoe Transportation District—California .....	CA-03-0393-00	1,200,000	03/26/93
New York Metropolitan Transportation Authority—New York, NY-Northeastern NJ .....	NY-03-0281-00	236,644,258	03/23/93
Ohio Department of Transportation—Ohio .....	OH-03-0117-00	1,344,715	03/25/93
Greater Cleveland Regional Transit Authority—Cleveland, OH .....	OH-03-0125-00	1,500,000	03/26/93
Central Ohio Transit Authority—Columbus, OH .....	OH-03-0129-00	4,067,898	03/25/93
City of Williamsport-Bureau of Transportation—Williamsport, PA .....	PA-03-0236-00	400,000	03/17/93
Port Authority of Allegheny County—Pittsburgh, PA .....	PA-03-0237-00	5,000,000	03/29/93
Metropolitan Transit Authority—Nashville, TN .....	TN-03-0029-00	243,200	03/30/93
Brazos Valley Community Action Agency—Bryan-College Station, TX .....	TX-03-0151-00	9,584,636	03/26/93
Corpus Christi Regional Transit Authority—Corpus Christi, TX .....	TX-03-0156-00	1,532,000	03/26/93
City of Spokane—Spokane, WA .....	WA-03-0073-00	4,200,000	03/26/93

**SECTION 9 GRANTS**

Transit property	Grant No.	Grant amount (dollars)	Obligation date
Arkansas State Highway and Transportation Department—Arkansas .....	AR-90-X029-00	1,531,128	03/26/93
Central Arkansas Transit Authority—Little Rock-North Little Rock, AR .....	AR-90-X030-00	2,041,830	03/26/93

## SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount (dollars)	Obligation date
Livermore-Amador Valley Transit Authority—San Francisco-Oakland, CA .....	CA-90-X505-00	62,793	03/26/93
City of Simi Valley—Simi Valley, CA .....	CA-90-X519-00	748,350	03/26/93
Yolo County Transit Authority—Sacramento, CA .....	CA-90-X520-00	1,017,802	03/26/93
Stockton Metropolitan Transit District—Stockton, CA .....	CA-90-X524-00	3,545,160	03/25/93
City of Santa Rosa—Santa Rosa, CA .....	CA-90-X525-00	1,026,000	03/25/93
Santa Clara County Transit District—San Jose, CA .....	CA-90-X526-00	17,676,030	03/26/93
Central Contra Costa Transit Authority—San Francisco-Oakland, CA .....	CA-90-X527-00	4,599,691	03/25/93
Southern California Rapid Transit District—Los Angeles, CA .....	CA-90-X534-00	155,946,331	03/25/93
Riverside Transit Agency—Riverside-San Bernardino, CA .....	CA-90-X535-00	2,255,719	03/26/93
City of Visalia—Visalia, CA .....	CA-90-X537-00	2,045,800	03/26/93
Orange County Transit District—Los Angeles, CA .....	CA-90-X538-00	17,796,200	03/25/93
City of Montebello—Los Angeles, CA .....	CA-90-X539-00	3,184,000	03/25/93
Long Beach Public Transportation Company—Los Angeles, CA .....	CA-90-X540-00	4,680,000	03/26/93
Riverside Transit Agency—Riverside-San Bernardino, CA .....	CA-90-X541-00	370,101	03/26/93
City of Corona—Riverside-San Bernardino, CA .....	CA-90-X547-00	270,000	03/26/93
City of Santa Maria Area Transit—Santa Maria, CA .....	CA-90-X549-00	419,279	03/26/93
City of Riverside—Riverside-San Bernardino, CA .....	CA-90-X558-00	172,800	03/26/93
City of Colorado Springs—Colorado Springs, CO .....	CO-90-X073-00	1,539,595	03/29/93
Washington Metropolitan Area Transit Authority (WMATA)—Washington, DC-MD-VA .....	DC-90-X019-00	16,070,000	03/26/93
Escambia County Board of Commissioners—Pensacola, FL .....	FL-90-X192-01	749,610	03/29/93
Pinellas Suncoast Transit Authority—St. Petersburg, FL .....	FL-90-X200-01	1,008,000	03/30/93
Metropolitan Dade Transit Agency—Miami-Hialeah, FL .....	FL-90-X206-00	796,000	03/19/93
Manatee County Board of County Commissioners—Sarasota-Bradenton, FL .....	FL-90-X215-00	1,232,788	03/29/93
City and County of Honolulu—Honolulu, HI .....	HI-90-X010-01	20,784,000	03/36/93
City and County of Honolulu—Honolulu, HI .....	HI-90-X011-00	15,352,681	03/26/93
City of Davenport—Department of Municipal Transportation—Davenport-Rock Island-Moline, IA-IL .....	IA-90-X147-00	512,819	03/17/93
City of East Dubuque—Dubuque, IA-IL .....	IL-90-X210-00	4,113	03/16/93
Bloomington-Normal Public Transit System—Bloomington-Normal, IL .....	IL-90-X212-00	682,434	03/30/93
Loves Park Transit System (LPTS)—Rockford, IL .....	IL-90-X214-00	85,088	03/25/93
Transit Authority of River City—Louisville, KY-IN .....	KY-90-X066-00	13,803,077	03/30/93
Rapides Area Planning Commission—Alexandria, LA .....	LA-90-X140-00	26,000	03/26/93
City of Shreveport—Shreveport, LA .....	LA-90-X141-00	1,796,559	03/26/93
Regional Transit Authority—New Orleans, LA .....	LA-90-X142-00	4,302,400	03/26/93
Massachusetts Bay Transportation Authority—Boston, MA .....	MA-90-X143-00	18,162,518	03/02/93
City of Niles—South Bend-Nishawaka, IN-MI .....	MI-90-X170-00	187,113	03/30/93
Kalamazoo Metro Transit—Kalamazoo, MI .....	MI-90-X172-00	905,844	03/26/93
City of Rochester—Rochester, MN .....	MN-90-X068-00	423,569	03/25/93
City of Columbia Department of Public Works—Columbia, MO .....	MO-90-X085-00	62,952	03/02/93
City of Springfield City Utilities—Springfield, MO .....	MO-90-X086-00	1,142,990	03/30/93
City of Lincoln—Lincoln, NE .....	NE-90-X032-00	1,566,012	03/22/93
Town of Huntington—New York, NY—Northeastern NJ .....	NY-90-X245-00	369,817	03/17/93
Rochester-Genesee Regional Transportation Authority—Rochester, NY .....	NY-90-X246-00	3,066,951	03/12/93
Putnam County—New York, NY—Northeastern NJ .....	NY-90-X252-00	188,000	03/29/93
Greater Cleveland Regional Transit Authority—Cleveland, OH .....	OH-90-X182-00	2,400,000	03/30/93
Canton Regional Transit Authority—Canton, OH .....	OH-90-X183-00	64,000	03/25/93
Central Ohio Transit Authority—Columbus, OH .....	OH-90-X185-00	4,431,200	03/25/93
Salem Area Mass Transit District—Salem, OR .....	OR-90-X044-00	844,000	03/16/93
Centre Area Transportation Authority—State College, PA .....	PA-90-X249-00	439,451	03/30/93
Beaver County Transit Authority—Pittsburgh, PA .....	PA-90-X250-00	496,790	03/30/93
Metropolitan Transit Authority—Nashville, TN .....	TX-90-X089-01	72,000	03/29/93
Fort Worth Transportation Authority—Dallas-Ft. Worth, TX .....	TX-90-X267-00	4,023,000	03/26/93
Via Metropolitan Transit Authority—San Antonio, TX .....	TX-90-X268-00	14,994,161	03/26/93
Metropolitan Transit Authority of Harris County—Houston, TX .....	TX-90-X269-00	22,140,165	03/26/93
City of Arlington—Dallas-Ft. Worth, TX .....	TX-90-X270-00	647,000	03/26/93
Dallas Area Rapid Transit—Dallas-Ft. Worth, TX .....	TX-90-X272-00	4,956,000	03/29/93
Utah Transit Authority—Salt Lake City, UT .....	UT-90-X017-00	2,400,000	03/10/93
City of Richmond—Richmond, VA .....	VA-90-X103-00	200,000	03/18/93
Greater Richmond Transit Company—Richmond, VA .....	VA-90-X105-01	120,000	03/18/93
Clark County Public Transportation Benefit Area—Portland-Vancouver, OR-WA .....	WA-90-X139-00	2,551,800	03/26/93
Municipality of Metropolitan Seattle—Seattle, WA .....	WA-90-X140-00	35,511,467	03/29/93
City of Longview—Longview, WA-OR .....	WA-90-X142-00	704,000	03/23/93

Issued on: May 4, 1993.

Robert H. McManus,  
Acting Administrator.

[FR Doc. 93-10968 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-57-M

### Maritime Administration

[Docket S-899]

#### American President Lines, Ltd.; Application for Amendment of Existing Waiver of Section 804(a) of the Merchant Marine Act, 1936, As Amended

American President Lines, Ltd. (APL), by application dated May 4, 1993, requests a change in an existing waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag operations of APL, under Operating-Differential Subsidy Agreement, Contract MA/MSB-417.

APL has authority, under a previous section 804 waiver, to operate one foreign-flag vessel of up to 500 FEU capacity between Colombo or Fujayrah and ports in the Red Sea (excluding Egypt and Ethiopia), Gulf of Aden, Oman. APL requests a change to increase the authorized number of vessels from one to three, each of approximately 500 FEU capacity.

APL states in its May 4 letter application that changes in the wake of the Gulf war have increased cargo movements in the Red Sea area to a level to support weekly service.

The long distance between Fujayrah and Aqaba plus the required port time to handle cargo require a 21-day voyage. Weekly service would thus make three ships necessary. The planned itinerary is to be Fujayrah—Hudaydah/Port Sudan—Juddah—Aqaba—Juddah—Hudaydah—Fujayrah.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on May 17, 1993. This notice is published as a matter of discretion and publication should in no way be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Program No. 20.804 (Operating-Differential Subsidies).

By order of the Maritime Administration.

Dated: May 6, 1993.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 93-11114 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-81-M

### DEPARTMENT OF THE TREASURY

#### Public Information Collection Requirements Submitted to OMB for Review

May 4, 1993.

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 1980, Public Law 96-511. 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

#### Internal Revenue Service

OMB Number: 1545-1174

Form Number: IRS Forms 6747 and 6747A

Type of Review: Extension

Title: Order for Reproduction Proofs (6747) Order Form for Reader List Program (6747A)

Description: Forms 6747 and 6747A allow customers to obtain Tax forms as soon as they are available.

Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees

Estimated Number of Respondents: 1,342

Estimated Burden Hours Per Respondent:

Form 6747—15 minutes

Form 6747A—3 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 307 hours

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-10994 Filed 5-7-93; 8:45 am]

BILLING CODE 4830-01-M

### Internal Revenue Service

#### Tax on Certain Imported Substances; Notice of Receipt of Petitions

AGENCY: Internal Revenue Service,  
Treasury.

ACTION: Notice.

**SUMMARY:** This notice announces the receipt, under Notice 89-61, 1989-1 C.B. 717, of petitions requesting that certain substances be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. For each petition received this notice lists the proposed effective date of the modification to the list of taxable substances, the petitioner, and the substance. This is not a determination that the list of taxable substances should be modified.

**FOR FURTHER INFORMATION CONTACT:** Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622-3130 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89-61, 1989-1 C.B. 717, sets forth the rules relating to the determination process.

##### Explanation

This Notice supplements the notice published in the *Federal Register* on April 14, 1992, (57 FR 12956) relating to receipt of petitions. The complete petition for each substance listed below is available in the Internal Revenue Service Freedom of Information Reading Room. A Notice of Filing for each substance will be published separately.

##### Correction of Proposed Effective Date

The receipt of the petitions in part I of this notice was announced in the April 14, 1992, notice. It was brought to the attention of the Service that the proposed effective date computed for those petitions was incorrect. This notice corrects the proposed effective date.

**I. Correction of Proposed Effective Date**

*Proposed to be Effective October 1, 1990:*

Monsanto Company

di-n-hexyl adipate  
ortho-dichlorobenzene  
para-dichlorobenzene

**II. Petitions Received**

*Proposed to be Effective January 1, 1993:*

Aristech Chemical Corporation

diphenylamine  
aniline

*Proposed to be Effective April 1, 1993:*

Monsanto Company

sodium nitrilotriacetate monohydrate  
diphenyl oxide

*Proposed to be Effective July 1, 1993:*

Monsanto Company  
tetrachlorophthalic anhydride

Miles Inc.

polycarbonate  
polymeric MDI (diphenylmethane diisocyanate)

Kalama Chemical Company

benzoic acid  
benzaldehyde

Vista Chemical Company

synthetic linear fatty alcohols

*Proposed to be Effective October 1, 1993:*

Vista Chemical Company

synthetic linear fatty alcohol ethoxylates

Aristech Chemical Corporation

di-2-ethyl hexyl phthalate

Monsanto Company

4-aminodiphenylamine  
n-t-butyl-2-benzothiazole sulfenamide  
phosphoric acid  
sodium tripolyphosphate  
dicalcium phosphate (anhydrous)  
dicalcium phosphate (dihydrate)

Ethyl Corporation

methyl bromide/chloropicrin  
ethylenebistetrahydrophthalimide  
hexabromocyclododecane

*Proposed to be Effective April 1, 1994:*

PPG Industries, Inc.

monochlorobenzene  
ethyl chloride

Dale D. Goode,

*Federal Register Liaison Officer, Assistant  
Chief Counsel (Corporate).*

[FR Doc. 93-10872 Filed 5-7-93; 8:45 am]

BILLING CODE 4830-01-U



# Sunshine Act Meetings

Federal Register

Vol. 58, No. 88

Monday, May 10, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** Thursday, May 13, 1993, 10 a.m.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Closed to the Public.

### Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL (301) 504-0709.**

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, (301) 504-0800.

Dated: April 27, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93-11136 Filed 5-6-93; 2:19 pm]

BILLING CODE 6355-01-M

## FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), U.S.C. 552b:

**DATE AND TIME:** May 12, 1993, 10:00 a.m.

**PLACE:** 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

### Consent Agenda—Hydro, 979th Meeting—May 5, 1993, Regular Meeting (10:00 a.m.)

- CAH-1.  
Project No. 11102-002, Olson Electric Development Company, Inc.
- CAH-2.  
Project No. 2239-006, Tomahawk Power & Pulp Company
- CAH-3.  
Project No. 553-020, City of Seattle, Washington
- CAH-4. Omitted
- CAH-5.  
Project No. 8864-007, Weyerhaeuser Company
- CAH-6.  
Project No. 4669-028, Rancho Riata Hydro Partners, Inc.
- CAH-7.  
Project No. 2523-004, Wisconsin Electric Power Company
- CAH-8.  
Project No. 2389-009, Edwards Manufacturing Company, Inc.

### Consent Agenda—Electric

- CAE-1.  
Docket No. ER93-219-000, Western Massachusetts Electric Company
- CAE-2.  
Docket No. ER93-429-000, South Carolina Electric & Gas Company
- CAE-3.  
Docket No. ER93-254-000, Consolidated Edison Company of New York, Inc.
- CAE-4.  
Docket No. ER93-3-000, United Illuminating Company
- CAE-5.  
Docket No. ER81-177-012 (Phase II), Southern California Edison Company
- CAE-6.  
Docket No. EL93-24-000, Delmarva Power & Light Company
- CAE-7.  
Docket Nos. ER91-195-004, 006, 007 and 008, Western Systems Power Pool
- CAE-8.  
Docket No. QF92-179-001, Arroyo Energy, Limited Partnership
- CAE-9.  
Docket No. ER93-338-001, Rochester Gas & Electric Company
- CAE-10.  
Docket No. ER93-327-001, Florida Power & Light Company
- CAE-11.  
Docket Nos. ER91-150-010 and ER91-570-007, Southern Company Services, Inc.
- CAE-12.  
Docket No. ER92-280-001, Public Service Electric & Gas Company
- CAE-13.  
Omitted
- CAE-14.  
Docket Nos. ER92-436-001 and EL92-29-001, Florida Power Corporation
- CAE-15.

- Docket No. EG93-34-000, Clearfield Partners, L.P.
- CAE-16.  
Docket No. EG93-36-000, Elm Energy & Recycling (UK) Limited
- Consent Agenda—Oil and Gas**
- CAG-1.  
Docket No. RP93-3-003, Arkla Energy Resources
- CAG-2.  
Docket Nos. RP89-186-054 and 055, Great Lakes Gas Transmission Ltd. Partnership
- CAG-3.  
Docket Nos. RP89-48-020, 021 and 023, Transwestern Pipeline Company
- CAG-4.  
Omitted
- CAG-5.  
Docket No. CP91-2322-004, Paiute Pipeline Company
- CAG-6.  
Docket No. TA93-1-59-001, Northern Natural Gas Company
- CAG-7.  
Docket No. RP93-17-000, Tennessee Gas Pipeline Corporation
- CAG-8.  
Docket Nos. RP91-41-018 and RP91-90-010, Columbia Gas Transmission Corporation
- CAG-9.  
Docket No. RP93-87-001, Natural Gas Pipeline Company of America
- CAG-10.  
Docket No. RP88-262-026, Panhandle Eastern Pipe Line Company
- CAG-11.  
Docket Nos. RP80-97-060, RP82-12-023 and RP91-203-028, Tennessee Gas Pipeline Company
- CAG-12.  
Docket No. RP92-157-003, Pacific Offshore Pipeline Company
- CAG-13.  
Docket No. RP92-133-003, Gas Research Institute
- CAG-14.  
Docket Nos. IS92-39-002, IS93-21-001 and OR92-8-001, SFPP, Inc.
- CAG-15.  
Docket Nos. RP91-143-013, 014, 016, 017, RP92-159-000, 001 and 002, Great Lakes Gas Transmission Limited Partnership
- CAG-16.  
Docket Nos. RP91-143-005 and RP91-231-003, Great Lakes Gas Transmission Limited Partnership
- CAG-17.  
Docket Nos. RP93-59-001 and CP75-104-055, High Island Offshore System
- CAG-18.  
Docket No. RP93-61-001, U-T Offshore System
- CAG-19.  
Docket No. GP91-8-002, Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72-73 v. Rocky Mountain

- Natural Gas Company, a division of KN Energy, Inc.  
Docket No. GP91-10-002, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72-73
- CAG-20.  
Docket No. RP89-124-000, CNG Transmission Corporation
- CAG-21.  
Docket No. RP92-227-001, Eastern Shore Natural Gas Company
- CAG-22.  
Docket Nos. RP93-5-009 and RS92-69-003, Northwest Pipeline Corporation
- CAG-23.  
Docket Nos. RS92-22-005 and 006, Panhandle Eastern Pipe Line Company
- CAG-24.  
Omitted
- CAG-25.  
Docket No. CP89-460-101, Pacific Gas Transmission Company
- CAG-26.  
Docket No. CP92-6-008, Southern Natural Gas Company and South Georgia Natural Gas Company  
Docket No. CP92-311-006, Southern Natural Gas Company
- CAG-27.  
Docket No. CP88-14-001, ANR Pipeline Company
- CAG-28.  
Omitted
- CAG-29.  
Docket No. CP89-2173-001, Arkla Energy Resources, a Division of Arkla, Inc. and Mississippi River Transmission Corporation  
Docket No. CP89-2174-003, Arkla Energy Resources, a Division of Arkla, Inc.  
Docket No. CP89-2195-001, ANR Pipeline Company  
Docket No. RP91-65-009, Arkla Energy Resources, a Division of Arkla, Inc.
- CAG-30.  
Docket Nos. CP90-1389-003 and CP91-1884-002, Great Lakes Gas Transmission Limited Partnership
- CAG-31.  
Docket No. CP89-661-019 and 021, Algonquin Gas Transmission Company
- CAG-32.  
Docket No. CP92-259-001, Sumas International Pipeline, Inc.  
Docket Nos. CP92-336-002 and CP92-383-001, Northwest Pipeline Corporation  
Docket No. CP92-247-002, Northwest Pipeline Corporation and Washington Water Power Corporation
- CAG-33.  
Docket No. CP90-687-008, Transcontinental Gas Pipe Line Corporation
- CAG-34.  
Docket No. CP93-75-001, Sunrise Energy Company v. Transwestern Pipeline Company
- CAG-35.  
Docket No. CP92-448-001, ANR Pipeline Company
- CAG-36.  
Docket No. CP92-668-000, Southern Natural Gas Company and South Georgia Natural Gas Company

### Hydro Agenda

- H-1.  
Project No. 8142-002, Henwood Associates, Inc. Order on stay.

### Electric Agenda

- E-1.  
Reserved

### Oil and Gas Agenda

#### I. Pipeline Rate Matters

- PR-1.  
Reserved

#### II. Restructuring Matters

- RS-1.  
Docket Nos. RS92-49-000, RP92-74-000 and RP92-204-000 South Georgia Natural Gas Company. Order on compliance filing.
- RS-2.  
Docket Nos. RS92-75-000 and 001, Paiute Pipeline Company. Order on compliance filing.
- RS-3.  
Docket Nos. RS92-13-000, 001, CP82-487-000, RP86-10-000, RP89-34-000, RP92-163-004, RP92-170-004 and RP92-236-002, Williston Basin Interstate Pipeline Company. Order on compliance filing.
- RS-4.  
Docket No. RS92-40-000, Louisiana-Nevada Transit Company. Order on compliance filing.
- RS-5.  
Docket Nos. RS92-43-000 and RP93-4-000, Mississippi River Transmission Company. Order on compliance filing.
- RS-6.  
Docket No. RS92-2-000, ANR Pipeline Company. Order on compliance filing.
- RS-7.  
Docket No. RS92-86-000, Transcontinental Gas Pipe Line Corporation. Order on compliance filing.
- RS-8.  
Docket Nos. RS92-28-005, 006, 007, RP93-14-006 and CP93-77-001, Algonquin Gas Transmission Company. Order on compliance filing.

#### III. Pipeline Certificate Matters

- PC-1.  
Reserved  
Dated: May 5, 1993.

Lois D. Cashell,  
Secretary.

[FR Doc. 93-11097 Filed 5-6-93; 3:12 pm]

BILLING CODE 6717-01-M

### FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, May 13, 1993

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 13, 1993, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

#### Item No., Bureau, and Subject

- 1—Common Carrier—Title: Regulatory Reform for Local Exchange Carriers Subject

- to Rate of Return Regulation (CC Docket No. 92-135). Summary: The Commission will consider adoption of a *Report and Order* concerning optional methods of regulating local exchange carriers that do not participate in price cap regulation.
- 2—Common Carrier—Title: Policy and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards (CC Docket No. 91-115). Summary: The Commission will consider adoption of a *Report and Order* concerning the current provision of billing name and address information by local exchange carriers.
- 3—Office of Engineering and Technology—Title: Amendment of Part 2 of the Commission's Rules to Allocate Spectrum for Mobile-Satellite Service in the 1530-1544 MHz and 1626.5-1645.5 MHz Bands (GEN Docket No. 90-56, RM-6459). Summary: The Commission will consider adoption of a *Report and Order and Further Notice of Proposed Rulemaking* concerning allocation of spectrum to the generic mobile-satellite service.
- 4—Private Radio—Title: Amendment of part 90 of the Commission's Rules Governing Extended Implementation Periods (PR Docket No. 92-210, RM-7974). Summary: The Commission will consider adoption of a *Report and Order* modifying our rules that govern extended implementation periods.
- 5—Private Radio—Title: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of Specialized Mobile Radio Systems (SMR) in the 800 MHz Frequency Band (RMs-8117, 8030 and 8029). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* proposing new rules for facilitating the future development of SMR systems in the 800 MHz Band.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: May 6, 1993.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-11159 Filed 5-6-93; 3:19 pm]

BILLING CODE 6712-01-M

### TENNESSEE VALLEY AUTHORITY

[Meeting No. 1458]

TIME AND DATE: 10 a.m. (EDT), May 12, 1993.

PLACE: Sevier County Courthouse Annex, 125 Court Street, Sevierville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on April 14, 1993.

#### ACTION ITEMS:

##### Discussion Items

1. TVA Honor Guard.

2. TVA 60th Anniversary.

*New Business*

C—Energy

C1. Contract with International Combustion Limited for Gallatin Fossil Plant Low NOx Burner Assemblies.

C2. Arrangements with Oklahoma Gas and Electric Company (OG&E) Providing for TVA Purchases from OG&E.

E—Real Property Transactions

E1. Sale of Permanent Easement Affecting Approximately 0.06 Acre of Land to the West Lauderdale Water and Fire Protection Authority for a Water Tank Site—State Line, Alabama, Repeater Station Property—Tract No. XWJRS-1WS—Lauderdale County, Alabama.

E2. Public Auction Sale Affecting Approximately 10.5 Acres of Land—Former Marshall and Henderson Manufacturing, Inc., Kiln Property—Tract No. XWEMP-1—Weir, Choctaw County, Mississippi.

E3. Abandonment of Transmission Line Easements Affecting Approximately 3.5 Acres of Land to the Underlying Landowner, Adam D. Hamilton—TVA's Arlington-Jefferson City Right-Of-Way—Tract Nos.

HQJC-1 and HQJCR-2—Jefferson County, Tennessee.

E4. Abandonment of Easement Rights Affecting Approximately 0.05 Acre of Land—Elgin and Jean C. Smith—Tract No. XCR-30—Hamilton County, Tennessee, Chickamauga Lake.

E5. Abandonment of Easement Rights Affecting Approximately 0.01 Acre of Land—Alex Biles—Tract No. BR-216F—Washington County, Tennessee, Boone Lake.

E6. Abandonment of TVA Easement Rights Affecting Approximately 16.5 Acres of Land—McKinnon Bridge Company, Inc.—Tract Nos. WBR-1608F, -1609F, and -1610F—Loudon County, Tennessee, Watts Bar Lake.

E7. Grant of Permanent Easement Affecting 12.04 Acres of Land for a Highway Right-Of-Way—Tennessee Department of Transportation—Tract No. XTGR-159H—Marion County, Tennessee, Gunter'sville Lake.

E8. Sale of Noncommercial, Nonexclusive Permanent Easement Affecting 0.16 Acre of Land for Construction and Maintenance of Recreational Water Use Facilities—Alan Kuntz—Tract No. XTELR-113RE—Loudon County, Tennessee, Tellico Lake.

F—Unclassified

F1. License to Science Applications International Corporation to Use and Distribute the On-Line Diagnostic Monitoring System Software and Information.

F2. Filing of Condemnation Case.

**INFORMATION ITEMS:**

1. Realignment of Hydro Benefit to Residential Consumers.
2. Jobs and Education Bill Credit Program.

**CONTACT PERSON FOR MORE INFORMATION:**

Alan Carmichael, Vice President, Government Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: May 5, 1993.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 93-11041 Filed 5-6-93; 10:01 am]

BILLING CODE 6120-08-01

# Corrections

Federal Register

Vol. 58, No. 88

Monday, May 10, 1993

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.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2389-012-Maine]

#### Edwards Manufacturing Co.; Intent to Prepare an Environmental Impact Statement

##### Correction

In notice document 93-9467 beginning on page 21715 in the issue of Friday, April 23, 1993, in the third column, under the subject heading, "April 29, 1993" should read "April 19, 1993".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Services

#### Tetanus/Diphtheria and Tetanus Vaccine Information Materials

##### Correction

In notice document 93-7767 beginning on page 17603 in the issue of Monday, April 5, 1993, make the following correction:

On page 17605, before the file line at the bottom of the page, insert "Td-Int. April 5, 1993."

BILLING CODE 1505-01-D

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-020-4210-05; I-29559]

#### Twin Falls County, ID, Hub Butte Landfill Proposal; Intent To Prepare an Environmental Impact Statement/Plan Amendment

##### Correction

In notice document 93-5683 beginning on page 13640, in the issue of

Friday, March 12, 1993, make the following correction:

1. On page 13641, in the first column, in land description T. 11 S., R. 17 E., in Sec. 32, in the first line insert a comma after "W½", and the second line should be removed.

BILLING CODE 1505-01-D

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AG17

#### Dependency and Indemnity Compensation Reform Act of 1992

##### Correction

In rule document 93-9736 beginning on page 25561 in the issue of Tuesday, April 27, 1993, make the following correction:

##### § 3.5 [Corrected]

On page 25561, in the third column, in § 3.5(e)(1), in the fifth line, insert "the" after "be".

BILLING CODE 1505-01-D

# Federal Register

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Monday  
May 10, 1993

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## Part II

### Department of Transportation

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Coast Guard

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33 CFR Part 89

Inland Navigation Rules, Gulf Intracoastal-  
Coastal Waterway; Final Rule

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 89**

[CGD 91-050]

RIN 2115-AE09

**Waters on Which Certain Inland Navigation Rules Apply**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is amending the regulations implementing the Inland Navigation Rules by defining certain portions of the Gulf Intracoastal-Coastal Waterway as waters "specified by the Secretary". This will allow towboat operators on designated portions of the Gulf Intracoastal Waterway to use a rule designed for certain rivers and narrow waterways, exempting them from using white masthead lights, thus improving navigation safety.

**EFFECTIVE DATE:** July 9, 1993.

**ADDRESSES:** Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Epstein, Navigation Rules and Information Branch, Office of Navigation Safety and Waterway Services, (202) 267-0352 or (202) 267-0357.

**SUPPLEMENTARY INFORMATION:****Drafting Information**

The principal persons involved in drafting this document are Jonathan Epstein, Project Manager, Office of Navigation Safety and Waterway Services, and Helen Boutrous, Project Counsel, Office of Chief Counsel.

**Regulatory History**

On September 18, 1992, the Coast Guard published a notice of proposed rulemaking entitled "Waters on Which Certain Inland Navigation Rules Apply" in the *Federal Register* (57 FR 43169). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

**Background and Purpose**

Under the Inland Navigation Rules Act of 1980 (Pub. L. 96-591, 33 U.S.C.

2001 *et seq.*), Congress delegated to the Secretary of Transportation authority to specify waters on which certain Inland Navigation Rules apply in order to best meet the navigational needs in these areas. The Secretary of Transportation delegated this authority to the Coast Guard (49 CFR 1.46(n)(14)).

In 1989, the American Waterways Operators, Inc., representing many of the towboat operators, raised concerns about glare and reflection of the masthead lights off of large tows when pushing ahead on the Gulf Intracoastal Waterway. Based on recommendations from both the Navigation Safety Advisory Council and the Towing Safety Advisory Council, the Coast Guard is amending 33 CFR part 89 so that Inland Rule 24(i) will apply to specified portions of the Gulf Intracoastal Waterway. This will allow towboat operators to extinguish their masthead lights, except when approaching or crossing certain designated ship channels.

**Discussion of Comments and Changes**

The Coast Guard received four comments in response to the proposed rule. Comments from the American Waterways Operators and American Commercial Barge Line Company strongly endorsed the rule.

One comment requested that the Coast Guard define the terms "EHL" and "WHL" as used in the proposed rule. The final rule indicates that the terms are acronyms for "East of Harvey Locks" and "West of Harvey Locks" and denote mile marks. The same comment also noted that the Cochrane Bridge, referenced in § 89.25(f), was replaced in 1985 and questioned whether the replacement bridge carries the name of the previous bridge. The Coast Guard has verified that the replacement bridge carries the same name.

The same comment also suggested that the Coast Guard more stringently enforce existing lighting standards for tow vessels on the Gulf Intracoastal Waterway. The Coast Guard has long recognized the problem of adequate sidelights on barges. These enforcement concerns will be forwarded to local Coast Guard Districts. However, since towboat operators on the Gulf Intracoastal Waterway almost exclusively push ahead, their barges are lighted not only with side lights but with a special flashing yellow light in accordance with Inland Rule 24(f)(i). Therefore, the Coast Guard has determined that barges will be sufficiently lighted under these rules to meet the navigational needs of the Gulf Intracoastal Waterway.

Another comment expressed concern that the Coast Guard would include questions about the twelve designated areas along the Gulf Intracoastal Waterway on future licensing exams. Questions concerning licensing and testing are beyond the scope of this rulemaking. A copy of the comment, however, has been forwarded to the appropriate Coast Guard authority.

**Regulatory Evaluation**

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. No additional costs will be incurred. This rule merely requires white masthead lights to be turned on and off at appropriate points along the Gulf Intracoastal Waterway, for safety reasons.

**Small Entities**

No comments were received regarding the impact of the rule on small entities. This rule exempts towboat operators from using white masthead lights on designated portions of the Gulf Intracoastal Waterway. This rule will impose no additional costs. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under Federal law, authority to issue regulations to implement the Inland Navigational Rules is vested in the Secretary of Transportation and delegated to the Coast Guard. Therefore, the Coast Guard intends this rule to preempt State action addressing this subject matter.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of

Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. This rule exempts towboat operators from using white masthead lights on designated portions of the Gulf Intracoastal Waterway and clearly will have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

#### List of Subjects in 33 CFR Part 89

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 89 as follows:

#### PART 89—INLAND NAVIGATION RULES: IMPLEMENTING RULES

1. The authority citation for part 89 continues to read as follows:

**Authority:** 33 U.S.C. 2071; 49 CFR 1.46(n)(14).

2. Section 89.25 is revised to read as follows:

#### § 89.25 Waters upon which Inland Rules 9(a)(ii), 14(d), and 15(b) apply.

Inland Rules 9(a)(ii), 14(d), and 15(b) apply on the Great Lakes, the Western Rivers, and the following specified waters:

- (a) Tennessee-Tombigbee Waterway.
- (b) Tombigbee River.
- (c) Black Warrior River.
- (d) Alabama River.
- (e) Coosa River.

(f) Mobile River above the Cochrane Bridge at St. Louis Point.

(g) Flint River.

(h) Chattahoochee River.

(i) The Apalachicola River above its confluence with the Jackson River.

3. Section 89.27 is added to read as follows:

#### § 89.27 Waters upon which Inland Rule 24(i) applies.

(a) Inland Rule 24(i) applies on the Western Rivers and the specified waters listed in § 89.25 (a) through (i).

(b) Inland Rule 24(i) applies on the Gulf Intracoastal Waterway from St. Marks, Florida, to the Rio Grande, Texas, including the Morgan City-Port Allen Alternate Route and the Galveston-Freeport Cutoff, except that a power-driven vessel pushing ahead or towing alongside shall exhibit the lights required by Inland Rule 24(c), while transiting within the following areas:

(1) St. Andrews Bay from the Hathaway Fixed Bridge at Mile 284.6 East of Harvey Locks (EHL) to the DuPont Fixed Bridge at Mile 295.4 EHL.

(2) Pensacola Bay, Santa Rosa Sound and Big Lagoon from the Light "10" off of Trout Point at Mile 176.9 EHL to the Pensacola Fixed Bridge at Mile 189.1 EHL.

(3) Mobile Bay and Bon Secour Bay from the Dauphin Island Causeway Fixed Bridge at Mile 127.7 EHL to Little Point Clear at Mile 140 EHL.

(4) Mississippi Sound from Grand Island Waterway Light "1" at Mile 53.8 EHL to Light "40" off the West Point of Dauphin Island at Mile 118.7 EHL.

(5) The Mississippi River at New Orleans, Mississippi River-Gulf Outlet

Canal and the Inner Harbor Navigation Canal from the junction of the Harvey Canal and the Algiers Alternate Route at Mile 6.5 West of Harvey Locks (WHL) to the Michoud Canal at Mile 18 EHL.

(6) The Calcasieu River from the Calcasieu Lock at Mile 238.6 WHL to the Ellender Lift Bridge at Mile 243.6 WHL.

(7) The Sabine Neches Canal from mile 262.5 WHL to mile 291.5 WHL.

(8) Bolivar Roads from the Bolivar Assembling Basin at Mile 346 WHL to the Galveston Causeway Bridge at Mile 357.3 WHL.

(9) Freeport Harbor from Surfside Beach Fixed Bridge at Mile 393.8 WHL to the Bryan Beach Pontoon Bridge at Mile 397.6 WHL.

(10) Matagorda Ship Channel area of Matagorda Bay from Range "K" Front Light at Mile 468.7 WHL to the Port O'Connor Jetty at Mile 472.2 WHL.

(11) Corpus Christi Bay from Redfish Bay Day Beacon "55" at Mile 537.4 WHL when in the Gulf Intracoastal Waterway main route or from the north end of Lydia Ann Island Mile 531.1A when in the Gulf Intracoastal Waterway Alternate Route to Corpus Christi Bay LT 76 at Mile 543.7 WHL.

(12) Port Isabel and Brownsville Ship Channel south of the Padre Island Causeway Fixed Bridge at Mile 665.1 WHL.

Dated: April 9, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc 93-10960 Filed 5-7-93; 8:45 am]

BILLING CODE 4910-14-M





# **Federal Register**

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**Monday  
May 10, 1993**

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**Part III**

**Department of  
Transportation**

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**Coast Guard**

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**33 CFR Part 164**

**46 CFR Part 35**

**Navigation Underway: Tankers; Final Rule**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 164****46 CFR Part 35**

[CGD 91-203, 91-204, 91-222]

RIN 2115-AE00, AE03, AE12

**Navigation Underway; Tankers**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is consolidating three proposed rules into one final rule requiring tankers of 1,600 or more gross tons (GT) when operating on the navigable waters of the United States to navigate with two officers on the bridge and an adequate engineering watch, including a licensed engineer in the machinery spaces. Restrictions are also imposed on use of an auto pilot by these tankers. These actions are required by statute. This final rule will provide additional tanker navigation safety requirements to reduce the incidence of tanker casualties.

**EFFECTIVE DATE:** This regulation is effective on July 9, 1993. The Director of the Federal Register approves as of July 9, 1993. The incorporation by reference of certain publications listed in the regulations.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margie Hegy, Short Range Aids to Navigation Division, (G-NSR-3), 267-0415.

**SUPPLEMENTARY INFORMATION:****Drafting Information**

The principal persons involved in drafting this document are Lieutenant Commander Paul Jewell, Project Manager, OPA 90 staff and Joan Tilghman, Project Counsel, OPA 90 staff.

**Regulatory History**

This final rule combines three related Coast Guard rulemakings that were published separately. Those rulemakings were: "Use of Automatic Pilot: Area Restrictions and Performance Requirements" (CGD 91-204), "Unattended Machinery Spaces: Operating Requirements" (CGD 91-203), and "Second Officer on the Bridge" (CGD 91-222).

On January 3, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Tank Vessels: Automatic Pilot Use; Area Restrictions and Performance Requirements" in the *Federal Register* (57 FR 514). The Coast Guard received

26 letters commenting on the proposal. Because of the comments received, a supplemental notice of proposed rulemaking (SNPRM) was published on October 2, 1992, entitled "Use of Automatic Pilot: Area Restrictions and Performance Requirements" (57 FR 45667). Seventeen letters were received commenting on the SNPRM. Both of these rulemaking documents proposed to designate waters where certain rank vessels would be allowed to operate with the auto pilot engaged.

On April 9, 1992, the Coast Guard published a NPRM entitled "Unattended Machinery Spaces: Operating Requirements" in the *Federal Register* (57 FR 12378). That NPRM proposed to allow certain tankers to operate with unattended machinery spaces. The Coast Guard received 159 letters commenting on the proposal. Most of those letters objected to the proposal, and on October 2, 1992, the Coast Guard published a SNPRM. The SNPRM proposed to require the machinery spaces to be attended continuously. The Coast Guard received 10 letters commenting on the SNPRM.

On October 2, 1992, the Coast Guard also published a NPRM entitled "Second Officer on the Bridge" in the *Federal Register* (57 FR 45664). The NPRM proposed to require that two licensed officers be on the bridge of certain tankers when in the internal waters of the U.S. The Coast Guard received 27 letters commenting on this proposal.

No public hearings were requested for the most recent rulemakings and none was held.

**Background and Purpose**

The Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) requires a number of tanker navigation safety rules. Section 4114(a) of OPA 90 directs the Coast Guard to define the conditions under, and designate the waters upon, which tank vessels subject to 46 U.S.C. 3703 may operate with the auto pilot engaged or with an unattended engine room. For tankers 1,600 GT or more subject to 46 U.S.C. 8502, section 4116(b) directs the designation of U.S. waters where a second officer must be on the bridge.

The Coast Guard has determined that this rule should also apply to foreign flag tankers and U.S. tankers sailing on registry because these tankers pose a similar risk to the environment as tankers subject to 46 U.S.C. 8502. Therefore, under the authority of section 12 of the Ports and Waterways Safety Act (33 U.S.C. 1231) and 46 U.S.C. 8502 this final rule applies to all tankers of 1,600 GT or more when in the navigable waters of the United States. This rule:

(1) Designates areas where automatic pilots may be used; (2) prohibits operation with unattended machinery spaces; and (3) requires the tankers to navigate with at least two officers on the bridge.

**Discussion of Comments and Changes**

A number of the comments received addressed the three proposed rules in general and also provided specific comments on the individual provisions of the proposed rules. The majority of the comments supported the proposed rules, and many stated that the Coast Guard should extend the rules to include other vessels. The reason given was that navigation safety rules are appropriate not only for tankers but for all vessels that pose a risk to the environment.

There were a number of comments that addressed specifically including both towing vessels and barges under the rules because they also pose a risk to the environment. Some of the comments stated that Congress clearly intended these rules to apply to towing vessels. There also were comments that supported excluding towing vessels and barges from the scope of the rules because towing vessels are operated differently from tankers. These latter comments stated that applying the rules to towing vessels would increase operating expenses without a commensurate increase in safety or would adversely affect the safety of towing vessels and tank barges.

OPA 90 requires that the Coast Guard designate waters where most tankers must navigate with additional navigational safeguards. Congress expressed its desire that the Coast Guard implement these rules for tankers in an expeditious manner. The Coast Guard does not want to delay further the implementation of the tanker-specific rules to include other vessels, but may consider initiating a separate rulemaking under other authority to expand the applicability of the requirements set out in the final rule.

The proposed rules referred separately to tankers and integrated tug and barge units (ITBs) certificated to operate as tankships. ITBs inspected and certificated to operate as tankships are considered by the Coast Guard to fall within the definition of tanker. Consequently, it is not necessary to designate ITBs as a separate and distinct category of tanker. Language specifically defining ITBs as tankers is included in the final rule.

One comment requested the Coast Guard to clarify whether the three proposed rules applied to foreign tankers enroute to Canadian ports and

transiting U.S. waters in the Strait of Juan de Fuca.

U.S. waters in the Strait of Juan de Fuca are internal waters of the United States. Tankers transiting the internal waters of the U.S. are subject to this rule. The principle of innocent passage only applies to vessels transiting the territorial seas of the U.S.

#### Unattended Machinery Spaces

Most of the comments agreed that tankers should operate with a licensed engineer in the machinery spaces. One comment stated that tankers should be prohibited from operating with their machinery spaces unattended out to twelve nautical miles from shore.

Section 4114(a) of OPA 90 specifies that this rule applies only on the navigable waters of the United States. As defined in 33 U.S.C. 2701, navigable waters are the waters of the United States, including the territorial sea. This rule cannot be extended out to twelve miles under section 4114(a), because the territorial sea extends only three miles from the territorial sea baseline. Extending the applicability of this rule under other authority may be the subject of a later Coast Guard action. The final rule sets requirements for those areas that Congress believed merited special attention.

Three comments stated that the rule should not require the engineer to be in a specific location, because there are instances when the licensed engineer's presence in the main control space or some other location within the machinery spaces would be more appropriate.

The purpose of the rule is to ensure that a licensed engineer is monitoring the engineering system's performance and is available to take immediate corrective action when necessary. A restrictive reading of the International Maritime Organization (IMO) definition of machinery spaces could lead to the conclusion that the engineer's presence in the main control station is not sufficient to comply with this rule. However, such a limited scope is not consistent with the Coast Guard's intent. The final rule has been clarified to allow the licensed engineer to monitor the systems and take the necessary corrective action from the main control station.

The majority of comments to both the NPRM and SNPRM endorsed having a licensed engineer in the machinery spaces when a tanker is transiting any navigable waters of the U.S. One comment stated that tankers should be permitted to operate with unattended machinery spaces when in the territorial sea except in specified high risk areas.

Another comment said that having a licensed engineer in the machinery spaces of highly automated vessels would not improve safety. That comment indicated that certain automated vessels with safety features beyond the minimum requirements prescribed for automated plant certification, should be allowed to operate without an engineer attending the machinery spaces. For safety reasons the Coast Guard believes that most tankers in the navigable waters of the U.S. should have a licensed engineer immediately available in the machinery spaces to respond to alarms and take manual control when necessary.

#### Second Officer on the Bridge

Fourteen comments supported the provision requiring two officers on the bridge. Many of those comments stated that navigating with two licensed officers on the bridge when the vessel was operating in pilotage waters was already a common maritime practice required by most tanker owners.

Two comments did not support the proposed rulemaking. One comment stated that two officers were not necessary as long as the one officer on watch was well rested, competent, and qualified. The other comment felt that an additional officer would be a distraction to the person piloting the vessel.

Standard maritime practice dictates that two officers be on the bridge when a tanker is in pilotage waters. More importantly, in OPA 90 Congress has recognized the difficulty and complexity of tanker navigation close to shore by requiring the Coast Guard to designate waters where having a second licensed officer will facilitate safe operations.

One comment letter expressed neither explicit support nor opposition to the rule but cited a list of tanker casualties that occurred with two officers on the bridge. Another comment questioned whether any recent tanker casualties occurred because there was only one officer on the bridge.

The Coast Guard recognizes that there have been tanker casualties that have occurred with two or more officers on the bridge. However, there are recent instances where tanker casualties occurred due to error by the sole licensed deck officer on watch. The T/V WORLD PRODIGY grounding and spill in 1989 is an example of the type of accident that this rule should help prevent.

One comment stated that the rule should use the term "licensed deck officers" to preclude using other licensed officers, such as engineering or

radio officers, in complying with this rule. A similar comment stated that the duties of the two officers should be specified, because the rule as written would allow either officer to be sleeping as long as both were presented on the bridge. Another comment questioned whether the pilot was considered a licensed officer for the purposes of this rule.

The Coast Guard has revised the terminology in the second officer provision of this rule to specify that two licensed deck officers must be "on watch" on the bridge to ensure that both of these officers are serving in an official capacity and not sleeping or performing other tasks unrelated to the navigation of the tanker. The rule now specifies that in waters where a pilot is required, the master or a mate must be on the bridge along with the pilot. The rule will allow one officer to concentrate on the safe movement of the tanker through the waterway, while the other officer assists as necessary with navigation and performs other important watch functions. In areas where pilots are not required, at least two licensed deck officers must be on the bridge to navigate the tanker safely.

The NPRM stated that in fifteen States, a foreign flag or U.S. registered vessel is required only to pay a pilotage fee in the State's pilotage waters. Some comments read this statement as the Coast Guard's interpretation of pilotage laws. One comment believed the Coast Guard endorsed this practice.

The Coast Guard is aware of fifteen States which do not have compulsory pilotage laws and mentioned that fact to dispel any notion that foreign trade tankers were already required to navigate with two licensed officers on the bridge. The Coast Guard's description of existing practices is not an endorsement.

A number of the letters supporting the second officer provision stated that a second officer should be required in all navigable waters of the U.S. The comments stated that extending the requirement to all navigable waters would reflect good marine practice, would ensure that an additional officer is assisting with the navigation in the generally congested areas at the entrance to harbors, and would make the final rule less confusing to the mariner. This change would also make the second officer provision consistent with the applicability of the unattended machinery spaces and auto pilot provisions of the rule.

The Coast Guard agrees with the comments and has removed the limitation to internal waters from § 164.13(c) thus making the rule subject

to the general applicability provisions of § 164.01, which includes all navigable waters of the U.S., (except the St. Lawrence Seaway). This will not be a substantial added burden, because the requirement would add only a small additional time (20 minutes at nine knots) during the voyage when two officers would be required to be on the bridge. It also should increase the likelihood that the tanker will navigate safely in what are generally congested approaches to U.S. harbors. The impact of this change on vessels certificated only for Great Lakes service or Lakes, Bays, and Sounds (LBS) service is discussed below.

One letter stated that the second officer requirement should apply when a tanker is within one-half hour steaming time from shore, because there are rocks and shoals that far out to sea. The final rule applies in the navigable waters of the U.S. A rule which applies when a vessel is one-half hour steaming time from shore would be inexact and confusing to mariners and enforcement officers alike. Because such a standard would vary with each tanker, and possibly extend beyond the navigable waters of the U.S., the Coast Guard did not incorporate the suggestion into the rule.

One comment noted that having two officers on the bridge when approaching port is something that vessels have done for 100 years. The comment stated that instead of implementing the rule, the Coast Guard should require tankers to hire a local quartermaster to steer the vessel, arguing that local quartermasters would greatly enhance safety in U.S. waterways.

The person steering the tanker, whether a local quartermaster or a member of this ship's crew, should follow the directions of the watch officer or pilot. The helmsman should neither be expected, nor allowed, to make decisions regarding the helm commands or courses steered, but should only execute the steering commands given. Consequently, the Coast Guard does not believe that requiring a local quartermaster would result in safer navigation than navigating with two licensed officers. The Coast Guard does not intend to require tanker masters to hire a local quartermaster to steer the vessel.

Seven comments were received that discussed the proposed exemption for small tankers certificated only for operation on Great Lakes service or Lakes, Bays, and Sounds (LBS) service. All but one of the comments agreed that small tankers should be exempt from the rule; and four stated that the exemption be extended to include other

small, special purpose tankers with limited areas of operation. Some comments argued, however, that factors other than the certificate of inspection should be considered when determining which tankers to exempt. Small tanker owners and operators noted that, because of the OPA 90-mandated work-hour limitations, the second officer rule could be economically devastating. The owners would have to double the deck officer complement and modify their vessels to accommodate the extra officers. The comments stated that the rule would not increase the safety of the small tankers because of tanker size, limited routes, and officer familiarity with the waters navigated.

The Coast Guard does not wish to impose an undue burden on operators of small tankers. For the reasons set out in the NPRM, the Coast Guard continues to believe that small coastal tankers on limited routes pose less risk to health, safety, and the environment than other tankers. However, a blanket exemption for Great Lakes and LBS services could allow a large tanker to change its route and become exempt from the rule simply because of its certificate. Such an exemption would be inappropriate. Consequently, the provision in the proposed rule that exempted all tankers certificated to operate only on the Great Lakes or only on Lakes, Bays, and Sounds routes has been eliminated. Instead, Coast Guard COTPs will consider deviations from the rule on a case-by-case basis. A deviation may be granted, if it does not impair the safe navigation of the vessel. The procedure by which a tanker owner or operator may request a deviation is specified in 33 CFR 164.55.

The rule is intended to match the cost of compliance with the benefit to be gained. In striking a balance, the Coast Guard believes it is appropriate to take account of the relative risks posed by large and small tankers. For the reasons set out above, the best approach for achieving a cost/benefit balance for small tankers is to let the cognizant COTP assess the risks and grant deviations to specific vessels or transits as appropriate.

#### Use of Auto Pilots

Comments stated that the auto pilot rule should apply to all tank vessels regardless of cargo or size because all tank vessels pose risks. One comment stated that if a helmsman was not required to be present, an auto pilot failure on a small tank vessel could cause the vessel to ground or collide with another vessel, perhaps resulting in a major spill.

In the auto pilot SNPRM, the Coast Guard proposed to remove 46 CFR 35.20-45, which governs the use of auto pilots by all tank ships, and to add, in 33 CFR 164.13, stringent restrictions on auto pilot use by a limited class of tank vessel. Because 33 CFR part 164 applies only to vessels of 1,600 GT or more, the use of an auto pilot by tank ships of less than 1,600 GT would have been unrestricted. The Coast Guard agrees that small tank ships should be required to exercise appropriate care when using an auto pilot. Consequently, 46 CFR 35.20-45 is retained with a cross reference to the more restrictive rules in 33 CFR 164.13 for tankers of 1,600 GT or more. Title 46 CFR 35.20-45 requires the master of a tank ship to ensure that when the auto pilot is used in certain areas or circumstances that: (1) It is possible to immediately establish manual control; (2) a competent person is ready to take over steering control and; (3) the changeover from automatic to manual steering is made by, or under the supervision of, the officer of the watch. The final rule adds auto pilot restrictions to 33 CFR 164.13 for tankers of 1,600 GT or more. These restrictions include a prohibition on auto pilot use in certain designated areas and a requirement that a qualified helmsman be stationed at the helm.

One comment generally agreed with the auto pilot SNPRM, but suggested modification to allow Captains of the Port (COTPs) discretion in permitting certain vessels with an auto pilot that is part of an integrated navigation system to operate without restriction.

In the auto pilot SNPRM, the Coast Guard proposed that certain tankers with integrated navigation systems be allowed to operate with such systems engaged even in traffic separation schemes and shipping safety fairways where use of an auto pilot was otherwise prohibited. This provision is retained in the final rule. Anchorage grounds and areas within one half mile from shore were not added to the list of areas where the integrated systems could be used, because the variety of circumstances that could be encountered in those areas make it undesirable to grant blanket approval to the use of integrated systems. Tankers in anchorage grounds or that are within one half mile from shore are generally maneuvering at a slow speed where an auto pilot would not be effective.

Two comments stated that the COTPs also should have discretion to restrict the use of an auto pilot in additional waters within the COTP zone. The Coast Guard does not agree. It is in the mariner's and the Coast Guard's interest to minimize the prospect of a confusing

array of rules that may vary from port to port. The Coast Guard finds that a single, national rule will facilitate compliance.

A number of comments did not agree that the one-half mile from shore restriction on the use of an auto pilot was adequate because there would not be sufficient time to correct an auto pilot failure. The comments suggested restricting the use of an auto pilot to greater distances from shore.

The Coast Guard does not agree that the time required to correct an auto pilot failure is a significant safety consideration. This rule requires a helmsman to be present and ready at all times to take manual control. It takes a similar amount of time to override a modern auto pilot and take manual steering control as it does to make a course change by turning the wheel.

Some comments stated that the use of an advanced auto pilot in certain waters, such as dredged channels, should not be permitted. The comments cited other unique circumstances in specific local areas of operation (such as the Florida Keys, New York/New Jersey harbor, or Delaware Bay) where the use of an auto pilot would be allowed under this rule but would be unsafe because of specific existing conditions.

The steering of a tanker is affected by the distance from the hull to bottom of the channel. The amount of underkeel clearance and its affect on steering depend on the draft of a tanker and the depth of the water. Some, but not all, tankers have so little underkeel clearance in dredged channels that they should not operate in these channels with their auto pilot engaged. It is the duty of vessel masters and pilots to exercise their professional judgment and weigh the capabilities of the auto pilot and the specific navigational demands in a local area. Vessel masters and pilots are in the best position to determine whether, in the waters where the final rule allows discretion, the use of an auto pilot is safe based on the local conditions. There is nothing in this rule that compels a tanker's master or pilot to use an auto pilot, and the Coast Guard is not promoting indiscriminate use of an auto pilot. This rule is permissive and recognizes that an auto pilot is a navigational tool that, when used by a prudent mariner under appropriate circumstances, can assist the mariner in the safe transit of a tanker.

Most comments supported the requirement that a qualified individual be present at the helm when a tanker is operating with the auto pilot engaged while on the navigable waters of the U.S. One dissenting comment suggested

that the boredom of the helmsman and resulting inattention outweighed the safety advantages of having a qualified individual at the helm. Another dissenting comment stated that having a helmsman defeats the purpose of an auto pilot.

Under current regulations (33 CFR 164.11), there must be a person competent to steer the vessel in the wheelhouse at all times. Because of the risk tankers pose to the environment, the Coast Guard does not agree the qualified helmsman on tankers of 1,600 gross tons or more should be allowed to engage in other duties elsewhere on the bridge when the auto pilot is engaged pursuant to this rule. Having a qualified helmsman at the helm ensures that someone is immediately available to disengage the auto pilot and take manual steering control in an emergency.

The statute cited in the footnote of 33 CFR 164.11 has been superseded. The Coast Guard has added a provision in this rule to correct that footnote.

Some of the comments noted that the Coast Guard's statement in the SNPRM that licensed deck officers sometimes serve as helmsman was not true and that we should prohibit this practice. The Coast Guard knows that it would be unusual for a large tanker to have the licensed deck officer serving as helmsmen. The discussion of the issue in the SNPRM focused on a limited group of small tankers that have limited space in the pilothouse and that are not required to carry individuals qualified to serve as helmsman. The Coast Guard does not believe that it is appropriate to prohibit a licensed deck officer, master, or pilot from steering a tanker.

#### **Incorporation by Reference**

The Director of the Federal Register has approved the material in 33 CFR 164.03 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

#### **Regulatory Evaluation**

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of the rule to be so minimal that a full Regulatory Evaluation is unnecessary. The rule does not meet any of the criteria listed in paragraph 6(a)(2) of the Executive Order. This rule will not result in annual costs of \$100 million; will have no significant adverse effects on competition, employment, or other aspects of the economy; and will not

result in a major increase in costs and prices.

The rule will affect tankers of 1,600 GT or more. Tankers must comply with this rule only when underway on the navigable waters of the United States, which extends out to 3 nautical miles seaward from the territorial sea baseline. The comments received on the NPRMs and SNPRMs support the Coast Guard's position that the provisions of the rule, in large part, codify generally accepted marine practice. According to the comments, most tanker masters already ensure that a licensed engineer is attending the machinery spaces and that more than one deck officer is on the bridge when underway in most of the navigable waters of the United States.

There will be no cost to vessel owners in complying with the automatic pilot provisions of the rule, because the rule does not require the use of auto pilots, it only prohibits their use in certain areas. The rule neither requires equipment nor increases crew size.

There were comments from owners of small tankers who indicate that the second officer requirement would cost as much as \$100,000 per year for a tanker. The Coast Guard is aware of 10 small tankers that will be subject to this rule, and consequently, subject to higher operating costs. If all ten of these tanker owners were to spend \$100,000 per year to provide additional deck watch officers, this rule would cost about \$1 million per year. The owners of small tankers are free to request deviation from the rule which could significantly reduce the costs of compliance.

The overall potential benefit of the rule is that it will provide increased protection from oil spills for U.S. shores and adjacent waters. However, it is not possible to predict the number of casualties that will be prevented or the amount of oil that would be spilled. If even one moderate spill in an environmentally sensitive area is prevented, the benefits are expected to outweigh the costs. Requiring two licensed officers on the bridge of tankers reduces the likelihood that a serious navigational error will occur or go unnoticed. Requiring a licensed engineer on watch in the machinery spaces or the main control space will ensure prompt attention to machinery faults. Restricting the use of automatic pilots will promote increased vigilance and quick helm response to emergency situations in restricted waters.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on

a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). "Small entities" also include small not-for-profit organizations and small governmental jurisdictions.

The portion of this rulemaking that requires tankers over 1,600 gross tons to operate in the navigable waters of the United States with at least two licensed deck officers on watch on the bridge may result in increased operating costs for vessels in coastwise trading and would likely be the only potential economic impact of interest to small entities. Of particular concern to the Coast Guard were 10 of the smallest tankers that are subject to this rule. The Coast Guard's analysis of its records indicates that none of these 10 vessels are operated by small businesses. Operators include several multinational oil companies, a large Federal agency, a Great Lakes ore fleet operator, and a firm that owns and operates a fleet of 25 ships and 600 barges. Although two firms forwarded comments that expressed economic concerns about effects of the second officer requirement, neither were small businesses. No comments on economic effects were received from small entities.

Additionally, existing provisions for deviations could effectively tier the regulation, were small entities to engage in trade regulated by this rule. While the Coast Guard did not include specific exemptions, Coast Guard COTPs are authorized to consider requests for deviations from the rule on a case-by-case basis. A deviation may be granted if granting the deviation does not impair the safe navigation of the vessel. The procedure by which a tanker owner or operator may request a deviation is specified in 33 CFR 164.55. Beyond the deviation procedures, further flexibility would not be in the interest of sound environmental policy.

Because the portions of this rule concerning unattended machinery spaces and the use of auto pilots will impose virtually no costs on the regulated community, and because of the circumstances described in this discussion on small entities concerning the second officer requirement, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

The rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed the rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Coast Guard received a number of comments on its preemption determination, some in support and some in opposition. While a tanker covered by this rule is operating on the navigable waters of the U.S., the rule: (1) Prohibits the operation with unattended machinery spaces; (2) requires that a qualified individual be at the helm; and (3) requires two officers to be on the bridge. It is a well-settled principle that regulations concerning manning of commercial vessels in U.S. waters are the exclusive domain of the U.S. Coast Guard. Further, standardizing vessel manning requirements is necessary because vessels move from port to port in the national marketplace, and variation of manning requirements would be unreasonably burdensome. Therefore, the Coast Guard intends the manning provisions to preempt State action addressing the same subject matter. This rule does not alter the State-Federal relationship regarding pilotage requirements and does not preempt the States' authority to establish a requirement for a State pilot under 46 U.S.C. 8501.

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket for inspection or copying where indicated under "ADDRESSES." The rule is not expected to result in significant impact on the quality of the human environment, as defined by the National Environmental Policy Act.

In evaluating the environmental impact of this action, the Coast Guard considered the following:

(1) Environmental benefits of regulating the use of auto pilots or requiring additional manning on the bridge or in the machinery spaces cannot be quantified in isolation, due to the complementary effects of other OPA 90-related regulatory changes. For

example, regulations dealing with improved crew training, vessel traffic control, and other OPA 90 initiatives should result in reduced casualties and reduced numbers and volumes of spills;

(2) The rule involves the navigable waters of the U.S. and should help prevent spills, especially when vessels are maneuvering near shorelines and in congested waterways.

#### List of Subjects

##### 33 CFR Part 164

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

##### 46 CFR Part 35

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 164 and 46 CFR part 35 as follows:

#### TITLE 33 CFR—[AMENDED]

#### PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 is revised to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502 sec. 4114(a), Pub. L. 101-380, 104 Stat. 517 (46 U.S.C. 3703 note). Sec. 164.61 also issued under 46 U.S.C. 6101.

2. Section 164.03 is revised to read as follows:

##### § 164.03 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and the material must be available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Marine Environmental Protection Division (G-MEP), room 2100, 2100 Second Street, SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

**Radio Technical Commission for Maritime Services (RTCM)**

P.O. Box 19087, Washington, DC 20036,  
Paper 12-78/DO-100, Minimum Performance  
Standards, Loran C Receiving Equipment, 12/  
20/77-164.41

**International Maritime Organization (IMO)**

4 Albert Embankment, London SE1 7SR,  
U.K., IMO Resolution A.342(IX),  
Recommendation on Performance Standards  
for Automatic Pilots, adopted November 12,  
1975-164.13

3. The footnote in § 164.11 is revised  
to read as follows:

<sup>1</sup> See also 46 U.S.C. 8702(d), which  
requires an able seaman at the wheel on U.S.  
vessels of 100 gross tons or more in narrow  
or crowded waters during low visibility.

4. Section 164.13 is added to read as  
follows:

**§ 164.13 Navigation underway: tankers.**

(a) As used in this section, "tanker"  
means a self-propelled tank vessel,  
including integrated tug barge  
combinations, constructed or adapted  
primarily to carry oil or hazardous  
material in bulk in the cargo spaces and  
inspected and certificated as a tanker.

(b) Each tanker must have an  
engineering watch capable of  
monitoring the propulsion system,  
communicating with the bridge, and  
implementing manual control measures  
immediately when necessary. The  
watch must be physically present in the  
machinery spaces or in the main control  
space and must consist of at least a  
licensed engineer.

(c) Each tanker must navigate with at  
least two licensed deck officers on  
watch on the bridge, one of whom may  
be a pilot. In waters where a pilot is  
required, the second officer, must be an  
individual licensed and assigned to the  
vessel as master, mate, or officer in  
charge of a navigational watch, who is  
separate and distinct from the pilot.

(d) Except as specified in paragraph  
(e) of this section, a tanker may operate  
with an auto pilot engaged only if all of  
the following conditions exist:

(1) The operation and performance of  
the automatic pilot conforms with the  
standards recommended by the  
International Maritime Organization in  
IMO Resolution A.342(IX).

(2) A qualified helmsman is present at  
the helm and prepared at all times to  
assume manual control.

(3) The tanker is not operating in any  
of the following areas:

(i) The areas of the traffic separation  
schemes specified in subchapter P of  
this chapter.

(ii) The portions of a shipping safety  
fairway specified in part 166 of this  
chapter.

(iii) An anchorage ground specified in  
part 110 of this chapter.

(iv) An area within one-half nautical  
mile of any U.S. shore.

(e) A tanker equipped with an  
integrated navigation system, and  
complying with paragraph (d)(2) of this  
section, may use the system with the  
auto pilot engaged while in the areas  
described in paragraphs (d)(3) (i) and (ii)  
of this section. The master shall

provide, upon request, documentation  
showing that the integrated navigation  
system—

(1) Can maintain a predetermined  
trackline with a cross track error of less  
than 10 meters 95 percent of the time;

(2) Provides continuous position data  
accurate to within 20 meters 95 percent  
of the time; and

(3) Has an immediate override  
control.

**TITLE 46 CFR—[AMENDED]****PART 35—OPERATIONS**

5. The authority citation for part 35  
continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C.  
3306, 3703, 6101; 49 U.S.C. App. 1804; E.O.  
11735, 38 FR 21243, 3 CFR, 1971-1975  
Comp., p. 793; E.O. 12234, 45 FR 58801, 3  
CFR, 1980 Comp., p. 277; 49 CFR 1.46.

6. In § 35.20-45, the introductory text  
is revised to read as follows:

**§ 35.20-45 Use of Auto Pilot—T/ALL.**

Except as provided in 33 CFR 164.13,  
when the automatic pilot is used in:

\* \* \* \* \*

Dated: May 4, 1993.

A. Cattalini,

Captain, U.S. Coast Guard, Acting Chief,  
Office of Navigation Safety and Waterway  
Services.

[FR Doc. 93-10959 Filed 5-7-93; 8:45 am]

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# Federal Register

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Monday  
May 10, 1993

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## Part IV

### Department of Health and Human Services

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Food and Drug Administration

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21 CFR Part 310  
Status of Certain Over-the-Counter Drug  
Category II and III Active Ingredients;  
Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 310**

[Docket No. 91N-0505]

RIN 0905-AA06

**Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule establishing that certain active ingredients in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. FDA is issuing this final rule after considering the reports and recommendations of various OTC advisory review panels and public comments on the agency's notices of proposed rulemaking. Based on the absence of substantive comments in opposition to the agency's proposed nonmonograph status for these ingredients, as well as the absence of submissions by interested parties of new data or information to FDA pursuant to the regulations, the agency is issuing this final rule to remove from the OTC market these ingredients for the uses specified in this rule. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

**EFFECTIVE DATE:** November 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

**SUPPLEMENTARY INFORMATION:** In various issues of the Federal Register, FDA has published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), advance notices of proposed rulemaking to establish monographs for specific classes of OTC drug products, together with the recommendations of the OTC advisory review panels, which were responsible for evaluating data on the active ingredients in the specific drug class(es) in each proposed monograph. Following publication of each proposed monograph, interested parties were invited to submit comments within a set time period, with an additional period of time allowed for reply comments in response to comments filed in the initial comment period.

FDA evaluated the OTC advisory review panels' recommendations and the comments and reply comments received in response to the initial publication of the advance notices of proposed rulemaking. After considering this information, the agency published proposed regulations (in the form of tentative final monographs for various specific classes of OTC drug products). Interested persons were invited to file comments, objections, and/or requests for an oral hearing before the Commissioner of Food and Drugs (the Commissioner) regarding the specific proposals within a set time period. A period of 12 months was provided for the submission of new data and information regarding each specific proposed rulemaking, and 2 additional months were provided for comments on the new data. The publication dates, comment closing dates, and new data closing date for each advance notice of proposed rulemaking and notice of proposed rulemaking are listed in Table I of the August 25, 1992 proposed rulemaking discussed below. (See 57 FR 38568 at 38569.)

In the Federal Register of August 25, 1992 (57 FR 38568), FDA published, under § 330.10(a)(7)(ii) (21 CFR 330.10(a)(7)(ii)), a proposed rulemaking encompassing certain Category II and III active ingredients for which the periods for submission of comments and new data following the publication of a notice of proposed rulemaking had closed and for which no significant comments or new data to upgrade the status of these ingredients had been submitted. In each instance, a final rule for the class of ingredients involved had not been published to date. Since that time, final rules for two of the OTC drug rulemakings included in the proposal, external analgesic drug products for diaper rash and topical antifungal drug products for diaper rash, were published on December 18, 1992 (57 FR 60426 and 60430, respectively). Accordingly, the active ingredients from those rulemakings that were included in the proposal are not included in this final rule.

The OTC drug review administrative procedures provide in § 330.10(a)(7)(ii) that the Commissioner may publish a separate tentative order proposing that active ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments in opposition to the advisory panel's proposed

classification and no new data and information were received pursuant to § 330.10(a)(6)(iv) (21 CFR 330.10(a)(6)(iv)). Section 330.10(a)(7)(ii) authorizes the publication of a separate tentative order immediately following the close of the comment and new data periods for an advance notice of proposed rulemaking. However, in the case of the ingredients included in the proposal, the Commissioner waited until after proposed rulemakings were published and the periods for submission of comments and new data had ended. This additional period allowed the fullest possible opportunity for public comment and receipt of new data to upgrade the status of these ingredients.

As mentioned, no substantive comments or new data were submitted to support reclassification of any of these active ingredients to monograph status. Therefore, before a final rule on each respective drug category is published, the Commissioner has determined that these ingredients are not generally recognized as safe and effective and that any OTC drug product containing any of these active ingredients not be allowed to continue to be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. FDA has elected to act on these ingredients in advance of finalization of other monograph conditions in order to expedite completion of the OTC drug review. Table I below lists the title, docket number, and active ingredients of the specific rulemakings that are addressed in this final rule.

FDA advises that the active ingredients listed in this final rule will not be included in the relevant final monographs because they have not been shown to be generally recognized as safe and effective for their intended use. The agency is amending 21 CFR part 310 to list all of the active ingredients covered by this final rule by adding them to § 310.545 (21 CFR 310.545). The agency further advises that these active ingredients should be eliminated from OTC drug products by November 10, 1993, regardless of whether further testing is undertaken to justify future use, and regardless of whether the relevant OTC drug monographs have been finalized at that time. Therefore, on or after November 10, 1993, no OTC drug product containing any ingredient listed in this final rule and included in § 310.545 either labeled or intended as an active ingredient for the uses specified in that section may be initially introduced or initially delivered for introduction into interstate commerce

unless it is the subject of an approved application. Further, any OTC drug product containing an ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency points out that publication of this final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See § 10.30 (21 CFR 10.30).) However, marketing of products containing these active ingredients may not continue while the data are being evaluated by the agency.

In response to the proposed rule on certain additional OTC Category II and III ingredients, nine drug manufacturers and six consumers submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

#### I. The Agency's Conclusions on the Comments

1. One comment requested clarification of the statement that any product containing any of the listed ingredients and labeled for an OTC use as identified by the proposed rule will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) (57 FR 38568 at 38572). The comment contended that this statement is limited in effect to the use of a listed ingredient as an active ingredient for the specified indication(s). Accordingly, this proposal does not extend to additional uses of the listed active ingredients covered by other OTC drug rulemaking proceedings.

The comment is correct. This final rule affects only the use of the listed ingredients as active ingredients for the

specific indications under which they are listed. As stated in § 310.545, this rule is limited to "active ingredients" for various uses for which " \* \* \* based on evidence currently available, there are inadequate data to establish general recognition of the safety and effectiveness of these ingredients for the specified uses: \* \* \*."

2. One comment requested clarification of the agency's statement that "FDA has determined that the presence of these ingredients in an OTC drug product would result in that drug product not being generally recognized as safe and effective or would result in misbranding." (57 FR 38568). The comment contended that this statement applies only to the use of nonmonograph ingredients as active ingredients. The comment stated that certain nonmonograph ingredients may be used as inactive ingredients in product formulations, which should not cause the product to be misbranded, provided that no drug claims are made.

The agency's statement was made in the context of considering the affected ingredients as active ingredients. This final rule applies only to the use of the listed ingredients as active ingredients for the specific indications listed. The agency recognizes that some of the ingredients included in this final rule have valid uses as inactive ingredients (e.g., cinnamon oil, peppermint). Any inactive ingredient present in the product should have an appropriate purpose and be safe and suitable for use in the product in accordance with § 330.1(e) (21 CFR 330.1(e)). The presence of an appropriate inactive ingredient § 330.1(e) in a product will not cause the product to be misbranded, provided that no drug claims are attributed to the ingredient.

3. One comment requested that the proposed prohibition of salicylic acid in OTC topical antifungal drug products be expressly limited to its use as an active ingredient and not include its use as an adjuvant keratolytic in these drug products. The comment stated that following publication of the tentative final monograph for OTC topical antifungal drug products, additional data (Ref. 1) were submitted to that rulemaking on November 30, 1990, in support of salicylic acid as an adjuvant keratolytic in topical antifungal drug products. The comment stated that the criteria upon which the August 25, 1992, proposed rule is based are consonant with the characterization by agency personnel of the rulemaking as "administrative house cleaning" of ingredients no one is interested in. The comment contended that, from the standpoint of administrative procedural

requirements, the criteria used by the agency to determine that an ingredient has been "abandoned" have not been met for salicylic acid as an adjuvant keratolytic.

The agency acknowledges that a submission of data was made on November 30, 1990. The agency reviewed that submission and informed the manufacturer in a letter dated February 15, 1991 (Ref. 2), that the "open, uncontrolled clinical trial does not provide any useful information." There were major flaws in the design of the clinical study. The agency stated in the August 25, 1992, proposal that no "substantive" comments or new data were submitted for the listed ingredients. The agency did not consider the November 30, 1990, data submission to be substantive. No other data were submitted to support monograph status for salicylic acid used as an adjuvant keratolytic in OTC topical antifungal drug products. Accordingly, the final rule does not contain an express limitation as requested by the comment.

#### References

(1) Comment No. C30, Docket No. 80N-0476, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to Guido Mendoza, Kramer Laboratories, Inc., coded LET24, Docket No. 80N-0476, Dockets Management Branch.

4. One comment requested that the agency delay its proposed action regarding benzoic acid and salicylic acid as active ingredients in OTC topical antifungal drug products. The comment acknowledged that substantive comments or adequate data have not been submitted to support benzoic acid and salicylic acid as Category I active ingredients for topical antifungal use. However, the comment stated that products containing these ingredients and labeled for the treatment of athlete's foot and ringworm have been continuously marketed since 1932. The comment requested additional time to submit documentation and for an oral hearing.

Another comment requested that salsalate, an internal analgesic, antipyretic, and antirheumatic ingredient, be kept in Category III pending new studies and testing planned to be submitted before the final monograph. The comment stated that these studies would provide additional evidence of salsalate's OTC safety and efficacy.

The agency clearly stated in the proposal that "This proposal does not constitute a reopening of the administrative record or an opportunity to submit new data to any of the

specified rulemakings." (57 FR 38568). In addition, § 330.10(a)(7)(v) (21 CFR 330.10(a)(7)(v)) of the regulations governing the OTC drug review states that new data and information submitted after the closing of the administrative record for a tentative final rule " \* \* \* but prior to the establishment of a final monograph will be considered as a petition to amend the monograph and will be considered by the Commissioner only after a final monograph has been published in the Federal Register unless the Commissioner finds that good cause has been shown that warrants earlier consideration."

None of the comments offered good cause why the requested ingredients should not be included in this final rule. Benzoic acid and salicylic acid have been under consideration in the rulemaking for OTC topical antifungal drug products since 1974. The comment did not provide any explanation why data or comments were not submitted before the close of the administrative record on February 12, 1991. Salsalate has been under consideration in the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products since 1972. The comment did not provide any explanation why the data were not submitted before the close of the administrative record on January 16, 1990. The appropriate course of action for both comments is to submit any new data to the specific rulemaking for that class of OTC drug products, in a citizen petition under §§ 10.30 and 330.10.

5. Seven comments objected to the proposed rulemaking as a ban on vitamin, mineral, and other natural food supplements. The comments were concerned that many nutritional supplements and herbs would be removed from the marketplace. One comment contended that a number of the ingredients (pyridoxine hydrochloride, betaine hydrochloride, papaya, capsicum, eucalyptus oil, hydrogen peroxide, calcium pantothenate, and riboflavin) have nutritional value. Two of the comments contended that the agency is ignoring the Proxmire Act of 1976 that instructed FDA to set up separate guidelines for dietary supplements.

The agency recognizes that some of the ingredients included in this rulemaking are also marketed as vitamins, minerals, and food supplements. This rule affects only the marketing of ingredients listed as active ingredients in specific types of OTC drug products for which unproven medical claims are being made. This rule does not affect the continued use

and marketing of these ingredients in vitamin, mineral, and food supplement products and, thus, is in conformance with the 1976 amendment to the act (21 U.S.C. 350). The agency believes that the comments misinterpreted the agency's intent as a ban on the substance itself rather than a restriction on marketing ingredients with claims as an active ingredient for specific listed drug indications.

6. Three comments disagreed with the proposed listing of aspergillus oryza enzymes under digestive aid drug products in § 310.545(a)(8)(ii). One comment stated that the term describes a group of functionally different enzymes derived from a particular source. Another comment mentioned that there is no evidence that "aspergillus oryza enzymes" have been used in OTC drug products in the past or at the present time, and that inclusion in the listing appears inappropriate. Several comments stated that new information on lactase enzyme derived from *Aspergillus oryzae* (*A. oryzae*) had been submitted to the administrative record in the rulemaking for OTC digestive aid drug products. Thus, the comments contended that aspergillus oryza enzymes should be deleted from the list of nonmonograph ingredients until the digestive aid drug products rulemaking is completed, or if retained in the list, the agency should clarify that it does not include lactase enzyme derived from *A. oryzae*.

*Aspergillus oryzae* enzymes were included in the listing in proposed § 310.545(a)(8)(ii) based on their listing in a call-for-data notice published in the Federal Register of August 27, 1975 (40 FR 38179), and the Panel's statement that it was neither able to locate nor was it aware of any significant body of data demonstrating the safety and effectiveness of aspergillus oryza enzymes for treating the symptoms of intestinal distress (47 FR 454 at 458, January 5, 1982). As one comment noted, the term describes a group of functionally different enzymes derived from a particular source. Lactase enzyme is the only enzyme derived from *A. oryzae* for which the agency has received any data in the rulemaking for OTC digestive aid drug products. The comments are correct in stating that this particular enzyme should be excluded from this final rule. Accordingly, the agency is including a parenthetical phrase in the regulation following aspergillus oryza enzymes that states: "(except lactase enzymes derived from *Aspergillus oryzae*)."

7. One comment requested clarification of the status of camphor and menthol as external analgesic,

anesthetic, and antipruritic active ingredients in fever blister and cold sore treatment drug products because of the listing of these ingredients in proposed § 310.545(a)(10)(v).

The proposed rule for OTC external analgesic fever blister and cold sore treatment drug products (55 FR 3370 at 3382 and 3383, January 31, 1990) provides that products containing ingredients listed in § 348.10(a) or (b) or combinations of ingredients identified in § 348.20(a)(1) or (a)(3) may be labeled "for \* \* \* pain and itching associated with fever blisters and cold sores." Proposed § 348.10(b)(2) and (b)(6) of the tentative final monograph for OTC external analgesic drug products (48 FR 5852 at 5867, February 8, 1983) list camphor at 0.1 to 3 percent and menthol at 0.1 to 1 percent, respectively. Camphor and menthol are also listed in § 348.12(b)(1) and (b)(2) at higher concentrations for counterirritant use.

The August 25, 1992 proposed rule that listed camphor and menthol in § 310.545(a)(10)(v) was intended to apply to the higher (counterirritant) concentrations of camphor and menthol only. The agency is clarifying this fact in this final rule by adding in § 310.545(a)(10)(v) the parenthetical phrase "(exceeding 3 percent)" after the entry for camphor and by adding the parenthetical phrase "(exceeding 1 percent)" after the entry for menthol.

**II. Summary of Significant Changes From the Proposed Rule**

1. The agency is including a parenthetical phrase following aspergillus oryza enzymes in § 310.545(a)(8)(ii) that states: "(except lactase enzymes derived from *Aspergillus oryzae*)." (See comment 6.)

2. The agency is adding in § 310.545(a)(10)(v) the parenthetical phrase "(exceeding 3 percent)" after the entry for camphor and adding the parenthetical phrase "(exceeding 1 percent)" after the entry for menthol. (See comment 7.)

3. The agency is redesignating several of the proposed paragraphs in § 310.545 of this final rule as follows:

Proposed rule	Final rule
(a)(21)(i) .....	(a)(22)(ii)
(a)(22) through (a)(24).	(a)(23) through (a)(25)
(d)(4) .....	(d)(11)

**III. The Agency's Final Conclusions on Certain Additional OTC Drug Category II and III Active Ingredients**

The agency has determined that no substantive comments or additional data have been submitted to the OTC drug

review to support any of the ingredients listed below as being generally recognized as safe and effective for the OTC drug uses specified in the table (Table I). Based on the agency's procedural regulations (21 CFR 330.10(a)(7)(ii)), the agency has determined that these ingredients are not generally recognized as safe and effective and are misbranded when present in the following specific OTC drug products:

**TABLE I.—OTC DRUG RULEMAKINGS AND ACTIVE INGREDIENTS COVERED BY THIS NOTICE**

Rulemaking
(1) Digestive Aid Drug Products (Docket No. 81N-0106):
Alcohol
Aluminum hydroxide
Amylase
Anise seed
Aromatic powder
Asafetida
Aspergillus oryza enzymes (except lactase enzyme derived from <i>Aspergillus oryzae</i> )
Bacillus acidophilus
Bean
Belladonna alkaloids
Belladonna leaves, powdered extract
Betaine hydrochloride
Bismuth subcarbonate
Bismuth subgallate
Black radish powder
Blessed thistle ( <i>cnicus benedictus</i> )
Buckthorn
Calcium gluconate
Capsicum
Capsicum, fluid extract of
Carbon
Cascara sagrada extract
Catechu, tincture
Catnip
Chamomile flowers
Charcoal, wood
Chloroform
Cinnamon oil
Cinnamon tincture
Citrus pectin
Diastase
Diastase malt
Dog grass
Elecampane
Ether
Fennel acid
Galega
Ginger
Glycine
Hydrastis canadensis (golden seal)
Hectorite
Horsetail
Huckleberry
Hydrastis fluid extract
Hydrochloric acid
Iodine
Iron ox bile
Johnswort
Juniper
Kaolin, colloidal
Knotgrass

**TABLE I.—OTC DRUG RULEMAKINGS AND ACTIVE INGREDIENTS COVERED BY THIS NOTICE—Continued**

Rulemaking
Lactic acid
Lactose
Lavender compound, tincture of
Linden
Lipase
Lysine hydrochloride
Mannitol
Mycozyme
Myrrh, fluid extract of
Nettle
Nickel-pectin
Nux vomica extract
Orthophosphoric acid
Papaya, natural
Pectin
Peppermint
Peppermint spirit
Phenacetin
Potassium bicarbonate
Potassium carbonate
Protease
Prolase
Rhubarb fluid extract
Senna
Sodium chloride
Sodium salicylate
Stem bromelain
Strawberry
Strychnine
Tannic acid
Trillium
Woodruff
(2) External Analgesic Drug Products:
(a) Fever Blister and Cold Sore Treatment Drug Products (Docket No. 78N-301F):
Allyl isothiocyanate
Aspirin
Bismuth sodium tartrate
Camphor (exceeding 3 percent)
Capsaicin
Capsicum
Capsicum oleoresin
Chloral hydrate
Chlorobutanol
Cyclomethycaine sulfate
Eucalyptus oil
Eugenol
Glycol salicylate
Hexylresorcinol
Histamine dihydrochloride
Menthol (exceeding 1 percent)
Methapyrilene hydrochloride
Methyl nicotinate
Methyl salicylate
Pectin
Salicylamide
Strong ammonia solution
Tannic acid
Thymol
Triplennamine hydrochloride
Trolamine salicylate
Turpentine oil
Zinc sulfate
(b) Insect Bite and Sting Drug Products (Docket No. 78N-301P):
Alcohol
Alcohol, ethoxylated alkyl
Benzalkonium chloride

**TABLE I.—OTC DRUG RULEMAKINGS AND ACTIVE INGREDIENTS COVERED BY THIS NOTICE—Continued**

Rulemaking
Calamine
Ergot fluidextract
Ferric chloride
Panthenol
Peppermint oil
Pyrimamine maleate
Sodium borate
Trolamine salicylate
Turpentine oil
Zinc oxide
Zirconium oxide
(c) Poison Ivy, Poison Oak, and Poison Sumac Drug Products (Docket No. 78N-301P):
Alcohol
Aspirin
Benzethonium chloride
Benzocaine (0.5 to 1.25 percent)
Bithionol
Calamine
Cetaikonium chloride
Chloral hydrate
Chlorobutanol
Chlorpheniramine maleate
Creosote, beechwood
Cyclomethycaine sulfate
Dexpanthenol
Diperodon hydrochloride
Eucalyptus oil
Eugenol
Glycerin
Glycol salicylate
Hectorite
Hexylresorcinol
Hydrogen peroxide
Impatiens biflora tincture
Iron oxide
Isopropyl alcohol
Lanolin
Lead acetate
Merbromin
Mercuric chloride
Methapyrilene hydrochloride
Panthenol
Parethoxycaine hydrochloride
Phenyltoloxamine dihydrogen citrate
Povidone-vinylacetate copolymers
Pyrimamine maleate
Salicylamide
Salicylic acid
Simethicone
Sulfur
Tannic acid
Thymol
Trolamine salicylate
Turpentine oil
Zirconium oxide
Zyloxin
(3) Skin Protectant Drug Products:
(a) Astringent Drug Products (Docket No. 78N-021A):
Acetone
Alcohol
Alum, ammonium
Alum, potassium
Aluminum chlorhydroxy complex
Aromatics
Benzalkonium chloride

TABLE I.—OTC DRUG RULEMAKINGS AND ACTIVE INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking
Benzethonium chloride
Benzocaine
Benzoic acid
Boric acid
Calcium acetate
Camphor gum
Clove oil
Colloidal oatmeal
Cresol
Cupric sulfate
Eucalyptus oil
Eugenol
Honey
Isopropyl alcohol
Menthol
Methyl salicylate
Oxyquinoline sulfate
P-t-butyl-m-cresol
Peppermint oil
Phenol
Polyoxyethylene laurate
Potassium ferrocyanide
Sage oil
Silver nitrate
Sodium borate
Sodium diacetate
Talc
Tannic acid glycerite
Thymol
Topical starch
Zinc chloride
Zinc oxide
Zinc phenolsulfonate
Zinc stearate
Zinc sulfate
(b) Diaper Rash Drug Products (Docket No. 78N-021D):
Aluminum hydroxide
Cocoa butter
Cysteine hydrochloride
Glycerin
Protein hydrolysate
Racemethionine
Sulfur
Tannic acid
Zinc acetate
Zinc carbonate
(c) Fever Blister and Cold Sore Treatment Drug Products (Docket No. 78N-021F):
Bismuth subnitrate
Boric acid
Pyridoxine hydrochloride
Sulfur
Tannic acid
Topical starch
Trolamine
Zinc sulfate
(d) Insect Bite and Sting Drug Products (Docket No. 78N-021P):
Alcohol
Alcohol, ethoxylated alkyl
Ammonia solution, strong
Ammonium hydroxide
Benzalkonium chloride
Camphor
Ergot fluidextract
Ferric chloride
Menthol

TABLE I.—OTC DRUG RULEMAKINGS AND ACTIVE INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking
Peppermint oil
Phenol
Pyriminamine maleate
Sodium borate
Trolamine
Turpentine oil
Zirconium oxide
(e) Poison Ivy, Poison Oak, and Poison Sumac Drug Products (Docket No. 78N-021P):
Alcohol
Anion and cation exchange resins buffered
Benzethonium chloride
Benzocaine
Benzyl alcohol
Bismuth subnitrate
Bithionol
Boric acid
Camphor
Cetalkonium chloride
Chloral hydrate
Chlorpheniramine maleate
Creosote
Diperodon hydrochloride
Diphenhydramine hydrochloride
Eucalyptus oil
Ferric chloride
Glycerin
Hectorite
Hydrogen peroxide
Impatiens biflora tincture
Iron oxide
Isopropyl alcohol
Lanolin
Lead acetate
Lidocaine
Menthol
Merbromin
Mercuric chloride
Panthenol
Parathoxycaine hydrochloride
Phenol
Phenyltoloxamine dihydrogen citrate
Povidone-vinylacetate copolymers
Salicylic acid
Simethicone
Tannic acid
Topical starch
Trolamine
Turpentine oil
Zirconium oxide
Zyloxin
(4) Topical Antifungal Drug Products (Docket No. 80N-0476):
Aicloxa
Alum, potassium
Aluminum sulfate
Amyllicresols, secondary
Basic fuchsin
Benzethonium chloride
Benzoic acid
Benzoxiquinone
Boric acid
Camphor
Candididin
Chlorothymol
Coal tar

TABLE I.—OTC DRUG RULEMAKINGS AND ACTIVE INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking
Dichlorophen
Menthol
Methylparaben
Oxyquinoline
Oxyquinoline sulfate
Phenol
Phenolate sodium
Phenyl salicylate
Propionic acid
Propylparaben
Resorcinol
Salicylic acid
Sodium borate
Sodium caprylate
Sodium propionate
Sulfur
Tannic acid
Thymol
Tolindate
Triacetin
Zinc caprylate
Zinc propionate
(5) Internal Analgesic Drug Products (Docket No. 77N-0084):
Aminobenzoic acid <sup>1</sup>
Antipyrine
Aspirin, aluminum
Calcium salicylate
Codeine
Codeine phosphate
Codeine sulfate
Iodoantipyrine
Lysine aspirin
Methapyrilene fumarate <sup>1</sup>
Phenacetin
Pheniramine maleate <sup>1</sup>
Pyriminamine maleate <sup>1</sup>
Quinine
Salsalate
Sodium aminobenzoate <sup>1</sup>
(6) Orally Administered Menstrual Drug Products (Docket No. 82N-0165):
Alcohol
Alfalfa leaves
Aloes
Asclepias tuberosa
Asparagus
Barosma
Bearberry (extract of uva ursi)
Bearberry fluidextract (extract of bearberry)
Blessed thistle (crnicus benedictus)
Buchu powdered extract (extract of buchu)
Calcium lactate
Calcium pantothenate
Capsicum oleoresin
Cascara fluidextract, aromatic (extract of cascara)
Chlorophenpyridamine maleate
Cimicifuga racemosa
Codeine
Collinsonia (extract stone root)
Corn silk
Couch grass
Dog grass extract
Ethyl nitrite
Ferric chloride

TABLE I.—OTC DRUG RULEMAKINGS AND ACTIVE INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking
Ferrous sulfate
Gentiana lutea (gentian)
Glycyrrhiza (licorice)
Homatropine methylbromide
Hydrangea, powdered extract (extract of hydrangea)
Hydrastis canadensis (golden seal)
Hyoscyamine sulfate
Juniper oil (oil of juniper)
Magnesium sulfate
Methapyrilene hydrochloride
Methenamine
Methylene blue
Natural estrogenic hormone
Niacinamide
Nutmeg oil (oil of nutmeg)
Oil of erigeron
Parsley
Peppermint spirit
Pepsin, essence
Phenacetin
Phenindamine tartrate
Phenyl salicylate
Piscidia erythrina
Pipisssewa
Potassium acetate
Potassium nitrate
Riboflavin
Saw palmetto
Senecio aureus
Sodium benzoate
Sodium nitrate
Sucrose
Sufferated oils of turpentine
Taraxacum officinale
Theobromine sodium salicylate
Theophylline
Thiamine hydrochloride
Triticum
Turpentine, venice (venice turpentine)
Urea
(7) Pediculicide Drug Products (Docket No. 81N-0201):
Benzocaine
Benzyl alcohol
Benzyl benzoate
Chlorophenothane (dichlorodiphenyl trichloroethane)
Coconut oil soap, aqueous
Copper oleate
Docusate sodium
Formic acid <sup>2</sup>
Isobornyl thiocynoacetate
Picrotoxin
Propylene glycol
Sabadilla alkaloids
Sulfur, sublimed
Thiocynoacetate

<sup>1</sup> Ingredient used as an analgesic-antipyretic adjuvant.

<sup>2</sup> This ingredient was not submitted to or previously classified in the OTC drug review, but has been observed in a marketed product.

Accordingly, any drug product containing any of these ingredients either labeled or intended as an active ingredient for any of the OTC uses

identified above will be considered nonmonograph and misbranded under section 502 of the act (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application or abbreviated application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to amend the appropriate monograph to include any of the above active ingredients in OTC drug products. (See 21 CFR 10.30.)

Any OTC drug product containing any of the above ingredients either labeled or intended as an active ingredient for the uses included in the above rulemakings that is initially introduced or initially delivered for introduction into interstate commerce after November 10, 1993 and that is not the subject of an approved application or abbreviated application will be in violation of sections 502 and 505 of the act (21 U.S.C. 352 and 355) and, therefore, subject to regulatory action. Further, any OTC drug product containing an ingredient subject to this rulemaking that is repackaged or relabeled after November 10, 1993 must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (57 FR 38568 at 38572). The agency concludes that there is no basis for the continued marketing of these ingredients for the uses listed in Table I above. There are other ingredients being considered for monograph status that manufacturers can use to reformulate affected products. In many instances, manufacturers have already reformulated their products to include these ingredients. As a result of this final rule, manufacturers may need to reformulate some products prior to promulgation of the applicable final monograph. However, there will be no additional costs because reformulation would be required, in any event, when the final monograph is published.

Early finalization of the nonmonograph status of the ingredients listed in this notice will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of

ingredients for which safety and effectiveness have not been established. This action will result in a direct economic savings to consumers. Manufacturers will benefit from being able to use alternative ingredients that are under review to determine general recognition of safety and effectiveness, without incurring additional expense of clinical testing for these ingredients. Based on the above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 310**

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

**PART 310—NEW DRUGS**

1. The authority citation for 21 CFR part 310 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

2. Section 310.545 is amended by redesignating the text of paragraphs (a)(8) and (a)(18) as paragraphs (a)(8)(i) and (a)(18)(i), respectively; by adding new (a)(8)(ii) heading, (a)(8)(ii), (a)(10)(v) through (a)(10)(vii), (a)(18)(i) heading, (a)(18)(ii) through (a)(18)(vi), (a)(22)(ii), (a)(23) through (a)(25), and (d)(11); and by revising paragraph (d) introductory text and paragraph (d)(1) to read as follows:

**§310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.**

- (a) \* \* \*
- (8) Digestive aid drug products—(i) Approved as of May 7, 1991. \* \* \*
- (ii) Approved as of November 10, 1993.

Alcohol  
Aluminum hydroxide

Amylase  
 Anise seed  
 Aromatic powder  
 Asafetida  
 Aspergillus oryza enzymes (except lactase enzyme derived from *Aspergillus oryzae*)  
 Bacillus acidophilus  
 Bean  
 Belladonna alkaloids  
 Belladonna leaves, powdered extract  
 Betaine hydrochloride  
 Bismuth subcarbonate  
 Bismuth subgallate  
 Black radish powder  
 Blessed thistle (*cnicus benedictus*)  
 Buckthorn  
 Calcium gluconate  
 Capsicum  
 Capsicum, fluid extract of  
 Carbon  
 Cascara sagrada extract  
 Catechu, tincture  
 Catnip  
 Chamomile flowers  
 Charcoal, wood  
 Chloroform  
 Cinnamon oil  
 Cinnamon tincture  
 Citrus pectin  
 Diastase  
 Diastase malt  
 Dog grass  
 Elecampane  
 Ether  
 Fennel acid  
 Galega  
 Ginger  
 Glycine  
 Hydrastis canadensis (golden seal)  
 Hectorite  
 Horsetail  
 Huckleberry  
 Hydrastis fluid extract  
 Hydrochloric acid  
 Iodine  
 Iron ox bile  
 Johnswort  
 Juniper  
 Kaolin, colloidal  
 Knotgrass  
 Lactic acid  
 Lactose  
 Lavender compound, tincture of  
 Linden  
 Lipase  
 Lysine hydrochloride  
 Mannitol  
 Mycozyme  
 Myrrh, fluid extract of  
 Nettle  
 Nickel-pectin  
 Nux vomica extract  
 Orthophosphoric acid  
 Papaya, natural  
 Pectin  
 Peppermint  
 Peppermint spirit  
 Phenacetin  
 Potassium bicarbonate  
 Potassium carbonate  
 Protease  
 Prolase  
 Rhubarb fluid extract  
 Senna  
 Sodium chloride  
 Sodium salicylate

Stem bromelain  
 Strawberry  
 Strychnine  
 Tannic acid  
 Trillium  
 Woodruff  
 \* \* \* \* \*

(10) \* \* \*  
 (v) *Fever blister and cold sore treatment drug products.*

Allyl isothiocyanate  
 Aspirin  
 Bismuth sodium tartrate  
 Camphor (exceeding 3 percent)  
 Capsaicin  
 Capsicum  
 Capsicum oleoresin  
 Chloral hydrate  
 Chlorobutanol  
 Cyclomethycaine sulfate  
 Eucalyptus oil  
 Eugenol  
 Glycol salicylate  
 Hexylresorcinol  
 Histamine dihydrochloride  
 Menthol (exceeding 1 percent)  
 Methapyrilene hydrochloride  
 Methyl nicotinate  
 Methyl salicylate  
 Pectin  
 Salicylamide  
 Strong ammonia solution  
 Tannic acid  
 Thymol  
 Tripelennamine hydrochloride  
 Trolamine salicylate  
 Turpentine oil  
 Zinc sulfate

(vi) *Insect bite and sting drug products.*

Alcohol  
 Alcohol, ethoxylated alkyl  
 Benzalkonium chloride  
 Calamine  
 Ergot fluidextract  
 Ferric chloride  
 Panthenol  
 Peppermint oil  
 Pyrilamine maleate  
 Sodium borate  
 Trolamine salicylate  
 Turpentine oil  
 Zinc oxide  
 Zirconium oxide

(vii) *Poison ivy, poison oak, and poison sumac drug products.*

Alcohol  
 Aspirin  
 Benzethonium chloride  
 Benzocaine (0.5 to 1.25 percent)  
 Bithionol  
 Calamine  
 Cetalkonium chloride  
 Chloral hydrate  
 Chlorobutanol  
 Chlorpheniramine maleate  
 Creosote, beechwood  
 Cyclomethycaine sulfate  
 Dexpanthenol  
 Dipiperodon hydrochloride  
 Eucalyptus oil  
 Eugenol  
 Glycerin

Glycol salicylate  
 Hectorite  
 Hexylresorcinol  
 Hydrogen peroxide  
 Impatiens biflora tincture  
 Iron oxide  
 Isopropyl alcohol  
 Lanolin  
 Lead acetate  
 Merbromin  
 Mercuric chloride  
 Methapyrilene hydrochloride  
 Panthenol  
 Parethoxycaine hydrochloride  
 Phenyltoloxamine dihydrogen citrate  
 Povidone-vinylacetate copolymers  
 Pyrilamine maleate  
 Salicylamide  
 Salicylic acid  
 Simethicone  
 Sulfur  
 Tannic acid  
 Thymol  
 Trolamine salicylate  
 Turpentine oil  
 Zirconium oxide  
 Zyloxin

(18) *Skin protectant drug products—*

(i) *Ingredients. \* \* \**

(ii) *Astringent drug products.*

Acetone  
 Alcohol  
 Alum, ammonium  
 Alum, potassium  
 Aluminum chlorhydroxy complex  
 Aromatics  
 Benzalkonium chloride  
 Benzethonium chloride  
 Benzocaine  
 Benzoic acid  
 Boric acid  
 Calcium acetate  
 Camphor gum  
 Clove oil  
 Colloidal oatmeal  
 Cresol  
 Cupric sulfate  
 Eucalyptus oil  
 Eugenol  
 Honey  
 Isopropyl alcohol  
 Menthol  
 Methyl salicylate  
 Oxyquinoline sulfate  
 P-t-butyl-m-cresol  
 Peppermint oil  
 Phenol  
 Polyoxethylene laurate  
 Potassium ferrocyanide  
 Sage oil  
 Silver nitrate  
 Sodium borate  
 Sodium diacetate  
 Talc  
 Tannic acid glycerite  
 Thymol  
 Topical starch  
 Zinc chloride  
 Zinc oxide  
 Zinc phenolsulfonate  
 Zinc stearate  
 Zinc sulfate

(iii) *Diaper rash drug products.*

Aluminum hydroxide



Cocoa butter  
Cysteine hydrochloride  
Glycerin  
Protein hydrolysate  
Racemethionine  
Sulfur  
Tannic acid  
Zinc acetate  
Zinc carbonate

(iv) *Fever blister and cold sore treatment drug products.*

Bismuth subnitrate  
Boric acid  
Pyridoxine hydrochloride  
Sulfur  
Tannic acid  
Topical starch  
Trolamine  
Zinc sulfate

(v) *Insect bite and sting drug products.*

Alcohol  
Alcohol, ethoxylated alkyl  
Ammonia solution, strong  
Ammonium hydroxide  
Benzalkonium chloride  
Camphor  
Ergot fluidextract  
Ferric chloride  
Menthol  
Peppermint oil  
Phenol  
Pyrilamine maleate  
Sodium borate  
Trolamine  
Turpentine oil  
Zirconium oxide

(vi) *Poison ivy, poison oak, and poison sumac drug products.*

Alcohol  
Anion and cation exchange resins buffered  
Benzethonium chloride  
Benzocaine  
Benzyl alcohol  
Bismuth subnitrate  
Bithionol  
Boric acid  
Camphor  
Cetalkonium chloride  
Chloral hydrate  
Chlorpheniramine maleate  
Creosote  
Diperodon hydrochloride  
Diphenhydramine hydrochloride  
Eucalyptus oil  
Ferric chloride  
Glycerin  
Hectorite  
Hydrogen peroxide  
Impatiens biflora tincture  
Iron oxide  
Isopropyl alcohol  
Lanolin  
Lead acetate  
Lidocaine  
Menthol  
Merbromin  
Mercuric chloride  
Panthenol  
Parethoxycaine hydrochloride  
Phenol  
Phenyltoloxamine dihydrogen citrate  
Povidone-vinylacetate copolymers

Salicylic acid  
Simethicone  
Tannic acid  
Topical starch  
Trolamine  
Turpentine oil  
Zirconium oxide  
Zyloxin

\* \* \* \* \*

(22) \* \* \*

(ii) *Ingredients.*

Alcloxa  
Alum, potassium  
Aluminum sulfate  
Amyltri cresols, secondary  
Basic fuchsin  
Benzethonium chloride  
Benzoic acid  
Benzoxiquine  
Boric acid  
Camphor  
Candididin  
Chlorothymol  
Coal tar  
Dichlorophen  
Menthol  
Methylparaben  
Oxyquinoline  
Oxyquinoline sulfate  
Phenol  
Phenolate sodium  
Phenyl salicylate  
Propionic acid  
Propylparaben  
Resorcinol  
Salicylic acid  
Sodium borate  
Sodium caprylate  
Sodium propionate  
Sulfur  
Tannic acid  
Thymol  
Tolindate  
Triacetin  
Zinc caprylate  
Zinc propionate

(23) *Internal analgesic drug products.*

Aminobenzoic acid  
Antipyrine  
Aspirin, aluminum  
Calcium salicylate  
Codeine  
Codeine phosphate  
Codeine sulfate  
Iodoantipyrine  
Lysine aspirin  
Methapyrilene fumarate  
Phenacetin  
Pheniramine maleate  
Pyrilamine maleate  
Quinine  
Salsalate  
Sodium aminobenzoate

(24) *Orally administered menstrual drug products.*

Alcohol  
Alfalfa leaves  
Aloes  
Asclepias tuberosa  
Asparagus  
Barosma  
Bearberry (extract of uva ursi)  
Bearberry fluidextract (extract of bearberry)

Blessed thistle (cnicus benedictus)  
Buchu powdered extract (extract of buchu)  
Calcium lactate  
Calcium pantothenate  
Capsicum oleoresin  
Cascara fluidextract, aromatic (extract of cascara)  
Chlorpropenpyridamine maleate  
Cimicifuga racemosa  
Codeine  
Collinsonia (extract stone root)  
Corn silk  
Couch grass  
Dog grass extract  
Ethyl nitrite  
Ferric chloride  
Ferrous sulfate  
Gentiana lutea (gentian)  
Glycyrrhiza (licorice)  
Homatropine methylbromide  
Hydrangea, powdered extract (extract of hydrangea)  
Hydrastis canadensis (golden seal)  
Hyoscyamine sulfate  
Juniper oil (oil of juniper)  
Magnesium sulfate  
Methapyrilene hydrochloride  
Methenamine  
Methylene blue  
Natural estrogenic hormone  
Niacinamide  
Nutmeg oil (oil of nutmeg)  
Oil of erigeron  
Parsley  
Peppermint spirit  
Pepsin, essence  
Phenacetin  
Phenindamine tartrate  
Phenyl salicylate  
Piscidia erythrina  
Pipsissewa  
Potassium acetate  
Potassium nitrate  
Riboflavin  
Saw palmetto  
Senecio aureus  
Sodium benzoate  
Sodium nitrate  
Sucrose  
Sulferated oils of turpentine  
Taraxacum officinale  
Theobromine sodium salicylate  
Theophylline  
Thiamine hydrochloride  
Triticum  
Turpentine, venice (venice turpentine)  
Urea

(25) *Pediculicide drug products.*

Benzocaine  
Benzyl alcohol  
Benzyl benzoate  
Chlorophenothane (dichlorodiphenyl trichloroethane)  
Coconut oil soap, aqueous  
Copper oleate  
Docusate sodium  
Formic acid  
Isobornyl thiocyanacetate  
Picrotoxin  
Propylene glycol  
Sabadilla alkaloids  
Sulfur, sublimed  
Thiocyanacetate

\* \* \* \* \*

(d) Any OTC drug product that is not in compliance with this section is

subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(11) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(6)(i)(A), (a)(6)(ii), (a)(7) (except as covered by

paragraph (d)(3) of this section), (a)(8)(i), (a)(9) through (a)(10)(iii), (a)(11) through (a)(18)(i), and (a)(19) of this section.

\* \* \* \* \*

(11) November 10, 1993, for products subject to paragraphs (a)(8)(ii), (a)(10)(v) through (a)(10)(vii), (a)(18)(ii) through

(a)(18)(vi), (a)(22)(ii), and (a)(23) through (a)(25) of this section.

Dated: March 31, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93-10958 Filed 5-7-93; 8:45 am]

BILLING CODE 4160-01-P

# Federal Register

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**Monday  
May 10, 1993**

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**Part V**

**The President**

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**Memorandum of May 6—Determination  
Under the Bus Regulatory Reform Act of  
1982**

**Proclamation 6558—National Walking  
Week, 1993**



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**Presidential Documents**

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Title 3—

Memorandum of May 6, 1993

The President

**Determination Under the Bus Regulatory Reform Act of 1982****Memorandum for the Secretary of Transportation**

Section 6 of the Bus Regulatory Reform Act of 1982 imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. The Act authorized the President to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. Sixty days' advance notice to the Congress is required whenever the removal or modification applies to a contiguous foreign country or political subdivision thereof that substantially prohibits the granting of motor carrier authority to persons from the United States.

I am pleased that an agreement between the United States and Mexico has been concluded to ensure fair and reciprocal treatment for charter and tour bus interests on both sides of the border. The agreement reached, however, does not allow for full access to cross-border and domestic markets. Therefore, the moratorium must reflect the conditions under which operating authority may be issued to Mexican charter and tour companies under the agreement.

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. section 10922(D)(2)(A), I hereby make a limited modification to the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country.

The moratorium is modified only to authorize the Interstate Commerce Commission to grant Mexican motor carriers authority to transport passengers in charter or special operations, in foreign commerce, in round trip or one-way service between Mexico and the United States pursuant to the following restrictions:

1. The Mexican motor carrier can conduct cross-border charter or special service in the United States only when the international tour or charter begins in Mexico;
2. Tickets or tour packages for such operations cannot be sold in the United States; and
3. The terms of the grants of authority given to Mexican motor carriers will be limited by the life of the agreement with Mexico covering reciprocal cross-border charter and special operations.

This action applies only to international charter and tour operations, does not allow for point-to-point service within the United States, and does not authorize companies to conduct cross-border regular route service. This action preserves the status quo with respect to Mexican trucking companies and Mexican companies engaged in regular route service, and will maintain the moratorium on those operations through September 25, 1994, unless earlier revoked or modified.

Accordingly, you are directed to notify the Congress today on my behalf that, effective 60 days hence, the moratorium will no longer be in effect for Mexican charter and tour bus companies subject to the above stated

conditions. Because of this action, the Interstate Commerce Commission will then accept and process expeditiously all applications for operating authority from Mexican owned, controlled, or domiciled charter and tour bus firms. I should note that applications in Mexico by United States charter and tour bus firms will be similarly treated.

You are hereby authorized and directed to publish this determination in the Federal Register.

*William Clinton*

THE WHITE HOUSE,  
Washington, May 6, 1993.

[FR Doc. 93-11160  
Filed 5-6-93; 4:56 pm]  
Billing code 4910-62-M

## Presidential Documents

Proclamation 6558 of May 6, 1993

### National Walking Week, 1993

By the President of the United States of America

#### A Proclamation

Medical research confirms that regular physical activity benefits human health in many ways. Exercise can help to prevent and manage coronary heart disease, hypertension, noninsulin-dependent diabetes, osteoporosis, and mental health problems, such as depression and anxiety. Regular exercise is also linked with lower rates of colon cancer and stroke. Light to medium exercise for at least 30 minutes each day enhances our lives by improving our physical fitness and our health.

Sustained walking is a wonderful way to exercise at minimal risk and little cost. Millions of Americans enjoy walking for a variety of reasons: as a time for private reflection; an occasion to enjoy the company of friends; a form of public demonstration; or as an invigorating activity and sport. Exercise such as walking is a key component of our Nation's prevention agenda, which envisions a healthier, vibrant America. Regular walking is a form of self-care that can contribute to the reduction of preventable death, disease, and disability; reduce health care costs; improve overall energy and efficiency; and promote long and healthy lives. Americans across the country are experiencing the joys and benefits of regular walking as policy-makers, legislators, and citizens work to improve trails and protect natural environments that make walking pleasurable and safe.

The Congress, by Public Law 102-474, has designated the week of May 2 through May 8, 1993, as "National Walking Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of May 2 through May 8, 1993, as National Walking Week. I invite the Governors of the 50 States and the appropriate officials of all other areas under the jurisdiction of the United States to issue similar proclamations. I encourage the American people to join with health and recreation professionals, private voluntary associations, and other concerned organizations in observing this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.







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Monday, May 10, 1993

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	\$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	Jan. 1, 1993
4	(869-019-00003-8)	5.50	Jan. 1, 1993
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§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
§§ 1.1401-End	(869-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-019-00101-8)	6.00	Apr. 1, 1990
600-End	(869-017-00101-5)	6.50	Apr. 1, 1992

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
<b>27 Parts:</b>				3-6		14.00	<sup>3</sup> July 1, 1984
1-199	(869-017-00102-3)	34.00	Apr. 1, 1992	7		6.00	<sup>3</sup> July 1, 1984
200-End	(869-017-00103-1)	11.00	<sup>5</sup> Apr. 1, 1991	8		4.50	<sup>3</sup> July 1, 1984
<b>28</b>	(869-017-00104-0)	37.00	July 1, 1992	9		13.00	<sup>3</sup> July 1, 1984
<b>29 Parts:</b>				10-17		9.50	<sup>3</sup> July 1, 1984
0-99	(869-017-00105-8)	19.00	July 1, 1992	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
100-499	(869-013-00106-6)	9.00	July 1, 1992	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
500-899	(869-017-00107-4)	32.00	July 1, 1992	18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
900-1899	(869-017-00108-2)	16.00	July 1, 1992	19-100		13.00	<sup>3</sup> July 1, 1984
1900-1910 (§§ 1901.1 to 1910.999)	(869-017-00109-1)	29.00	July 1, 1992	1-100	(869-017-00153-8)	9.50	July 1, 1992
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992	101	(869-017-00154-6)	28.00	July 1, 1992
1911-1925	(869-017-00111-2)	9.00	<sup>6</sup> July 1, 1989	102-200	(869-017-00155-4)	11.00	<sup>7</sup> July 1, 1991
1926	(869-017-00112-1)	14.00	July 1, 1992	201-End	(869-017-00156-2)	11.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992	<b>42 Parts:</b>			
<b>30 Parts:</b>				1-399	(869-017-00157-1)	23.00	Oct. 1, 1992
1-199	(869-017-00114-7)	25.00	July 1, 1992	400-429	(869-017-00158-9)	23.00	Oct. 1, 1992
200-699	(869-017-00115-5)	19.00	July 1, 1992	430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
700-End	(869-017-00116-3)	25.00	July 1, 1992	<b>43 Parts:</b>			
<b>31 Parts:</b>				1-999	(869-017-00160-1)	22.00	Oct. 1, 1992
0-199	(869-017-00117-1)	17.00	July 1, 1992	1000-3999	(869-017-00161-9)	30.00	Oct. 1, 1992
200-End	(869-017-00118-0)	25.00	July 1, 1992	4000-End	(869-017-00162-7)	13.00	Oct. 1, 1992
<b>32 Parts:</b>				<b>44</b>	(869-017-00163-5)	26.00	Oct. 1, 1992
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	<b>45 Parts:</b>			
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	1-199	(869-017-00164-3)	20.00	Oct. 1, 1992
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	200-499	(869-017-00165-1)	14.00	Oct. 1, 1992
1-189	(869-017-00119-8)	30.00	July 1, 1992	500-1199	(869-017-00166-0)	30.00	Oct. 1, 1992
190-399	(869-017-00120-1)	33.00	July 1, 1992	1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
400-629	(869-017-00121-0)	29.00	July 1, 1992	<b>46 Parts:</b>			
630-699	(869-017-00122-8)	14.00	<sup>7</sup> July 1, 1991	1-40	(869-017-00168-6)	17.00	Oct. 1, 1992
700-799	(869-017-00123-6)	20.00	July 1, 1992	41-69	(869-017-00169-4)	16.00	Oct. 1, 1992
800-End	(869-017-00124-4)	20.00	July 1, 1992	70-89	(869-017-00170-8)	8.00	Oct. 1, 1992
<b>33 Parts:</b>				90-139	(869-017-00171-6)	14.00	Oct. 1, 1992
1-124	(869-017-00125-2)	18.00	July 1, 1992	140-155	(869-017-00172-4)	12.00	Oct. 1, 1992
125-199	(869-017-00126-1)	21.00	July 1, 1992	156-165	(869-017-00173-2)	14.00	<sup>8</sup> Oct. 1, 1991
200-End	(869-017-00127-9)	23.00	July 1, 1992	166-199	(869-017-00174-1)	17.00	Oct. 1, 1992
<b>34 Parts:</b>				200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
1-299	(869-017-00128-7)	27.00	July 1, 1992	500-End	(869-017-00176-7)	14.00	Oct. 1, 1992
300-399	(869-017-00129-5)	19.00	July 1, 1992	<b>47 Parts:</b>			
400-End	(869-017-00130-9)	32.00	July 1, 1992	0-19	(869-017-00177-5)	22.00	Oct. 1, 1992
<b>35</b>	(869-017-00131-7)	12.00	July 1, 1992	20-39	(869-017-00178-3)	22.00	Oct. 1, 1992
<b>36 Parts:</b>				40-69	(869-017-00179-1)	12.00	Oct. 1, 1992
1-199	(869-017-00132-5)	15.00	July 1, 1992	70-79	(869-017-00180-5)	21.00	Oct. 1, 1992
200-End	(869-017-00133-3)	32.00	July 1, 1992	80-End	(869-017-00181-3)	24.00	Oct. 1, 1992
<b>37</b>	(869-017-00134-1)	17.00	July 1, 1992	<b>48 Chapters:</b>			
<b>38 Parts:</b>				1 (Parts 1-51)	(869-017-00182-1)	34.00	Oct. 1, 1992
0-17	(869-017-00135-0)	28.00	Sept 1, 1992	1 (Parts 52-99)	(869-017-00183-0)	22.00	Oct. 1, 1992
18-End	(869-017-00136-8)	28.00	Sept. 1, 1992	2 (Parts 201-251)	(869-017-00184-8)	15.00	Oct. 1, 1992
<b>39</b>	(869-017-00137-6)	16.00	July 1, 1992	2 (Parts 252-299)	(869-017-00185-6)	12.00	Oct. 1, 1992
<b>40 Parts:</b>				3-6	(869-017-00186-4)	22.00	Oct. 1, 1992
1-51	(869-017-00138-4)	31.00	July 1, 1992	7-14	(869-017-00187-2)	30.00	Oct. 1, 1992
52	(869-017-00139-2)	33.00	July 1, 1992	15-28	(869-017-00188-1)	26.00	Oct. 1, 1992
53-60	(869-017-00140-6)	36.00	July 1, 1992	29-End	(869-017-00189-9)	16.00	Oct. 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992	<b>49 Parts:</b>			
81-85	(869-017-00142-2)	17.00	July 1, 1992	1-99	(869-017-00190-2)	22.00	Oct. 1, 1992
86-99	(869-017-00143-1)	33.00	July 1, 1992	100-177	(869-017-00191-1)	27.00	Oct. 1, 1992
100-149	(869-017-00144-9)	34.00	July 1, 1992	178-199	(869-017-00192-9)	19.00	Oct. 1, 1992
150-189	(869-017-00145-7)	21.00	July 1, 1992	200-399	(869-017-00193-7)	27.00	Oct. 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992	400-999	(869-017-00194-5)	31.00	Oct. 1, 1992
260-299	(869-017-00147-3)	36.00	July 1, 1992	1000-1199	(869-017-00195-3)	19.00	Oct. 1, 1992
300-399	(869-017-00148-1)	15.00	July 1, 1992	1200-End	(869-017-00196-1)	21.00	Oct. 1, 1992
400-424	(869-017-00149-0)	26.00	July 1, 1992	<b>50 Parts:</b>			
425-699	(869-017-00150-3)	26.00	July 1, 1992	1-199	(869-017-00197-0)	23.00	Oct. 1, 1992
700-789	(869-017-00151-1)	23.00	July 1, 1992	200-599	(869-017-00198-8)	20.00	Oct. 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992	600-End	(869-017-00199-6)	20.00	Oct. 1, 1992
<b>41 Chapters:</b>				CFR Index and Findings Aids	(869-019-00053-4)	36.00	Jan. 1, 1993
1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984	Complete 1993 CFR set		775.00	1993
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984	Microfiche CFR Edition: Complete set (one-time mailing)		188.00	1990

Title	Stock Number	Price	Revision Date
Complete set (one-time mailing) .....		188.00	1991
Complete set (one-time mailing) .....		188.00	1992
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Individual copies .....		2.00	1993

<sup>1</sup>Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup>The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39, inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup>The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49, inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup>No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

<sup>5</sup>No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 30, 1992. The CFR volume issued April 1, 1991, should be retained.

<sup>6</sup>No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

<sup>7</sup>No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.

<sup>8</sup>No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

