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Rules and Regulations

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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 AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Doc. No. 0294-S]

General Administrative Regulations; Standards for Approval; Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends 7 CFR part 400, subpart L, Standards for Approval; Standard Reinsurance Agreement (Agreement), effective for the 1993 and subsequent reinsurance years, to reduce the amount of premium surplus the company reinsured under an Agreement must retain to write a given premium volume of multiple peril crop insurance (MPCI). The intended effect of this rule is to increase the total volume of premium a company may write under the Agreement.

DATES: This final rule is effective on August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235-1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations remains unchanged.

FCIC has determined that this rule relates to internal agency management and is not subject to the notice and comment provisions of 5 U.S.C. 553. The rule shall therefor be effective upon publication in the **Federal Register**.

Further, since this action relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291.

This action is also exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these final regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778.

Background

The current "Standards for Approval", as published in the Code of Federal Regulations (CFR) are too restrictive and impose unnecessary limitations on the amount of premium volume which reinsured companies must have in order to write a maximum value of multiple peril crop insurance (MPCI).

Section 400.161, *Definitions*, contained in 7 CFR part 400, subpart L, Reinsurance Agreement—Standards for Approval for the 1988 and Subsequent Crop Years currently defines "MPUL" in subsection (i) as follows:

MPUL means the maximum probable underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

Although FCIC's current definition of "MPUL" refers to maximum probable as opposed to maximum possible, maximum possible is preferred. MPUL is the amount of loss the company may accumulate at a gross loss ratio which FCIC uses to determine the maximum premium which FCIC will allow a company to write. The amount of "probable" underwriting loss that a company may sustain at a given premium level is, of necessity, an estimate. The amount of "possible" underwriting loss a company may sustain at a given premium level is simply a mathematical computation. By computing MPUL on the possible loss, FCIC uses a more certain number and has adjusted its formula to factor in the greater loss factor resulting from the definition changes. Therefore, the definition for "MPUL" has been changed to refer to "maximum possible underwriting loss."

The surplus is a financial cushion or buffer protecting the company against shocks in the marketplace. The larger the cushion relative to a company's liabilities the stronger the firm. The insurer's surplus limits established by these regulations limit the amount of new business the company can write. Adequate surplus is needed by a company to absorb unforeseen underwriting losses or operating costs, absorb declines in the value of the investment portfolio, allow adequate loss reserves, and finance future growth in written premiums.

For the 1992 reinsurance year, FCIC used retained premium in each state and fund to determine whether or not a company possessed adequate surplus to secure "potential" liability at a 400 loss ratio for the ultimate net premium volume retained even though the 1992 Agreement allowed a non-proportional sharing of underwriting losses to a 500 loss ratio.

Effective for the 1993 reinsurance year, FCIC intends to provide for risk sharing to a 500 loss ratio or the revised MPUL which will ensure adequate surplus is required for any level of risk sharing assumed under the Agreement.

Section 400.170, *General qualifications*, provides a mechanism for determining the amount of surplus that an insurer must have in order to qualify for and to receive an Agreement with FCIC. Section 400.170(c) currently states:

> Have surplus, as reported in its most recent financial statement, that is at least equal to the MPUL for the gross premium proposed to be reinsured times the appropriate Minimum Surplus Factor, found in the Minimum Surplus Table. For the purposes of the

Minimum Surplus Table, an insurer is considered to issue policies in a state if at least 2 and one-half percent (2½) of all its reinsured gross premium is written in that state:

MINIMUM SURPLUS TABLE

Number of States in which a company issues FCIC-reinsured policies:	Minimum surplus factor (multiply by underwriting loss at a 400 loss ratio:)
1	8
2 through 10	5
11 or more	4

FCIC herein changes § 400.170(c) to address the issue of whether the state MPUL factors consider retained premium in each fund and each state which currently inflates the premium surplus requirements by using two factors for the MPUL, eliminating the current factors of 4, 5, or 8, depending on the number of states in which the company currently writes. The Minimum Surplus Table in § 400.170(c) is changed to read as follows:

MINIMUM SURPLUS TABLE

Number of States in which a company issues FCIC-reinsured policies	Minimum surplus factor (multiply by MPUL)
1 through 10	2.5
11 or more	2.0

This change will apply to the 1993, and subsequent Agreements, effective on or after July 1, 1992, and only affects companies under an Agreement.

The Standards for Approval for the Agreement are for the protection of FCIC. The changes proposed herein have the effect of reducing the surplus required and do not increase the requirements for approval for any company.

For these reasons, FCIC has determined that this rule relates to internal agency management and is not subject to the notice and comment provisions of 5 U.S.C. 553. The rule shall therefore be effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 400

Crop Insurance.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations—Standards for Approval; Standard Reinsurance Agreement (7 CFR part 400, subpart L), effective for the 1993 and succeeding reinsurance years, in the following instances:

1. **Authority:** The authority citation for 7 CFR part 400, subpart L, continues to read as follows:

Authority: 7 U.S.C. 1501–1520.

2. 7 CFR 400.161(i) is revised to read as follows:

§ 400.161 Definitions.

* * * * *

(i) *MPUL* means the maximum possible underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

* * * * *

3. 7 CFR 400.170(c) is revised to read as follows:

§ 400.170 General Qualifications

* * * * *

(c) Have surplus, as reported in its most recent financial statement, that is at least equal to the MPUL for the gross premium proposed to be reinsured times the appropriate Minimum Surplus Factor, found in the Minimum Surplus Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least 2 and one-half percent (2½%) of all its reinsured gross premium is written in that state.

MINIMUM SURPLUS TABLE

Number of States in which a company issues FCIC-reinsured policies	Minimum surplus factor (multiply by MPUL)
1 through 10	2.5
11 or more	2.0

* * * * *

Done in Washington, DC on May 22, 1992.

Jane A. Wittmeyer,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–18593 Filed 8–5–92; 8:45 am]

BILLING CODE 3410-08-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AD05

Codes and Standards for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to incorporate by reference the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section III, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), and the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section XI, Division 1, of the ASME Code. The final rule imposes an augmented examination of reactor vessel shell welds and separates the requirements for inservice testing from those for inservice inspection by placing the requirements for inservice testing in a separate paragraph. The ASME Code addenda and edition incorporated by reference provide updated rules for the construction of components of light-water-cooled nuclear power plants, and for the inservice inspection and inservice testing of those components. This final rule permits the use of improved methods for construction, inservice inspection, and inservice testing of nuclear power plant components; requires expedited implementation of the expanded reactor vessel shell weld examinations specified in the 1989 Edition of Section XI; and more clearly distinguishes in the regulations the requirements for inservice testing from those for inservice inspection.

EFFECTIVE DATE: September 8, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Office of the Director of the Office of the Federal Register as of September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. G.C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3848.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1991 (56 FR 3796), the Nuclear Regulatory Commission published in the **Federal Register** a proposed amendment to its regulation, 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," to update the reference to editions and addenda of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). This proposed amendment would revise § 50.55a to incorporate by reference the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section III, Division 1, of the ASME Code, and the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section

XI, Division 1, of the ASME Code, with a specified modification. The modification would require implementation of certain requirements for containment isolation valve (CIV) testing that appear in Section XI Subsection IWV prior to the 1988 Addenda, but which do not appear in the later addenda. The amendment would impose an augmented examination of reactor vessel shell welds, and separate in the regulations the requirements for inservice testing from those for inservice inspection by placing the requirements for inservice testing in a separate paragraph.

Summary of Comments

Interested parties were invited to submit written comments for consideration in connection with the proposed amendment by April 16, 1991. Comments were received from 29 separate sources. These sources consisted of 23 utilities, one service organization representing four nuclear power plants, the Nuclear Management and Resources Council (NUMARC), one owners group (BWR Owners Group (BWROG)), one state entity (Illinois Department of Nuclear Safety (IDNS)), one public citizens group (Ohio Citizens for Responsible Energy (OCRE)), and one independent consultant.

The submitted comments generally addressed one of the following subject areas: (1) The incorporation by reference of the specified later addenda and edition of Section III, Division 1, and Section XI, Division 1, of the ASME Code into § 50.55a; (2) the endorsement of comments submitted by NUMARC; (3) the proposed modification to Section XI Subsection IWV rules for CIV testing; (4) the proposed augmented reactor vessel examination; (5) the separation of the rules for inservice inspection and inservice testing; (6) the existing scope of § 50.55a for pump and valve testing; and (7) the potential endorsement in § 50.55a of ASME/ANSI OM part 4 on snubbers.

Those who commented on the updating of existing references to Section III and Section XI of the ASME Code in § 50.55a generally noted their approval. One commentor, however, expressed significant concern with the new provision initially specified in the Section XI 1988 Addenda which expands the existing requirement to examine one circumferential and one longitudinal reactor vessel shell weld during the 2nd and subsequent inspection intervals to essentially 100 percent of all reactor vessel shell weld during those intervals. Volumetric examination of all reactor vessel shell welds during the first inspection interval has been a requirement in Section XI since the 1975 Addenda. The commentor believes that the expanded examination is unnecessary and that examination efforts should focus on the beltline welds or welds that exceed a specified fluence level. The NRC agrees with the ASME action to expand the reactor vessel examination on the basis that the importance of the reactor vessel, and previous unexpected cracking of primary coolant pressure boundary components, requires that the expanded examinations be performed to ensure the integrity of the reactor vessel. The importance of reactor vessel integrity in protecting the public health and safety demands that periodic, comprehensive inservice examinations of the reactor vessel be made to ensure that structural degradation, if it occurs, does not go undetected. Although the beltline welds do receive the highest radiation, there is simply no assurance that service induced cracking would be limited to those welds. An examination once every ten years of essentially 100 percent of all reactor vessel shell welds is both reasonable and necessary.

The comments submitted by NUMARC relate to: (1) The proposed endorsement of a later edition and addenda of the ASME Code, which NUMARC considers to be a positive step; (2) the proposed modification to Section XI Subsection IWV (i.e., the reference to part 10 of ASME/ANSI OMa–1988 Addenda to ASME/ANSI OM–1987 (OM Part 10)), which NUMARC considers to be inappropriate and unnecessary on the basis that 10 CFR part 50, Appendix J testing is adequate; (3) the proposed augmented reactor vessel examination, which NUMARC recognizes to be important, but suggests that more flexibility be incorporated into the implementation provisions; and (4) the scope of § 50.55a which NUMARC believes should not be influenced by Generic Letter 89–04. Approximately one-half of the utility commentors specifically endorsed the comments by NUMARC. In general, comments from the other utilities were consistent with one or more of the comments from NUMARC. The comments from NUMARC are discussed below, along with comments from others on the same subject.

Most of the comments addressed, in part, the proposed modification to Section XI Subsection IWV rules for containment isolation valve testing. Utility comments supported the NUMARC comment, which expressed the belief that the current Appendix J containment leakage testing program already provides an adequate basis for assessing and controlling containment leakage and that the modification could result in a valve having to be declared inoperable immediately, in spite of the fact that the total containment leakage may be substantially less than allowable. NUMARC suggested that, in lieu of reinstating requirements for specific valves, NRC recommend to the ASME Operations & Maintenance (O&M) Committee that it perform a comprehensive review of the testing requirements for containment isolation valves and acceptance standards for those tests. IDNS agreed with the NRC position that the requirements for leakage rate analysis and provisions for corrective action should be maintained, but believed that it would be less confusing for licensees if those requirements were incorporated into the existing requirements for Type C testing in Appendix J. OCRE strongly supported the action by NRC to modify the Section XI rules for CIV testing.

The NRC concern that resulted in the proposed modification to Section XI Subsection IWV stems from the findings of two reviews and a follow-on study of Appendix J leak test results. The overall findings show that valve leakage is the primary contributor to occurrences of containment unavailability and that such occurrences generally involve small, rather than large, leaks. Risk to the public from small leakage events is very low, but the NRC is concerned that eliminating the existing Section XI requirement to analyze leakage rates and to take corrective action in the event of abnormally high leakage rates for those CIVs that do not provide a reactor coolant system pressure isolation function could reduce the ability to detect degrading valves and, thereby, could permit an unacceptable reduction in the present safety margin associated with the leak tight integrity of those CIVs and, thereby, the containment.

It was specifically noted in the proposed rule that the NRC was interested in receiving comments on the discussed basis for and content of the proposed modification, and was particularly interested in receiving comments that would provide insight and justification, based upon plant experiences, relative to the need for revising or possibly eliminating the proposed modification. Many comments were received that express concern with the proposed modification. However, these comments, which generally state the opinion that Appendix J requirements are adequate and sufficient with regard to ensuring containment integrity, are of a qualitative nature and no specific plant

data or operational experiences were provided or referenced that updated the results of the earlier studies. No additional substantive information was provided for the NRC to consider relative to the need for revising or possibly eliminating the proposed modification. It has not been demonstrated, by analysis of more recent and comprehensive containment leakage test data, that containment leakage integrity can be maintained at an acceptable level without continued implementation of the existing Appendix J valve leak rate test program in conjunction with the Section XI requirement for analysis of leak rates.

Consistent with the comment by NUMARC, the NRC staff discussed the basis for OM part 10 CIV testing requirements with representatives from the ASME O&M Committee. Based on these discussions and in concert with the O&M Committee organization, the O&M Committee has initiated action to (1) perform a comprehensive review of OM part 10 CIV testing requirements and acceptance standards and (2) develop a basis document that would provide, as a minimum, a documented basis for not including the requirements for analysis of leakage rates and corrective actions in OM part 10 for those CIVs that do not provide a reactor coolant system pressure isolation function. The NRC will reevaluate the need for the modification to Section XI Subsection IWV, following review of this basis document. It is anticipated that this will occur as part of a future rulemaking proceeding that will address the incorporation by reference of the ASME O&M Code into § 50.55a.

In the meantime, this final rule incorporates by reference the 1988 Addenda and 1989 Edition of Section XI, Division 1, with a specified modification for CIV testing that is provided in a new § 50.55a(b)(2)(vii). The modification substantially preserves the existing requirements for analysis of leakage rates and corrective actions that exist in Subsection IWV prior to the 1988 Addenda. Specifically, the modification requires that licensees implement the requirements of Paragraph 4.2.2.3(e), "Analysis of Leakage Rates," of part 10 and Paragraph 4.2.2.3(f), "Corrective Action," of part 10, in addition to the requirements of Paragraph 4.2.2.2 of part 10, for all Category A valves that are CIVs, regardless of whether or not they provide a reactor coolant system pressure isolation function. Because paragraph 4.2.2.3(e) of part 10 is specified in the modification rather than the existing IWV-3426, the existing Section XI requirement is somewhat relaxed by permitting valve combinations rather than specific valves to be analyzed. This recognizes that, in the past, requests for relief have been granted where design constraints necessitate testing combinations of valves with permissible leak rate limits applied to valve groups. The specified modification does not require the present practice of trending NPS 6 and larger valves because that requirement has not been carried from IWV-3427(b) to OM part 10.

Section XI Subsection IWV (1988 Addenda and 1989 Edition), Subsection IWP (1988 Addenda and 1989 Edition), and Subsection IWF (1987 Addenda, 1988 Addenda, and 1989 Edition) reference ASME/ANSI OM part 10, ASME/ANSI OM part 6, and ASME/ANSI OM part 4, respectively. During preparation of this final rule, it was recognized that Table IWA-1600-1 in the applicable Section XI addenda and edition specifies a nonexistent revision for OM part 10 and part 6, and does not specifically identify the applicable revision for OM part 4. The Section XI Subcommittee on Inservice Inspection has taken action to correct the revision reference, which, for these standards, should be the ANSI/ASME OMa-1988 Addenda to the ASME/ANSI OM-1987 Edition. To ensure that licensees are aware of the correct revision reference to the OM standards, an additional modification, § 50.55a(b)(2)(viii), has been added to specify that the OMa-1988 Addenda is the applicable revision to the OM-1987 Edition for OM part 4, part 6, and part 10 when using the noted Section XI addenda and edition.

The NUMARC comment relative to the proposed augmented examination of the reactor vessel indicates an understanding of the NRC position on the need for this examination, but notes concern with the specifics of the proposed implementation. Specifically, NUMARC expresses concern that: (1) Better utilization of available inspection resources could be accomplished by limiting application of the augmented inspection program to the reactor vessel beltline shell welds, or by limiting implementation of the augmented examination to reactor vessel shell welds that exceed a specific neutron flux exposure (this comment differs from the one utility comment noted above relative to updating later edition and addenda of Section XI in that it only refers to the augmented examination); (2) tooling for the older Boiling Water Reactors (BWRs) may generally not be available in the time-frame needed; (3) only those reliefs which address the scope and extent of shell weld examinations should be revoked, and they should be revoked on a plant specific basis; and (4) the NRC should state its willingness to accept requests for specific new exemptions, based on the availability of suitable equipment and technology at the time of the scheduled inspection and the appropriate technical justification.

Other comments on the augmented examination include those from: BWROG, which noted concern for those plants close to the end of the current interval that could not practically incorporate the augmented examination into the current interval and would have to perform that examination during the first period of the next interval (**Note:** The deferred augmented examination may be used as a substitute for the reactor vessel shell weld examination normally scheduled for the interval in which the deferred examination was performed (§ 50.55a(g)(6)(ii)(A)*(3)*, therefore, the impact of deferring the augmented examination will be reduced); IDNS, which strongly supports the NRC position regarding the augmented examination of the reactor vessel; and OCRE, which also strongly supports the augmented examination and notes that the examination will not only provide an additional assurance of safety, but will aid in understanding aging degradation phenomena which will assist licensees that wish to pursue license renewal.

The NRC position with regard to the augmented examination of the reactor vessel, as previously stated in the Supplementary Information to the proposed rule, is that degradation of reactor vessel materials has become more of a concern recently, because: (1) Results from irradiation surveillance material tests show that certain reactor vessel materials undergo greater radiation damage than previously expected, (2) indications from operational data show that stress corrosion cracking of BWR reactor vessels is more probable than was thought several years ago, and (3) significant service induced cracking has occurred in large vessels (i.e., pressurizer, steam generators) designed and fabricated to the ASME Code. It is the judgment of the NRC that, because of new information and previous limited examinations of reactor vessels, there may exist a substantially greater potential for reactor vessel degradation, in all areas of the reactor vessel, than previously considered and that maintenance of the level of protection presumed by the regulations requires more than compliance to existing regulatory requirements. The NRC has

determined that the augmented examination of reactor vessels will result in a substantial increase in the overall protection of the public health and safety, and that the costs of implementation are justified in view of the increased protection. The backfit analysis required by § 50.109, "Backfitting," is provided as part of the regulatory analysis that supports this final rule.

However, the NRC agrees with comments that additional flexibility and specificity will improve implementation of the augmented examination of reactor vessel examination. To this end, the augmented examination of reactor vessel shell welds specified in this final rule includes the following new provisions and clarifications: (1) The revocation of previously granted reliefs is limited to those reliefs that deal with the extent of volumetric examination of reactor vessel shell welds; (2) the augmented examination will be performed in accordance with the section XI edition and addenda applicable to the inspection interval in which the examination is actually performed; (3) "essentially 100%" as used in § 50.55a(g)(6)(ii)(A) means "more than 90 percent of the examination volume of each weld, where the reduction in examination volume is due to interference from another component, or part geometry;" (4) licensees that defer the augmented examination to the next interval are permitted to retain all existing approved reliefs for the current interval; (5) licensees with fewer than 40 months remaining in the inspection interval in effect when the rule becomes effective are permitted to extend the interval in accordance with the provisions of section XI (1989 Edition) IWA-2430(d); (6) licensees that are unable to satisfy completely the requirements for the augmented examination may request to perform alternate examinations in accordance with § 50.55a(g)(6)(ii)(A)(*5*). These items are addressed individually in the discussion below regarding provisions of the augmented reactor vessel shell weld examination.

Section 50.55a(g)(6)(ii) addresses augmented inservice inspection programs for those systems and components for which the Commission determines that added assurance of structural reliability is necessary. For that purpose, and consisent with the discussion in this final rule, § 50.55a(g)(6)(ii)(A) has been added to require expedited implementation of the reactor vessel shell weld examinations specified in the 1989 Edition of section XI, Division 1, in item B1.10, "Shell Welds," of Examination Category B-A, "Pressure Retaining Welds in Reactor Vessel," in Table 2500-1 of subsection IWB, "Requirements for Class 1 Components of Light-Water Cooled Power Plants."

In order to ensure the applicability of the new augmented examination to all licensees, § 50.55a(g)(6)(ii)(A)(*1*) revokes all previously granted reliefs relating to the extent of volumetric examination of the reactor vessel shell welds that apply to examinations for the inservice inspection interval that is in effect when the rule becomes effective subject to a specified modification. Limiting the revocation of previously granted reliefs to those that deal with the extent of the volumetric examination permits the retention of those approved reliefs that deal with issues such as specification of calibration blocks. Licensees that choose to defer the augmented examination to the next interval in accordance with § 50.55a(g)(6)(ii)(A)(*3*) should note that paragraph (*iv*) of that section modifies the revocation of approved reliefs to permit retention of previously approved reliefs for the current interval when the augmented examination in deferred. This provision recognizes that plants that previously received relief from the section XI reactor vessel shell weld examination and satisfy the condition to defer the augmented examination may find it impractical to implement the section XI examination during the current inspection interval.

Section 50.55a(g)(6)(ii)(A)(*2*) requires all licensees to implement the specified augmented examination of reactor vessels during the inspection interval in effect when this rule becomes effective, subject to conditions specified in § 50.55a(g)(6)(ii)(A)(*3*) and (*4*). Section 50.55a(g)(6)(ii)(A)(*2*) specifically permits the use of the augmented examination, when not deferred, as a substitute for the reactor vessel shell weld examinations scheduled for the inspection interval in effect when the rule becomes effective, and specifies that, for the purpose of this rule, "essentially 100 percent" as used in Table IWB-2500-1 means "more than 90 percent of the examination volume of each weld, where the reduced examination volume is due to interference from another component, or part geometry." This is consistent with section XI Code Case N-460, which previously has been approved for use in Regulatory Guide 1.147. It is recognized that it may be necessary to implement a combination of internal and external diameter examinations to achieve "essentially 100%" examination volume coverage for each weld. A clarification has been included in this section to note that the augmented examination may be used as a substitute for the reactor vessel shell weld examination in the interval in effect when the rule becomes effective when the augmented examination is not deferred. This is a reinforcement of § 50.55a(g)(6)(ii)(A)(3), as it appears in both the proposed and final rule, which specifies that the deferred examination may not be used as a substitute for the reactor vessel shell weld examination scheduled for implementation during the inservice inspection interval in effect when the rule becomes effective.

The NRC recognizes that plants with fewer than 40 months remaining in the inspection interval when this rule becomes effective may find it impractical to implement the augmented examination of the reactor vessel during that inspection interval. Therefore, § 50.55a(g)(6)(ii)(A)(*3*) permits plants with fewer than 40 months remaining in the inspection interval when this rule becomes effective to defer the augmented examination until the first period of the next inspection interval. However, this same paragraph specifically prohibits the use of the deferred augmented examination as a substitute for reactor vessel shell weld examinations scheduled for the inspection interval in effect when the rule becomes effective. The intent is to ensure that the examinations are deferred only when necessary and not to have the rule encourage a 40-month delay in reactor vessel shell weld examinations. Further, § 50.55a(g)(6)(ii)(A)(*3*) permits using the deferred examination, with a condition, as a substitute for reactor vessel shell weld examinations scheduled for the inspection interval in which the deferred examinations are performed. The condition is that subsequent reactor vessel shell weld examinations for successive inspection intervals be performed in the first period of the inspection interval. This condition is necessary to prevent a potential 160-month gap between reactor vessel shell weld examinations. This gap would occur if a plant used the deferred examination performed in the first period as a substitute for the scheduled examination and then deferred the examination for the next inspection interval to the end of that interval as permitted by section XI. In addition, this section specifies that licensees with fewer than 40 months remaining in the inservice inspection interval in effect when the rule becomes effective may extend that interval in accordance with

the provisions of section XI (1989 Edition) IWA-2430(d) to permit implementation of the augmented examination during the current interval. It is not the intent of the NRC to permit licensees in the second period of an inspection interval to reduce the interval length for the purpose of "being within 40 months of the end of the interval" and, thereby, deferring the augmented examination to the first period of the subsequent interval.

Section 50.55a(g)(6)(ii)(A)(*4*) specifies that a licensee that has either completed or has scheduled an inspection of essentially 100 percent of the length of all Examination Category B-A shell welds during the inservice inspection interval in effect when the rule becomes effective does not have to implement the required augmented examination of the reactor vessel shell welds. Primarily, this paragraph is intended to permit licensees who are in the first inspection interval to use the essentially 100 percent reactor vessel shell weld examination required for that interval by section XI to satisfy the requirement for the augmented examination of the reactor vessel. The technical objective of the augmented examination will be accomplished under these conditions. These licensees will continue to apply the current requirements of § 50.55a(g)(4) until the next inspection interval when future examinations will be performed based on ASME section XI, 1989 Edition, or later Code edition and addenda specified in § 50.55a(b).

The augmented examination specified in § 50.55a(g)(6)(ii)(A) is not an ASME Code requirement. It is a requirement specifically developed and additionally imposed by the Commission. Therefore, except for the specific provisions in § 50.55a(g)(6)(ii)(A)(*2*) and (*3*) that permit using the augmented examination as a substitute for section XI required reactor vessel shell weld examinations, the closing out of an inservice inspection interval is not dependent on completion of the augmented examination. In the specific instance where the augmented examination is deferred to the first period of the next inspection interval, the current inspection interval could be closed out relative to reactor vessel shell weld examinations by implementing the regularly scheduled reactor vessel shell weld examinations as modified by previously approved applicable relief requests for that interval.

The NRC recognizes that, as noted by commentors, there may exist conditions that prevent licensees from completely satisfying the requirements for the augmented reactor vessel shell weld examination as specified in § 50.55a(g)(6)(ii)(A). For this reason, § 50.55a(g)(6)(ii)(A)(*5*) has been added to permit licensees that make a determination that they are unable to completely satisfy the specified augmented examination to propose and use alternatives that have been authorized by the NRC's Director of the Office of Nuclear Reactor Regulation.

This final rule amends § 50.55a to separate the requirements for inservice testing from those for inservice inspection by moving the requirements for inservice testing to a separate paragraph. Previously, § 50.55a(g), "Inservice inspection requirements," specified the requirements for (1) preservice and inservice examinations for Class 1, Class 2, and Class 3 components and their supports, (2) system pressure tests for Class 1, Class 2, and Class 3 components, and (3) inservice testing of Class 1, Class 2, and Class 3 pumps and valves. In order to emphasize the importance of inservice testing and to distinguish more clearly its requirements from those of inservice inspection, this final rule moves the requirement for inservice testing from § 50.55a(g), "Inservice inspection requirements," to a separate (previously reserved) § 50.55a(f), which is titled "Inservice testing requirements." All existing requirements for inservice examination and system pressure testing are retained in § 50.55a(g).

There is overall favorable acceptance of the separation of the requirements in the regulation for inservice testing and for inservice inspection. It is generally believed by the commentors, as it is believed by the NRC, that the separation serves to clarify and emphasize the requirements for inservice testing. Two administrative changes were made in the development of § 50.55a(f) relative to existing § 50.55a(g). First, § 50.55a(f)(6)(ii) has been added to indicate the Commission's intent to impose an augmented inservice testing program if added assurance of operational readiness is deemed necessary. This paragraph only indicates intent and does not impose a specific requirement. It does parallel the existing § 50.55a(g)(6)(ii) which specifies that the Commission may require an augmented inservice inspection program for systems and components for which it deems that added assurance of structural reliability is necessary. One utility commentor expressed concern that the addition of § 50.55a(f)(6)(ii) would permit the Commission to impose an augmented inservice testing program without further justification. This is not the case. Any program for augmented inservice testing will be fully justified with a documented regulatory analysis that includes the appropriate backfit analysis. The intent of the NRC to perform the necessary backfit analysis is clearly demonstrated by the backfit analysis that was performed to require the augmented examination of the reactor vessel that is specified in § 50.55a(g)(6)(ii)(A) of this final rule.

Second, this final rule includes the addition of introductory text to § 50.55a(g) which states that the requirements for inservice testing of Class 1, Class 2, and Class 3 pumps and valves are located in § 50.55a(f). This change is necessary because the placement of inservice testing requirements into a separate § 50.55a(f), as included in the proposed rule, would have caused administrative inconsistencies with regard to existing references to § 50.55a(g) for inservice testing in documents such as technical specifications, safety analysis reports, procedures, and records. With this change, existing references to § 50.55a(g) for inservice testing will refer the user to § 50.55a(f), where the specific requirements for inservice testing are located. The NRC recommends that as the governing documents are updated, the direct reference to § 50.55a(f) be incorporated, as appropriate.

Two editorial revisions, relative to the previous § 50.55a(g), are included in the new § 50.55a(f). These editorial revisions: (1) Reserve § 50.55a(f)(3) (i) and (ii) so that the structure of § 50.55a(f) will parallel that of § 50.55a(g) for the purpose of promoting easier cross-referencing between the two paragraphs; and (2) modify the reference to 120-month inspection interval in § 50.55a(g) to 120-month interval in § 50.55a(f), because the term "inspection interval," as used in Section XI, is used only in the context of inservice inspection. (The term "test interval" was not used because, unlike inspection interval, the 120-month time frame does not designate a period of required actions for the testing program. The 120-month interval used in § 50.55a(f) and the 120-month inspection interval used in § 50.55a(g) are considered by the staff to be coincident for the purpose of 120-month updating requirements.)

A number of comments were received regarding the scope of § 50.55a as applied to pump and valve testing. These comments ranged from recommending that the scope of § 50.55a be expanded to be consistent with the scopes of OM part 6 and part 10, which go beyond Class 1, Class 2, and Class 3 components, to recommending that the

scope of § 50.55a be limited to ASME Code classified components. One commentor expressed concern that the Supplementary Information in the proposed rulemaking addressed Generic Letter 89-04 in a way that seemed to include the letter in the rulemaking. That was not intended. To the contrary, the intent of this rulemaking is to maintain the existing scope of § 50.55a for pump and valve testing. For plants whose construction permits were issued on or after January 1, 1971, that scope constitutes Code classified components as specified in existing § 50.55a(g) (2) and (3) (i.e., § 50.55a(f) (2) and (3) by this rulemaking). For those plants whose construction permits were issued prior to January 1, 1971, that scope constitutes components of the reactor coolant pressure boundary which must meet the requirements applicable to components that are classified as ASME Code Class 1, and other safety-related pumps and valves which must meet the requirements applicable to components that are classified as ASME Code Class 2 or Class 3, as specified in existing § 50.55a(g)(1) (i.e., § 50.55a(f)(1) by this rulemaking). The reference to the generic letter has not been included in the final rule.

A number of comments were received with regard to snubber testing which is outside the scope of this rulemaking. Commentors generally suggested that ASME OM part 4, "Examination and Performance Testing of Nuclear Power Plant Dynamic Restraints (Snubbers)," which is referenced in Subsection IWF in the 1987 Addenda, 1988 Addenda and 1989 Edition of Section XI, be incorporated by reference into § 50.55a. Subsection IWF, "Component Supports," provides rules for the examination of component supports, and the testing of snubbers. Prior to the 1987 Addenda, Subsection IWF provided self-contained rules for the testing of snubbers. Section 50.55a does not specify requirements for the testing of snubbers. This was clarified by the separation of requirements for inservice testing and inservice inspection. Inservice testing requirements specified in § 50.55a(f) apply only to pumps and valves. The testing requirements specified in OM part 4 and referenced in Section XI Subsection IWF article IWF-5000 are not incorporated by reference into § 50.55a. Requirements for the testing of snubbers are generally governed by plant technical specifications. NRC is in the process of initiating a proposed rulemaking that would, among other things, address the incorporation by reference of the ASME OM Code, which contains rules for pump, valve, and snubber testing, into § 50.55a(f). The NRC will as a part of this future rulemaking determine the need for and acceptability of endorsing the ASME OM Code rules for snubber testing. However, in accordance with requirements for examination of component supports specified in § 50.55a(g), licensees are required to implement the rules for examination of snubbers that are provided in OM part 4 as referenced in Subsection IWF Article IWF-5000 in the applicable Section XI addenda and edition of this final rule.

Section 50.55a(g) provides requirements for selecting the ASME Code edition and addenda of Section XI to be complied with during the preservice inspection (§ 50.55a(g)(3), for plants whose construction permit was issued on or after July 1, 1974); the initial 10-year inspection interval (§ 50.55a(g)(4)(i)); and successive 10-year inspection intervals (§ 50.55a(g)(4)(ii)). As noted in the final rule codifying the most recent amendment to § 50.55a (May 5, 1988; 53 FR 16051), paragraph IWA-2400 of Section XI (as revised by the Winter 1983 Addenda) incorporated rules for selecting the applicable edition and addenda of Section XI during the preservice inspection (IWA-2411), the initial 10-year inspection interval (IWA-2412), and successive 10-year inspection intervals (IWA-2413). The criteria provided in the regulations and Section XI are effectively the same for the preservice inspection and the successive 10-year inspection intervals, but differ for the initial 10-year inspection interval. In general, use of the Commission requirements will result in the selection of a more recent edition and addenda than will use of the Section XI rules. Satisfying the requirements of § 50.55a(g)(4)(i) for the initial 10-year inspection interval will, in general, also satisfy the rules of Section XI. Although the Section XI requirements for selecting editions and addenda remain unchanged in the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition, the Commission is reaffirming its intent that in all cases the existing requirements in § 50.55a(g) be the basis for selecting the edition and addenda of Section XI to be complied with during the preservice inspection, the initial 10-year inspection interval, and the successive 10-year inspection intervals.

This final rule makes a number of editorial changes to § 50.55a for the purpose of adopting a standard convention for imposing an obligation or expressing a prohibition. In this convention "shall" is used to impose an obligation on an individual or legal entity capable of performing the required action, "must" is used as the mandatory form when the subject of the sentence is an inanimate object, and "may not" is used to impose a prohibition. The following paragraphs are amended solely to be consistent with this convention: The introductory paragraph to the section; paragraphs (a)(1), (a)(3), (b)(2)(iii), (b)(2)(iv), (g)(1), (g)(3)(ii), (g)(3)(iii), (g)(3)(iv), introductory paragraph to (g)(4), (g)(4)(i), (g)(4)(ii), (g)(5)(i), (g)(5)(iv), (g)(6)(i), (h), and footnote 8. Other paragraphs are amended for the same editorial reason, but they also contain technical revisions relevant to other parts of this final rule. Section 50.55a(f) has been developed consistent with the noted convention.

Subsection IWE, "Requirements for Class MC Components of Light-Water-Cooled Power Plants," was added to Section XI, Division 1, in the Winter 1981 Addenda. Since § 50.55a does not currently address the inservice inspection of containments and the scope of § 50.55a is not affected by this final rule, the requirements of Subsection IWE are not imposed upon Commission licensees by this amendment. The incorporation by reference of Subsection IWE into § 50.55a is presently the subject of a separate rulemaking action. Section 50.55a(b)(2)(vi) is reserved for that action.

The NRC previously alerted all holders of operating licenses or construction permits for nuclear power reactors, through NRC Information Notice No. 88-95 (IN 88-95), "Inadequate Procurement Requirements Imposed by Licensees on Vendors," to the potential that inadequate licensee procurement requirements or implementation by vendors in supplying components under the ASME Code could result in failure by these vendors to fully implement 10 CFR part 50, Appendix B (Quality Assurance Criteria). The problem, which was revealed during routine NRC inspections of vendors, resulted from the belief by some vendors that if an item was exempted by the ASME Code from Code requirements, the item was exempt from all other regulatory requirements. The apparent belief of some vendors was that since NRC endorses the ASME Code in its regulations and has accepted the various exemptions, there are, therefore, no other applicable regulatory requirements. This belief is not consistent with the NRC position. The NRC reaffirms its position which, as previously put forth in IN 88-95, states that all safety-related items, even those exempted from ASME Code requirements, are required to be

manufactured under a quality assurance program that meets the requirements of 10 CFR part 50, appendix B.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action that significantly affects the quality of the human environment and therefore an environmental impact statement is not required.

This final rule is one part of a regulatory framework directed to ensuring pressure vessel integrity, and the operational readiness of pumps and valves. Therefore, in the general sense, this rule will have a positive impact on the environment. This rule incorporates by reference into the NRC regulations improved rules contained in the ASME Code for the construction, inservice inspection, and inservice testing of components used in nuclear power plants. In addition, this rule requires an augmented examination of reactor vessel shell welds to further ensure the structural integrity of the reactor vessel. The occupational exposures attributable to the expanded reactor vessel examinations contained in the ASME Code and the augmented examination are not expected to be significant because exposures will be limited by the use of remote examination equipment. Occupational exposures associated with the augmented reactor vessel examination will be further limited by provisions in the final rule that permit, under certain conditions, the licensee to satisfy the requirement for the augmented examination by previously scheduled or implemented reactor vessel examinations, or by deferring the examination to the next interval and using the deferred examination as a replacement for the previously scheduled examination for that interval. The actions required by applicants and licensees to implement the final rule are of an established nature that should not increase the potential for a negative environmental impact.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Gilbert C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3848.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150-0011.

The public reporting burden for this collection of information is estimated to average 42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this amendment to the regulations. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mr. G.C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-3848.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Backfit Analysis

The final rule incorporates by reference a later edition and addenda to Section III, Division 1, and, with both a technical and nontechnical modification, Section XI, Division 1, of the ASME Code; imposes an augmented examination on reactor vessels; and separates the requirements for inservice inspection from those for inservice testing.

The incorporation by reference into the regulations of later editions and addenda of Section III and Section XI of the ASME Code is not a backfit because Section III requirements apply only to new construction, except as voluntarily implemented by licensees, and because updated Section XI requirements are an integral part of the longstanding § 50.55a(g)(4)(ii) requirement to update inservice inspection and inservice testing programs to reflect the requirements of the latest edition and addenda of Section XI incorporated by reference in § 50.55a(b) 12 months prior to the start of the 120-month inspection interval, subject to specified limitations and modifications. The technical modification to part 10 of ASME/ANSI OMa-1988 Addenda to ASME/ANSI OM-1987 specified in § 50.55a(b)(2)(vii) is not a backfit because it simply retains an existing Section XI requirement for containment isolation valve testing that licensees now are required to implement in accordance with § 50.55a(g). The nontechnical modification specified in § 50.55a(b)(2)(viii) is not a backfit because it only serves to properly identify an incorrectly referenced standard in Section XI.

The NRC has concluded, based on the analysis required by § 50.109(a)(3) which is provided in the regulatory analysis, that the backfit that will be imposed by the augmented reactor vessel examination specified in § 50.55a(g)(6)(ii)(A) will result in a substantial increase in the overall protection of the public health and safety, and that the direct and indirect costs of implementation are justified in view of the increased protection.

The separation in the regulation of the inservice inspection and inservice testing requirements is an administrative reorganization of § 50.55a that has no impact on existing technical requirements and, therefore, has no effect on backfitting.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear

power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under Sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201b); §§ 50.5, 50.7(a), 50.10(a)-(c), 50.34(a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (1)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.55a, the introductory text, paragraphs (a), (b)(1), the introductory text of (b)(2), (b)(2)(iii), (b)(2)(iv)(A), (g)(1), (g)(2), (g)(3) introductory text, (g)(3)(i), (g)(3)(ii), (g)(4), (g)(5)(i), (g)(5)(iv), (h), and footnote 8 are revised; paragraphs (g)(3)(iii) and (g)(3)(iv) are removed and reserved; paragraph (b)(2)(vi) is added and reserved; and paragraphs (b)(2)(vii), (b)(2)(viii), (f), introductory text to (g), and (g)(6)(ii)(A) are added to read as follows:

§ 50.55a Codes and standards.

Each operating license for a boiling or pressurized water-cooled nuclear power facility is subject to the conditions in paragraphs (f) and (g) of this section and each construction permit for a utilization facility is subject to the following conditions in addition to those specified in § 50.55.

(a)(1) Structures, systems, and components must be designed, fabricated, erected, constructed, tested, and inspected to quality standards commensurate with the importance of the safety function to be performed.

(2) Systems and components of boiling and pressurized water-cooled nuclear power reactors must meet the requirements of the ASME Boiler and Pressure Vessel Code specified in paragraphs (b), (c), (d), (e), (f), and (g) of this section. Protection systems of nuclear power reactors of all types must meet the requirements specified in paragraph (h) of this section.

(3) Proposed alternatives to the requirements of paragraphs (c), (d), (e), (f), (g), and (h) of this section or portions thereof may be used when authorized by the Director of the Office of Nuclear Reactor Regulation. The applicant shall demonstrate that:

(i) The proposed alternatives would provide an acceptable level of quality and safety, or

(ii) Compliance with the specified requirements of this section would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

(b) * * *

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include addenda through the 1988 Addenda and editions through the 1989 Edition.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include addenda through the 1988 Addenda and editions through the 1989 Edition, subject to the following limitations and modifications:

* * * * *

(iii) *Steam generator tubing (modifies Article IWB-2000).* If the technical specifications of a nuclear power plant include surveillance requirements for steam generators different than those in Article IWB-2000, the inservice inspection program for steam generator tubing is governed by the requirements in the technical specifications.

(iv) *Pressure-retaining welds in ASME Code Class 2 piping (applies to Tables IWC-2520 or IWC-2520-1, Category C-F).* (A) Appropriate Code Class 2 pipe welds in Residual Heat Removal Systems, Emergency Core Cooling Systems, and Containment Heat Removal Systems, must be examined. When applying editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of Section XI of the ASME Code, the extent of examination for these systems must be determined by the requirements of paragraph IWC-1220, Table IWC-2520 Category C-F and C-G, and paragraph IWC-2411 in the 1974 Edition and Addenda through the Summer 1975 Addenda.

* * * * *

(vi) [Reserved]

(vii) *Inservice testing of containment isolation valves.* When using Subsection IWV in the 1988 Addenda or the 1989 Edition of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, leakage rates for Category A containment isolation valves that do not provide a reactor coolant system pressure isolation function must be analyzed in accordance with paragraph 4.2.2.3(e) of part 10, and corrective actions for these valves must be made in accordance with paragraph 4.2.2.3(f) of part 10 of ASME/ANSI OMa-1988 Addenda to ASME/ANSI OM-1987.

(viii) *Section XI References to OM Part 4, OM Part 6 and OM Part 10 (Table IWA-1600-1).* When using Table IWA-1600-1, "Referenced Standards and Specifications" in the Section XI, Division 1, 1987 Addenda, 1988 Addenda, or 1989 Edition, the specified "Revision Date or Indicator" for ASME/ANSI OM Part 4, ASME/ANSI part 6, and ASME/ANSI part 10 shall be the OMa-1988 Addenda to the OM-1987 Edition.

* * * * *

(f) *Inservice testing requirements.* (1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued prior to January 1, 1971, pumps and valves must meet the test requirement of paragraphs (f) (4) and (5) of this section to the extent practical. Pumps and valves which are part of the reactor coolant pressure boundary must meet the requirements applicable to components which are classified as ASME Code Class 1. Other safety-related pumps and valves must meet the requirements applicable to components which are classified as ASME Code Class 2 or Class 3.

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda [6] in effect 6 months prior to the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed therein.

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after July 1, 1974:

(i) [Reserved]

(ii) [Reserved]

(iii) Pumps and valves which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(iv) Pumps and valves which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(v) All pumps and valves may meet the test requirements set forth in subsequent editions of codes and addenda or portions thereof which are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section.

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, pumps and valves which are classified as ASME Code Class 1, Class 2, and Class 3 must meet the inservice test requirements, except design and access provisions, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (f)(2) and (f)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of such components.

(i) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during the initial 120-month interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months prior to the date of issuance of the operating license, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months prior to the start of the 120-month interval, subject to the limitations and modifications listed in paragraph (b) of this section.

(iii) [Reserved]

(iv) Inservice tests of pumps and valves may meet the requirements set forth in subsequent editions and addenda that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section, and subject to Commission approval. Portions of editions or addenda may be used provided that all related requirements of the respective editions or addenda are met.

(5)(i) The inservice test program for a boiling or pressurized water-cooled nuclear power facility must be revised by the licensee, as necessary, to meet the requirements of paragraph (f)(4) of this section.

(ii) If a revised inservice test program for a facility conflicts with the technical specification for the facility, the licensee shall apply to the Commission for amendment of the technical specifications to conform the technical specification to the revised program. The licensee shall submit this application, as specified in § 50.4, at least 6 months before the start of the period during which the provisions become applicable, as determined by paragraph (f)(4) of this section.

(iii) If the licensee has determined that conformance with certain code requirements is impractical for its facility, the licensee shall notify the Commission and submit, as specified in § 50.4, information to support the determination.

(iv) Where a pump or valve test requirement by the code or addenda is determined to be impractical by the licensee and is not included in the revised inservice test program as permitted by paragraph (f)(4) of this section, the basis for this determination must be demonstrated to the satisfaction of the Commission not later than 12 months after the expiration of the initial 120-month period of operation from start of facility commercial operation and each subsequent 120-month period of operation during which the test is determined to be impractical.

(6)(i) The Commission will evaluate determinations under paragraph (f)(5) of this section that code requirements are impractical. The Commission may grant relief and may impose such alternative requirements as it determines is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest giving due consideration to the burden upon the licensee that could result if the requirements were imposed on the facility.

(ii) The Commission may require the licensee to follow an augmented inservice test program for pumps and valves for which the Commission deems that added assurance of operational readiness is necessary.

(g) *Inservice inspection requirements.* Requirements for inservice testing of Class 1, Class 2, and Class 3 pumps and valves are located in § 50.55a(f).

(1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued prior to January 1, 1971, components (including supports) must meet the requirements of paragraphs (g) (4) and (5) of this section to the extent practical. Components which are part of the reactor coolant pressure boundary and their supports must meet the requirements applicable to components which are classified as ASME Code Class 1. Other safety-related pressure vessels, piping, pumps and valves must meet the requirements

[6] ASME Code cases that have been determined suitable for use by the Commission staff are listed in NRC Regulatory Guide 1.84, "Design and Code Case Acceptability—ASME Section III Division 1," NRC Regulatory Guide 1.85, "Materials Code Case Acceptability—ASME Section III Division 1," and NRC Regulatory Guide 1.147 "Inservice Inspection Code Case Acceptability—ASME Section XI Division 1." The use of other Code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3).

applicable to components which are classified as ASME Code Class 2 or Class 3.

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda [6] in effect six months prior to the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section.

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after July 1, 1974:

(i) Components which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular component.

(iii) [Reserved]

(iv) [Reserved]

* * * * *

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified as ASME Code Class 1, Class 2 and Class 3 must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (g)(2) and (g)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components.

(i) Inservice examinations of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months prior to the date of issuance of the operating license, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months prior to the start of the 120-month inspection interval, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months prior to the start of the 120-month inspection interval, subject to the limitations and modifications listed in paragraph (b) of this section.

(iii) [Reserved]

(iv) Inservice examination of components and system pressure tests may meet the requirements set forth in subsequent editions and addenda that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section, and subject to Commission approval. Portions of editions or addenda may be used provided that all related requirements of the respective editions or addenda are met.

(5)(i) The inservice inspection program for a boiling or pressurized water-cooled nuclear power facility must be revised by the licensee, as necessary, to meet the requirements of paragraph (g)(4) of this section.

* * * * *

(iv) Where an examination requirement by the code or addenda is determined to be impractical by the licensee and is not included in the revised inservice inspection program as permitted by paragraph (g)(4) of this section, the basis for this determination must be demonstrated to the satisfaction of the Commission not later than 12 months after the expiration of the initial 120-month period of operation from start of facility commercial operation and each subsequent 120-month period of operation during which the examination is determined to be impractical.

(6) * * *

(ii) * * *

(A) Augmented examination of reactor vessel.

(1) All previously granted reliefs under § 50.55a to licensees for the extent of volumetric examination of reactor vessel shell welds specified in Item B1.10 of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB–2500–1 of Subsection IWB in applicable edition and addenda of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, during the inservice inspection interval in effect on September 8, 1992 are hereby revoked, subject to the specific modification in § 50.55a(g)(6)(ii)(A)*(3)(iv)* for licensees that defer the augmented examination in accordance with § 50.55a(g)(6)(ii)(A)*(3)*.

(2) All licensees shall augment their reactor vessel examination by implementing once, as part of the inservice inspection interval in effect on September 8, 1992, the examination requirements for reactor vessel shell welds specified in Item B1.10 of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB–2500–1 of Subsection IWB of the 1989 Edition of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, subject to the conditions specified in § 50.55a(g)(6)(ii)(A)*(3)* and *(4)*. The augmented examination, when not deferred in accordance with the provisions of § 50.55a(g)(6)(ii)A*(3)*, shall be performed in accordance with the related procedures specified in the Section XI edition and addenda applicable to the inservice inspection interval in effect on September 8, 1992, and may be used as a substitute for the reactor vessel shell weld examination scheduled for implementation during the inservice inspection interval in effect on September 8, 1992. For the purpose of this augmented examination, "essentially 100% as used in Table IWB–2500–1 means more than 90 percent of the examination volume of each weld, where the reduction in coverage is due

to interference by another component, or part geometry.

(3) Licensees with fewer than 40 months remaining in the inservice inspection interval in effect on September 8, 1992 may defer the augmented reactor vessel examination specified in § 50.55a(g)(6)(ii)(A)(2) to the first period of the next inspection interval under the following conditions:

(i) The deferred augmented examination may not be used as a substitute for the reactor vessel shell weld examination scheduled for implementation during the inservice inspection interval in effect on September 8, 1992.

(ii) The deferred augmented examination may be used as a substitute for the reactor vessel shell weld examination normally scheduled for the inspection interval in which the deferred examination is performed.

(iii) If the deferred augmented examination is used as a substitute for the normally scheduled reactor vessel shell weld examination, subsequent reactor vessel shell weld examinations must be performed during the first period of successive inspection intervals.

(iv) Licensees that defer the augmented examination, as permitted herein, may retain all previously granted reliefs that otherwise would be revoked by § 50.55a(g)(6)(ii)(A)(1) for the inservice inspection interval in effect on September 8, 1992.

(v) Licensees with fewer than 40 months remaining in the inservice inspection interval in effect on September 8, 1992 may extend that interval in accordance with the provisions of Section XI (1989 Edition) IWA-2430(d) for the purpose of implementing the augmented examination during that interval.

(vi) The deferred augmented examination shall be performed in accordance with the related procedures specified in the Section XI edition and addenda applicable to the inspection interval in which the augmented examination is performed.

(4) The requirement for augmented examination of the reactor vessel may be satisfied by an examination of essentially 100 percent of the reactor vessel shell welds specified in § 50.55a(g)(6)(ii)(A)(2) that has been completed, or is scheduled for implementation with a written commitment, or is required by § 50.55a(g)(4)(i), during the inservice inspection interval in effect on September 8, 1992.

(5) Licensees that make a determination that they are unable to completely satisfy the requirements for the augmented reactor vessel shell weld examination specified in § 50.55a(g)(6)(ii)(A) shall submit information to the Commission to support the determination and shall propose an alternative to the examination requirements that would provide an acceptable level of quality and safety. The licensee may use the proposed alternative when authorized by the Director of the Office of Nuclear Reactor Regulation.

(h) *Protection systems.* For construction permits issued after January 1, 1971, protection systems must meet the requirements set forth in editions or revisions of the Institute of Electrical and Electronics Engineers Standard: "Criteria for Protection Systems for Nuclear Power Generating Stations," (IEEE-279) in effect [7] on the formal docket date [8] of the application for a construction permit. Protection systems may meet the requirements set forth in subsequent editions or revisions of IEEE-279 which become effective.

* * * * *

Dated at Rockville, Maryland, this 15th day of July 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-18481 Filed 8-5-92; 8:45 am]

BILLING CODE 7590-01-M

[7] For purposes of this regulation the proposed IEEE 279 became "in effect" on August 30, 1968, and the revised issue IEEE 279—1971 became "in effect" on June 3, 1971. Copies may be obtained from the Institute of Electrical and Electronics Engineers, United Engineering Center, 345 East 47th St., New York, NY 10017. Copies are available for inspection at the Commission's Technical Library, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland.

[8] Where an application for a construction permit is submitted in four parts pursuant to the provisions of § 2.101(a-1) and Subpart F of Part 2 of this chapter, "the formal docket date of the application for a construction permit" for purposes of this section is the date of docketing of the information required by § 2.101(a-1), (2), or (3), whichever is later.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0743]

Truth in Lending; Home Equity Disclosure Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Z (Truth in Lending) to provide that depository institutions may retain the right to demand payment of a home equity line of credit extended to their own executive officers when required by federal law; and not changing the rules in Regulation Z that set forth the way creditors disclose discounted initial rates and certain payment examples for home equity lines. The rules in question relate to the Home Equity Loan Consumer Protection Act of 1988, which requires creditors to provide consumers with information for open-end credit plans secured by the consumer's dwelling, and places certain substantive limitations on the way in which those lines may be structured. With regard to the amendment, depository institutions that currently include such a provision in their executive officer's contracts will not be affected by this amendment. The approach adopted by the Board for disclosure of the discounted initial rate and certain payment examples has been examined by the U.S. Court of Appeals for the District of Columbia Circuit in recent litigation, and remanded to the Board for further consideration. After such reconsideration and analysis of the comment letters, the Board has decided to retain the existing rules.

EFFECTIVE DATE: July 29, 1992, but compliance optional until October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Home Equity Loan Consumer Protection Act was enacted in November 1988. On January 23, 1989, the Board published for comment a proposed rule to implement the statute (54 FR 3063) and on June 9, 1989, adopted a final rule (54 FR 24670). Compliance with the regulation was mandatory as of November 7, 1989.

On November 1, 1989, Consumers Union filed suit against the Board challenging certain aspects of the regulation.[1] The U.S. District Court for

[1] Among other issues, Consumer Union challenged the provision in the regulation permitting creditors to suspend advances of credit during any period the rate cap is reached. Consumers Union also challenged the part of the regulation permitting creditors to give disclosures about any "repayment" period—that is, when advances are no longer made and the consumer is paying off the amount borrowed—at the time the repayment period begins, rather than at the time of application. In March 1990

Continued

the District of Columbia issued a decision in favor of the Board on several aspects of the lawsuit in May 1990. *Consumers Union* v. *Federal Reserve Board* (736 F. Supp. 337). Consumers Union appealed that decision to the U.S. Court of Appeals for the District of Columbia Circuit. In July 1991, the Court of Appeals issued its opinion, deciding in favor of the Board on four of the issues presented on appeal, and remanding to the Board for further consideration two other issues. *Consumers Union* v. *Federal Reserve Board* (938 F.2d 266). The two issues deal with how creditors disclose a "teaser" or initial discounted rate, and the payment examples that must be provided in the preapplication disclosures. On December 30, 1991, the Board published a proposed rule seeking comment on whether the regulation should be amended (56 FR 67233). The Board also requested comment on a third issue, unrelated to the litigation, concerning the conflict between section 22 of the Federal Reserve Act, which regulates member bank loans to executive officers, and the substantive rules contained in the home equity statute.

The Board received 84 comments on the proposal. Based on a review of the comments and further analysis the Board is revising the regulation relating to credit extended to executive officers, but is leaving unchanged the provisions dealing with discounted rates and the payment examples.

Section 105(d) of the Truth in Lending Act provides that amendments to Regulation Z shall have an effective date of October 1, and must be promulgated at least six months before that date. Thus, in the present case the Board believes an October 1, 1993 effective date is required by the statute.

(2) Amendments to Regulation Z

(i) *Teaser rate provision.* The home equity statute provides that creditors must state any initial "teaser" or discounted rate in the preapplication disclosures. Specifically, the statute states [I]f an initial annual percentage rate is offered which is not based on an index—

(i) A statement of such rate and the period of time such initial rate will be in effect.

In the final regulations implementing the statute, the Board did not require that the exact amount of the discounted rate be stated. Instead, creditors were required to disclose the fact that the initial rate is discounted, state the period of time the rate will be in effect, and alert consumers to "ask about" the current discounted rate. In its briefs to the District Court and the Court of Appeals, the Board stated that the regulation diverged from the statutory language in reliance on the Board's "exception" authority.

The Truth in Lending Act grants the Board broad authority in implementing the statute. Section 105 of the act provides that implementing regulations may contain such classifications, differentiations, or other provisions, and *may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper* to effectuate the purposes of [the Truth in Lending Act], to prevent circumvention or evasion thereof, or to facilitate compliance therewith. (Emphasis added.)

The Court of Appeals noted that the issue of the Board's exception authority had been raised for the first time during the course of the litigation, and had not been passed upon in the first instance by the Board itself. The Court thus remanded this portion of the regulation to the Board, to allow it to identify the scope of its exception authority under the Truth in Lending Act, to decide how broad the "class of transactions" can be that is exempted, and to decide whether an exception was necessary or appropriate in the case of the teaser rate provision.

In December 1991, the Board solicited comment on the teaser rate disclosure and whether the regulation should be amended to require disclosure of the exact teaser rate in the early disclosures. The Board also requested comment on whether an exception is necessary or appropriate in the case of the discounted initial rate disclosure. The Board asked commenters to explain why stating the amount of time any discount is in effect (which is required by the regulation) does not raise the same problems as requiring the amount of the discount to be stated. The Board also solicited comment on whether the use of ranges to state the discount would be desirable.

Of the sixty-seven commenters who discussed the discount issue, fifty-seven stated the Board should not change the rules dealing with initial discounted rates. A number of commenters stated that if creditors were required to state the exact amount of the discount in the early disclosures they might discontinue offering such a feature, due to the need to frequently update forms. Several commenters stated that reprinting disclosures every time a discount changed would impose significant costs, substantially increase the potential for errors in printing and distributing new forms, and raise additional liability risks.

Several commenters noted that in a rapidly changing rate environment creditors would have to update the preprinted forms on a frequent basis, imposing significant printing, administrative, and distribution costs that would be passed on to consumers. Commenters stated that these increased costs greatly outweighed any benefits consumers might derive from receiving the specific discount. Commenters also noted practical problems that would arise if the exact amount of the discount had to be stated. Commenters stated that it could take months to prepare the preprinted disclosures and, if the discount had to be preprinted, the institution might want to change the discount by the time the new forms were ready for distribution.

Ten commenters stated that the Board should change its rule, and require creditors to state the exact amount of the discount in the preapplication disclosures. In general, these commenters felt consumers needed to know the precise amount of the discount at this early stage to be able to accurately compare accounts. These commenters stated that without this figure consumers could not determine which of two (or more) plans offers the better deal.

Based on a review of the comment letters and further analysis the Board is retaining the current rule in the regulation dealing with initial discounted rates. The Board believes the current approach provides the information that is most useful to consumers about discounted rates (that is, the fact that the initial rate is discounted, the temporary nature of the discount, and a reminder to ask for current rates). The Board believes this approach fulfills Congress' intent to ensure that applicants know the most important features of home equity lines, and is an appropriate case for making an adjustment to the statutory provision. The Board believes that requiring creditors to state the exact amount of any initial discounted rate in the preapplication disclosures could cause consumers to suffer adverse consequences.

The Board believes if creditors were required to state the exact amount of the discount, many creditors might eliminate this feature from their plans, thus

the Board published a proposed rule to amend the regulation relating to the rate cap and delayed timing issues. (55 FR 10465, March 21, 1990) In September 1990 the Board adopted a final rule (55 FR 38310, September 18, 1990) (correction notice at 55 FR 39538, September 27, 1990) on these two issues.

reducing choices (particularly lower-cost alternatives) available to consumers. For those that continued to offer discounted plans, the Board believes the costs incurred in complying (which would ultimately be paid by the consumer) would vastly exceed the benefits consumers derive from the disclosure.

The Board notes that the regulation requires creditors to inform consumers that the rate is temporary and the length of time it is in effect with the early preprinted disclosures. In addition, creditors must disclose to consumers the exact amount of any discounted initial rate with other information given prior to consummation, under § 226.6 of the regulation. Finally, lenders have an incentive to let the consumer know the amount of the discount since the purpose of a discounted rate program is to encourage consumers to open a home equity line.

As mentioned earlier, the Board asked commenters to explain why stating the amount of the discount raised a problem when creditors must state the time a discount is in effect. Several commenters stated that providing the time a discount is in effect was not a problem since programs are typically offered for a standard period of time, such as six months or one year. Commenters distinguished this requirement from stating the exact discount since the latter figure could and often did change frequently.

The Board also solicited comment on whether consumers would benefit by having the discount stated as a range. Commenters stated that providing a range for a discount might be more workable for creditors than stating the exact amount of the discount, but would be of little benefit to the consumer, since the consumer would have to contact the creditor anyway to find out the exact amount of the discount. The Board believes this approach would provide limited value to consumers, and is not adopting it.

(ii) *Payment examples issue.* The statute requires three types of payment examples to be provided for home equity plans: (1) An example showing the minimum periodic payment and amount of time needed to repay the line, based on a $10,000 balance and a recent annual percentage rate (the "minimum payment" example); (2) a statement of the minimum periodic payment based on a $10,000 balance when the maximum annual percentage rate is in effect (the "worst case" example); and (3) an historical table, based on a $10,000 extension of credit, showing how annual percentage rates and payments would have been affected by index value changes over the most recent 15 year period (the "historical example"). The statute provides that the worst case example and the historical example must be stated for "each repayment option" under the plan.

In implementing the statute, the Board chose to allow creditors to provide representative examples of the various payment options offered, rather than requiring separate examples for each payment option. (See comments 5b(d)(5)(iii)–(2), 5b(d)(12)(x)–1, and 5b(d)(12)(xi)–7 of the Official Staff Commentary.) Under this rule, no matter how many payment options were offered, creditors would never have to disclose more than three minimum payment examples, three worst case examples, and three historical examples. In its briefs to the District Court and Court of Appeals the Board noted that requiring a worst case example and historical example for every payment option offered would result in "information overload" and would likely lead lenders to reduce the options offered to consumers. The briefs argued that the Board adopted its rule pursuant to its exception authority. Again, the Court of Appeals remanded this issue to the Board because the issue of the Board's exception authority under the Truth in Lending Act had not been developed in the rulemaking record, but was raised only in litigation.

In its December 1991 proposal, the Board solicited comment on whether the payment example rule should be revised to require an example for each payment option. Sixty-four commenters addressed this issue. Sixty of them stated that Board should *not* amend the regulation to require payment examples for all payment options offered. Four commenters stated that the Board should require such examples and argued that consumers needed such information to make informed decisions about home equity plans.

Based on a review of comment letters and further analysis, the Board is retaining the payment example rules as written. The Board believes the approach adopted provides consumers with the information needed to compare accounts. The use of representative examples, when coupled with a complete description of the minimum payment requirements and other disclosures, provides consumers with the most useful information.

The Board believes if creditors were required to provide a 15-year historical example and "worst case" example for every payment option offered, many creditors would eliminate choices of payment plans provided to consumers. A number of commenters stated that they would reduce options available if they had to provide a 15-year historical example, minimum payment example and worst case example for every option, due to the expense, risk of error, and potential liability involved in providing such information. For example, one commenter stated it permits consumers to make payments of interest and a fixed amount of principal—with the consumer deciding how much principal to pay. If this creditor had to provide three payment examples for each option given to the consumer, this could require hundreds of examples.

For those creditors that choose to provide numerous payment choices, the Board believes providing three examples for each option would produce an overwhelming amount of information. Several commenters pointed out this fact. The Board believes in such cases consumers may be overwhelmed with the sheer amount of information, and not read the disclosures, or not read the most important pieces of information, such as the index used to make rate adjustments. Such a result would be antithetical to the Congress' purpose in enacting the law. Therefore, the Board believes this is an appropriate case for the exercise of its authority to make an exception to the statutory requirements.

The Board recognizes that examples, by their nature, cannot capture precisely what a particular consumer's payments under a particular plan will be. The examples are based on an assumed $10,000 extension of credit. Obviously, if a consumer's line of credit is greater than that, the payment examples will not reflect his or her actual payments, regardless of how many examples are provided. Examples are illustrative, and providing a huge number of examples will not necessarily assist consumers in choosing a plan.

The Board also notes that the regulation requires creditors to narratively describe every payment option given to consumers, and this ensures that consumers have a full description of the choices offered. This information describing the payment provisions is given a second time to consumers before they open the plan. (See § 226.6(e)(2).)

(iii) *Use of Exception Authority.* As mentioned earlier, section 105 of the Truth in Lending Act grants the Board broad authority in implementing the statute. The Supreme Court has recognized this broad delegation of authority to the Board. The Court has stated: "[b]ecause of their complexity and variety * * * credit transactions defy exhaustive regulation by a single

statute. Congress therefore delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit."[2]

The Board is using its "exception authority" to address three circumstances: disclosure of information about an initial discounted rate, disclosure of a historical example for payment options, and disclosure of the "worst case" example for payment options. The Board believes these exceptions are necessary and proper to accomplish the purposes of the act and facilitate compliance and fall within the limits on its authority to make exceptions.

The Board believes that, while its authority to make exceptions is broad, the authority does have limits. The Board does not take the view that it is permitted to radically undermine the Congress' purpose in enacting key elements of a statutory scheme, even if the Board strongly disagreed with the wisdom of the Congress' decision. The Board does believe it is authorized to fashion rules that are faithful to the essential purposes of the law and that take account of the needs and capacity of both consumers and creditors.

The home equity statute and implementing regulation require creditors to provide a significant amount of information to consumers about the home equity line offered by the creditor. Depending on the type of features of a specific creditor's plan (such as multiple payment options and variable rate provisions) over 50 facts may be required to be disclosed to consumers (in addition to a 15-year historical example which shows index values, annual percentage rates and payments).

The Board believes that use of its exception authority is warranted in the case of the discount issue for several reasons. First, if the exact discount were required to be disclosed, the Board believes many creditors would stop offering discounted plans. Due to the critical compliance problems—the inability to provide updated rate information with the preprinted disclosures to respond to market and competitive conditions—a result of such a requirement would likely be fewer choices to consumers and, in particular, the loss to consumers of lower rate alternatives. The Board believes some creditors would eliminate this option from their plans due to the increased risk of error and liability. Second, consumers might be misled if they rely on a discounted rate that turned out to be effective for only a short time after the disclosures were provided.[3] If an exact figure were given, a consumer would receive information that is accurate when provided, but the discount could change if the consumer did not apply for the plan soon after receiving the disclosures.[4]

Third, the Board believes the key information the consumer needs is not the initial rate, but the fact that it is only temporary. Placing too much emphasis on the initial rate could diminish the fact that such a rate cannot be relied on for the long term. Finally, costs of complying with such a rule would be significant. Forms might have to be frequently changed at great expense to creditors. For those that continued to offer such plans the Board believes the costs of complying with such rules would greatly exceed any consumer benefits.

With regard to the rule dealing with payment examples, the Board is making an adjustment for two categories of payment options.[5] For that class of transactions that permit payment of a fixed percentage or fixed fraction of the outstanding balance, the Board is not requiring a 15-year historical example and worst case example for every possible payment choice within that category, but just one representative example. Similarly, for that class of transactions that permit payment of, for example, a specified dollar amount plus accrued finance charges, the Board is not requiring a 15-year historical example and worst case example for every possible payment choice within that category.

The Board believes use of its exception authority is warranted in the case of the 15-year historical example and worst case example for several reasons. First, the Board believes that if creditors were required to provide these examples for every payment option offered, the result would be that many lenders would reduce the payment choices provided to consumers. Due to the complexity and costs in complying, and the increased risk of error and liability, many creditors would eliminate choices currently offered to consumers. Second, the Board believes providing a multitude of examples would likely obscure important information, such as the index used for the plan, and for those creditors that choose to continue offering multiple payment options, consumers might not read the voluminous disclosures or might miss the most important terms of the plan. The Board believes providing multiple payment examples, beyond those already required by the regulation, would overload the consumer with information.[6] Third, the Board believes the costs of complying with such a rule would be tremendous and greatly exceed any consumer benefits. This is especially true since the examples are not intended to demonstrate the exact payment that will be made by the consumer under the plan, but rather to provide a general sense of the impact of rate changes on the minimum payments.

(iv) *Home equity lines and executive offices.* The home equity statute provides that a creditor may not terminate and demand payment of a line of credit except in three specified circumstances: Fraud, failure of the consumer to make payments, and action by the consumer that impairs the security for the plan. The regulation implementing this provision provides that a creditor may not include in its contract a provision permitting it to terminate and accelerate the balance due except for these situations. (See § 226.5b(f)(2) and the accompanying Official Staff Commentary.)

Section 22(g) of the Federal Reserve Act establishes rules relating to loans to executive officers by member banks. The law provides that a member bank may extend credit to its own executive officers provided "it is on condition that it shall become due and payable on demand of the bank" any time the person is indebted to any other bank in

[2] *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 559–60 (1980). The Court also noted that: "[t]he concept of 'meaningful disclosure' that animates TILA * * * cannot be applied in the abstract. Meaningful disclosure does not mean more disclosure. Rather, it describes a balance between 'competing consideration of complete disclosure * * * and the need to avoid * * * [information overload].' "*Id.* at 568 (emphasis in original).

[3] While disclosures must be accurate when provided, creditors are not required to guarantee any terms for the plan, as is reflected by the disclosure in § 226.5b(d)(2)(i) concerning terms subject to change.

[4] In this case, consumers would likely have to call the institution to ensure that the rate is still available. Alternatively, an institution could be required to guarantee the rate and include a date identifying how long it is available. Since discounted rates are a function of competitive and other factors, however, it might be very difficult for an institution to accurately predict how long a rate will be made available to the public. This could lead institutions to commit to only a short time period, in order to retain the option of offering a less favorable discount in light of competitive or market conditions. Consumers would derive little benefit from having a discounted rate disclosed if they ultimately had to call institutions to verify the current rate anyway.

[5] The Board is not exempting that class of payment plans that permit payment of only accrued finance charges ("interest-only" transactions).

[6] It is worth noting that the information required by Regulation Z is in addition to information a creditor includes in its contract with the consumer, the deed accompanying the transaction, any state law-mandated disclosures, and other federal disclosures.

an amount in excess of that prescribed by the appropriate federal banking agency. Shortly after the Board considered the current proposal (but prior to publication in the **Federal Register**), the Federal Deposit Insurance Corporation Improvement Act (FDICIA) of 1991 was enacted. Section 306 of FDICIA provides that the provisions in section 22(g) of the Federal Reserve Act apply to savings associations and nonmember insured banks. Thus, member banks, savings associations and nonmember insured banks that extend credit to their executive officers must retain the ability to call the loan in the circumstances set out in section 22(g) of the Federal Reserve Act.[7]

Regulation O (12 CFR part 215), which implements the Federal Reserve Act, provides that a member bank making loans to any of its executive officers shall retain the right to call the loan any time the officer is indebted to any other bank in excess of 2.5% of the member bank's capital and unimpaired surplus or $25,000 (whichever is higher), but in all cases any amount over $100,000.[8] The statute and implementing regulation are intended to limit the risks of insider lending and to implement important safety and soundness policies.

If the home equity statute and section 22(g) of the Federal Reserve Act (and section 306 of FDICIA) were given full effect, they could be read as effectively prohibiting home equity lines by member banks, savings associations and insured nonmember banks to their executive officers. The home equity statute prohibits calling a loan except in the circumstances specifically set forth in the statute. Section 22(g) of the Federal Reserve Act (and section 306 of FDICIA) prohibits member banks, savings associations and insured nonmember banks from making loans to executive officers unless the institutions retain the ability to demand payment of the loan in certain circumstances. The home equity statute does not recognize the condition as a permissible reason to call a line of credit. Thus, if both laws were given full effect, member banks and savings associations could not offer home equity lines to their executive officers.

The Board requested comment on whether the home equity regulation should be amended to permit banks to include a call feature in their contracts for home equity lines for executive officers, and exercise that feature as provided in section 22 of the Federal Reserve Act and implementing Regulation O. Based on a review of the comment letters and further analysis, the Board is modifying the regulation to permit depository institutions to include a demand provision in home equity lines to executive officers, as provided in the Federal Reserve Act and FDICIA. The Board believes that the Congress, in enacting the home equity statute, did not intend to override the provisions in the Federal Reserve Act dealing with demand provisions in loans made to executive officers. This idea is buttressed by the fact that the Congress recently enacted FDICIA which extended the important safety and soundness policies contained in section 22(g) of the Federal Reserve Act to savings associations and insured nonmember banks. There is no suggestion in the legislative history of the home equity statute that the Congress intended to repeal section 22(g) of the Federal Reserve Act and prohibit banks from offering home equity lines to their executive officers. Indeed, enactment of section 306 of the FDICIA supports the idea that the Congress intended for this provision to continue in full force in spite of enactment of the home equity statute.

A number of persons commented on whether the home equity provisions should override the policies contained in section 22(g) of the Federal Reserve Act. All commenters but one believed the policies in the Federal Reserve Act, dealing with safety and soundness, should take precedence over the home equity protections. Those commenters stated that they favored a narrow exception to the home equity rules for executive officers, and that an exception was necessary and appropriate to effectuate the policies of the Federal Reserve Act. The one commenter opposing the Board's action stated that this was an inappropriate action to be taken by the Board, and that the Congress itself should make this determination.

The Board is modifying the home equity rules to provide that member banks, savings institutions and insured nonmember banks can include a provisions in their credit contracts with executive officers granting the right to call a home equity line of credit to the extent required by section 22 of the Federal Reserve Act and section 306 of FDICIA. The final regulation permits, as did the proposal, all depository institutions, and not solely member banks, to use the exception regarding a demand feature. While current federal law (in the Federal Reserve Act and FDICIA) is limited to member banks, savings associations and insured nonmember banks, the Board has used the broader category of depository institutions for ease of reference, and in the event any other federal law or regulation is enacted that requires other institutions to retain the ability to call credit extended to executive officers. The home equity rules will ensure that the same rules apply equally to all depository institutions.

The creation of an exception to the home equity rules accommodates the express terms of section 22(g) of the Federal Reserve Act and section 306 of FDICIA. This approach gives effect to the policies contained in the Federal Reserve Act, and at the same time creates a very limited exception to the home equity statute. The Board also believes its exception authority under the Truth in Lending Act is consistent with this modification of the home equity rules to permit depository institutions to include a demand feature in lines of credit made to executive officers. Without this modification, the Board believes some institutions may not make lines available to their executive officers. By clarifying that institutions may make such lines available to their executive officers, the Board believes it is ensuring some consumers access to such credit, which may not have been offered previously to them.

The regulation reflects the fact that institutions that wish to offer home equity lines to their executive officers must include such a provision in their home equity agreements with those officers. The Board has added specific language to the regulation to expressly require this condition in the credit contract.[9] Of course, an institution may only have a demand feature as broad as that required by the Federal Reserve Act, FDICIA and their implementing regulations in its home equity lines with executive officers. A broader demand

[7] On March 4, 1992, the Federal Deposit Insurance Corporation amended its rules to provide that, with certain exceptions, the rules in Regulation O apply to insured nonmember banks (57 FR 7647). On April 9, 1992, the Office of Thrift Supervision proposed a rule to implement the provision in FDICIA dealing with loans to executive officers of savings associations (57 FR 12232).

[8] Subsequent to publication of the proposal to amend Regulation Z, the Board proposed to amend Regulation O to implement amendments to FDICIA. On May 28, 1992, the Board published a final rule amending Regulation O. (57 FR 22417.) Among other changes, a technical revision was made to § 215.5(d)(4) to clarify that member banks must "in writing" provide for the ability to call a loan to an executive officer.

[9] While Regulation O requires that this provision must be "in writing," in order to implement provisions in the Home Equity Loan Consumer Protection Act that prohibit "unilateral" changes to a home equity plan, the Board believes that institutions must include such a provision in the home equity agreement entered into by the executive officer.

provision is prohibited under Regulation Z.

The Board solicited comment on whether a specific disclosure should be provided to executive officers if the home equity rules were interpreted to permit inclusion of this demand provision. The Board requested comment on whether a contractual provision setting forth this provision would provide adequate information if the provision is not also specifically disclosed in the preapplication disclosures. After reviewing the comment letters and for the reasons set forth below, the Board is requiring only that this provision be in the home equity contract, rather than requiring it to be separately disclosed with the preapplication disclosures.

The vast majority of commenters opposed requiring a separate disclosure referencing this call provision. Commenters stated that including this provision in the contract with the executive officer was sufficient to notify the person of the right of the institution. Commenters also noted that executive officers are already likely to be aware of the limitations contained in Regulation O. The Board believes inclusion of this provision in the contract will notify executive officers of this condition.

Commenters stated that including such a notice on disclosure forms given to all consumers would be very confusing to consumers, since the provision would be inapplicable to the vast majority of consumers. Many commenters also stated that having a separate disclosure form solely for executive officers, or requiring the use of an insert or attachment highlighting this feature would be unnecessary, and would increase the likelihood of error (in distributing the wrong form).

The Board also will be permissive on whether this condition is separately disclosed under § 226.6(e)(1) of the regulation. (Section 226.6(e) generally requires creditors to provide again to consumers many of the preapplication disclosures at the time the account is opened.) The Board believes that the inclusion of this feature in the home equity agreement provides sufficient notice to executive officers of this feature. In addition, since these later disclosures are generally combined with contractual provisions, the Board believes that requiring a specific disclosure of such a feature, in most cases, would not provide the borrower with any additional information. Furthermore, requiring a disclosure under § 226.6(e), but not requiring a disclosure under § 226.5b(d)(4), would likely create a more complicated rule and could increase compliance problems, with little, if any, additional benefit provided to the executive officer.

Commenters requested that the Board address how this call feature relates to the closed-end disclosure rules. Specifically, commenters asked whether a demand disclosure is required under §§ 226.18(i) and 226.19(b)(2)(xi), if a closed-end loan to an executive officer contains a call provision. The Board believes that when an institution has a narrow demand feature in its closed-end credit agreement to the extend required by section 22(g) of the Federal Reserve Act and 306 of FDICIA, institutions should be permitted to provide or not to provide demand disclosures. For consistency and to minimize compliance burdens, the Board believes it is important to treat these features similarly under the disclosure rules for open-end and closed-end credit. Of course, if an institution has a demand feature in its closed-end agreement that is broader than that required by the Federal Reserve Act and FDICIA, such a feature would have to be disclosed under § 226.18(i) and, in the case of variable-rate mortgages, § 226.19(b).

The Board expects to propose technical conforming amendments to the official staff commentary in the fall, under the normal schedule for commentary revisions, reflecting these positions concerning §§ 226.5b(d)(4), 226.6(e)(1), 226.18(i), and 226.19(b)(2)(xi).

(3) Economic Impact Statement

The change to the regulation is likely to have an insignificant impact on creditors' costs, including those of small entities.

(4) Text of Revisions

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending Regulation Z, 12 CFR part 226, by modifying §§ 226.5b(f)(2)(ii) and 226.5b(f)(2)(iii) and by adding § 226.5b(f)(2)(iv).

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set out in the preamble, 12 CFR part 226 is amended as follows:

PART 226—[AMENDED]

1. The authority citation for part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and 1637(c)(5); sec. 1204(c), Competitive Equality Banking Act, 12 U.S.C. 3806.

Subpart B—Open-End Credit

2. 12 CFR 226.5b is amended by revising paragraphs (f)(2)(ii) and (f)(2)(iii), and by adding paragraph (f)(2)(iv) to read as follows:

§ 226.5b Requirements for home equity plans.

* * * * *

(f) * * *

(2) * * *

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance;

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 30, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-18468 Filed 8-5-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 135

[Docket No. 26530, Amendment Nos. 25-76, 121-228 and 135-43]

RIN 2120-AC46

Improved Access to Type III Exits

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: In the May 4, 1992, issue of the Federal Register (57 FR 19220), the FAA published a final rule amending its regulations to require improved access to Type III emergency exits (typically smaller overwing exits) in transport category airplanes with 60 or more passengers. Those changes affect air carriers and commercial operators of transport category airplanes operating under the provisions of part 121 of the Federal Aviation Regulations (FAR) and air taxi and commercial operators of such airplanes under the provisions of part 135 of the FAR. This document corrects an error in that final rule.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, FAA, Regulations Branch (ANM-114), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2114.

SUPPLEMENTARY INFORMATION: As amended, § 121.310(f)(3)(iii) requires part 121 operators to comply with the new standards after December 3, 1992. It was intended that part 135 operators would have to comply at the same time; however, the compliance time was inadvertently omitted from § 135.178(f)(3). In the absence of a specific compliance time, compliance for part 135 operators would be required as of June 3, 1992, the effective date of Amendment 135-43. This document serves to correct that omission.

Correction of the Amendment

In consideration of the foregoing, § 135.178(f)(3) is corrected to read as follows:

§ 135.178 Additional emergency equipment.

* * * * *

(f) * * *

(3) There must be access from the main aisle to each Type III and Type IV exit. The access from the aisle to these exits must not be obstructed by seats, berths, or other protrusions in a manner that would reduce the effectiveness of the exit. In addition, for a transport category airplane type certificated after January 1, 1958, there must be placards installed in accordance with § 25.813(c)(3) of this chapter for each Type III exit after December 3, 1992.

* * * * *

Issued in Renton, Washington, on July 24, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18408 Filed 8-5-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Maximum Lawful Price and Inflation Adjustments Under the Natural Gas Policy Act

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices (MLPs) prescribed under title I of the Natural Gas Policy Act (NGPA) for the months of August, September, October 1992. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the MLPs before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1992.

FOR FURTHER INFORMATION CONTACT: Garry L. Penix, (202) 208-0622.

SUPPLEMENTARY INFORMATION:

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

(Issued July 31, 1992)

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires the Commission to compute and make available maximum lawful prices (MLPs) and inflation adjustments prescribed in title I of the NGPA prior to the month the figures apply to.

Pursuant to this requirement and the authority delegated in § 375.307(c)(1) of the Commission's regulations, the Director of the Office of Pipeline and Producer Regulation is publishing MLPs and inflation adjustment factors for August, September and October 1992. MLPs and inflation adjustment factors for periods before August 1992 are contained in Tables in §§ 271.101 and 271.102 of the Commission's regulations. Table I of § 271.101(a) specifies the MLPs for gas under NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the MLPs for gas under sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors.

The quarterly percentage change in the gross domestic product (GDP) implicit price deflator published on July 30, 1992, was used in computing the MLPs and inflation adjustment factors for August, September and October 1992. The gross national product (GNP) specified in the NGPA wasn't used since the Department of Commerce states the next change in the GNP won't be published until September 1992. When the GNP is published, revised prices and inflation factors for August, September and October 1992 will be published, if necessary.

The Director notes that no changes to the MLPs and inflation adjustment factors for May, June and July 1992, which were computed with the GDP implicit price deflator, are necessary. After the GNP was published, it was found that MLPs and inflation factors for May, June and July 1992, computed using the GNP, were identical to those computed using the GDP.

List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

1. The authority citation for part 271 is revised to read as follows:

Authority: 15 U.S.C. 717-717w; 15 U.S.C. 3301-3432; 42 U.S.C. 7101-7352.

2. Section 271.101(a) is amended by adding the maximum lawful prices for August, September and October 1992, in Tables I and II.

TABLE I.—NATURAL GAS CEILING PRICES

[Other Than NGPA Sections 104 and 106(a)]

Subpart of Part 271	NGPA section	Category of Gas	Maximum lawful price per MMBtu for deliveries in—		
			Aug. 1992	Sept. 1992	Oct. 1992
B	102	New natural gas, certain OCS gas [1]	$6.723	$6.754	$6.785
C	103(b)(1)	New onshore production wells [2]	3.861	3.866	3.871
E	105(b)(3)	Intrastate existing contracts	6.267	6.291	6.315
F	106(b) 1(B)	Alternative Maximum lawful price for certain intra-state rollover gas [3]	2.209	2.212	2.215
G	107(c)(5)	Gas produced from tight formations [4]	7.722	7.732	7.742
H	108	Stripper gas	7.203	7.236	7.269

TABLE I.—NATURAL GAS CEILING PRICES—Continued

[Other Than NGPA Sections 104 and 106(a)]

Subpart of Part 271	NGPA section	Category of Gas	Maximum lawful price per MMBtu for deliveries in—		
			Aug. 1992	Sept. 1992	Oct. 1992
I	109	Not otherwise covered	3.195	3.199	3.203

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section102(c) was deregulated. (See part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price of 200% of the price specified in subpart C of part 271. The incentive ceiling price does not apply to certain gas after May 12, 1990, as a result of Commission Order No. 519-A. (See § 271.703 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a) (SUBPART D, PART 271)

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in—		
	Aug. 1992	Sept. 1992	Oct. 1992
Post-1974 gas: [2]			
All producers	$3.195	$3.199	$3.203
1973-1974 Biennium gas:			
Small producer	2.693	2.697	2.701
Large producer	2.068	2.071	2.074
Interstate rollover gas:			
All Poducers	1.185	1.187	1.189
Replacement contract gas or recompletion gas:			
Small producer	1.517	1.519	1.521
Large producer	1.161	1.163	1.165
Flowing gas:			
Small producer	0.763	0.764	0.765
Large producer	0.647	0.648	0.649
Certain Permian Basin gas:			
Small producer	0.900	0.901	0.902
Large producer	0.800	0.801	0.802
Certain Rocky Mountain gas:			
Small producer	0.900	0.901	0.902
Large producer	0.763	0.764	0.765
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	0.728	0.729	0.730
Other contracts	0.676	0.677	0.678
Minimum rate gas: [1]			
All producers	0.398	0.399	0.400

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[2] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of August, September and October 1992, in Table III.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery	Factor by which price in preceding month is multiplied
August 1992	1.00132
September 1992	1.00132
October 1992	1.00132

[FR Doc. 92-18606 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70 and 75

RIN 1219-AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Delay of effective date of final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is delaying the effective date of the Agency's final rule revising safety standards for ventilation of underground coal mines.

EFFECTIVE DATE: The effective date of August 16, 1992 for the May 15, 1992 final rule is delayed to November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION: On May 15, 1992, MSHA published a final rule (57 FR 20868) to revise its safety standards for ventilation of underground coal mines. The final rule was a comprehensive revision of the existing standards. Due to problems encountered with distribution of the final rule some affected parties did not receive timely notice which has hindered their ability to understand and comply with the rule. MSHA has held 17 informational

meetings across the country to brief the mining public on the provisions of the rule. From these meetings, MSHA has learned that many mine operators have not had time to sufficiently acquaint their managers with the new regulations; this will preclude them from orderly implementation of the rule by August 16. Under these circumstances MSHA's enforcement of the regulations could result in confusion rather than enhanced miner safety. The Agency has also learned that mining equipment manufacturers have not had sufficient notice of revised requirements to adequately adjust their production levels to provide equipment and materials necessary for compliance with the rule by all mines. MSHA has therefore concluded that additional time is needed to ensure that mine operators can effectively plan and implement the necessary changes. Although MSHA has trained its inspectors on the rule, the Agency will use this additional time to better assist the mining community with training their personnel. For these reasons, MSHA is delaying the effective date to November 16, 1992.

In view of the imminence of the deadline and of the circumstances described above, the Agency has determined under section 553(b)(B) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)(B)) that for good cause it would be both impracticable and contrary to the public interest to provide advance notice and an opportunity for public comment on the delay of the rule's effective date. Pursuant to 5 U.S.C. 553(d)(3) and for good cause based upon these same reasons, this action is excepted from the 30-day delayed effective date of the APA.

Dated: July 31, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 92-18622 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 312 and 317

Federal Savings and Loan Associations and Federal Credit Unions as Fiscal Agents of the United States and Agencies for Issue of United States Savings Bonds

AGENCY: Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This document is being published to set forth the changes which would permit Federal credit unions that are in good standing to sell and issue United States Savings Bonds to other than their own members. It has been determined that the granting of unqualified issuing agent status to such Federal credit unions would be in the best interests of the public and place such credit unions in a more equitable competitive position with respect to other financial institutions which serve as savings bond issuing and paying agents.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, WV 26106-1328, (304) 420-6505.

SUPPLEMENTARY INFORMATION: 31 CFR part 312, also referred to as Department of the Treasury Circular No. 568, contains the regulations which permit Federal savings and loan associations and Federal credit unions to act as fiscal agents of the United States. This part is amended by changing the beginning note to permit Federal credit unions in good standing to take applications, forward remittances, and make delivery of United States Savings Bonds for nonmembers as well as members.

31 CFR part 317, also referred to as Department of the Treasury Circular, Public Debt Series No. 4-67, as revised, contains the regulations governing agents authorized to sell and issue Series EE United States Savings Bonds. Section 317.2(a) is amended by adding Federal credit unions in good standing to the list of organizations eligible to apply for qualification and to serve as savings bond issuing agents. There are currently no restrictions on credit unions with respect to redemption of savings bonds. It is, therefore, unnecessary to amend the regulations governing the redemption of savings bonds set forth in 31 CFR part 321, also referred to as Department of the Treasury Circular No. 750, (as revised).

Procedural Requirements

This notice is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

The notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects

31 CFR Part 312

Federal savings and loan associations, Federal credit unions, Government securities.

31 CFR Part 317

Banks and banking, Federal Reserve System, Government securities.

Dated: July 30, 1992.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR parts 312 and 317 are amended as follows:

PART 312—FEDERAL SAVINGS AND LOAN ASSOCIATIONS AND FEDERAL CREDIT UNIONS AS FISCAL AGENTS OF THE UNITED STATES

1. The authority for part 312 continues to read as follows:

Authority: Sec 5(k), 17 48 Stat. 646, 1222; 12 U.S.C. 1464(k), 1767.

2. The beginning note to part 312 is amended by adding a new paragraph at the end to read as follows:

Note: * * *

Pursuant to these same regulations, the Fiscal Assistant Secretary has now designated for employment, as fiscal agents of the United States, for the purpose of taking applications from nonmembers, as well as their own members, and forwarding remittances for, and making delivery of United States Savings Bonds, all Federal credit unions in good standing.

* * * * *

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

1. The authority for part 317 continues to read as follows:

Authority: 31 U.S.C. 3105, 2 U.S.C. 901, 5 U.S.C. 301.

2. Section 317.2 is amended by adding "Federal credit unions in good standing," to the list of organizations described in paragraph (a), after the word "Banks,".

[FR Doc. 92-18446 Filed 8-5-92; 8:45 am]

BILLING CODE 4810-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6941

[UT-942-4214-10; UT-65685]

Withdrawal of Public Land for the Bonneville Salt Flats; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 30,203.56 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the unique geologic, recreational, and visual resources of the Bonneville Salt Flats. An additional 3,200.24 acres of non-Federal land, if acquired by the United States, would also be withdrawn by this order. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4119.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bonneville Salt Flats:

Salt Lake Meridian

T. 1 N., R. 16 W.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, and E½SW¼.
T. 2 N., R. 16 W.,
Sec. 20;
Sec. 21;
Sec. 28;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 33, NW¼.
T. 1 N., R. 17 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 and 2, S½NE¼, and S½;
Sec. 8, E½ and SW¼;
Sec. 9;
Sec. 10;
Sec. 11;
Sec. 12;
Sec. 13, W½;
Sec. 14;
Sec. 15;
Sec. 17;
Sec. 18, lots 3 and 4, E½, and E½SW¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 21;
Sec. 22;
Sec. 23;
Sec. 26, W½;
Sec. 27;
Sec. 28;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 33;
Sec. 34;
Sec. 35, W½.
T. 2 N., R. 17 W.,
Sec. 25;
Sec. 26, SE¼;
Sec. 34, SE¼;
Sec. 35.
T. 1 N., R. 18 W.,
Sec. 24, E½ and SW¼;
Sec. 25;
Sec. 26, E½ and SW¼;
Sec. 34, E½ and SW¼;
Sec. 35.
T. 1 S., R. 17 W.,
Sec. 3, lots 3 and 4, S½NW¼, and SW¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4 inclusive, S½N½, and S½;
Sec. 6 lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 and 2 NE¼, and E½NW¼;
Sec. 8, N½;
Sec. 9, N½.
T. 1 S., R. 18 W.
Sec. 1, lots 1 and 2, E½SW¼NE¼, SE¼NE¼, NE¼SE¼, and E½SE¼SE¼;
Sec. 3, lots 1 to 4 inclusive, SW¼NE¼, W½SE¼NE¼, S½NW¼, NE¼SW¼, W½SW¼, and W½NW¼SE¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, SE½;
Sec. 8;
Sec. 9, N½NE¼, W½SW¼NE¼, NW¼, W½NE¼SW¼, NW¼SW¼, and W½SW¼SW¼.

The area described contains 30,203.56 acres in Tooele County.

2. The following described non-Federal land (3,200.24 acres) is within the exterior boundary of the Bonneville Salt Flats withdrawal made by this order. If the United States subsequently acquires this land, the land will be subject to the terms and conditions of this withdrawal:

Salt Lake Meridian

T. 1 N., R. 17 W.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 16;
Sec. 32.
T. 1 N., R. 18 W.,
Sec. 36.
T. 2 N., R. 17 W.,
Sec. 36.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 30, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-18662 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-DQ-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7544]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of each community's suspension is the third date ("Susp.") listed in the fourth column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction of acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Conversions				
Region I				
Massachusetts: Amesbury, town of Essex County	250075	August 7, 1975, Emerg.; June 18, 1980, Reg.; August 3, 1992, susp.	August 3, 1992	August 3, 1992.
Region II				
New Jersey:				
Fairfield, township of Cumberland County	340168	June 23, 1972, Emerg.; November 19, 1982, Reg.; August 3, 1992, Susp.	August 3, 1992	Do.
Greenwich, township of Cumberland County	340169	September 29, 1975, Emerg.; March 11, 1983, Reg.; August 3, 1992, Susp.	August 3, 1992	Do.
Region III				
Pennsylvania: Butler, township of Schuylkill County	421999	September 15, 1975, Emerg.; November 16, 1990, Reg.; August 3, 1992, Susp.	August 3, 1992	Do.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region VI				
Louisiana: St. Mary Parish, unincorporated areas	220192	April 6, 1973, Emerg.; September 3, 1980, Reg.; August 3, 1992, Susp.	August 3, 1992	Do.
Region II				
New Jersey:				
Hopewell, township of, Cumberland County	340248	February 22, 1974, Emerg.; February 15, 1980, Reg.; August 18, 1992, Susp.	August 18, 1992	August 18, 1992.
Lawrence, township of, Cumberland County	340171	July 21, 1975, Emerg.; November 16, 1982, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
New York: Rutland, town of, Jefferson County	360350	August 11, 1975, Emerg.; June 5, 1985, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Region III				
West Virginia:				
Lewis County, unincorporated areas	540085	January 25, 1977; Emerg.; July 1, 1987, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Weston, city of, Lewis County	540087	November 1, 1974, Emerg.; April 15, 1982, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Pennsylvania: Ambler, borough of, Montgomery County	420947	December 6, 1973, Emerg.; November 2, 1977, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Region IV				
Georgia: Kennesaw, city of Cobb County	130055	July 25, 1975, Emerg.; August 1, 1980, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Tennessee:				
Cocke County, unincorporated areas	470033	March 14, 1978, Emerg.; January 6, 1988, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Newport, city of, Cocke County,	475440	February 12, 1971, Emerg.; September 3, 1971, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Region V				
Minnesota:				
Aitkin County, unincorporated areas	260417	April 28, 1988, Emerg.; July 16, 1990, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Dayton, city of, Hennepin County	270158	September 25, 1973; Emerg.; February 1, 1978, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
McLeod County, unincorporated areas	270616	March 4, 1974, Emerg.; February 4, 1981, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Greenfield, city of, Hennepin County	270673	December 26, 1974, Emerg.; April 15, 1981, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Rockford, city of, Hennepin/Wright Counties	270182	February 5, 1975, Emerg.; November 1, 1979, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Watertown, city of, Carver County	270056	March 14, 1975, Emerg.; November 1, 1978, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Region VI				
Louisiana: Gonzales, City of, Ascension Parish	220015	April 6, 1973, Emerg.; August 16, 1982, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Texas: Galveston County, unincorporated areas	485470	April 8, 1971, Emerg.; April 9, 1971, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.

[1] Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 28, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-18284 Filed 8-5-92; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 64

[Docket No. FEMA-7545]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the forth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federal implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Utah:			
Cleveland, Town of Emery County	490196	June 11, 1992	July 12, 1977.
Reinstatements—Regular Program			
West Virginia:			
Thomas, City of Tucker County	540261	Oct. 16, 1975; Emerg.; Sept. 10, 1984, Reg.; Aug. 15, 1990, Susp.; Dec. 26, 1990, Rein.; June 2, 1992, Susp.; June 17, 1992, Rein.	June 2, 1992.
New York:			
Lenox, Town of Madison County	360404	Aug. 18, 1975, Emerg.; March 18, 1987, Reg.; March 18, 1987, Susp.; June 22, 1992, Rein.	June 3, 1988.
Putnam, Town of Washington County	361236	May 5, 1976, Emerg.; Aug. 19, 1986, Reg.; Aug. 19, 1986, Susp.; June 22, 1992, Rein.	Aug. 19, 1986.
Michigan:			
Portland, Township of Ionia County	260831	Sept. 5, 1975, Emerg.; May 1, 1984, Reg.; June 16, 1992, Susp.; June 19, 1992, Rein.	June 16, 1992.
Pennsylvania:			
Dreher, Township of Wayne County	422164	May 14, 1975, Emerg.; March 4, 1988, Reg.; April 15, 1992, Susp.; June 23, 1992, Rein.	Mar. 4, 1991.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Texas:			
Midland County, Unincorporated Areas	481239	March 8, 1978, Emerg.; Sept. 27, 1991, Reg.; Sept. 27, 1991, Susp.; June 23, 1992, Rein.	Sept. 27, 1991
Tennessee:			
McNairy County, Unincorporated Areas	470127	June 16, 1988, Emerg.; July 1, 1988, Reg.; April 2, 1991, Susp.; June 23, 1992, Rein.	April 2, 1991.
Colorado:			
Las Animas County, Unincorporated Areas	080105	Oct. 15, 1971, Emerg.; Sept. 1, 1977, Reg.; Nov. 2, 1990, Susp.; June 29, 1992, Rein.	April 3, 1984.
Regular Conversions			
Region III:			
West Virginia:			
Davis, Town of Tucker County	540260	June 2, 1992, Suspension withdrawn	June 2, 1992.
Hambleton, Town of Tucker County	540192	do	June 2, 1992.
Hendricks, Town of Tucker County	540193	do	June 2, 1992.
Tucker County, Unincorporated Areas	540191	do	June 2, 1992.
Region VI:			
Louisiana:			
St. Charles Parish, Unincorporated Areas	220160	June 16, 1992, Suspension Withdrawn	June 16, 1992.
Region IX:			
California:			
Fort Bragg, City of Mendocino County	060184	do	June 16, 1992.
Mendocino County, Unincorporated Areas	060183	do	June 16, 1992.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension, Rein.-Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 29, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-18541 Filed 8-5-92; 8:45 am]

BILLING CODE 5718-21-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 272

[Docket No. R-144]

RIN 2133-AA96

Administering Maintenance and Repair Subsidy; Audit Requirements and Procedures

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rulemaking amends the regulations of the Maritime Administration (MARAD) with respect to MARAD's internal procedure for verifying the expenses incurred by subsidized operators receiving maintenance and repair (M&R) subsidy. One amendment relieves the operator from the automatic disallowance of otherwise subsidizable expenses included in a repair summary or supplement that was not submitted in a specified time period to MARAD. The other amendment recognizes that, pursuant to agreement between MARAD and the Inspector General, Department of Transportation, the required audit of an operator's M&R costs shall be performed for MARAD by the Office of Inspector General (OIG).

DATES: This final rule is effective August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Seelinger, Chief, Division of Ship Maintenance and Repair, 400 7th Street, SW., Washington, DC 20590. Tel. (202) 366-5776.

SUPPLEMENTARY INFORMATION: Title VI of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1171, *et seq.*) provides authority to the Secretary of Transportation, acting through the Maritime Subsidy Board of the Maritime Administration, to enter into contracts for the award of ODS to U.S. citizens for the operation of a vessel or vessels which are to be used in an essential service in the foreign commerce of the United States. The purpose of ODS is to compensate the operators of such vessels for excess operating costs associated with documentation of the vessels under the laws of the United States, including crew wage costs and, when appropriate, the cost of M&R not covered by insurance (46 App. U.S.C. 1173). MARAD's regulation at 46 CFR 272.42 provides that MARAD shall audit the operator's M&R costs, as necessary, and shall notify the operator of the audit results.

Section 272.24(a) of the existing regulations requires that the operators of a vessel receiving M&R subsidy submit to the appropriate MARAD regional Ship Operations Office a Subsidy Repair Summary (Form MA-140) not later than 120 days after termination of a single voyage or multiple voyages. Section 272.23(d) provides that if an operator fails to file the repair summary or supplement within this time, any expense included therein shall be ineligible for subsidy unless the operator can prove the delay in filing was due to circumstances beyond the operator's control. The procedures set forth in MARAD's regulations governing the calculation of subsidy rates for liner vessels (46 CFR part 282), beginning with the calendar year 1985, makes use of a relationship of M&R subsidy to wage subsidy for a three-year period commencing five years prior to the year for which the rate is being calculated. For example, approved and audited expenses for the years 1987-89 are used to calculate the 1992 M&R subsidy that the operator receives. The procedure for determining M&R subsidy for bulk vessels (46 CFR part 252) also utilizes a historical period of M&R costs, i.e., the historical period between a subsidized vessel's latest two routine dry dockings prior to the subsidized year.

Under both the liner and bulk procedures, M&R subsidy is determined as a per diem amount payable for subsidized voyage days in the calendar year for which they are applicable. The MA-140 submissions within the 120 day period are no longer necessary to assure the timely payment of subsidy. For this reason, there is no longer a need to disallow claims on the basis of their untimely submission. The provision in 46 CFR 272.23 which provides for the disallowance of claims that are not submitted within 120 days was inadvertently left in the regulation when it was amended in 1990. Accordingly, MARAD is removing this provision. The

existing regulation is inconsistent with the actual audit procedure that was effected by a 1981 agreement between MARAD and the Inspector General, Department of Transportation, and subsequent agreements in 1984, which agreements implement provisions in section 4 of the Inspector General Act (IGA) of 1978, as amended, Pub. L. 92-463 (published at 5 U.S.C. App.). The IGA includes within the duties and responsibilities of each Inspector General an obligation to "conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Department within which his office is established." In 1981, in recognition of these audit responsibilities, the Maritime Administrator and the Inspector General, Department of Transportation, entered into a Memorandum of Agreement, stating that the OIG will perform the necessary audit for MARAD and providing further for the transfer of the MARAD audit function and personnel to the OIG. Further agreements between MARAD and the OIG with respect to audit requirements for various MARAD programs and modifications to MARAD audit policy are reflected in memoranda exchanged in 1984 by the former MARAD Associate Administrator for Policy and Administration and the former Assistant Inspector General for Policy Planning and Resources.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

This rulemaking does not involve any change in important Departmental policies and is considered nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). It announces a policy change to remove a burden on subsidized operators receiving M&R and clarifies responsibilities for performing audits of M&R expenses claimed. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

The amendments to 46 CFR part 272 remove a general statement of policy to relieve an unnecessary burden on subsidized operators receiving M&R subsidy and clarify a matter of agency practice and procedure, namely that the required audit of M&R costs will be performed for MARAD by the OIG and that MARAD will notify the operator of the results of the audit performed by the OIG. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), requirements for notice and opportunity for public comment are not applicable. Since MARAD does not anticipate that publication for comment would result in the receipt of useful information, such publication is not required under DOT Regulatory Policies and Procedures. Because the rule is deregulatory and clarifying in nature, MARAD finds that good cause exists pursuant to 5 U.S.C. 553(d)(C3) for making it effective in publication. This rule is not subject to the requirements of E.O. 12291.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environment Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains reporting requirements that have previously been approved by the Office of Management and Budget (Approval No. 2133-0006). OMB approved the latest changes to the information collection requirements in revised part 221 as contained in the final rule published July 3, 1992, (57 FR 23470). However, the revision of forms referenced in this rule will be submitted to OMB for review and approval. Therefore, use of present Maritime Administration forms will be continued, pending review and approval of the forms, as revised.

List of Subjects in 46 CFR Part 272

Cargo vessels, grant programs.

Accordingly, MARAD hereby amends 46 CFR part 272 as follows:

1. The authority citation for 46 CFR part 272 is revised to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1173, 1176; 49 CFR 1.66.

§ 272.23 [Amended]

2. In § 272.23, paragraph (d) is removed and paragraphs (e) through (t) are redesignated as paragraphs (d) through (s).

3. Section 272.42 is revised to read as follows:

§ 272.42 Audit requirements and procedures.

(a) *Required audit.* In connection with the audit of the Operator's subsidizable expenses, the Office of the Inspector General, Department of Transportation, shall audit for MARAD the Operator's M&R costs, as necessary, for the determination of final subsidy rates. The Operator shall substantiate those costs recorded on the books of account which have been approved by the Administration.

(b) *Notification of audit results.* Upon completion of the audit by the Office of Inspector General, the MARAD Office of Financial Approvals shall notify the Operator of the audit results, including any items disallowed and the reasons for such disallowance.

By Order of the Maritime Administrator.

Dated: July 30, 1992.

James E. Saari,

Secretary.

[FR Doc. 92-18556 Filed 8-5-92; 8:45 am]

BILLING CODE 4910-81-M

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46 CFR Part 298

[Docket No. R-145]

RIN 2133-AA97

Obligation Guarantees

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: Title XI of the Merchant Marine Act, 1936, as amended (Act), authorizes the Secretary of Transportation to provide guarantees of debt (obligation guarantees) issued to finance the construction, reconstruction or reconditioning of vessels built in United States shipyards and owned by citizens of the United States. Applications for obligation guarantees are made to the Maritime

Administration acting under authority delegated by the Secretary to the Maritime Administrator. MARAD is revising in its regulations implementing Title XI of the Merchant Marine Act, 1936, as amended (Act), a requirement for the computation of the Internal Rate of Return (IRR) of an applicant's proposed project by shifting the burden for computation of the IRR from the applicant to MARAD. The existing requirement is contained in a regulation that prescribes the terms, conditions and procedures for applying for and administering Federal ship financing assistance in the form of obligation guarantees. The revised regulation is a result of the review of existing regulations mandated by the President on January 28, 1992. It will streamline procedures for processing applications for assistance under Title XI of the Act and provide substantial paperwork relief to applicants for Title XI obligation guarantees.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mitchell D. Lax, Director Office of Ship Financing, Maritime Administration, Washington, DC 20590, Telephone No. (202) 366-5744.

SUPPLEMENTARY INFORMATION: 46 CFR part 298 implements authority of the Maritime Administrator, as delegated by the Secretary of Transportation, to issue obligation guarantees. Section 298.14 of the existing regulations for obligation guarantees provides that no letter of commitment for an obligation guarantee will be issued by MARAD without a finding that the proposed project will be economically sound. An "obligation guarantee" is a pledge of the full faith and credit of the United States to the payment of the unpaid principal and interest on the guarantee of a note, bond, debenture, or other evidence of indebtedness as defined in the Act. In the presentation to establish economic soundness, applicants are required to provide an IRR of at least ten percent. An IRR analysis is intended to demonstrate the projected profitability of a proposed project, and whether the security for the guarantee will be used economically and efficiently.

The procedures set forth in the rule for calculating the IRR are extensive and complex, and it is MARAD's experience that applicants have found these procedures to be burdensome. The revision of the rule to shift the computation of the IRR to MARAD would provide substantial paperwork relief for Title XI applicants while still requiring them to submit the underlying financial information necessary for MARAD to calculate the IRR as appropriate.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

This rulemaking does not involve any change in important Departmental policies and is considered nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). It eliminates a requirement that an applicant for MARAD financial assistance make a detailed financial computation to be submitted with the application. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

This rulemaking relates to amendment of existing regulations that prescribe conditions and procedures for applying for Federal ship financing assistance in the form of obligation guarantees. Accordingly, it is a matter of agency practice and procedure. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), requirements for notice and opportunity for public comment are not applicable. Since MARAD does not anticipate that publication for comment would result in the receipt of useful information, such publication is also not required under DOT's Regulatory Policies and Procedures. Since the rule relieves an economic burden on applicants it is being made effective on publication for good cause pursuant to 5 U.S.C. 553(d)(3). This rule is not subject to the requirements of E.O. 12291.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environment Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains reporting requirements that have previously been approved by the Office of Management and Budget (Approval No. 2133-0006). OMB approved the latest changes to the information collection requirements in revised part 221 as contained in the final rule published June 3, 1992, (57 FR 23470). However, the revision of forms referenced in this rule will be submitted to OMB for review and approval. Therefore, use of present Maritime Administration forms will be continued, pending review and approval of the forms, as revised.

This rulemaking relates to amendment of existing regulations that prescribe conditions and procedures for applying for Federal ship financing assistance in the form of obligation guarantees.

List of Subjects in 46 CFR Part 298

Banks, Banking, Loan programs—Transportation, Maritime carriers, Mortgages, Mortgage insurance, Uniform system of accounts.

Accordingly, 46 CFR part 298 is amended as follows:

PART 298—[AMENDED]

1. The authority citation for part 298 is revised to read as follows:

Authority: 46 App. U.S.C. 1114(b), 49 CFR 1.66.

§ 298.14 [Amended]

2. Section 298.14 is amended as follows:

(a) In paragraph (b)(3), by substituting a period for the second comma and deleting thereafter the phrase "and in accordance with paragraph (b)(4) of this section."

(b) By removing paragraph (b)(4) in its entirety.

Dated: July 30, 1992.

By order of the Maritime Administrator.

James E. Saast,

Secretary, Maritime Administration.

[FR Doc. 92-18557 Filed 8-5-92; 8:45 am]

BILLING CODE 4410-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-342; RM-6976; FCC 92-335]

Television Broadcasting Services; Ardmore, OK, and Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 12 from Ardmore, Oklahoma to Sherman, Texas, and modifies the license of Station KXII (TV) to reflect Channel 12 at Sherman, as proposed in the Notice of Proposed Rule Making in this proceeding. See 56 FR 63704, December 5, 1991. Channel 12 can be allotted to Sherman, Texas, in compliance with the Commission's minimum distance separation requirements at the current transmitter site for Station KXII (TV). The coordinates for Channel 12 at Sherman, Texas are North Latitude 34-01-58 and West Longitude 96-48-00.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-342, adopted July 17, 1992, and released July 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., Suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Oklahoma, is amended by removing Channel "12-" from Ardmore.

3. Section 73.606(b), the Table of Television Allotments under Texas, is amended by adding Channel "12-" at Sherman.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-18524 Filed 8-5-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 91-322; FCC 92-321]

Private Land Mobile Radio Services; Secondary Fixed Operations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These rule changes relax existing restrictions on secondary fixed signaling and alarm operations by all types of private land mobile radio systems that are licensed for exclusive use. This action is taken to remove an unnecessary regulatory burden on these licensees. These new rules will provide increased capability for licensees of exclusive-use private land mobile radio systems to meet their communication needs.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Rules Branch, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 91-322, FCC 92-321, adopted July 10, 1992, and released July 22, 1992. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452-1422.

Summary of Report and Order

1. 47 CFR 90.235 provides that private radio land mobile licensees authorized under part 90 of the Commission's Rules may conduct secondary fixed signaling and alarm operations above 25 MHz provided certain terms and conditions are met. These provisions, essentially technical, relate primarily to protection of co-channel users from interference on shared channels. In 1986, we amended 47 CFR 90.637(c) to allow trunked Specialized Mobile Radio (SMR) systems and their end users to conduct such operations on a less restricted basis without complying with 47 CFR 90.235. This action was taken because the restrictions had been intended to reduce interference potential to mobile operations in a shared spectrum environment and thus were unnecessary for trunked SMR systems, which operate on exclusive frequency assignments.

2. On October 22, 1991, we adopted a Notice of Proposed Rule Making (Notice) to consider rules relaxing restrictions on secondary fixed signaling and alarm operations by all types of private land mobile radio systems that are licensed for exclusive use. The action we took in 1986 permitting trunked SMR systems to conduct secondary operations without meeting the § 90.235 restrictions formed the basis for the action proposed in the Notice. Trunked SMR systems are not the only private land mobile radio systems that operate in an exclusive-use environment. The same rationale exists for removing the § 90.235 restrictions from other systems operating on exclusive-use assignments. Therefore, we adopt the rules as proposed in the Notice. This will allow additional operations on existing spectrum allocations—clearly an efficient use of the spectrum.

3. To ensure that harmful interference does not occur, we adopt our proposed rules to limit output power to 30 watts and require that an automatic means be available to deactivate remote transmitters in the event the carrier remains on for a period in excess of three minutes. We also adopt rules to preserve the land mobile nature of the part 90 services.

Final Regulatory Flexibility Analysis

Need and purpose of this action:

4. The Commission is adopting this Report and Order to provide increased capability for licensees of exclusive-use private land mobile radio systems to meet their communications needs. The action taken herein will permit licensees of exclusive-use private land mobile radio systems to make greater use of secondary fixed signaling and alarm operations on already licensed spectrum to further address their own communications requirements.

Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

5. No comments addressed our Initial Regulatory Flexibility Analysis.

Significant alternatives considered and rejected:

6. None.

List of Subjects in 47 CFR Part 90

Exclusive-use land mobile systems, Private land mobile radio services, Radio, Secondary fixed signaling and alarm operations.

Amendatory Text

47 CFR part 90, is amended as follows:

1. The authority citation for part 90 is revised to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.235 is amended by adding a new paragraph (l) at the end to read as follows:

§ 90.235 Secondary fixed signaling operations.

* * * * *

(1) Secondary fixed signaling operations conducted in accordance with the provisions of §§ 90.317(a) or 90.637(c) of this part are exempt from the foregoing provisions of this section.

3. A new § 90.317 is added to read as follows:

§ 90.317 Fixed ancillary signaling and data transmissions.

(a) Licensees of systems that have exclusive-use status in their respective geographic areas may engage in fixed ancillary signaling and data transmissions, subject to the following requirements:

(1) All such ancillary operations must be on a secondary, non-interference basis to the primary mobile operation of any other licensee.

(2) The output power at the remote site shall not exceed 30 watts.

(3) Any fixed transmitters will not count toward meeting the mobile loading requirements nor be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system.

(4) Automatic means must be provided to deactivate the remote transmitter in the event the carrier remains on for a period in excess of three minutes.

(5) Operational fixed stations authorized pursuant to the provisions of this paragraph are exempt from the requirements of §§ 90.425 and 90.429.

(6) If the system is licensed on 470–512 MHz conventional frequencies, and exclusivity has been achieved through the aggregate loading of more than a single co-channel licensee, then a licensee must obtain the concurrence of other co-channel licensees prior to commencing such ancillary operations.

(b) Licensees of systems that do not have exclusive-use status in their respective geographic areas may conduct fixed ancillary signaling and data transmissions only in accordance with the provisions of § 90.235 of this part.

4. Section 90.637 is amended by revising paragraph (c) and adding new paragraph (d) to read as follows:

§ 90.637 Restrictions on operational fixed stations.

* * * * *

(c) Trunked and conventional systems that have exclusive-use status in their respective geographic areas may conduct fixed ancillary signaling and data transmissions subject to the following requirements:

(1) All operations must be on a secondary, non-interference basis to the primary mobile operation of any other licensee.

(2) The output power at the remote site must not exceed 30 watts.

(3) Any fixed transmitters will not count toward meeting the mobile loading requirements nor be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system.

(4) Automatic means must be provided to deactivate the remote transmitter in the event the carrier remains on for a period in excess of three minutes.

(5) Operational fixed stations authorized pursuant to the provisions of paragraphs (c) and (d) of this Section are exempt from the requirements of §§ 90.425 and 90.429.

(d) Conventional systems that do not have exclusive-use status in their respective geographic areas may conduct fixed ancillary signaling and data transmissions only in accordance with all the provisions of § 90.235.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-18236 Filed 8-5-92; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 57, No. 152
Thursday, August 6, 1992

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 AGRICULTURE

Agriculture Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO-368-A21, AO-380-A11; DA-92-07]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposed changes in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Federal milk marketing orders. The proposals concern the amendment of the orders: (1) To provide multiple component pricing plans for milk used in Class II and Class III products in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas; (2) To revise the location adjustment for plants in Yakima County, Washington, in the Pacific Northwest order; (3) To amend the delivery requirements for qualification as a supply plant in the Pacific Northwest Order; and (4) To grant the Washington State Department of Corrections dairy plant exempt status under the Pacific Northwest order. The multiple component pricing proposal for the Pacific Northwest order would be on a solids nonfat basis while for the Southwestern Idaho-Eastern Oregon order it would be based on protein.

DATES: The hearing will convene at 9 a.m. on September 9, 1992.

ADDRESSES: The hearing will be held at The Sheraton Portland Airport Hotel, 8235 Northeast Airport Way Portland, Oregon 97220, (503) 281-2500.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at The Sheraton Portland Airport Hotel, 8235 Northeast Airport Way Portland, Oregon 97220, (503) 281-2500 beginning at 9 a.m. local time, on September 9, 1992, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendment to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

TheAct provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

The authority citation for 7 CFR parts 1124 and 1135 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Darigold Farms

Proposal No. 1

Amend the following provisions of the Pacific Northwest order to read as follows:

Section 1124.9 Handler

* * * * *

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for

delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the Market Administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat and nonfat milk solids tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

* * * * *

Add a new § 1124.21 to read as follows:

Section 1124.21 Producer Price Differential

Producer price differential means the price per hundredweight of milk to be paid producers which represents their pro rata share of the Class I, Class II and Class III–A differentials, and other payments and adjustments under the order, computed pursuant to §§ 1124.60 and 1124.61.

Section 1124.30 Reports of Receipts and Utilization

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production) and the amount of nonfat milk solids contained therein.

(ii) Milk received from a cooperative association pursuant to 1124.9(c) and the amount of nonfat milk solids.

* * * * *

(c) * * *

(1) The quantities of skim milk and butterfat received from producers and the amount of nonfat milk solids contained therein;

(2) The utilization of skim milk and butterfat and the amount of nonfat milk solids for which it is the handler pursuant to § 1124.9(b); and

* * * * *

Section 1124.31 Payroll Reports

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat and the pounds of nonfat milk solids contained in such milk, and the number of days on which milk was delivered by such producer in such month;

* * * * *

(b) * * *

(1) The total pounds of milk, butterfat content and nonfat milk solids thereof received from each dairy farmer.

* * * * *

Section 1124.43 General Classification and Accounting Rules

* * * * *

(d) Each person qualified as a handler pursuant to § 1124.9 (a), (b), or (c) shall determine and maintain records of the nonfat milk solids content of milk and fluid milk products received and disposed of as are necessary to submit reports to the Market Administrator pursuant to §§ 1124.30 and 1124.31, and shall retain and make available such records in the same manner as is required for records of butterfat and skim milk pursuant to § 1000.5 of the general provisions included in § 1124.1.

(e) The Market Administrator shall verify or establish the accuracy of data reported for nonfat milk solids pursuant to this part through audit of books and records of handlers, and by such other means as are necessary and commonly employed in the verification of data concerning the receipts and utilization of skim milk and butterfat.

Section 1124.50 Class Prices and Component Prices

* * * * *

(e) Skim milk price. The skim milk price per hundredweight shall be the basic formula price for the month less an amount computed by multiplying the butterfat differential computed pursuant to § 1124.74 by 35.

(f) Butterfat price. The butterfat price per pound shall be the total of: (1) The skim milk value per hundredweight for the month divided by 100; and (2) the butterfat differential for the month, computed pursuant to § 1124.74, multiplied by 10.

(g) Nonfat milk solids price. The price per pound for nonfat milk solids shall be computed by subtracting from the basic formula price, the butterfat price multiplied by 3.5 and dividing the result by the average percentage of nonfat milk solids in all producers for such month.

Section 1124.53 Announcement of Class Prices

* * * * *

(a) The 5th day after the end of each month, the basic formula price and the prices for skim milk and and butterfat computed pursuant to §§ 1124.50(e) and 1124.50(f) respectively; and

(b) The 14th day after the end of each month, the handler nonfat milk solids price computed pursuant to § 1124.50(g).

Section 1124.60 Computation of Handlers Obligation to Producer Differential Pool

Handler's value of milk for computing uniform prices. The Market Administrator shall compute each month for each handler defined in § 1124.9(a) with respect to each of such handler's pool plants and for each handler defined in § 1124.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of milk received from a cooperative association as a handler pursuant to § 1124.9(c) and allocated to Class I pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) and the pounds of producer milk in Class I as determined pursuant to § 1124.44, both multiplied by the difference between the Class I price (adjusted pursuant to § 1124.52) and the Class III price;

(b) The pounds of milk received from a cooperative association as a handler pursuant to § 1124.9(c) and allocated to Class II pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) and the pounds of producer milk in Class II as determined pursuant to § 1124.44, both multiplied by the difference between the Class II price and Class III price;

(c) For producer milk is Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

(d) The value of the product pounds, skim milk and butterfat in overage assigned to each class pursuant to § 1124.44(a)(15) and the value of the corresponding pounds of nonfat milk solids associated with the skim milk subtracted from Class II and Class III pursuant to § 1124.44(a)(15), by multiplying the skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1124.44(a)(15) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to

§ 1124.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) multiplied by the difference between the Class II price and the Class III price, plus the pounds of nonfat milk solids in skim milk subtracted from Class II pursuant to § 1124.44(a)(15) multiplied by the nonfat milk solids price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1124.44(b) multiplied by the butterfat price;

(3) The pounds of nonfat milk solids in skim milk overage subtracted from Class III pursuant to § 1124.44(a)(15) multiplied by the nonfat milk solids price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1124.44(b) multiplied by the butterfat price;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I or Class II pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b), and value of the pounds of nonfat milk solids associated with the skim milk subtracted from Class II pursuant to § 1124.44(a)(10), computed by multiplying the skim milk pounds so subtracted by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the previous month as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b) at the current month's Class II-Class III price difference and the current month's nonfat milk solids and butterfat prices, less the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8) (i) through (iv), and the corresponding step of § 1124.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant and the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8) (v) and (vi) and the corresponding step of § 1124.44(b) applicable at the location of the transferor plant at the current month's Class I-Class III price difference;

(h) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(12) and the corresponding step of § 1124.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal Order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(i) The pounds of skim milk received from a cooperative association as a handler pursuant to § 1124.9(c) and allocated to Class I pursuant to § 1124.44(a)(15), and the pounds of producer milk in CLass I as determined pursuant to § 1124.44, both multiplied by the skim milk price for the month computed pursuant to § 1124.50(e).

(j) The pounds of nonfat milk solids in skim milk in receipts allocated to Class II and Class III pursuant to § 1124.44(a)(15) and producer milk classified as Class II and Class III pursuant to § 1124.44, computed by multiplying the skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month for each report filed separately, the result to be multiplied by the nonfat milk solids price for the month computed pursuant to § 1124.50(g).

Section 1124.61 Computation of Producer Price Differential

For each month the Market Administrator shall compute a "producer price differential" as follows:

(a) The "producer price differential" shall be the result of the following computations:

(1) Combine into one metal:

(i) The value computed pursuant to § 1124.60(a) through (h) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month:

(ii) An amount equal to the total value of the location differentials computed pursuant to § 1124.75;

(iii)An amount equal to not less than one-half of the unobligated balance in the producer settlement fund.

(2) Divide the total value calculated under paragraph (a)(1) of this section by the sum of the following for all handlers:

(i) The total hundredweight of producer milk pursuant to § 1124.13 represented by the value established pursuant to (1)(i) of this paragraph; and

(ii) The total hundredweight for which a value is computed pursuant to § 1124.60(h).

(3) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "producer price differential."

Section 1124.62 Computation of Producer Nonfat Milk Solids Price

The "producer nonfat milk solids price" to be paid to all producers for the pounds of nonfat milk solids contained in their milk shall be computed by the Market Administrator each month as follows:

(1) Combine into one total the values computed pursuant to § 1124.60 (i) and (j) for all handlers who made reports pursuant to § 1124.30 and who made payments pursuant to § 1124.71 for the preceding month:

(2) Divide the resulting amount by the total pounds of nonfat milk solids in producer milk; and

(3) Round to the nearest whole cent. The result is the "producer nonfat milk solids price".

Section 1124.63 Announcement of the Producer Price Differential, Producer Nonfat Milk Solids and an Estimated Uniform Price

The Market Administrator shall announce on or before the 14th day after the end of each month, the following prices for such month:

(a) The producer price differential;

(b) The producer nonfat milk solids price; and

(c) An estimated uniform price per hundredweight of milk computed by adding the producer price differential to the basic formula price.

Section 1124.71 Payment to the Producer Settlement Fund

(a) On or before the sixteenth day after the end of the month each handler shall pay to the Market Administrator the amount, if any, by which its obligation specified in paragraph (a)(1) of this section exceeds the amount specified for such handler in paragraph (a)(2) of this section;

(1) The sum of:

(i) The total obligation of the handler for such month as determined pursuant to § 1124.60; and

(ii) for a cooperative association handler, the amount due from other handlers pursuant to § 1124.73(d).

(2) The sum of:

(i) The value of milk received by such handler from producers at the applicable prices pursuant to § 1124.73(a)(2) (i), (ii), and (iii).

(ii) The amount to be paid by such handler to cooperative associations pursuant to § 1124.73(d); and

(iii) The value at the producer price differential adjusted for the location of the plant(s) at which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed for such handler pursuant to § 1124.60(g); and

* * * * *

Section 1124.73 Payments to Producers and to Cooperative Associations.

(a) Each handler shall make payment to each producer for producer milk received from such producer as provided in subparagraphs (1), (2), and (3) hereof or paragraph (b) of this section:

(1) On or before the last day of the month to each producer who did not discontinue shipping milk to such handler before the eighteenth day of the month, not less than the Class III price for the preceding month per hundredweight of milk received from the producer during the first fifteen days of the month, subject to adjustment for proper deductions authorized in writing by the producer; and

(2) On or before the nineteenth day after the end of each month for such milk received from the producer during the month an amount computed as follows:

(i) The butterfat price for the month multiplied by the total pounds of butterfat in milk received from the producer; plus

(ii) The nonfat milk solids price for the month multiplied by the total pounds of nonfat milk solids in the milk received from the producer; plus

(iii) The total hundredweight of milk received from the producer multiplied by the producer price differential for the month as adjusted pursuant to § 1124.75(a); less

(iv) Payments made to the producer pursuant to paragraph (a)(1) of this section; less

(v) Proper deductions authorized in writing by the producer; and less

(vi) Any deduction required pursuant to statute.

(3) If by the date specified in paragraph (a)(2) hereof a handler has not received full payment from the Market Administrator pursuant to § 1124.72, the payments to producers required in such paragraph may be reduced uniformly as a percentage of the amount due each producer by a total sum not in excess of the remainder due from the Market Administrator and the handler shall pay the balance due producers on or before the date for making payments pursuant to such paragraph next following receipt of the full payment for the Market Administrator.

(b) The payments required in paragraph (a) of this section shall upon the request of a cooperative association qualified under § 1124.18 be made to the association or its duly authorized agent for milk received from each producer who has given such association authorization by contract or other written instrument to collect the proceeds from the sale of producer's milk. All payments required pursuant to this paragraph shall be made on or before the second day prior to the dates specified for such payment in paragraph (a)(2) of this section.

(c) Each handler shall pay to each cooperative association which operates a pool plant or its duly authorized agent for butterfat and nonfat milk solids received from such plant in the form of fluid milk products:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section for butterfat and nonfat milk solids received during the first fifteen days of the month at not less than the butterfat and nonfat milk solids prices respectively for the preceding month; and

(2) On or before the fifteenth day after the end of such month an amount of money determined in accordance with computations made on the same basis as those specified in § 1124.73(a)(2) (i) through (iii), minus any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler qualified pursuant to § 1124.9(a) that received milk for which a cooperative association was the handler pursuant to § 1124.9(c) shall pay the cooperative association for such milk:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section for milk received during the first fifteen days of the month at not less than the Class III price for the preceding month; and

(2) On or before the seventeenth day after the end of each month of milk received during the month an amount of money determined for such milk in accordance with the computations specified in § 1124.73(a)(2) (i) through (iii), minus any payment made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler shall provide each producer, on or before the 19th day of each month with a supporting statement for producer milk received from the producer during the previous month in such form that it may be retained by the producer, which shall show:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer, the pounds of butterfat and nonfat milk solids contained therein and, unless previously provided, the pounds of milk in each delivery;

(3) The minimum rates at which payment to the producer is required under the provisions of this section;

(4) The rate and amount of any premiums or of payments made in excess of the minimums required under this order;

(5) The amount or rate of each deduction claimed by the handler, together with an explanation of each such deduction; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler shall, upon request provide the cooperative association, with respect to each producer for whom such payment is made, any or all of the information specified in paragraph (f) of this section.

Section 1124.75 Plant Location Adjustments for Producers and on Nonpool Milk

* * * * *

(c) For purposes of the computations pursuant to § § 1124.71(a) 1124.72, the producer price differential for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted producer price differential shall not be less than zero.

Section 1124.76 Payments by a Handler Operating a Partially Regulated Distributing Plant

Amend § 1124.76 by changing the term "uniform price" to read "estimated uniform price" wherever contained therein.

Proposed by Darigold Farms and Western Dairymen Cooperative, Inc.

Proposal No. 2

Amend the following provisions of the Southwestern Idaho-Eastern Oregon order to read as follows:

Section 1135.9 Handler

* * * * *

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk on the basis of weights determined from its measurement at the farm and butterfat and protein tests determined from farm bulk tank samples;

* * * * *

Add a new § 1135.21 to read as follows:

Section 1135.21 Producer Price Differential

Producer price differential means the price per hundredweight of milk to be paid producers which represents their prorata share of the Class I and Class II differentials and other payments and adjustments under the order computed pursuant to §§ 1135.60 and 1135.61.

In § 1135.30, paragraphs (b) and (d) are redesignated as paragraphs (d) and (e) and the introductory text and paragraphs (a) through (c) are added to read as follows:

Section 1135.30 Reports of Receipts and Utilization

On or before the ninth day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator the following information for such month as follows:

(a) Each handler qualified pursuant to § 1135.9(a) shall report for each pool plant operated by the handler the quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk received at such plants or diverted by the handler to other plants and the protein content of such milk;

(2) Producer milk received at such plants from handlers qualified pursuant to § 1135.9 (c) and (d) and the protein content of such milk; and

(3) Fluid milk products and bulk fluid cream products from other pool plants and other source milk received at such plants, and the quantities of skim milk contained in or represented by such products;

(b) Each handler qualified pursuant to § 1135.9(b), (c) or (d) shall report the quantities of producer milk received and the butterfat and protein thereof.

(c) Each handler submitting reports pursuant to paragraphs (a) and (b) hereof shall report the utilization or disposition of all milk, filled milk and milk products required to be reported, and inventories on hand at the beginning and end of each month in the form of the fluid milk products specified in § 1135.40(b)(1).

Section 1135.31 Payroll Reports

(a) on or before the 22nd day after the end of the month, each handler described in § 1135.9(a), (b), (c) and (d), shall report to the market administrator in the detail prescribed by the market administrator the following information showing for each producer for such month;

(1) * * *

(2) * * *

(3) * * *

(4) The average butterfat and protein content of his/her milk;

* * * * *

Section 1135.43 General Classification and Accounting Rules

* * * * *

(d) Each person qualified as a handler pursuant to § 1135.9 (a), (b), (c), or (d) shall determine and maintain records of the protein content of milk and fluid milk products received and disposed of as are necessary to submit reports to the market administrator pursuant to §§ 1135.30 and 1135.31, and shall retain and make available such records in the same manner as is required for records of butterfat and skim milk pursuant to § 1000.5 of the general provisions included in § 1135.1.

(e) The market administrator shall verify or establish the accuracy of the data reported for milk protein pursuant to this part through audit of the books and records of handlers, and by such other means as are necessary and commonly employed in the verification of data concerning the receipts and utilization of skim milk and butterfat.

Section 1135.50 Class Prices

* * * * *

(d) Skim milk price. The skim milk price per hundredweight shall be the basic formula price for the month less an amount computed by multiplying the butterfat differential computed pursuant to § 1135.74 to 35.

(e) Butterfat price. The butterfat price per pound shall be the total of: (1) the skim milk value per hundredweight for the month divided by 100: and (2) the butterfat differential for the month, computed pursuant to section 1135.74 multiplied by 10.

(f) Handler protein price. The price per pound for protein shall be computed by subtracting from the basic formula price, the butterfat price multiplied by 3.5 and dividing the result by the average percentage of protein in all producer for such month.

Section 1135.53 Announcement of Class and Component Prices

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the Class II price for the following month;

(c) The 5th day after the end of each month, the basic formula price and the prices for skim milk and butterfat computed pursuant to § 1135.50 (d) and (e) respectively; and

(d) The 14th day after the end of each month the handler protein price computed pursuant to § 1135.50(f) for such month.

Section 1135.60 Computation of Handlers' Obligations to Producer Price Differential Pool

For the purpose of computing the producer price differential the market administrator shall compute each month a differential value for each handler for each of the handler's pool plants and for each handler qualified pursuant to § 1135.9 (b), (c), or (d) by combining the amounts computed as follows:

(a) Multiply the hundredweight of producer milk assigned to Class I milk pursuant to § 1135.44(c), plus any overage assigned to that Class pursuant to § 1135.44(a)(14) and the corresponding step of § 1135.44(b) by the difference between the Class I price, and the basic formula price;

(b) Multiply the hundredweight of producer milk assigned to Class II milk pursuant to § 1135.44(c), plus any overage assigned to that Class pursuant to § 1135.44(a)(14) and the corresponding step of § 1135.44(b) by the difference between the Class II price and the basic formula price;

(c) Multiply the total pounds of butterfat assigned to overage pursuant to § 1135.44(b)(14) by the butterfat price;

(d) Combine the amounts computed with respect to skim milk overages computed pursuant to § 1135.44(a)(14) as follows:

(i) Multiply the hundredweight of skim milk overage assigned to Class I by the skim milk price; and

(ii) Multiply the hundredweight of skim milk overage assigned to Class II and Class III by the average protein content of the skim milk remaining after § 1135.44(a)(14), and multiply the resulting figure by the handler protein price.

(e) Multiply the difference between the basic formula price for the preceding month and the Class I price, or the Class II price for the current month, by the hundredweight of skim milk and butterfat subtracted respectively from Class I and Class II pursuant to § 1135.44(a)(9) and the corresponding step of § 1135.44(b);

(f) Multiply the difference between the Class I price and the basic formula price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7) (i) through (iv) and the corresponding step of § 1135.44(b), after excluding receipts of bulk fluid cream products from an other order plant;

(g) Multiply the difference between the Class I price and the basic formula price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7) (v) and (vi) and the corresponding step of § 1135.44(b);

(h) Multiply the difference between the Class I price and the basic formula price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and the corresponding step of § 1135.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from unregulated supply plants to the extent an equivalent quantity of skim milk and butterfat disposed of to any such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(i) Multiply the skim milk price by the hundredweight of skim milk assigned to Class I milk pursuant to § 1135.44(a); and

(j) Multiply the handler protein price by the pounds of protein in producer skim milk assigned to Class II and Class III milk pursuant to § 1135.44(a), to be computed by multiplying the hundredweight of skim milk so assigned by the average percentage of protein in all producer skim milk received by the handler during the month.

Section 1135.61 Computation of Producer Price Differential

For each month the market administrator shall compute a producer price differential value for all milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 (a) through (h) for all handlers who filed reports pursuant to § 1135.30 for the month, and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum of the following for all handlers in these computations:

(1) The total hundredweight of their producer milk receipts;

(2) The total hundredweight for which values were computed pursuant to § 1135.60(h); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk included under paragraph (c) of this section. The result shall be the "producer price differential".

Section 1135.62 Computation of Producer Protein Price

For each month the market administrator shall compute the producer protein price per pound to be paid producers for protein in milk marketed as producer milk as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 (i) and (j) for all handlers who made reports pursuant to § 1135.30 and who made payments pursuant to § 1135.71 for the preceding month:

(b) Divide the amount computed pursuant to paragraph (a) hereof by the total pounds or protein contained in the producer milk of the handlers on which the computations are based; and

(c) Round to the nearest whole cent. The result shall be the "Producer protein price".

Section 1135.63 Announcement of the Producer Price Differential, the Producer Protein Price and an Estimated Uniform Price

The market administrator shall announce on or before the 14th day after the end of each month the following prices for such month:

(a) The producer price differential;

(b) The producer protein price; and

(c) An estimated uniform price per hundredweight of milk computed by adding the producer price differential to the basic formula price.

Section 1135.71 Payment to the Producer-Settlement Fund

On or before the 16th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the amount as specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total differential value computed for the handler pursuant to § 1135.60.

(b) The sum of:

(1) The value computed by multiplying the producer price differential by the hundredweight of producer milk received from handlers qualified pursuant to § 1135.9(c) and from producers during the month;

(2) The value computed for the protein contained in the producer milk included under (1) hereof at the producer protein price; and

(3) The value at the producer price differential of the hundredweight of skim milk and butterfat for which a value is computed pursuant to § 1135.60(h).

Section 1135.72 Payments From the Producer-Settlement Fund

On or before the 18th day after the end of the month the market administrator shall pay to each handler the amount, if any, by which the amount computed for such handler pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If at such time the balance in the producer-settlement fund is insufficient to make all the market administrator payments pursuant to this section, the market administrator shall reduce uniformly such payment and shall complete such payment as soon as the necessary funds become available.

Section 1135.73 Payments to Producers and to Cooperative Associations

* * * * *

(b) On or before the 19th day after the end of each month each handler shall pay to each producer from whom producer milk was received during the month for such milk a sum computed as follows:

(1) The butterfat price for the month multiplied by the total pounds of butterfat in such milk; less

(2) The producer protein price for the month multiplied by the total pounds of protein in such milk; plus

(3) The producer price differential for the month multiplied by the hundredweight of such milk; less

(4) Payments made to the producer pursuant to paragraph (a) of this section; less

(5) Deductions for marketing services pursuant to § 1135.86; and less

(6) Other proper deductions authorized in writing by such producer.

* * * * *

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 19th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraphs (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) The total pounds of milk received from the producer and the pounds of butterfat and protein contained therein;

(1) * * *

(2) * * *

(3) The minimum rates at which payment is required pursuant to this section;

(4) The rates used in making payment, if such rates are other than the required applicable minimums;

(5) The amount (or rate per hundredweight) of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with an explanation of each deduction; and

(6) The net amount of the payment to the producer.

Section 1135.76 Payments by a Handler Operating a Partially Regulated Distributing Plant

Amend § 1135.76 by changing the term "uniform price" to read "estimated uniform price" wherever contained therein.

Proposed by Darigold Farms

Proposal No. 3

Amend the following provisions of the Pacific Northwest order to read as follows:

Section 1124.52 Plant Location Adjustments for Handlers

(a) * * *

(1) * * *

(2) Zone 2 shall include the Washington counties of Whatcom and Yakima.

(3) * * *

(4) Zone 4 shall include:

(i) The Idaho counties of Lewis and Nez Perce;

(ii) The Oregon counties of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Morrow, Sherman, Umatilla, Wallowa, Wasco and Wheeler;

(iii) The Washington counties of Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Franklin, Garfield, Grant, Jefferson, Kittitas, Klickitat, Okanogan, San Juan and Walla Walla.

* * * * *

Proposed by Tillamook County Creamery Association

Proposal No. 4

Amend the following provision of the Pacific Northwest order to read as follows:

Section 1124.7 Pool Plant

* * * * *

(b) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; Provided, That:

* * * * *

Proposed by Washington State Department of Corrections

Proposal No. 5

Amend the following provisions of the Pacific Northwest order to read as follows:

Section 1124.8 Nonpool Plant

* * * * *

(e) Exempt distributing plant means:

(1) A plant, other than a pool supply plant or a regulated plant under another Federal order that meets all the requirements for status as a pool plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed an average of 300 pounds daily. For purposes of this paragraph, route disposition shall not include receipts from a transferor-plant pursuant to the proviso of § 1124.3(a); or

(2) A plant owned and operated by a State institution or establishment which processes or packages fluid milk products.

Section 1124.10 Producer-Handler

Producer-handler means a person, other than a State institution or establishment, who is engaged in the production of milk and also operates a plant from which during the month an average of more than 300 pounds daily of fluid milk products, except filled milk is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 6

Make such changes as may be necessary to make the entire marketing agreements and orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator, Jerry L. Colburn, USDA—AMS—Dairy Division, 16 West Harrison Street, Seattle, WA 98119, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Division, Agricultural Marketing Service (Washington office only)

Office of the Market Administrator, Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: July 31, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92-18614 Filed 8-5-92; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 270, and 274

[Release Nos. 33-6948, 34-30967, IC-18869, File No. S7-27-92]

RIN 3235-AF50

Periodic Repurchases by Closed-End Management Investment Companies; Redemptions by Open-End Management Investment Companies and Registered Separate Accounts at Periodic Intervals or With Extended Payment

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules, amendments to rules, and requests for comment.

SUMMARY: The Commission is proposing for public comment new rules and amendments to rules under the Investment Company Act of 1940 (the "Act") to provide that closed-end management investment companies may repurchase their common stock at periodic intervals at net asset value, and that open-end management investment companies and certain insurance company separate accounts may take up to thirty-one days to pay redemption proceeds; the thirty-one day redemption period would begin with the date of tender for open-end funds making rolling redemptions ("extended payment funds"), and with specified redemption deadlines for open-end funds redeeming at periodic intervals ("interval funds") (collectively, extended payment funds and interval funds are referred to as "limited redemption funds"). The Commission also is proposing for public comment a rule and amendments to certain rules under the Securities Exchange Act of 1934 that apply to repurchases by closed-end companies.

The proposals would permit investment companies to offer shareholders intermediate degrees of liquidity that are not currently available to shareholders of closed-end and open-end companies. The proposed rules are intended to facilitate greater investment in less liquid securities than is permitted for open-end companies, including venture capital investments, securities issued by small businesses, and less liquid securities issued by foreign issuers, and to permit insurance companies to use investment vehicles that are more consistent with the long-term nature of variable insurance contracts.

DATES: Comments must be received on or before November 4, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Stop 6-9, Washington, DC 20549. All comment letters should refer to File No. S7-27-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert G. Bagnall, Special Counsel, (202) 272-3042, or Karen L. Skidmore, Assistant Director, (202) 272-2048, Office of Regulatory Policy; Courtney S. Thornton, Attorney, (202) 272-2107, Office of Disclosure and Investment Adviser Regulation (for disclosure issues); or Patrice M. Pitts, Attorney, (202) 272-3040, Office of Insurance Products and Legal Compliance (for registered separate account issues); Division of Investment Management; David Hebner, Branch Chief, (202) 272-2880, Office of Legal Policy and Trading Practices, Division of Market Regulation (for questions about rules 10b-6, 10b-13, and 13e-4); Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rules 22e-3, 23c-3, and 27c-2 under the Investment Company Act of 1940 (15 U.S.C. § 80a) (the "Act"). Proposed rules 22e-3 and 23c-3 would implement the recommendations made in the recently issued report by the Division of Investment Management ("Division"), Protecting Investors: A Half Century of Investment Company Regulation,[1] in Chapter 11, *Repurchases and Redemptions of Investment Company Shares.* Proposed rule 27c-2 would permit registered separate accounts to rely on proposed rule 22e-3. The Commission also is proposing amendments to rules 0-1(e) (17 CFR 270.0-1(e)) and 22c-1 (17 CFR 270.22c-1). In addition, the Commission is proposing amendments to rules 10b-6 (17 CFR 240.10b-6) and 13e-4 (17 CFR 240.13e-4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78*ll*) (the "Exchange Act") to provide exemptions from those rules for repurchases pursuant to rule 23c-3, and new rule 14e-6 [2] thereunder, which would exempt closed-end periodic repurchases pursuant to new rule 23c-3 from rules 14e-1, and 14e-2 (17 CFR 240.14e-1 and .14e-2). The Commission also is publishing for comment draft Guidelines to Forms N-1A, N-2, N-3, and N-4 under the Act (17 CFR 274.11A, 11a-1, 11b, and 11c).

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[1] Division of Investment Management, SEC, *Repurchases and Redemptions of Investment Company Shares,* Protecting Investors: A Half Century of Investment Company Regulation (1992) (hereinafter the Protecting Investors report). This report concluded a two-year examination of the regulation of investment companies and certain other pooled vehicles. The Repurchases and Redemptions chapter discusses the Division's recommendations in greater detail. Many of the Division's recommendations were based on suggestions made by commenters responding to a Commission release requesting comment on the regulation of investment companies. Request for Comment on Reform of the Regulation of Investment Companies, Investment Company Act Release No. 17534 (June 15, 1990); 55 FR 25322 (hereinafter Study Release).

[2] This rule would be numbered 14e-6, rather than 14e-5, because the Division of Market Regulation already is preparing for Commission consideration a new rule 14e-5. *See* Regulatory Flexibility Agenda and Rules Scheduled for Review, Securities Act Release No. 6935 (Apr. 24, 1992), 57 FR 18421, 18427.

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Executive Summary

The rules and rule amendments proposed in this release would create intermediate procedures for the repurchase and redemption of investment companies shares that lie between the traditional practices of closed-end and open-end companies. Proposed rule 23c-3 would provide for periodic repurchases from closed-end fund shareholders at net asset value. Proposed rule 22e-3 would permit open-end funds to effect redemptions on a more limited basis than permitted under section 22(e) of the Act.[3] Rule 22c-1 [4] would be amended to refer to the special redemption provisions of proposed rule 22e-3.

Proposed rule 23c-3 would permit closed-end management investment companies to make periodic repurchase offers to shareholders at net asset value. Funds could make such offers every three, six, twelve, twenty-four or thirty-six months. The rule would require funds making such offers to send shareholders a notification containing specified information at least twenty business days in advance of each periodic deadline for submitting repurchase requests; funds would not be required to send such a notification if they adopted a fundamental policy of making all repurchase offers for the same amount of shares. Funds must pay repurchase proceeds using the net asset value on the next business day after a repurchase deadline and must make payment within seven days after the deadline. The dates of those deadlines and the frequency of such offers must be matters of fundamental policy, changeable only by shareholder vote.

Proposed rule 14e-6 and the proposed amendment to Exchange Act rule 13e-4 [5] would exempt periodic repurchases under rule 23c-3 from certain tender offer provisions, including the filing requirements of rule 13e-4. Another proposed amendment would exempt such repurchases from rule 10b-6,[6] which generally prohibits persons involved in a securities distribution from bidding for or purchasing those shares and certain related securities until after their participation in the distribution is complete.

Section 22(e) provides, subject to certain exceptions, that registered open-end companies may not suspend the right of redemption, and must pay redemption proceeds within seven days. Rule 22c-1 requires open-end companies to compute net asset value daily and requires shares to be redeemed "at a price based on the current net asset value of such securities which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security".

Proposed rule 22e-3 would provide an exemption from the prohibition in section 22(e) of the Act on suspending the right of redemption of redeemable securities or postponing the payment of redemption proceeds for more than seven days after the tender of securities for redemption. Open-end management investment companies and certain insurance company separate accounts would be able to take up to thirty-one days to pay redemption proceeds; the thirty-one day redemption period would begin with the date of tender for open-end funds making rolling redemptions ("extended payment funds"), and with specified redemption deadlines for open-end funds redeeming at periodic intervals ("interval funds"). Certain corresponding changes to the rules governing registered separate accounts would permit the use of rule 22e-3 by registered separate accounts, whether organized as open-end management companies or as unit investment trusts.

In addition, the Commission is publishing for comment new Guidelines to Forms N-1A, N-2, N-3, and N-4. These guides would indicate to registrants where specific disclosure may be needed concerning the proposed repurchase and redemption procedures.

I. Background

A. Differences Between Resales of Shares of Open-End and Closed-End Companies

Traditionally, shareholders of open-end and closed-end management investment companies have disposed of their shares in different ways, although open-end and closed-end management investment companies are subject to many of the same provisions under the Investment Company Act. These differences have resulted from both the legal distinctions between the two categories of management company and from differences in historical practice.

The key legal distinction is that section 5(a) of the Investment Company Act defines an open-end company as a management company that issues or has outstanding any "redeemable security." [7] All other management companies are closed-end. A redeemable security entitles the holder to receive, upon presentation to the issuer, the holder's approximate proportionate share of the issuer's current net assets, or the cash such share represents.[8] Open-end and closed-end companies are subject to many of the same core provisions of the Act,[9] but because open-end shareholders have redemption rights and closed-end shareholders do not, there are some significant differences in the regulatory treatment of open-end and closed-end companies.

Foremost among those differences is how shareholders of open-end and closed-end companies may dispose of their shares. Shareholders of open-end companies are entitled to redeem their shares from the issuer at net asset value, while closed-end shares usually are traded in secondary markets, either on exchanges or over the counter. Open-end shares are not traded in secondary markets.[10]

[3] 15 U.S.C. 80a-22(e).

[4] 17 CFR 270.22c-1.

[5] 17 CFR 240.13e-4.

[6] 17 CFR 240.10b-6.

[7] 15 U.S.C. 80a-5(a).

[8] Investment Company Act section 2(a)(32), 15 U.S.C. 80a-2(a)(32), defines a redeemable security as:

> any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

[9] Those provisions include the prohibitions on affiliated transactions in section 17, requirements for a written advisory contract approved by shareholders in section 15, requirements attending the composition and operations of the board of directors in sections 10 and 16, and the anti-pyramiding and investment restrictions in section 12(d). 15 U.S.C. 80a-17, -15, -10, -16, -12(d).

[10] This difference stems from section 22(d) of the Act, which in effect fixes the prices at which

Continued

In practice, open-end and closed-end companies also have sold or "distributed" their shares quite differently. Because shareholders may decide to redeem their shares at any time, open-end companies generally offer and sell new shares to the public on a continuous basis to replenish the monies withdrawn. Closed-end companies generally do not offer their shares to the public on a continuous basis; instead, they typically engage in traditional underwritten offerings of a fixed number of shares. These differences in the distribution and resale practices of open-end and closed-end investment companies predated the Investment Company Act and were codified in sections 22 and 23,[11] which added certain requirements to curb abuses that the Commission had observed in its study that predated the Act.[12]

Section 22 regulates the pricing, distribution, and redemption of open-end company securities. Paragraph (c) of section 22 gives the Commission broad power to regulate the pricing of redeemable securities, including the power to prescribe by rule methods for computing the price a shareholder will receive upon redemption.[13] Rule 22c-1 makes backward pricing illegal for open-end companies by instituting a requirement of "forward pricing" based on a daily computation of net asset value.[14] This provision is intended to prevent dilution and assure that prices bear an appropriate relation to the current net asset value of the shares.[15]

Paragraph (e) provides that registered open-end companies may not suspend the right of redemption, and must pay redemption proceeds within seven days. That subsection provides exceptions for certain emergencies or for such periods as the Commission may by order permit.

The limitations in section 22(e) were enacted in response to abusive practices of early open-end companies that claimed that their securities were redeemable, but then instituted barriers to redemption. Redemptions typically were suspended because a company was redeeming more shares than it was selling and wanted to stop net redemptions from further diminishing assets and decreasing management fees; some companies apparently suspended redemptions to prevent shareholders from switching into other funds.[16] Companies often suspended redemptions based on provisions contained in charter documents that shareholders never saw and that never were disclosed to investors.[17] Even if there could be no suspension without a shareholder vote, management typically controlled the proxy machinery and could persuade shareholders to vote for suspension by offering a plausible explanation of why suspension was necessary.[18]

Section 23 imposes requirements on the pricing, sale, and repurchase of shares of closed-end investment companies. These differ from the requirements that section 22 imposes on comparable activities by open-end companies. With respect to repurchases, section 23(c) limits a closed-end company's repurchase of its shares to purchases (1) on a national securities exchange or other market designated by the Commission (after written notice to all shareholders); (2) pursuant to tenders open to all security holders; or (3) in such other circumstances as the Commission permits by rule or order. Under section 23(c)(1), closed-end companies may purchase their shares on a securities exchange and such other open markets as the Commission by rule designates, provided that the company has notified stockholders of its intention within the preceding six months (if such securities are stock). Rule 23c-1 permits purchases on other open markets subject to a number of additional provisions designed to protect shareholders.[19] Rule 23c-2 permits closed-end companies to call or redeem securities according to their terms, under certain conditions.[20]

Offers to repurchases shares made to shareholders pursuant to section 23(c)(2) have been viewed as issuer tender offers and currently must comply with the requirements of the tender offer rules under the Securities Exchange Act,[21] including rules 13e-4 [22] and 14e-1.[23] To the extent that a closed-end company making a repurchase offer is also engaged in an offering of its shares, it must obtain relief from rule 10b-6 under the Exchange Act, which generally prohibits participants in a distribution from contemporaneously buying securities of the class being distributed unless it ceases the offering.

The requirements of section 23(c) addressed abuses during the 1920's and 1930's in extensive repurchase operations by closed-end companies.[24] Before the crash of 1929, it was not unusual for sponsors of closed-end companies to instigate market repurchases for the purpose of influencing the market to aid in the distribution of new shares.[25] Such repurchases also could enhance the value of the sponsors' own holdings.[26]

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redeemable securities, including open-end shares, are sold. 15 U.S.C. 80a-22(d). The result is a system of retail price maintenance that precludes dealers from making a secondary market in open-end shares. For a detailed discussion of the effects of this system of retail price maintenance on mutual fund distribution, see Protecting Investors, supra note 1, Chapter 8. The Commission has, however, granted an exemption from section 22(d) to permit exchange trading of a redeemable security. *See* SuperTrust Trust for Capital Market Fund, Inc. Shares, Investment Company Act Release Nos. 17613 (Jul. 25, 1990), 55 FR 31281 (Notice of Application) and 17809 (Oct. 19, 1990), 47 SEC Docket 1098 (Order).

[11] 15 U.S.C. 80a-22, -23.

[12] SEC, Investment Trusts and Investment Companies, pt. 3, H.R. Doc. No. 279, 76th Cong., 1st Sess. (1939) at 954 (hereinafter Investment Trust Study, pt. 3).

[13] Section 22(c) gives the Commission powers similar to those given to registered securities associations under sections 22(a) and (b) in connection with the promulgation of rules governing member activities with respect to the pricing and distribution of redeemable securities. Section 22(c) specifically provides that Commission rules preempt any conflicting rules adopted by securities associations.

[14] 17 CFR § 270.22c-1. Specifically, rule 22c-1 provides that open-end securities may not be sold, redeemed, or repurchased "except at a price based on the current net asset value of such securities which is *next computed after receipt* of a tender of such security for redemption or of an order to purchase or sell such security" *(emphasis added)*.

[15] See Adoption of Rule 22c-1 under the Investment Company Act of 1940 and Amendment of Rule 17a-3(a)(7) under the Securities Exchange Act of 1934, Investment Company Act Release No. 5519 (Oct. 16, 1968), 33 FR 16331.

[16] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 291-92 (1940) (statement of David Schenker, Chief Counsel, SEC Investment Trust Study).

[17] *See id.* at 291.

[18] *See id.* at 292.

[19] 17 CFR 270.23c-1. Among other things, the rule generally requires that purchases of junior shares not disturb the asset coverage requirements of section 18 (discussed *infra*), that purchases not be from affiliated persons of the issuer, and that purchases be made at a price not exceeding the lower of the market value, if any, or the net asset value of the security at the time of purchase.

[20] 17 CFR 270.23c-2. Rule 23c-2(a) generally permits a registered closed-end company to call or redeem its shares in accordance with the terms of such securities or the company's charter; this rule has been interpreted as permitting calls and redemptions solely at the issuer's option and without any choice on the part of the shareholder. Dimensional Fund Advisors, Inc. (pub. avail. Nov. 21, 1988).

[21] Securities Exchange Act of 1934, 15 U.S.C. 78a-78ll.

[22] 17 CFR 240.13e-4.

[23] 17 CFR 240.14e-1.

[24] Investment Trust Study, pt. 3, *supra* note 12, at 954. From 1927 through 1935, closed-end companies and their affiliated holding companies repurchased a net amount of $472 million of their securities, or about 12% of the securities issued and sold by closed-end companies during that period. *Id.* at 953-54.

[25] *Id.* at 956-57.

[26] *Id.* at 960-61.

After the crash, as the price of closed-end shares fell to a discount from net asset value, repurchases at a discount became a source of book profits for closed-end companies. Selling shareholders had no way of knowing the extent of the discount because closed-end companies did not disclose the net asset value of their shares.[27] In addition, because some companies made purchases on the open market without informing investors, investors could not determine the extent to which the market was being driven by the company's management.[28]

Other abuses occurred. Some closed-end companies would repurchase securities from insiders in private purchases, sometimes at a premium or in blocks that could not have been sold at the prevailing market price because of the size of the purchase.[29] Some companies would repurchase from certain shareholders to establish control or remove opposition to management.[30]

Because open-end securities are redeemable, and closed-end are not, section 18 of the Act (15 U.S.C. 80a–18) limits the use of leverage by closed-end and open-end investment companies in different ways. Closed-end companies may borrow from banks and private sources and may issue one class of senior debt, subject to a 300% asset coverage requirement, and also may issue one class of preferred stock, subject to a 200% asset coverage requirement.[31] Among other restrictions, a leveraged closed-end company may not pay dividends or other distributions, or purchase any of its capital stock, unless the prescribed asset coverage will be in place after the transaction. Provision also must be made to give senior security holders certain rights if the asset coverage falls below the prescribed amounts.[32] Because shareholders of open-end companies can redeem their shares, any senior securities of open-end companies would be vulnerable to insufficient asset coverage in the event of net redemptions. Accordingly, open-end companies have much less freedom to use leverage. They may not issue preferred stock or senior debt, except that they may borrow from banks, maintaining a minimum of 300% asset coverage for all amounts borrowed.[33]

The difference in redeemability also leads to different requirements for the liquidity of open-end and closed-end company assets. Because open-end companies must redeem their shares at any time and pay redemption proceeds within seven days, their portfolios should contain enough readily marketable securities to enable them to raise sufficient cash to meet redemptions in a timely manner.[34] Accordingly, the Commission has stated that open-end companies should maintain a high degree of liquidity by holding at least eighty-five percent of their assets in assets that can be sold in seven days at approximately the price used in determining net asset value (the "seven day standard").[35] This requirement should permit portfolio securities to be sold and the proceeds used to meet redemptions in a timely manner. Closed-end companies are not subject to a liquidity standard.

Various assets have been viewed as illiquid under the seven day standard. The Commission has stated that privately placed or other restricted securities are illiquid.[36] Securities offered pursuant to rule 144A under the Securities Act, however, might satisfy the standard, depending on various factors.[37] In addition, investment company registrants have been cautioned that some high yield securities might be illiquid,[38] as may be municipal lease securities, depending on certain factors relating to the market for such assets.[39] Many foreign securities may be considered illiquid because of the thinness of their market; in addition, securities transactions in foreign countries may be subject to slower settlement procedures than those in the United States, or currency restrictions may limit a fund's ability to convert cash into United States dollars.[40] Other assets that do not satisfy the open-end liquidity standard might include loans and loan participation interests;[41] certain warrants and options; certain instruments or transactions not maturing in seven days or less, including certain repurchase agreements; and venture capital or small business investments. Because the liquidity of a security is related to the accuracy of its valuation by an investment company,[42] an open-

[27] *Id.* at 966–67.

[28] *Id.*

[29] *Id.* at 977–78. Repurchases at a premium to market price were particularly troublesome because they diluted the company's assets for the benefit of the insider seller.

[30] *Id.* at 997.

[31] Paragraph (h) of section 18 defines asset coverage. For example, a closed-end company with $100 million in assets and no other outstanding indebtedness may issue senior debt of up to $50 million. The ratio of the total assets after the borrowings ($150 million) to the amount of debt outstanding ($50 million) would be 300%. The same company also may issue preferred stock having a liquidation preference of $50 million. The ratio of the total assets of the company after the issuance ($200 million) to the aggregate of borrowings and preferred stock ($100 million) would be 200%.

[32] Investment Company Act section 18(a).

[33] Investment Company Act section 18(f)(1).

[34] Even before the passage of the Investment Company Act, open-end companies invested predominantly in highly liquid, exchange listed securities. Investment Trust Study, pt. 3, *supra* note 12, at 807.

[35] *See* Guide 4 to Form N–1A, Revision of Guidelines to Form N–1A, Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828. *See also* Interpretative Releases Relating to the Investment Company Act of 1940 and Rules and Regulations Thereunder: Restricted Securities, Investment Company Act Release No. 5847 (Oct. 21, 1969), 35 FR 19989 (interpretive release regarding investment by investment companies in restricted securities); Resale of Restricted Securities: Changes to Methods of Determining Holding Period of Restricted Securities under Rules 144 and 145, Securities Act Release No. 6862 (Apr. 23, 1990), 55 FR 17933 (adopting rule 144A).

[36] *See* Inv. Co. Act Rel. 5847, *supra* note 35.

[37] *See* Sec. Act Rel. 6862, *supra* note 35. The Commission stated that the board of directors of a fund "should consider the unregistered nature of a Rule 144A security as one of the factors that it evaluates in determining whether or not a security is illiquid." *Id.* 55 FR at 17940. The Commission also cited the following factors as relevant, although not necessarily conclusive in determining whether a rule 144A security is liquid:

(1) The frequency of trades and quotes for the security; (2) the number of dealers willing to purchase or sell the security and the number of other potential purchasers; (3) dealer undertakings to make a market in the security; and (4) the nature of the marketplace trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

Id.

[38] Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants at 4–5 (Oct. 3, 1989).

[39] *See* Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Catherine L. Heron, Vice President, Investment Company Institute (June 21, 1991), recognizing that in certain circumstances municipal lease obligations may be viewed as liquid. Factors relevant to determining the liquidity and value of municipal lease obligations include the factors cited by the Commission as appropriate to consider in evaluating the liquidity of rule 144A securities (*see supra* note 37), as well as certain factors specifically relevant to municipal lease securities. Previously the Division had viewed municipal lease securities as always being illiquid. *See* Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants at 5 (Jan. 11, 1990) (the Division considered municipal lease securities to be illiquid because of the inefficiency and thinness of the market in which they are traded).

[40] *See* Sec. Act Rel. 6862, *supra* note 35, 55 FR 17940 n.60.

[41] Christopher Donnelly, *Financial Alchemy*, Investment Dealers' Dig., June 3, 1991, 18 (discussing lack of liquidity of loan participation market).

[42] The definition of "value" in section 2(a)(41) of the Act in effect requires valuations of a fund's portfolio assets to be based upon market quotations when such quotations are readily available. 15 U.S.C. 80a–2(a)(41). When market quotations are not readily available, portfolio securities must be valued at "fair value as determined in good faith by the board of directors." Market quotations typically are not available for many less liquid securities.

end company that does not satisfy the seven day standard may violate the pricing requirements of section 22(c) and rule 22c-1.[43]

B. Recent Developments

Some recent developments have indicated that investors may not be able to satisfy their investment objectives with the traditional procedures for redeeming open-end shares and reselling closed-end shares. The requirements that open-end companies pay redemption proceeds within seven days and have a correspondingly liquid portfolio prevent the offering of open-end companies that invest substantially in assets not satisfying the applicable liquidity standard.

Such companies must instead register as closed-end funds. For example, so-called "country funds" [44] often hold a large percentage of securities that are thinly traded or are considered to be illiquid for other reasons. One reason may be that the size of the fund is relatively large in relation to the overall capitalization of an emerging market and significant in proportion to the daily trading volume.

Closed-end companies may be perceived as offering certain advantages over open-end companies in portfolio management. While open-end companies may need to maintain a certain amount of cash or highly liquid investments to meet daily redemptions, closed-end companies may keep their assets fully invested according to their investment objectives.[45] The absence of the need to meet constant redemptions and the ability to be fully invested also allow closed-end companies to control portfolio turnover and transaction expenses. Because closed-end companies may use a greater degree of leverage than open-end companies, they may provide investors with the opportunity for greater returns (as well as greater risks).[46]

Closed-end funds, however, attract much less investment than open-end funds.[47] In part, this lack of interest may be due to the lack of established procedures for reselling shares to a fund, and to the recurring tendency of closed-end shares to trade at a discount to net asset value. In general, discounts appear shortly after initial public offerings and affect all types of publicly traded closed-end companies, although to varying degrees.[48] Commentators have advanced several theories to explain closed-end discounts, but no definitive consensus has emerged.[49]

Sponsors have considered and tried various techniques for responding to discounts or attempting to forestall them. Some companies borrow cash equal to the underwriting discount paid to brokers and invest that amount in the company. The theory behind this practice is that discounts result from the initial deduction of the underwriter's spread (or sales load) from the investors' initial investment.[50] Some companies offer dividend reinvestment plans, under which the company reinvests shareholder dividends and distributions in additional shares. Other companies engage in rights offerings, which are strictly limited by the Act.[51] While these practices appear to counteract the tendency toward discounts, dilution occurs when shareholders exercise rights or purchase new shares at prices less than net asset value. This eventually may cause a corresponding downward adjustment in market prices.

One method of ending discounts is to convert from closed-end to open-end status, but this approach has significant drawbacks.[52] Even the potential for elimination of discounts upon conversion can affect a closed-end company. Discounts attract arbitrageurs who gamble on swings in the discount and "raiders" or others who attempt to take over the company, sometimes forcing proxy contests to cause a company to convert from closed-end to open-end status.[53] Some potential targets have adopted supermajority voting provisions that make it nearly impossible for conversions to succeed.[54] In addition, to pre-empt the threat of forced takeovers, sponsors have organized closed-end companies that automatically will seek to convert to open-end status under certain circumstances, or after a fixed period of

[43] During 1991, the Commission brought two cases against funds that invested primarily in municipal leases, which were relatively illiquid; the Commission alleged that the illiquidity of these funds' portfolio assets caused the funds to compute net asset value improperly and in one case to fail to pay redemptions within seven days as required by section 22(e). *SEC v. Alpine Mutual Fund Trust*, Litigation Release No. 13101 (Nov. 21, 1991) (consent order against mutual fund and other defendants; complaint alleged, *inter alia*, that defendants had failed to compute net asset value accurately, had failed to redeem shares within seven days after tender); *SEC v. Municipal Lease Securities Fund, Inc.*, Litigation Release No. 12938 (Aug. 8, 1991) (consent order against investment adviser and other defendants; complaint alleged, *inter alia*, that defendants had sold and redeemed shares of fund at prices not based on net asset value, had falsely stated in documents filed with the Commission that prices were based on net asset value).

[44] Some of these companies invest in a number of countries; others invest only in a particular geographical region or in a single country.

[45] *See, e.g.*, Study Release, *supra* note 1. *See also* Letter from General American Investors Company, Inc. to Jonathan G. Katz, Secretary, SEC 4 (Oct. 3, 1990), File No. S7-11-90; and Letter from Baker, Fentress & Company to Jonathan G. Katz, Secretary, SEC 2 (Oct. 9, 1990), File No. S7-11-90.

[46] Many, if not most, closed-end companies do not issue significant amounts of senior securities, however. Currently, the issuance of senior securities is most common among closed-end bond funds, particularly municipal bond funds. Edward A. Wyatt, *On Borrowed Time? Leveraged Funds' Promise—and Perils*, Barron's, Nov. 11, 1991, at M16. Some investors may view these senior securities as a higher income alternative to investing in a tax-exempt money market fund. *See* James E. Lebherz, *Mutual Funds' Preferred Shares Offer an Alternative to Investors*, Wash. Post, Aug. 25, 1991, at H10.

[47] As of the end of 1991, closed-end funds had total assets of $72.76 billion. Lipper Analytical Securities Corp., Lipper Closed-End Performance Analysis Service, Jan. 31, 1992, at 44. Open-end assets at the end of 1991 were approximately $1.3 trillion. Investment Company Institute News Release, ICI-92-03 (Jan. 29, 1992).

[48] A 1989 study by the Commission's Office of Economic Analysis of the post-offering price performance of closed-end companies found that, on average, closed-end companies lost significant value during the first 120 trading days following their initial public offerings. After twenty-four weeks, the average discount for closed-end United States equity funds was 10.019%. For closed-end foreign stock funds, the discount was 11.424%. The average discount for closed-end bond funds was much lower, only 0.012%. *See* Office of Economic Analysis, SEC, The Post-Offering Price Performance of Closed-end Funds (July 21, 1989) (hereinafter The Post-Offering Price Performance of Closed-end Funds).

[49] *See Protecting Investors, supra* note 1, at 435-38.

[50] Proposed revisions to Form N-2, the registration form used by closed-end companies, would re-label underwriting discount as "sales load" in the net proceeds table on the cover of the prospectus and the per share table to increase investors' understanding of this charge. Registration Form for Closed-end Management Investment Companies, Investment Company Act Release No. 17091 (July 28, 1989), 54 FR 32993 (proposed amendments to Form N-2 and guidelines).

[51] Under section 23, closed-end companies may issue warrants or rights at less than net asset value only as provided by section 18(d), which requires that warrants and rights be issued exclusively to existing shareholders and expire within 120 days of their issuance.

[52] Those drawbacks may include changes in investment strategy, expenses, capital structure, pricing, and distribution as well as the complications of adopting redemption procedures.

[53] Section 13(a)(1) of the Act requires a majority of a company's outstanding voting securities to authorize a change in subclassification from closed-end to open-end. 15 U.S.C. 80a-13(a)(1). Upon conversion to open-end status, all shareholders may redeem shares at net asset value. Thus, raiders would instantly realize any profit on the difference between the discount prices they paid for the closed-end shares and the net asset value they are entitled to receive for the open-end shares. *See, e.g.*, Carole Gould, *Hunting the Closed-End Conversion*, N.Y. Times, Aug. 26, 1990, at 18F; Richard Phalon, *Duck Shoot*, Forbes, Sept. 3, 1990 at 165.

[54] A typical supermajority voting provision requires at least a two-thirds (but usually not over three-fourths) vote in favor of conversion. *See* Mary Joan Hoene, *Closed End Funds—Discount and Takeover Issues*, 1990 Mutual Funds and Investment Management Conference at IX-95.

time.[55] While these provisions are intended primarily as anti-takeover tactics, they may minimize discounts, particularly as a shareholder vote approaches.[56]

Certain closed-end companies have avoided discounts entirely while still remaining closed-end by making periodic tender offers at net asset value under section 23(c)(2). With one exception, these companies' shares have not been traded in secondary markets,[57] and the companies have provided shareholder liquidity solely through quarterly tender offers. The first closed-end companies to use this procedure were five loan participation or "prime rate" funds.[58] These funds registered as closed-end companies but adopted much of the traditional practices of open-end companies, offering shares continuously and providing the sole source of liquidity for their shareholders. As of December 31, 1991, the loan participation funds had total assets of almost $6 billion and accounted for approximately eight percent of the total assets held by closed-end companies.[59] By the end of 1991, two other closed-end companies had followed the lead of the loan participation funds and indicated that they periodically would consider making tender offers to their shareholders.[60]

Although issuer tender offers and redemptions by open-end companies both are effected at net asset value, tender offers differ from redemptions in several ways. Tender offers generally are made for finite amounts of shares and, if more shares are tendered than the company is prepared to buy, the company is required only to accept them on a pro rata basis. A company also is not obligated to make a tender offer.[61]

Closed-end company repurchase offers also are subject to a number of restrictions. Because of the requirements applicable to issuer tender offers, direct repurchase offers have been a relatively cumbersome and limited way for closed-end companies to provide for shareholder liquidity. They involve costs such as producing offering materials, notifying shareholders, and paying registration and filing fees. Open-end companies are not subject to similar requirements when redeeming their shares.

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Accordingly, in order to provide investors with greater investment flexibility and the option to invest in less liquid securities, including venture capital and small business securities, the Commission is proposing new rules and rule changes to provide shareholders an intermediate degree of liquidity between the traditional open-end and closed-end procedures. Thus, the Commission is proposing new rule 23c–3, which would provide a safe harbor for closed-end funds to make periodic repurchases of their shares at net asset value; the funds would set the terms of each offer, including the amount of shares to be repurchased. The Commission also is proposing new rule 22e–3, which would provide an exemption from the prohibition in section 22(e) against taking longer than seven days to pay redemption proceeds for open-end funds using one of two procedures prescribed in the rule: *interval funds* would redeem shares at periodic intervals and could take up to one month (thirty-one days) after specified periodic deadlines to pay redemptions; *extended payment funds* could take up to one month to pay redemptions after receiving a redemption request. The Commission also is proposing new rules and rule changes to allow registered separate accounts funding variable insurance contracts to rely on proposed rule 22e–3. Because variable insurance contracts are long-term contracts, they are well suited for investing in funds with less liquid portfolios and more limited redemption procedures than are currently permitted under the Act.

Previously, the Commission has granted exemptions from section 22(e),[62] and a small number of closed-end funds have made periodic repurchase offers using the issuer tender offer rules under the Exchange Act. Nevertheless, these proposals explore largely uncharted territory in the regulation and operation of investment companies. The Commission recognizes that these proposals would introduce complexity by permitting the creation of what might be viewed as three new types of investment company. Accordingly, as noted below periodically, the Commission requests comment on all aspects of these proposals.

II. Proposed Rules and Revisions to Rules to Provide for Periodic Repurchases by Closed-End Funds

The current regulation of repurchases under the rules for issuer tender offers

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[55] The conversion is contingent, of course, on obtaining the necessary shareholder approval required by section 13(a) of the Act. The shareholder vote usually may take place only several years after the fund's inception, and may hinge on a specific level of discount appearing or continuing for a specified period of time. *See, e.g., id.* at IX–98.

[56] *See* Greggory A. Brauer, *'Open-Ending' Closed-End Funds*, 13 J. Fin. Econ. 491, 506–07 (1984) (examining the effect on secondary market prices of closed-end companies' announcements of proposed conversions to open-end status). *But see The Post-Offering Price Performance of Closed-End Funds, supra note* 48, at 18–19, 36 (an examination of a sample of 64 closed-end companies 24 weeks after their initial public offering showed that there was a statistically insignificant difference in the discount or premium between companies with anti-takeover provisions and those without, and that the results did not change when the sample was broken down by type of fund).

[57] As a condition to relief from rule 10b–6 under the Exchange Act (17 CFR 240.10b–6), closed-end companies that intend to make such repurchases and continue to sell their shares may not list their shares on a securities exchange or have their shares quoted on the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). *See, e.g.*, Pilgrim Prime Rate Trust (Aug. 23, 1988).

[58] The five registrants are Allstate Prime Income Trust, Eaton Vance Prime Rate Reserves, Merrill Lynch Prime Fund, Pilgrim Prime Rate Trust, and Van Kampen Merritt Prime Rate Income Trust. These companies, first introduced in 1988, invest primarily in illiquid assets consisting of interests in senior, secured corporate loans that have floating interest rates. The interest rates float or reset at a margin above a generally recognized base lending rate such as the prime rate quoted by a designated United States bank, the London InterBank Offered Rate, the average secondary market rate for large certificates of deposit, or other base lending rates used by commercial lenders.

[59] Lipper Analytical Securities Corp., Lipper Closed-End Performance Analysis Service, Jan. 31, 1992, at 44 (assets of $5.80 billion out of total closed-end fund assets of $72.78 billion). *Cf.* Randall W. Forsyth, *Not Necessarily Prime Time, Barron's*, Oct. 21, 1991, at 47 (indicating that investors had tendered their shares at significant levels beginning in mid–1991 as interest rates dropped).

[60] The two are Merrill Lynch High Income Municipal Bond Fund, Inc., and Emerging Markets Growth Fund, Inc. The latter, however, has not made a tender offer since January, 1991.

[61] The Division has stated that committing in advance to make periodic tender offers might result in directors breaching their fiduciary duties to shareholders, since investors could not be certain when or if their shares would actually be repurchased by the company. *See* Guide 2 to proposed amendments to Form N–2, Inv. Co. Act Rel. 17091, *supra* note 50. Accordingly, these companies' prospectuses represent that each quarter the board of directors will consider whether to make a tender offer for outstanding shares but caution that tender offers may not take place every quarter.

[62] The Commission has previously granted exemptions from section 22(e) to permit issuers investing in less liquid securities to pay redemption proceeds on an intermittent basis or in longer than seven days. *See, e.g.*, American Federation of Labor and Congress of Industrial Organizations Mortgage Investment Trust, Investment Company Act Release Nos. 10650 (Mar. 30, 1979) (Notice of Application), 44 FR 21094, and 10674 (Apr. 26, 1979) (Order) (redemptions only during period preceding quarterly valuation dates of commingled trust fund investing in loans to union built housing); Mutual Investment Fund of Connecticut, Inc., Investment Company Act Release Nos. 2457 (Dec. 12, 1956) (Notice of Application), and 2465 (Dec. 31, 1956) (Order) (investment fund for Connecticut savings banks might limit redemptions on any one day, and by-laws provided for seven business days to pay redemptions); Savings Bank Investment Fund, 24 S.E.C. 531 (1946) (Order) (mutual investment fund for Massachusetts savings banks invested in mortgages and other assets and might take ten days to pay redemption requests).

involves requirements that were not designed with periodic repurchases by closed-end funds in mind and that create certain complexities that may be unnecessary. Moreover, although those rules have permitted repurchase offers at net asset value, the rules do not require such repurchases to be made at net asset value.

Proposed rule 23c-3 and the accompanying proposed Exchange Act rule changes would simplify direct repurchase offers by closed-end funds [63] and would give shareholders a mechanism for bypassing any discount in secondary market trading. By providing a safe harbor for periodic repurchases at net asset value under a fundamental policy that is clearly disclosed, rule 23c-3 would give shareholders of closed-end funds greater certainty that repurchases would occur.[64] It would no longer be necessary for directors to determine *whether* each offer would take place, or for funds to caution that there can be no assurance that offers will take place. The Commission requests comment whether rule 23c-3 should also apply to closed-end fund repurchases that are not made on a periodic basis as a matter of fundamental policy.

Closed-end funds relying on rule 23c-3 (in contrast to the traditional practice of most closed-end funds) probably would need to sell shares continuously in order to counter the effect of periodic repurchases on the size of the portfolio. These funds also may elect not to seek a secondary market for their shares and may provide the sole source of shareholder liquidity through the repurchase process. As proposed, however, rule 23c-3 does not prohibit closed-end funds relying on the rule from having their shares listed on an exchange or quoted on a system such as NASDAQ.

The proposed revisions to the tender offer rules would exempt rule 23c-3 repurchase offers from certain tender offer requirements; instead of providing detailed disclosure pursuant to Schedule 13E-4 and paying the associated filing fees, with certain exceptions closed-end funds would send shareholders a brief notification stating key information about each repurchase offer. The proposed amendment to Exchange Act rule 10b-6 would exempt closed-end fund repurchase offers relying on rule 23c-3 from rule 10b-6 because closed-end fund repurchases relying on rule 23c-3 would not involve the harms that rule 10b-6 is designed to address.

Rule 23c-3 would establish certain general requirements for the terms of closed-end repurchase offers at periodic intervals, including safeguards to protect the interests of shareholders. In addition, it would require closed-end funds relying on the rule to comply with limitations on senior securities similar to those that apply to open-end funds, to maintain a sufficiently liquid portfolio to meet their repurchase obligations, and to have a majority of independent directors, who would be self-nominating.

A. Terms of Repurchase Offers

Rule 23c-3 would permit a closed-end fund to repurchase its securities through periodic repurchase offers to all security holders [65] pursuant to a fundamental policy specifying the terms of the fund's repurchase offers. Those terms would include: the intervals between repurchase offers (which under the rule could be three, six, twelve, twenty-four, or thirty-six months); the scheduled repurchase deadline dates; the maximum and minimum amounts that a fund may offer to repurchase in any offer. Each repurchase offer could only be a partial offer for a specified amount of securities no less than five nor greater than twenty-five percent of the outstanding securities; if an offer were oversubscribed, a fund would be required to prorate the repurchase of tendered securities, subject to limited exceptions. A fund would have seven days to pay shareholders and would determine the net asset value applicable to repurchases on the business day following the repurchase deadline.

1. Fundamental Policy Regarding Repurchase Offers

Paragraph (b)(2) of proposed rule 23c-3 would require a closed-end company making periodic repurchase offers thereunder to adopt a fundamental policy, changeable only by vote of a majority of the outstanding voting securities,[66] specifying that the company will make repurchase offers and the terms of such offers. The terms specified in the policy would include the intervals between repurchase offers, the scheduled dates of the repurchase deadlines, and the minimum and maximum repurchase amounts. An existing closed-end fund would need a majority vote adopting such a policy in order to begin making periodic repurchase offers under rule 23c-3. Such a vote also would be required to cease making repurchase offers or to change their terms. The existence of a fundamental policy on these issues is intended to provide shareholders with maximum certainty that repurchase offers will take place and with a degree of certainty of the amount of securities that a fund will offer to repurchase in an offer.[67]

The Commission requests comment on the terms of the proposed fundamental policy requirement. In particular, comment is requested as to whether the date of the repurchase deadline should be a matter of fundamental policy, as proposed, or whether the company's directors should have some leeway to adjust the date without the expense of obtaining a shareholder vote in light of market conditions. If so, at what point would moving the date be inconsistent with the fundamental policy on the length of periodic intervals?

Paragraph (b)(3) provides that a closed-end company may suspend or postpone a scheduled repurchase offer in limited circumstances when repurchases would have severe consequences for shareholders or the fund. Subparagraphs (ii) to (iv) are based upon the clauses in section 22(e) of the Act providing when issuers of redeemable securities may suspend redemption or postpone payment upon redemption. In addition, subparagraph (i) would provide an exception if a repurchase could affect a fund's tax status as a regulated investment company under Subchapter M of the Internal Revenue Code.[68] Such

[63] Rule 23c-3 also provides for repurchases by business development companies (BDCs). For convenience, and because BDCs are organized as closed-end companies (see section Investment Company Act section 2(a)(48) (15 U.S.C. 2(a)(48))), this release uses the terms closed-end company and closed-end fund to encompass BDCs.

[64] The position of the Division that a commitment to make such offers might be inconsistent with the fiduciary duties of directors of the funds would not apply to repurchase offers relying on rule 23c-3. That position was stated in Guide 2 to Form N-2, Inv. Co. Act Rel. 17091, *supra* note 50.

[65] As used in rules 23c-3 and 22e-3, the term holder would encompass both record and beneficial holders.

[66] Section 2(a)(42) (15 U.S.C. 80a-2(a)(42)), the definition of the term "voting security," defines a majority of the outstanding voting securities of a company to mean "the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less."

[67] *See supra* note 50 and accompanying text. Currently, closed-end companies do not make any commitment that they will hold repurchase offers because of the Division's position regarding directors' fiduciary duties. Because rule 23c-3 would require funds to offer to repurchase the minimum repurchase amount, directors would not determine *whether* to make each repurchase offer, and cautionary prospectus disclosure now in use might not be necessary or appropriate.

[68] 26 U.S.C. 851-860.

circumstances currently are disclosed in prospectuses where tender offers are contemplated and in issuer tender offer documents.[69] The Commission requests comment on whether the rule should provide additional exceptions, and on whether all of the proposed exceptions are necessary or in the interests of investors.

2. Repurchase Offers to All Security Holders

Rule 23c-3 would require that repurchase offers be made to all holders of the class of securities to be purchased. This requirement, together with the requirement of pricing at net asset value, which would ensure that all repurchases are made at the same price, would protect against unfair discrimination.[70] Thus, all security holders would have the opportunity to tender their shares for repurchase; this requirement should preclude the recurrence of certain abuses noted in the Investment Trust Study, where some companies repurchased securities from insiders or other favored security holders.[71] This provision also would be consistent with the regulation of issuer tender offers under the Exchange Act; the "best price" rule requires that "the consideration paid to any security holder pursuant to the tender offer [be] the highest consideration paid to any security holder during such tender offer." [72]

The rule would not establish a record date defining which security holders would be eligible to tender their shares. Instead, the rule would provide that the offer would be open to all holders up until the repurchase deadline—the date by which a fund must receive repurchase requests. In this respect, the rule would adopt the requirement of the existing "all holders" rule that a tender offer be open to all security holders of the class of securities subject to the tender offer.[73] Accordingly, the repurchase offers would also be open to any person who becomes a shareholder after a fund sends out the notification to shareholders discussed in section II.A.6, below.

3. Amount of Repurchase Offers

Each repurchase offer under the rule would be an offer for a specified, finite amount of securities, rather than an offer for all outstanding securities. The limitation on the amount of securities to be repurchased is among the factors that would distinguish closed-end repurchase offers from redemptions by open-end interval companies discussed below. The proposed limitation has three aspects. First, the rule itself imposes a floor and a ceiling on the amount of each offer. A fund may not offer to purchase less than five percent or more than twenty-five percent of the shares outstanding. Second, each fund would be required to specify, as a fundamental policy, its minimum and maximum repurchase amounts—the minimum and maximum amounts that the fund might offer to repurchase in any offer, expressed as percentages of the amount of securities outstanding on the repurchase deadline. Third, in making each offer, a fund must specify the amount it actually is offering to repurchase in that offer within the range of the fund's fundamental policy.

a. *Maximum and minimum repurchase amounts.* Each repurchase offer would be required to be for an amount of securities no greater than the fund's maximum repurchase amount and no less than the minimum. Under paragraph (b)(2), those limits would be matters of fundamental policy, changeable only by a vote of a majority of the outstanding voting securities.[74] The establishment of a maximum repurchase amount results from the Act's definition of a closed-end company as a company that does not issue redeemable securities.[75] The proposed limit of twenty-five percent on maximum repurchase amounts is intended to ensure that a fund does not adopt a policy guaranteeing that it will repurchase in each offer all shares that might be tendered at net asset value, because such a policy would be tantamount to making the fund's shares redeemable securities. Conversely, the proposed limit of five percent on minimum repurchase amounts is intended to ensure a minimum degree of certainty that a fund will repurchase some of its securities in each offer. The figures of twenty-five and five percent are based upon the history of those funds that have made periodic repurchase offers: in many instances, the amounts tendered were in the range of four to seven percent, but the amount has run over thirty percent. Thus, the proposed percentages should ensure that in most circumstances a fund would repurchase all shares that shareholders might tender, but provide that in extreme circumstances a fund would repurchase less than all shares tendered. Establishing a maximum repurchase amount also would assist portfolio managers in judging the company's liquidity needs, while a minimum would assure shareholders that the company will in fact make large enough repurchase offers to accommodate ordinary shareholder liquidity needs.

The minimum and maximum repurchase amounts, like the amount of each repurchase offer discussed below, would be expressed as percentages of the securities outstanding on a repurchase deadline. The use of percentages, rather than numbers of shares, would differ from the typical practice in issuer tender offers, in which an issuer offers to purchase a stated number of shares. With periodic repurchases, using numbers of shares would not be feasible, because the number of shares outstanding would vary depending upon the numbers of shares repurchased and the number of shares sold. The use of percentages would provide greater clarity and certainty both to shareholders and to portfolio managers.

The Commission requests comment on the appropriateness of the proposed requirement that a closed-end fund establish minimum and maximum repurchase amounts as a matter of fundamental policy. Would the rule sufficiently distinguish closed-end repurchases from open-end redemptions, and redeemable from non-redeemable securities, if the rule only provided that a fund had the authority to determine the amount of each repurchase offer? Alternatively, would the rule provide a sufficient distinction if, instead of requiring the separate establishment of maximum and minimum repurchase amounts, it simply provided that each repurchase offer amount must be between five and twenty-five percent? The Commission also requests comment on the appropriateness of the twenty-five and five percent limits respectively imposed by the rule on the maximum and minimum repurchase amounts,

[69] *See, e.g.*, Pilgrim Prime Rate Trust, Offer to Purchase at 5-6 (Aug. 2, 1991), *reprinted in* Pilgrim Prime Rate Trust, Schedule 13E-4, Exhibit (a)(1)(ii) (Aug. 2, 1991); Merrill Lynch Prime Fund, Inc., Offer to Purchase at 5-6 (Aug. 19, 1991), *reprinted in* Merrill Lynch Prime Fund, Inc., Schedule 13E-4, Exhibit (a)(1)(ii) (Aug. 19, 1991).

[70] Section 23(c)(3) of the Act (the provision under which rule 23c-3 is proposed) permits repurchases "under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased."

[71] *See supra* notes 29, 30, and accompanying text.

[72] Rule 13e-4(f)(8) (17 CFR 270.13e-4(f)(8)).

[73] The Division of Investment Management has interpreted this provision to prohibit the specifying of a record date. *See* Guide 2 to Form N-2, Inv. Co. Act Rel. 17091, *supra* note 50 (proposing amendments to Form N-2).

[74] Section 2(a)(42) (15 U.S.C. 80a-2(a)(42)) defines a majority of the outstanding voting securities of a company. *See supra* note 66.

[75] *See* Protecting Investorys, *supra* note 1, at 466-70.

particularly in light of the different lengths of the permitted intervals between repurchase offers. The Commission also requests comment on whether, given the liquidity and other requirements in rule 23c-3, there might be any circumstances in which a closed-end fund relying on rule 23c-3 should be exempted by the rule from the maximum repurchase amount requirement without being required to register as an open-end fund.

b. *Repurchase offer amount.* Proposed paragraph (a)(5), the definition of "repurchase offer amount," would provide that a fund shall determine the amount of securities to be repurchased in a given repurchase offer. The fund may delegate this determination to the fund's investment adviser. No separate determination, however, would be required at the time of each offer if a fund's repurchase policy specified that all repurchase offers would be for the same amount, that is, that the maximum repurchase amount was equal to the minimum repurchase amount. Pursuant to their fiduciary obligations to shareholders, the directors would have the responsibility to monitor the repurchase process; and they would serve as a check on proposals by the investment adviser limiting the amount of repurchase offers and maximizing the level of assets under management on which advisory fees would be paid. For that reason, as discussed below, proposed paragraph (b)(8) would require funds making rule 23c-3 repurchase offers to have a majority of independent directors. The Commission requests comment on whether the directors should determine each repurchase offer amount, and on what role the directors, including the independent directors, should play if they do not make that determination.

c. *Amount of securities repurchased.* Because each repurchase offer would be a partial offer, security holders might tender a greater amount than the repurchase offer amount. The proposed rule would require a fund to repurchase securities on a pro rata basis if the amount tendered exceeded the repurchase offer amount. Proposed paragraph (b)(5), however, would give a fund some flexibility to avoid pro rata repurchases through two options for responding to an oversubscribed repurchase offer.

One option, paragraph (b)(5), would permit a fund to repurchase additional securities not exceeding two percent of the amount outstanding on the repurchase deadline. This provision is based on rule 13e-4, under which an issuer may purchase "an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer;" beyond that point, the issuer must extend the tender offer for a specified period.[76] The investment adviser would make this determination pursuant to guidelines established by the board of directors. The total amount repurchased could not in any event exceed the maximum repurchase amount, with one exception: If the fund's policy is to make all offers for the same amount (that is, if the maximum repurchase amount equals the minimum repurchase amount), the fund could purchase an additional two percent, but not more than twenty-five percent. The fund would not have the option of extending or amending the repurchase offer, as issuers may do under rule 13e-4. Under a regime of periodic repurchase offers, such changes to a repurchase offer would not be appropriate because they would conflict with the fundamental policy regarding the length of periodic intervals. Moreover, shareholders would have the assurance that a fund would make other offers at the scheduled intervals. The Commission requests comment on whether the two percent margin should be increased or decreased, or eliminated altogether. The prospect of future repurchase offers may make such latitude less necessary than in a one-time tender offer.

The second option, subparagraphs (b)(5) (i) and (ii), would give a fund two exceptions to the proration requirement.[77] One exception would permit a fund, before prorating other tenders, to accept all securities tendered by holders of less than one hundred shares who tender all of their securities. The other exception would permit security holders to tender securities subject to the condition that the fund repurchase all or none, or at least a designated minimum amount, of the securities tendered after accepting all other tenders on a pro rata basis. The Commission requests comment on whether the exceptions to the proration requirement are necessary, and on whether the rule should provide additional exceptions. The Commission also requests comment on whether the odd lot exception is appropriate for closed-end funds or whether some other exception might be more appropriate in light of typical patterns of closed-end shareholders' holdings.

[76] Rule 13e-4(f). Rule 14e-1(b) has a comparable provision.

[77] The pro rata provision, including the exceptions, is based upon paragraph (f)(3) of rule 13e-4.

4. Periodic Intervals

Under proposed paragraph (b), a registered closed-end company may repurchase its securities at "periodic intervals." Paragraph (a)(2) defines the term "periodic interval" as an interval of three, six, twelve, twenty-four, or thirty-six months. Paragraph (b)(2) requires that a closed-end company operating under the rule select the periodic interval at which it will make repurchases as a matter of fundamental policy. These requirements are intended to ensure that the intervals between any company's repurchases should be regular and easily ascertained in order to reduce the potential for investor confusion and allow investors to plan. The permitted intervals should ensure that repurchases take place on a regular schedule. The Commission requests comment whether the rule should permit other intervals.

The rule does not require that all funds making repurchases at the same periodic intervals schedule their repurchases in the same calendar months. One company making quarterly repurchases might make its repurchases in January, April, July, and October, while another company on a quarterly cycle might repurchase in different months. Thus, sponsors and investors would have maximum flexibility to select the repurchase schedule that best suits the needs of investors, any distinctive characteristics of portfolio assets, or a fund's fiscal year. Funds relying on rule 23c-3 would be expected to provide clear prospectus disclosure concerning the schedule of repurchases, including a statement of the frequency of repurchase offers on the cover page of the prospectus.[78]

This flexibility is intended to reduce the likelihood that closed-end companies making periodic repurchases will concentrate their repurchases, and hence their portfolio transactions, during the same brief periods. Avoiding concentration should reduce disruption to the market for portfolio assets and reduce adverse effects on the fund. The Commission and requests comment whether the rule should include any other requirements to avoid market disruption.

5. Timing of Repurchase Offers

Paragraph (b)(1) would require a closed-end fund relying on rule 23c-3 to pay repurchase proceeds to shareholders within seven days after a repurchase deadline. This requirement would parallel the procedure currently

[78] *See* draft staff Guide 10 to Form N-2.

followed by issuer tender offers, which are subject to a requirement of "prompt" payment following the termination of the tender offer. The Commission generally has interpreted the term "prompt" as requiring payment within five business days.[79] Since rule 23c–3 would provide that closed-end funds determine the amount of each repurchase offer, the funds would have some ability to plan portfolio and cash management in advance and thus have sufficient cash available already by each repurchase deadline. The Commission requests comment whether the rule should provide funds a longer period to pay repurchase proceeds. For example, should closed-end funds relying on rule 23c–3 have the same period of up to thirty-one days that limited redemption funds would have under rule 22e–3?

Paragraph (a)(3), the definition of "repurchase deadline," provides that the repurchase deadline shall be one of the following days of the calendar month: The first calendar or business day; the last calendar or business day; or the fifteenth calendar day or the next business day. The provision is intended to provide some consistency among the practices of different funds relying on the rule. The Commission requests comment whether this required uniformity may lead to concentration of portfolio transactions in very short periods, and on whether such concentration might adversely affect trading in less liquid securities. The Commission requests comment whether rule 23c–3—like rule 22e–3—should permit less uniformity in the scheduling of repurchases by different funds using the same periodic interval.

Proposed paragraph (b)(6) would require funds to permit security holders to revoke or withdraw their repurchase requests until the repurchase deadline but not to permit revocation thereafter. This requirement parallels the issuer tender offer regulations, which permit shareholders to withdraw securities previously tendered while the tender offer remains open.[80]

6. Notification to Shareholders

At present, closed-end funds that make repurchase tender offers must provide the Commission and shareholders with the disclosure required by rule 13e–4 under the Exchange Act and Schedule 13E–4. Schedule 13E–4 requires disclosure of the source and amount of the consideration to be paid, the purpose of the tender offer, transactions in the issuer's securities by certain related persons, any arrangements relating to the tender offer, and financial information about the issuer.

Proposed rule 23c–3 would recognize that much of the current tender offer disclosure requirements would not be relevant to periodic repurchase offers by closed-end companies under rule 23c–3. Shareholders would already know the basic outlines of each fund's repurchase procedures from prospectus disclosure. Paragraph (b)(4) would require that a closed-end fund send shareholders a notification disclosing the existence and timing of the repurchase offer, the repurchase amount, any repurchase fees, the procedures for tendering shares, provisions for repurchases on a pro rata basis, the net asset value as of the date of the repurchase offer and information about means for shareholders to learn net asset value at subsequent points (such as references to newspaper publication or any telephone information systems), and market price information, if any. Funds should be able to express this information concisely in a brief letter or statement. The Commission requests comment whether the notification should contain other information than that prescribed in the proposed rule.

The rule would provide an exception from the notification requirement for any fund whose repurchase policy provides for the fund to make all repurchase offers for the same amount of securities, that is, whose maximum repurchase amount equals its minimum repurchase amount. Because shareholders would already know the amount of each repurchase offer from the fund's prospectus and any sales materials, the need for disclosure of each repurchase offer would be less. The Commission requests comment on the appropriateness of this exception.

Rule 13e–4(f) requires that an issuer tender offer remain open for "(i) at least twenty business days from its commencement; and (ii) at least ten business days from the date" of notice of certain changes in the offer.[81] Proposed paragraph (b)(4) likewise would require a fund to send the notification to shareholders at least twenty business days before each repurchase deadline. This period is intended to ensure that shareholders receive notice far enough in advance to decide whether they want to tender their shares and to be able to return their repurchase requests to the company by the date of the termination of the repurchase offer. The Commission requests comment whether this period should be longer or shorter, and whether the rule should also impose a maximum limit; for example, the rule might prohibit funds from sending such notification more than thirty business days before a repurchase deadline.

Subparagraph (b)(4)(ii) would require funds to file a copy of each notification with the Commission within three business days after sending the notification to shareholders. The Commission staff would not review each notification before its distribution to shareholders but might review notifications to check a fund's compliance with rule 23c–3 and with its fundamental policy on repurchases. Unlike rule 13–4, under which issuers must amend a Schedule 13E–4 within ten business days after the termination of an offer in order to disclose, among other things, the results of the tender offer, proposed rule 23c–3 would not require any separate follow-up filing to disclose the amount of securities actually repurchased. Closed-end funds already are required to provide such information under Item 28 of Form N–SAR.[82]

Subparagraph (b)(4)(iii) requires a fund to take certain steps to ensure that notification of repurchase offers actually reaches beneficial owners. It refers to the shareholder communication procedures in rule 14a–13 under the Exchange Act.[83] The shareholder communication obligations under the Shareholder Communications Improvement Act of 1990 require the cooperation of members of securities exchanges, brokers, dealers, banks or similar financial institutions with respect to proxies, consents, authorizations, or information statements of registered investment

[79] *See* Tender Offers, Exchange Act Release No. 16384 at n.36 (Nov. 29, 1979), 44 FR 70326, 70337 (quoting memorandum of the Division of Corporation Finance). The Commission also has stated that there is not a single standard for what constitutes prompt payment under rules 14e–1 and 13e–4: The Commission recognizes that the operation of this standard will be affected by the practices of the financial community and the following factors: Current settlement, handling and delivery procedures relating to tenders made by guaranteed deliveries by appropriate institutions; procedures to cure technical defects in tenders; and the application of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 and the rules promulgated thereunder.

Id. at text accompanying notes 34–35.

[80] Rule 13e–4(f)(2) (17 CFR 240.13e–4(f)(2)). That rule also provides that shareholders may withdraw shares "if not yet accepted for payment, after the expiration of forty business days from the commencement of the issuer tender offer." That latter provision has no parallel in proposed rule 23c–3.

[81] *See also* rule 14e–1(a), (b).

[82] 17 CFR 274.101.

[83] 17 CFR 240.14a–13.

companies.[84] To the extent that a notification does not constitute a proxy, consent, authorization or information statement, record holders would not be subject to those requirements. Nevertheless, the Commission believes that closed-end companies making repurchase offers under rule 23c–3 can expect cooperation from such record holders, in part because of the obligations of broker-dealers under the NASD's Rules of Fair Practice,[85] and because record holders generally find it in their own interest to cooperate in transmitting such information to shareholders. The Commission requests comment on whether it is reasonable to expect such cooperation, or whether rule 23c–3 should impose other requirements to ensure that beneficial owners do receive notifications.

7. Net Asset Value

Section 23(c) of the Act (15 U.S.C. 80a–23(c)) does not set any requirement for the price at which a closed-end fund purchases its shares. Before the enactment of the Act, as noted above, some investment companies repurchased their shares in the market at discounts from net asset value, while other companies repurchased shares from insiders or other selected shareholders at a premium to net asset value.[86] Currently, the practice of closed-end funds that make periodic tender offers is to repurchase at a price based on net asset value.[87]

Rule 23c–3 would require the use of forward pricing at net asset value for all repurchases or sales of shares by closed-end funds relying on the rule. Paragraph (b)(1) would require all repurchases pursuant to the rule to be made at the net asset value of the securities on the business day after the repurchase deadline. Use of net asset value would preclude the recurrence of the abuses that were noted in the Investment Trust Study.[88]

Section 23 does not prescribe a procedure for determining current net asset value. While rule 22c–1 requires open-end funds to determine net asset value every business day, closed-end funds are not required to price their shares more often than quarterly. Many closed-end funds, however, voluntarily calculate and publish net asset values weekly.[89]

Paragraph (b)(7) would require closed-end funds that rely on the rule to determine their net asset values at least weekly, on a day and at a time or times determined by the funds' board of directors. A repurchase pricing date might fall on a day other than the normal day for determining net asset value in that week. In setting the policy for the day and time of computing net asset value, the directors of a closed-end fund may provide that in any week which includes a repurchase pricing date, the fund shall compute net asset value on the repurchase pricing date and shall not be required to compute net asset value on the day on which it otherwise would do so. The Commission requests comment whether closed-end funds under the rule should be required to determine net asset value more frequently than weekly, especially during the period immediately preceding each repurchase deadline, and, if so, what would be the costs of more frequent determinations of net asset value.

Proposed paragraph (b)(1) would permit closed-end funds making repurchase offers to impose only a charge no greater than two percent of the repurchase proceeds. This fee would be intended to compensate the investment company for expenses directly related to the repurchase, such as any costs incurred in disposing of portfolio securities[90] or in borrowing to make payment for repurchased shares.

B. Issuance of Senior Securities

Under section 18 of the Act, closed-end funds may issue senior securities in the form of both equity and debt. Senior securities representing indebtedness must have asset coverage of at least 300% after the issuance of such securities; and senior securities in the form of stock must have asset coverage of at least 200%.[91]

Section 18(a) of the Act requires that the terms of senior securities issued by closed-end funds prohibit repurchases of common stock if the repurchases would reduce the asset coverage below the required level. This prohibition responds to closed-end fund practices in the 1920's and 1930's, when funds sometimes issued senior securities to the public, then repurchased common shares, reducing the assets available to satisfy obligations to holders of senior securities.[92] If a scheduled repurchase would reduce the fund's asset coverage below that required, the repurchase cannot occur unless the fund takes other steps, such as retiring senior securities or selling additional common stock.

Rule 23c–3 is intended in part to provide holders of the common stock of a closed-end fund with a degree of certainty that repurchase offers will occur. That certainty ought not to be compromised through the issuance of senior securities whose terms might prohibit the repurchase of common stock. Accordingly, proposed paragraph (b)(9) would limit closed-end funds making periodic repurchases to borrowing under a standard similar to that for open-end funds; unlike the open-end standard, however, this provision would permit closed-end funds relying on rule 23c–3 to borrow from other lenders as well as banks.[93] This requirement is intended to ensure that a fund could make the maximum permitted repurchase offer without running afoul of the requirements of section 18(a). The Commission requests comment whether other restrictions on the use of senior securities would serve the same objectives.

C. Portfolio Liquidity

The portfolios of closed-end funds currently are not subject to any liquidity standard because historically such funds have not repurchased their

[84] *See* sections 14(b)(1) and (c) of the Exchange Act (15 U.S.C. 78n(b)(1), (c)).

[85] *See* Interpretation of the Board of Governors on Forwarding of Proxy and Other Materials, NASD Manual (CCH) ¶ 2151.05 ("a member has an inherent duty (under Article III, Section 1) * * * to forward all proxy material, annual reports, information statements and other material sent to stockholders, which are properly furnished to it by the issuer of the securities to each beneficial owner of shares of that issue which are held by the member for the beneficial owner thereof").

[86] *See supra* notes 12–30 and accompanying text.

[87] *See, e.g.*, Pilgrim Prime Rate Trust, Offer to Purchase, at 1 (Aug. 2, 1991), *reprinted in* Pilgrim Prime Rate Trust, Schedule 13E–4, Exhibit (a)(1)(ii) (Aug. 2, 1991). The use of net asset value has departed from traditional practice in other issuer tender offers. First, tender offers generally must state a fixed dollar amount for the price offered because schedule 13E–4 in Item 1(b) requires the issuer to state "the exact amount of such securities being sought and the consideration being offered therefor." For most portfolios, stating a dollar amount would not be possible if the offer is to be made at net asset value. *But see, e.g.*, Baldwin Securities Corporation (pub. avail. Dec. 24, 1986) (exemption granted for tender offer by closed-end company where consideration would be adjusted net asset value).

[88] *Id.*

[89] Net asset values compiled by Lipper Analytical Services and the Investment Company Institute appear each week in *Barron's*. Weekly listings also appear in the *Wall Street Journal* every Monday.

[90] Open-end companies may impose similar redemption fees. *See* Offers of Exchange Involving Registered Open-End Companies, Investment Company Act Release No. 17097, at n.37 (Aug. 3, 1989), 54 FR 35177 (adopting rule 11a–3).

[91] *See supra* note 31 (discussing asset coverage).

[92] Investment Trust Study, pt. 3, *supra* note 12, at 1001.

[93] Section 18(f)(1) limits open-end funds to bank borrowing with 300% asset coverage. 15 U.S.C. 80a–18(f)(1). This approach follows the provisions of the exemptive order in Wisconsin Investment Company, 10 S.E.C. 555 (1941), permitting a closed-end fund, which continuously offered its shares, to make periodic repurchases without complying with the predecessor of rule 23c–1, provided the fund complied with provisions of the Act that apply only to open-end funds.

securities on a regular basis. Proposed paragraph (b)(10) would impose a portfolio liquidity requirement on closed-end funds that make periodic repurchases pursuant to rule 23c-3.[94] This requirement is intended to ensure that a fund is able to live up to its fundamental policy of repurchasing its securities. The proposed standard has two parts both adapting the mutual fund seven day standard. First, at all times a portion of the portfolio equal to at least 150% of the minimum repurchase amount would have to consist of assets that can be sold in the ordinary course of business within seven days at approximately the value that the fund uses in valuing its investments. Second, at the time a fund sends out a notification of a repurchase offer, the fund would need assets satisfying the seven day standard in an amount equal to 150% of the repurchase offer amount. The first part is intended to ensure that the fund has sufficient liquid assets to comply with its fundamental policy on the minimum repurchase amount. The second part is intended to ensure that when a fund makes a repurchase offer it is in a position to carry out the offer. The 150% requirement is intended to allow the fund to respond to fluctuations in value of different portfolio securities and to leave the portfolio manager discretion as to which assets to sell.

The Commission requests comment whether the rule should provide a different liquidity standard. If so, what should that other liquidity standard be? In particular, the Commission requests portfolio managers and securities traders to discuss what kinds of assets might be held by closed-end funds making periodic repurchase offers, what factors might influence the degree of liquidity of such assets, and what kinds of standards would ensure that a closed-end fund can sell assets to meet periodic repurchase requests without a significant effect on the market for those assets.

The ultimate responsibility for the liquidity of portfolio assets would lie with the board of directors. The board could delegate day-to-day responsibility for evaluating liquidity of specific assets to a fund's investment adviser but would continue to be responsible for monitoring the adviser's performance of its duties and the composition of the portfolio.[95] Subparagraph (ii) would require the directors of a fund relying on rule 22e-3 to establish written procedures for ensuring the liquidity of the portfolio and to review those procedures at least annually, as well as on any other occasions when market developments call into question the liquidity of portfolio assets. Because a fund must satisfy the liquidity standard at any point at which it determines net asset value, it is necessary to evaluate the liquidity of portfolio assets, not just at the time of their acquisition, but also continuously as long as they are present in the portfolio. In evaluating liquidity, the following factors are relevant, although not necessarily determinative:

(1) The frequency of trades and quotes for the security; (2) the number of dealers willing to purchase or sell the security and the number of other potential purchasers; (3) dealer undertakings to make a market in the security; and (4) the nature of the marketplace trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).[96]

Other pertinent factors might include the size of the fund's holdings of a given security in relation to the total amount outstanding of such security or to the average trading volume for the security. If changes impair the liquidity of an asset, the adviser and the board should review the advisability of retaining that asset in the portfolio; and if, as a result of market changes, the portfolio fails to satisfy the liquidity requirements of paragraph (b)(10)(i), the fund must promptly take appropriate actions to bring itself into compliance.

Securities that are less liquid may raise special concerns regarding their valuation.[97] The board of directors of an investment company is responsible for the determination of the value of securities for which market quotations are not readily available.[98] Thus, the boards of directors of closed-end funds using rule 23c-3 should pay special attention to their responsibilities for the determination of the value of less liquid assets.

D. Independent Directors

Proposed paragraph (b)(8) would require that any closed-end company making periodic repurchases under rule 23c-3 have a board with a majority of directors who are not interested persons of the fund.[99] This requirement is intended to ensure that the board of directors provides independent scrutiny of actions or decisions by the fund or its adviser in areas where there may be a conflict of interest between the adviser and shareholders. For example, the determination of each repurchase offer amount may involve a conflict between the adviser's interest in keeping assets under management as high as possible and the shareholders' interest in tendering shares for repurchase. Paragraph (b)(8) also would require that the independent directors be self-nominating, as is currently required under rule 12b-1.[100]

E. Offerings of Securities by Companies Making Periodic Repurchases

Closed-end funds that make periodic repurchases may seek to offer additional shares on an ongoing basis in order to counter reductions in net assets caused by repurchases or to increase assets under management. The Protecting Investors report recommended [101] that the Commission amend rule 415 [102] to permit intermittent, as well as continuous, offerings by closed-end funds, or, in the alternative, that the Commission adopt a post-effective amendment procedure for closed-end funds comparable to that available to open-end funds under rule 485.[103] Because the proposed exemption from rule 10b-6 for closed-end funds making periodic repurchases under rule 23c-3 may remove a regulatory need for closed-end funds to interrupt their continuous offerings, the Commission is not proposing any amendment to rule 415 or any new post-effective amendment procedure comparable to rule 485. The Commission requests comment, however, whether other circumstances still make such new procedures necessary or desirable. The

[94] We disagree with the contention of the Investment Company Institute that advance notice of a repurchase request "would eliminate the need for SEC-imposed liquidity standards for these funds." Letter from Investment Company Institute to Jonathan G. Katz, Secretary, SEC 40 (Oct. 5, 1990), File No. S7-11-90.

[95] *Cf.* Sec. Act Rel. 6862, *supra* note 35, at n.61 (if board determines that rule 144A securities are liquid, such securities may be excepted from general position that restricted securities are illiquid).

[96] Sec. Act Rel. 6862, supra note 35, 55 FR at 17940.

[97] Of course, significant valuation issues also can arise with respect to securities that generally are regarded as liquid, notably securities (such as many debt securities) that are not traded on any exchange or other centralized market.

[98] Investment Company Act section 2(a)(41). *See supra* note 42 and accompanying text.

[99] Section 2(a)(19) of the Act (15 U.S.C. 80a-2(a)(19)) defines the term "interested person."

[100] 17 CFR 270.12b-1. These provisions are consistent with the general investment company governance recommendations in the Protecting Investors report. Protecting Investors, *supra* note 1, at 266-68.

[101] Protecting Investors, *supra* note 1, at 453.

[102] 17 CFR 230.415.

[103] 17 CFR 230.485. Rule 485 provides the procedures for filing and effectiveness of post-effective amendments to the registration statements of open-end investment companies. It provides in effect the mechanism for the continuous effectiveness of open-end registration statements.

Commission also requests comment whether the rule should require funds that offer their shares continuously to compute net asset value daily.

Such funds may be more likely to promote and advertise their shares than has traditionally been the case with most closed-end companies, which generally do not sell additional shares after the initial offering. Accordingly, paragraph (b)(11) would require funds relying on the rule to comply, as if they were open-end funds, with section 24(b),[104] which requires investment companies except closed-end funds to file copies of advertisements and other sales literature with the Commission.

F. Disclosure of Periodic Repurchases

Closed-end funds use Form N-2 (17 CFR 274.11a-1) to register as investment companies and to register the securities they offer. The Commission has published a staff guide (Guide 2) for funds repurchasing their securities under current rules.[105] If proposed rule 23c-3 is adopted, closed-end funds relying on the rule will be expected to include in registration statements on Form N-2 additional information that would be material to investors concerning the periodic repurchases of their securities.

The Commission is publishing for comment a new staff guide that details the types of prospectus disclosure that closed-end funds making periodic repurchases of their securities under the rule would be expected to make. In addition, the Commission requests comment on whether, if proposed rule 23c-3 is adopted, Form N-2 should be amended to incorporate all or a portion of the draft guide. Comment is also requested on whether funds making periodic repurchases under proposed rule 23c-3 should be either permitted or required to provide total return information in their financial highlights based only on net asset values rather than on the market price of the fund's shares. A net asset value-based calculation may better reflect shareholder experience because of the regular availability of repurchases at net asset value.

G. Proposed Amendment to Rule 10b-6

If a closed-end fund offers shares continuously, it may not conduct tender offers without exemptive relief from rule 10b-6 under the Exchange Act (17 CFR 240.10b-6). Rule 10b-6 generally prohibits persons involved in a distribution of securities from bidding for or purchasing those securities and certain related securities until after their participation in the distribution is complete.[106] The purpose of rule 10b-6 is to prevent persons interested in the distribution from "artificially conditioning the market for the securities in order to facilitate the distribution." [107] Each closed-end fund that makes periodic repurchases has obtained an exemption from rule 10b-6. These exemptions are subject to requirements designed to prevent manipulation, including a requirement that there be no secondary market for the company's shares.[108]

The Commission is proposing to exempt closed-end fund repurchase offers relying on rule 23c-3 from rule 10b-6. These repurchases would not appear to involve any potential for "artificially conditioning the market for the securities"—the primary abuse that rule 10b-6 was intended to prevent.[109] The Commission has stated that rule 10b-6 was "designed to protect the integrity of the securities trading market as an independent pricing mechanism * * *." [110] For investment companies, however, net asset value provides an independent pricing mechanism that distinguishes investment companies from all other issuers. This mechanism is based upon the values of the underlying portfolio assets and should not be affected by the terms of a repurchase offer or of a distribution by an investment company. Accordingly, sales and repurchases at net asset value, properly computed, do not necessarily implicate the concerns of rule 10b-6, as evidenced by the rule's express exemption for redeemable securities issued by open-end companies. The policies that underlie the exemption of open-end shares also support the exemption of closed-end periodic repurchases at a price based on net asset value.[111]

Because the proposed amendment to rule 10b-6 would exempt only repurchases pursuant to rule 23c-3, the exemption in new paragraph (h) would not apply to repurchases made outside rule 23c-3.[112] Thus, the closed-end exemption would be narrower than the exemption from rule 10b-6 for open-end companies, which exempts the securities of open-end companies. The Commission requests comment whether the exemption for closed-end funds should be as broad as the exemption for open-end funds.

Because of the minimal potential for abuse, the Commission is not proposing to prohibit funds from having such securities listed on an exchange or quoted on a system such as NASDAQ, or proposing to require that such funds suspend any offering of their securities during the repurchase offers. The Commission requests comment whether rule 23c-3 should incorporate either of those requirements or some modification thereof; any comment supporting the inclusion of such a provision should describe the harms that would result from failure to include such a provision.

H. Proposed Amendments to Tender Offer Rules

Closed-end companies that make periodic repurchases do so via tender offers subject to the rules under sections 13 and 14 of the Exchange Act.[113] Rule 13e-4 would be amended to exempt closed-end company periodic repurchases under rule 23c-3. As noted above, rule 23c-3 incorporates certain requirements of rule 13e-4 that are pertinent to the investor protection concerns raised by closed-end company repurchase offers. By virtue of the exemption from rule 13e-4, rule 23c-3 repurchase offers would not be required to pay tender offer filing fees pursuant to section 13(e)(3) of the Exchange Act, because funds making those offers would not be filing a statement required pursuant to section 13(e)(1). The Commission is also proposing new rule 14e-6, which would exempt closed-end repurchase offers under rule 23c-3 from rule 14e-1, which prohibits certain tender offer practices, and rule 14e-2, which requires an issuer to disclose to security holders the issuer's opinion, if any, regarding a tender offer.

[104] 15 U.S.C. 80a-24(b).

[105] *See* Inv. Co. Act Rel. 17091, *supra* note 50 (proposing amendments to Form N-2).

[106] The provisions of rule 10b-6 do not apply to redeemable securities issued by an open-end investment company. *See* rule 10b-6(d).

[107] Prohibition Against Trading by Persons Interested in a Distribution, Exchange Act Release No. 24003, section I (Jan. 16, 1987), 52 FR 2994 (adopting amendments to rule 10b-6).

[108] Pilgrim Prime Rate Trust (Aug. 23, 1988), Eaton Vance Prime Rate Reserves (July 14, 1989), Van Kampen Merritt Prime Rate Income Trust (Sept. 27, 1989), Merrill Lynch Prime Fund (Oct. 24, 1989), and Allstate Prime Income Trust (Nov. 21, 1989). See also Emerging Markets Growth Fund, Inc. (Aug. 13, 1991), and Merrill Lynch High Income Municipal Bond Fund, Inc. (Oct. 26, 1990).

[109] Exch. Act Rel. 24003, *supra* note 107.

[110] *Id.*, 52 FR at 2994.

[111] To the extent that there is secondary market trading in shares of closed-end funds using rule 23c-3, the market price may be influenced by the prospect of periodic repurchases at net asset value or the availability of new shares at net asset value. Thus, any market discount or premium to net asset value should remain within a confined range.

[112] In addition, the Commission is not proposing an exemption from Exchange Act rule 10b-13, which prohibits a person making a tender offer or exchange offer from purchasing securities outside of that offer during the offer period. 17 CFR 240.10b-13.

[113] 15 U.S.C. 78m, 78n.

These exceptions from the tender offer rules would apply only to repurchase offers at periodic intervals pursuant to proposed rule 23c-3. Any other repurchase or tender offers by a closed-end fund outside of rule 23c-3 would continue to be subject to the Exchange Act tender offer rules. Repurchase offers *within* rule 23c-3 would continue to be subject to other tender offer rules, including rules 14e-3 and 14e-4.

III. Proposed Rules and Revisions to Rules To Provide for Limited Redemptions by Open-End Companies

The requirements in section 22(e) for constant redeemability and the concomitant liquidity standards for mutual funds mean that investors cannot invest in open-end investment companies that offer securities with redemptions other than on a daily basis or that may invest in less liquid assets. Proposed rule 22e-3 would exempt a registered open-end investment company [114] or registered separate account [115] other than a money market fund [116] from the provisions of section 22(e) of the Act prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security.[117] The exemption would be available to either open-end companies offering redemption at periodic intervals ("interval funds") or open-end companies offering redemption with extended payment ("extended payment funds") as provided in subparagraphs (b)(1) and (b)(2) of the rule, and to registered separate accounts organized as, or holding the securities of, such open-end companies.

Both types of funds would be able to take up to one month (thirty-one days) to pay redemption proceeds. Rule 22c-1 would be revised to address the use by these funds of pricing procedures adapted to the different redemption rights of their securities. These procedures would permit funds to offer redeemable securities while investing in less liquid assets that do not meet the liquidity standard currently applicable to open-end companies. Thus, these limited redemption funds could invest in venture capital investments and small business securities, as well as certain privately placed or restricted securities, less liquid foreign securities, and other securities traditionally viewed as not falling within the seven day standard. While these funds would be designed for investing in these types of less-liquid assets, the rule does not specify a minimum degree of *illiquidity* for funds relying on the rule. The Commission requests comment whether the rule should impose such a standard. These procedures also might be appropriate for funds with shareholders not needing constant redeemability, such as employee benefit plan investment vehicles.

For these limited redemption companies to sell and redeem their shares with the same ease as open-end funds do today, certain conforming changes may be needed outside of the federal securities laws. For example, these new redemption procedures would not fit within the specifications of the National Securities Clearing Corporation's Fund/SERV automated system. Moreover, to the extent that certain states' laws or regulations restrict the holding of restricted or other illiquid securities by open-end investment companies, limited redemption funds holding such securities might not be permitted to offer their securities within those states. The Commission, while not requesting comment on these points, invites the securities industry and bar to consider what changes may be needed in these areas.

A. Fundamental Policy

Under subparagraphs (b)(1)(i) and (b)(2), both interval funds and extended payment funds would be required to adopt fundamental policies specifying their redemption procedures, including the timing of the key dates of the redemption procedures. As with the fundamental policies of closed-end funds making periodic repurchases, these policies would be changeable only upon a shareholder vote. Thus, a fund could not switch from full redeemability as provided in section 22(e) to limited redeemability under rule 22e-3, or vice versa,[118] without a majority vote of its outstanding voting securities.[119] This requirement is intended to prevent the occurrence of the sorts of abuses at which section 22(e) was aimed, such as the suspension of redemption rights without consulting shareholders or the issuance of securities whose terms did not guarantee redeemability.[120] This requirement also is consistent with the intent of the prohibition in section 13(a)(1) (15 U.S.C. 80a-13(a)(1)) against changing subclassification from open-end to closed-end or vice versa without a vote of a majority of the outstanding voting securities. In light of the reference in section 2(a)(32) to the "terms" of a redeemable security specifying its right of redemption, the Commission requests comment whether the rule also should require interval funds and extended payment funds to take any additional steps specifying their redemption procedures, such as detailing those procedures in their organizational documents.

B. Timing of Redemptions and Redemption Pricing

Both interval funds and extended payment funds could take up to one month (thirty-one days) to pay redemption proceeds: For interval funds that period would begin with each periodic redemption deadline, and interval funds would make payment by scheduled redemption payment dates; for extended payment funds the period would begin with the receipt of each redemption request, and there would be rolling deadlines for payment. The thirty-one day period between the redemption deadline and the redemption payment date is a maximum: funds would be free to select different lengths, depending on factors such as the liquidity of their portfolios or the frequency of redemptions.

Funds would calculate the net asset value applicable to a redemption request on the next redemption pricing date, which would occur seven days before the redemption payment date. Thus, the redemption pricing date could fall as much as twenty-four days after the date of a redemption deadline (in an

[114] In the case of an open-end company with more than one portfolio or series, as with other provisions of the Act and the rules thereunder, the reference to an open-end company would apply separately to each series. Thus, for example, a single registrant could include one or more interval funds, one or more extended payment funds, and one or more conventional mutual funds. The same treatment would hold true for registered separate accounts.

[115] A more complete discussion of the implications of the proposed rules and rule revisions for registered separate accounts is presented below in section III.G.

[116] Money market funds generally have the most liquid portfolios of any mutual fund (as well as offering shareholders liquidity features such as check writing privileges). Accordingly, the exemption from section 22(e) provided by the proposed rule would not appear to be appropriate for such issuers.

[117] The exemption provided by proposed rule 22e-3 would be available only to open-end management companies satisfying the requirements of the rule and to registered separate accounts, whether organized as unit investment trusts or as open-end management investment companies. Except for separate accounts organized as unit investment trusts, the rule would not apply to unit investment trusts, which also issue redeemable securities. Issuers not excepted by the rule would continue to be subject to the requirements of section 22(e).

[118] Likewise, an interval fund could not change to an extended payment fund, or vice versa, without a similar vote.

[119] Section 2(a)(42) (15 U.S.C. 80a-2(a)(42)) defines a majority of the outstanding voting securities of a company. *See supra* note 66.

[120] *See supra* notes 16-18 and accompanying text.

interval fund) or after the date of receipt of a redemption request (in an extended payment fund).

That twenty-four day delay is intended to address issues that may arise if a fund holds relatively illiquid securities yet needs to dispose of portfolio securities to pay shareholders for securities tendered for redemption. This period is intended to provide portfolio managers with enough time to sell securities and adjust the portfolio without depressing the value of portfolio securities before computing the net asset value used in calculating redemption proceeds. Of course, funds often may use other sources of money to pay redemption proceeds, including the sales of new shares, cash realized from prior sales of assets, borrowing, or some combination of the foregoing. The proposed rule, however, is intended to address the investor protection concerns that arise to the extent that a fund may not have sufficient cash on hand and need to sell assets to meet redemptions. This schedule should provide a relatively accurate match between the price paid for redeemed shares and amounts realized upon disposition of portfolio securities sold to pay redemption proceeds.

Absent such a delay in pricing, remaining shareholders' holdings would be diluted if it turned out that the assets sold did not garner the proceeds predicted for them at the time of pricing. The prevention of any dilution in pricing is fundamental under section 22; sections 22(a) and 22(c) mandate that pricing procedures be prescribed "for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of other outstanding securities of such company or any other result of such purchase, redemption or sale which is unfair to holders of such other outstanding securities * * *."

Shares that are tendered would participate proportionally in the company's gains and losses during the payout period. While the pricing requirement should minimize any dilution of shares that are not redeemed, the delay between the redemption deadline and pricing does subject redeeming shareholders to the risk that net asset value may fluctuate significantly between the time an investor decides to redeem and the time the investor receives payment. Thus, shareholders who tender their shares for redemption would bear the risk of market changes for the period after they have tendered their shares. Investment companies relying on rule 22e-3 would be expected to disclose this risk clearly in their prospectus.[121] The Commission requests comment whether to require funds to disclose this risk in other communications with shareholders, including redemption request forms, or messages on automated telephone systems.

The Commission requests comment on the appropriateness and adequacy of the proposed timing of the redemption pricing date and of the thirty-one day overall limit proposed here. Would that period be long enough to ensure the fair computation of net asset value for both shareholders who tender and those who do not? Some commenters cited in the Protecting Investors report had suggested a range of intervals, generally between thirty and sixty days, although they did not discuss any specific basis for their suggestions.[122] The Commission requests portfolio managers and traders to comment on the question whether a one-month period would provide them sufficient time to sell assets, particularly less liquid instruments, in order to pay redemption proceeds. Commenters also are asked to address the issue whether companies would in fact be likely to rely upon selling assets during that period in order to raise cash, or whether they would use other means. The Commission requests commenters who advocate alternative pricing procedures to provide specific operational information about existing alternative procedures that might provide an appropriate model; such procedures might include redemption or repurchase procedures used by other collective investment vehicles such as private investment funds, bank collective funds, real estate investment vehicles, or foreign investment companies. The Commission also requests comment whether, instead of requiring that the redemption pricing date occur seven days before the redemption deadline, the rule should permit funds to schedule their own redemption pricing dates.[123] If fund management should have this discretion, how should the rule ensure that pricing is equitable to redeeming and remaining shareholders, given the risks of investing in less liquid assets, and how can the rule prevent investor confusion?

[121] *See* draft Guide 34 to Form N-1A, draft Guide 38 to Form N-3, and draft Guide 13 to Form N-4.

[122] *See* Protecting Investors, *supra* note 1, at 449 n.101.

[123] This was the suggestion of the Investment Company Institute. Memorandum accompanying Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC 3-4 (Aug. 8, 1991), File No. S7-11-90.

1. Interval Fund Issues

Open-end interval funds would redeem at periodic intervals, just as closed-end funds under rule 23c-3 would make repurchases at periodic intervals. Paragraph (a)(1) provides that the permissible periodic intervals for open-end redemptions at intervals would be intervals of one, two, or three months. While an interval longer than three months might not be inconsistent with the definition of a redeemable security in section 2(a)(32) of the Act, the rule would not permit redemptions less frequently than quarterly.[124] The Commission requests comment whether the rule should permit other intervals or should define the permissible intervals differently. For example, would it be appropriate to permit redemptions at shorter intervals such as every two weeks, or twice monthly? Alternately, should interval funds be permitted to redeem at longer intervals, such as every six or twelve months? In particular, the Commission requests comment on the appropriateness of such longer intervals in the absence of an exemption from section 22(d) to permit market trading of the shares of limited redemption funds. The Commission also requests comment whether the rule should exempt some or all interval funds from section 22(d) and should *require* exchange listing of fund shares or quotation of fund shares on an automated quotation system in order to provide shareholders with secondary market liquidity during the intervals, especially the longer intervals.

Because proposed rule 22e-3 would permit interval funds to offer quarterly redemptions, there would be an overlap with proposed rule 23c-3, which would allow closed-end funds to make repurchases as often as quarterly. The Commission requests comment whether that overlap would lead to investor confusion between closed-end funds and open-end interval funds, or whether the fact that the overlap is restricted to quarterly transactions is sufficient to minimize investor confusion in the context of clear disclosure of a fund's redemption or repurchase procedures, especially given the fundamental distinction that an open-end fund must redeem all shares tendered, while a closed-end fund has no comparable obligation.

Unlike the definition of repurchase deadline in rule 23c-3, paragraph (a)(2),

[124] The Protecting Investors report concluded that the securities of open-end companies with limited redemptions would be redeemable securities within section 2(a)(32). Protecting Investors, *supra* note 1, at 466-69.

the definition of redemption deadline, would not require the redemption deadline to be expressed as one of certain specified days of the calendar month. This provision is intended to avoid requiring uniformity among the redemption policies of different funds in order to minimize concentration of redemption deadlines, and hence of portfolio transactions, at certain times of the month, because such concentration might disrupt the market for portfolio assets, particularly less liquid assets. Requiring uniformity in redemption deadlines might run a greater risk of market disruption than the comparable requirement in rule 23c-3 may, because limited redemption funds, unlike funds relying on rule 23c-3, may not limit the amount they redeem. The Commission requests comment whether in this respect rule 22e-3 should more closely match rule 23c-3 by requiring greater uniformity in the permissible days for redemption deadlines. The Commission also requests comment whether the rule should impose other requirements in order to minimize any market disruption. Limited redemption funds would be expected to include clear prospectus disclosure of their redemption deadlines.[125]

Paragraph (b)(1)(ii) would provide that interval fund redemption requests would be revocable until the redemption deadline but not thereafter. The Commission requests comment whether the rule should also require or permit companies to provide that shareholders may revoke their redemption requests for some period between the redemption deadline and the day before the redemption pricing date. Revocability between the redemption deadline and the redemption pricing date would allow security holders who have already tendered to respond to unanticipated market developments in the interim and thus would reduce the market risk to those holders. Revocability after the redemption deadline, however, would disrupt the work of portfolio managers and might increase fund expenses or harm investment performance. The Commission requests portfolio managers to comment on the effects of permitting revocability. In disposing of portfolio securities, how would portfolio managers take potential revocations into account? Would they only sell a certain percentage of the total requests and then sell more liquid securities upon the pricing date if fewer requests were revoked than anticipated?

The Commission requests comment whether rule 22e-3 should impose any restrictions (beyond a majority shareholder vote) upon conversions of existing open-end funds to interval funds. Should the interval fund provisions be available only to newly organized funds and not to existing funds? Should the rule require interval funds to list their securities on an exchange in order to provide shareholders with market liquidity during the intervals? Or should the rule require an existing open-end fund that converts to an interval fund to offer shareholders some opt-out mechanism?

C. Rule 22c-1 and Pricing for Redemptions and Sales of Limited Redemption Fund Shares

The redemption pricing date requirement in proposed paragraphs (b)(1)(i) and (b)(2) is an exception to the requirements of rule 22c-1, which requires issuers of redeemable securities to compute net asset value at least daily (on business days), and to price sales and redemptions of such securities at the next net asset value computed after the receipt of an order to purchase or redeem.[126] Instead, interval funds would price their redemptions on the next pricing date after the redemption deadline. The proposed new paragraph (d) of rule 22c-1 would provide an exception to that rule for interval fund redemptions priced as provided in rule 22e-3.

Rule 22c-1 would not be amended to modify the pricing of sales of interval fund shares. For purposes of sales of shares, the current requirements of rule 22c-1 would continue to apply to limited redemption funds. They would continue to be required to compute net asset value at least daily as provided in rule 22c-1, and would be required to sell securities at the net asset value next computed after receipt of an order to purchase. Industry representatives, however, have commented that some companies may prefer to forego offering new shares continuously to avoid the burden of daily pricing.[127]

The Commission requests comment on the requirement of daily pricing for sales of limited redemption funds. Should the rule require either type or both types of funds to price only at least weekly? Should the rule expressly provide procedures for interval funds to sell their securities only during certain periods? If so, what should those periods be, and what relationship, if any, should they bear to the redemption schedule? The Commission also requests comment whether rule 22c-1 should require interval funds to establish an appropriate mechanism for handling orders to purchase shares between pricing dates such as escrow accounts or temporary investment in affiliated money market funds if weekly pricing is permitted. Would such mechanisms increase administrative costs, and hence shareholder expenses?

D. Portfolio Liquidity

Open-end companies are required to maintain at least eighty-five percent of their assets in assets that can be sold in seven days at approximately the price used in determining net asset value.[128] Proposed paragraph (c) would impose a different liquidity requirement on interval funds and extended payment funds. At least eighty-five percent of the assets of an interval fund would have to satisfy either of two requirements: a fund must reasonably believe that an asset can be sold at approximately the price used in computing the fund's net asset value in a period equal to the fund's period for paying redemption proceeds (the period between an interval fund's redemption deadline and its redemption payment date, or the period between tender and the redemption payment date for an extended payment fund); or an asset must mature before the next redemption payment date.

The first part of that standard is adapted to reflect the difference between the seven days in which traditional open-end companies must pay redemption requests and the longer periods that rule 22e-3 would allow to interval and extended payment funds. Although this standard differs from the seven day standard for mutual funds, portfolio liquidity remains vitally important for limited redemption funds, because they will need to meet redemption requests. While in most cases funds may be able to anticipate redemption requests and will not need to sell portfolio assets to meet requests, a liquidity standard is necessary to ensure that, if a fund must sell securities to meet redemptions, shareholders will receive payment within the period within which the fund's fundamental policy requires payment. In some respects, liquidity may be even more

[125] *See* draft Guide 34 to Form N-1A.

[126] Rule 22c-1(b) requires issuers of redeemable securities to calculate net asset value daily (excluding weekends and holidays) except on (i) days on which changes in the value of the investment company's portfolio securities will not materially affect the current net asset value of the investment company's redeemable securities; or (ii) days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company.

[127] *See* ICI Aug. 8, 1991 Study Comment, *supra* note 123.

[128] *See* Guide 4 to Form N-1A, Inv. Co. Act Rel. 18612, *supra* note 35.

critical for interval funds, which may face more concentrated redemption requests during a given period than would a mutual fund. The second part of that standard would permit a fund to hold debt securities with a relatively short remaining maturity; this provision should be useful primarily to interval funds, which could acquire securities with a remaining maturity coinciding with the funds' redemption payment periods.

Because the liquidity of portfolio securities is critically related to the price used in computing a fund's net asset value, limited redemption funds must pay special attention to the valuation of portfolio assets. In particular, in determining the fair value of assets for which market quotations are not readily available, funds should use valuation methods that are realistic with a view to the potential need to sell assets within a one month period, or any shorter period set by their fundamental policy on the payment of redemption proceeds.

The Commission requests comment whether to modify the proposed liquidity standards. It may be appropriate to require that some portion of a fund's assets consists of assets that satisfy the current seven day standard for mutual funds in order to provide reinforcement for a fund's ability to pay redemptions in the event a fund faces higher redemptions than expected and it is difficult or inadvisable to sell less liquid assets. For example, a requirement that twenty or twenty-five percent of a fund's assets satisfy the seven day standard might provide some margin of comfort without unduly restricting a fund's portfolio management. The Commission requests portfolio managers and securities traders to discuss the kinds of assets that might be held by limited redemption funds, the factors that influence the degree of liquidity of such assets, and the kinds of standards for such assets that would ensure that a limited redemption fund can sell assets to meet redemption requests without a significant effect on the market for those assets. Those and other commenters should also address the extent to which funds might meet redemptions from other sources, including borrowings and cash on hand.

The Commission also requests comment on whether, in addition to the proposed liquidity standard, the rule should require some degree of diversification in limited redemption fund portfolios. Holding a portfolio of less liquid securities may make it difficult for limited redemption funds to pay redemption requests, even within the period of up to one month permitted by proposed rule 22e-3. If, in addition to holding less liquid securities, funds were to hold concentrated blocks of such securities, the reliability of net asset value computations and their ability to pay redemptions might be further impaired. Commenters should address whether risk disclosure or other provisions of rule 22e-3 provide investors with sufficient protection against these incremental risks.

As noted above, the board of directors of an investment company has the responsibility for determining the liquidity of portfolio assets; valuation of portfolio assets is critically important with limited redemption companies and may be especially complicated to the extent that they invest in less liquid assets. The Commission requests comment as to whether it should specify valuation procedures for assets for which market quotations may not be available.

E. Disclosure Regarding Limited Redemption Procedures

Because proposed rule 22e-3 would permit a substantial change in redemption procedures for open-end funds, it is crucial that investors understand that many of the typical rights that attach to ownership of shares of a traditional open-end fund will not attach to ownership of shares in a limited redemption company. Sponsors and underwriters of limited redemption companies will have a special duty and obligation to make sure that investors do not confuse limited redemption companies with typical mutual funds.

Both types of limited redemption companies would be open-end management companies and would file their registration statements on Form N-1A.[129] The changes contemplated by proposed rule 22e-3 would require substantially different disclosure in many respects from that now required of other open-end funds. Eventually, the Commission may propose amendments to Form N-1A, or develop a new registration form, designed specifically for limited redemption funds. At this time, the Commission is publishing for comment a new draft staff guide to Form N-1A, which focuses on critical areas of disclosure that would have to be made by limited redemption funds filing on Form N-1A.

Similarly, because registered separate accounts funding variable insurance contracts also may rely on proposed rule 22e-3, sponsors of those accounts must disclose to contract owners the redemption procedures followed by the accounts, and the risks of owning contracts of an open-end management separate account that has adopted a limited redemption policy, or of a UIT separate account that invests in an open-end company that has adopted a limited redemption policy. At this time, the Commission is publishing for comment proposed staff Guide 38 to Form N-3 (regarding prospectus disclosure by open-end management separate accounts organized as limited redemption funds), and proposed staff Guide 13 to Form N-4 (regarding prospectus disclosure by UIT separate accounts that invest in limited redemption funds).

F. Prohibition on Funds Holding Themselves Out as Mutual Funds

Paragraph (e) would prohibit interval and extended payment funds from holding themselves out as mutual funds. This prohibition is intended to prevent investor confusion between limited redemption funds and traditional open-end companies which have redeemed their securities continuously and paid redemption proceeds within seven days.[130]

It may also be appropriate to require limited redemption funds to identify themselves affirmatively in a way that distinguishes them from mutual funds. For example, a fund could indicate its limited redemption status in the fund's name or in a legend on the cover page of its prospectus. The Commission requests comment on whether such a requirement would be appropriate.

G. Use of Limited Redemptions Funds by Registered Separate Accounts

Proposed rule 22e-3 would allow registered separate accounts funding variable insurance contracts [131] to rely on its provisions. The rule would apply to registered separate accounts whether they are organized as open-end companies or unit investment trusts ("UITs"). In the case of the UIT separate account, however, proposed rule 22e-3 would apply only to the extent the account invests in an open-end company that itself is relying on the rule. The

[129] 17 CFR 274.11A.

[130] *See* Protecting Investors, *supra* note 1, at 462 (regarding the history of the term "mutual fund"); *see also* Walter N. Durst, Analysis and Handbook of Investment Trusts 28-29 (1932) (discussing " 'mutual' investment trusts"). The Investment Company Institute has supported such restrictions on the use of the term "mutual fund." Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC 38 (Oct. 5, 1990), File No. S7-11-90.

[131] The term "variable insurance contracts" includes both variable annuity and variable life insurance contracts.

long-term nature of variable insurance contracts makes the separate account funding them well-suited for use with an interval or extended payment fund.

Variable insurance contracts are regulated as periodic payment plan certificates under the Investment Company Act and must, therefore, be redeemable.[132] Mainly for this reason, the separate account funding the contracts is registered under the Act as an open-end company or a UIT, rather than a closed-end company.[133] As an open-end company, the separate account operates like a mutual fund except that investment in the account is available only through the purchase of a variable insurance contract. As a UIT, the separate account serves as the medium for investing variable insurance premiums in an open-end company.[134] Most variable insurance separate accounts are registered currently as UITs.

Variable insurance contracts are, by nature, long-term contracts. The variable annuity is offered principally as a retirement planning vehicle in both the tax-qualified and non tax-qualified markets, and generally is regarded as being most beneficial to investors if held for the long term.[135] The variable life insurance contract is essentially a whole life insurance contract that is funded, not by guarantees provided by the issuing insurance company, but mainly by the owner's investment experience in a separate account.[136] Significant tax penalties apply or other adverse tax consequences usually result when a variable insurance contract is surrendered within a few years of purchase. For example, a surrendering contract owner may lose the benefit of tax deferral on earnings for amounts accumulated under such contracts, and generally is required to pay an early withdrawal tax penalty as well.[137] A contract owner, therefore, is discouraged from terminating his or her contract early. In addition, the fee structure of variable contracts, particularly the use of substantial withdrawal charges when a contract is terminated within a few years of purchase, provides further incentives not to surrender early.[138]

Because of their long-term nature, variable insurance contracts, like most insurance contracts, are well-suited for investing in funds with less liquid portfolios than are currently required under the Investment Company Act. The typical life insurance company's general account portfolio [139] consists of significant holdings of mortgages, bonds, and other long-term investments.[140] In order to hold such assets, however, an insurance company is permitted by state law to include a contract provision that allows it to defer paying redemption proceeds for up to six months after a request for surrender.[141] Proposed rule 22e-3 would allow companies offering variable contracts to adapt better to typical insurance business practices, at a possible cost savings to variable contract owners. Further cost savings may be realized if, as proposed, the rule facilitates the use of fixed contract administrative systems with variable contracts. The Commission is requesting comment on the extent to which insurance companies offering variable contracts may benefit in this way from the proposed rule.

1. Reliance on Proposed Rule 22e-3 by Registered Separate Accounts Organized as UITs

As noted, proposed rule 22e-3 will apply to both open-end management separate accounts and to UIT separate accounts. As applied to open-end management separate accounts, proposed rule 22e-3 raises no unique issues; all of the considerations discussed previously for regular open-end companies appear equally relevant here. For UIT separate accounts, however, certain technical considerations arise.

Paragraph (d) of proposed rule 22e-3 would permit a UIT separate account to rely on rule 22e-3, but only to the extent it invests in an interval or extended payment fund. The Commission deems it appropriate to extend the provisions of this rule to a UIT separate account because a participant in such an account, for purposes of the Investment Company Act, has rights that are virtually identical to those of a direct investor in the underlying fund. Each subaccount of the separate account has investment objectives and policies that mirror those of the related underlying portfolio. By selecting a particular subaccount in which to invest premium

[132] Investment Company Act section 27(c)(1), 15 U.S.C. 80a-27(c)(1). A periodic payment plan certificate is, essentially, a contract for purchasing investment company shares by installment. *See* Investment Company Act section 2(a)(27), 15 U.S.C. 80a-2(a)(27).

[133] An open-end management separate account and the variable annuity contract it issues (or the units of participation under such contracts) are registered simultaneously under the Investment Company Act and the Securities Act on Form N-3. A UIT separate account and the variable annuity contract it issues (or the units of participation under such contracts) are registered simultaneously under the Investment Company Act and the Securities Act on Form N-4. A UIT separate account and the variable life insurance contracts it issues are registered separately under the Investment Company Act and the Securities Act on Forms N-8B-2 and S-6, respectively. Currently, no separate account offering variable life contracts is registered as an open-end management company.

[134] Under federal law, an open-end management separate account or the underlying fund for a UIT separate account may generally be used only by purchasers of variable insurance contracts. *See* Rev. Rul. 81-225, 1981-2 C.B. 12; 26 CFR 1.817-5 (1989). These provisions are intended to ensure that the favorable tax treatment generally accorded to purchasers of insurance contracts will remain available only to such persons and not to the general investing public.

[135] *See, e.g.*, Ellen E. Schultz, "Variable Annuities' Returns Can Glitter, But Unwary Investors May Feel Trapped," Wall St. J., July 10, 1992, at C1, col. 1 (commenting that variable annuity investors "should be" long-term investors); Eric S. Hardy, "How Well Did Your Annuity Do?" Forbes 134, 135 (Apr. 13, 1992) (noting that annuities can be a wise investment if you "keep your expenses low, and * * * can hang in long enough for the tax deferral to amount to something—usually about ten years"); Manuel Schiffres, "Winning Big With Variable Annuities," Kiplinger's Personal Finance Magazine 49, 50-52 (Apr. 1992) (advising that "[t]he longer you allow your assets to grow on a tax-deferred basis, the more advantageous the variable annuity becomes"); Schultz, "Big Fees Can Tarnish Variable Annuities," Wall St. J., Mar. 26, 1991, at C1, col. 2 (noting that "[a]nnuities are more appropriate as long term investments * * * because the fees in an annuity can offset the advantage of tax deferral for years, even when those fees are low").

[136] Recent tax law changes assure that most variable life insurance contracts will be paid for over a minimum period of seven years. *See* 26 U.S.C. 7702A (defining modified endowment contract).

[137] *See, e.g.*, 26 U.S.C. 72(q) (prescribing ten percent penalty for premature distributions from annuity contracts).

[138] Most variable insurance contracts provide for the deduction of substantial contingent deferred sales charges if a contract is surrendered during the first seven to ten contract years. It should be noted, however, that a contract owner may transfer money among the various subaccounts of a separate account without paying a tax penalty or incurring heavy contract charges. In this sense, a variable insurance contract may not necessarily be "long term" with respect to the length of time premiums remain invested in a particular subaccount. In addition, a variable insurance contract may be exchanged for another insurance contract tax-free if the exchange meets the requirements of section 1035 of the Internal Revenue Code. In such cases, however, contract charges such as contingent deferred sales charges, still may apply.

[139] An insurance company's general account serves as the medium for funding obligations under its fixed insurance contracts. By contrast, a registered separate account serves as the medium for funding a company's variable insurance obligations.

[140] On December 31, 1990, approximately forty-one percent (41%) of the assets of all United States life insurance companies was held in the form of corporate bonds, and twenty-two percent (22%) in the form of mortgages and real estate. *See*, American Council of Life Insurance, 1991 Life Insurance Fact Book Update.

[141] *See* Kenneth Black, Jr. & Harold Skipper, Jr., Life Insurance, 137 (11th ed. 1987) (a company's contractual right to delay payment of cash value for up to six months is intended to protect the company against "runs," where investments might have to be liquidated under adverse circumstances). The authors observe, however, that this is a seldom used contractual provision that has been invoked only once in the last several decades.

payments, therefore, a participant in a UIT separate account effectively elects to participate in the investment experience of the related underlying portfolio.[142] In addition, while the insurance company is the owner of underlying fund shares held by a UIT separate account, it must vote such shares on fund matters only as instructed by a participant in the separate account.[143]

As contemplated, proposed rule 22e-3 would require a UIT separate account and the interval or extended payment fund in which it invests to have identical redemption policies. Such a conclusion would seem to follow logically from the identity in investment policies and objectives for both entities. The Commission requests comment, however, on whether the redemption policies for both entities should always be identical, or whether a UIT separate account may have a more or less limited redemption policy than that for the underlying fund in which it invests.

Rule 22e-3 provides, among other things, that redemption policies for interval and extended payment funds are changeable only by a "majority vote of the outstanding voting securities of the company * * *." Because a participant in a UIT separate account is a virtual investor in the underlying fund, and in order to maintain consistency in treatment of variable insurance separate accounts,[144] paragraph (d) of proposed rule 22e-3 would require pass-through voting (which, as used herein, includes "mirror" or "echo" voting and "proportionate" voting) [145] on changes in redemption policies by an interval or extended payment fund. As defined in subparagraph (a)(5) of the rule, therefore, "majority vote of the outstanding voting securities of the company" means the majority vote achieved when shares of the open-end company in which the separate account invests are voted in accordance with instructions received from contract owners or participants in the separate account, and all other shares held by the separate account are voted in proportion to those shares for which contract owner instructions have been received.

2. Exemption from Sections 27(c)(1) and 27(d) of the Act

As noted previously, variable insurance contracts are periodic payment certificates under the Investment Company Act and are, therefore, subject to the provisions of section 27 of the Act. Under section 27(c)(1), a variable insurance contract must be a redeemable security. Under section 27(d), the owner of a variable annuity contract with an excess sales load design, *i.e.*, one that permits the issuer to deduct more than nine percent (9%) of purchase payments when made or in early contract years, may surrender the contract at any time during the first eighteen contract months and receive a certain refund of sales load. In addition, for variable life insurance contracts with excess sales load design(s), the provisions of section 27(d) have been modified to permit a contract owner to surrender the contract at any time during the first twenty-four contract months and receive a certain refund of sales load.[146]

Proposed rule 27c-2 would exempt a registered separate account relying on proposed rule 22e-3 from the redemption requirements of sections 27(c)(1) and 27(d); exemption from section 27(d) would be granted only to the extent necessary to permit compliance with the provisions of proposed rule 22e-3. As contemplated, therefore, proposed rule 27c-2 would merely relax the requirement of section 27(d) that "at any time" within a limited time period a variable contract may be surrendered and its owner receive a certain refund of sales load. Proposed rule 27c-2 would not otherwise affect the requirements of section 27(d) or the provisions of subparagraphs (b)(13)(v)(A) of rules 6e-2 and 6e-3(T).

3. Pricing of Variable Life Contracts Under Proposed Rule 22c-1(d)

Rules 6e-2(b)(12) and 6e-3(T)(b)(12) [147] permit pricing policies for separate accounts funding variable life insurance contracts and flexible premium variable life insurance contracts, respectively, that differ from the requirements of proposed rule 22c-1(d). Under subparagraphs (b)(12)(i) of rules 6e-2 and 6e-3(T), the cash value under a variable life policy need only be capable of computation; an actual computation is required only where "necessary for the operation of a particular contract." Similarly, under subparagraph (b)(12)(ii) of these rules, a variable life policy's death benefit need not be computed daily; instead, a calculation is necessary only on designated days when the "investment experience of the separate account would affect the death benefit." In the absence of evidence that the participants in such separate accounts would be adversely affected if the existing pricing policies were continued for separate accounts relying on rule 22e-3, the proposed rule would permit variable life separate accounts to continue to follow the policies set forth in rules 6e-2(b)(12) and 6e-3(T)(b)(12).

4. Conforming Amendments to Rule 0-1(e)

In addition to the specific proposals set forth above, the Commission is proposing related technical amendments to rule 0-1(e) (17 CFR 270.0-1(e)) of its General Rules and Regulations under the Act. The amendment is necessary to extend the conditions specified in rule 0-1(e) to a separate account that relies on proposed rule 22e-3 and serves as the funding medium for variable annuity contracts.

IV. Cost/Benefit of Proposed Action

Proposed rule 22e-3 would not impose any additional costs on existing open-end companies. Instead, it would permit open-end investment companies operating under the rule to invest a greater portion of their assets in less liquid assets than open-end companies currently are permitted to do. Accordingly, the rule is intended to allow shareholders to invest to a greater extent in less liquid assets including venture capital and small business securities. This change would obviate the need for sponsors to spend unproductive time attempting to fit these

[142] In the two-tier structure, the fundamental distinction between the UIT separate account and the underlying fund in which it invests relates to the activities occurring at each level. At the top tier (the UIT separate account level), all insurance-related administrative duties are performed, usually by the sponsoring insurance company. At the bottom tier (the fund level), the investment-related activities are handled, in most cases by the fund's investment adviser.

[143] *See* rules 6e-2(b)(10), (15), (17 CFR 270.6e-2(b)(10), (15)), and 6e-3(T)(b)(10), (15) (17 CFR 270.6e-3(T)(b)(10), (15)) (regarding separate accounts funding variable life insurance contracts and flexible premium variable life insurance contracts, respectively). The two contracts differ fundamentally in an owner's ability to vary the timing and/or amount of premium payments under the contracts, and the level of death benefit desired. The Commission construes section 48(a) (15 U.S.C. 80a-47(a)) to require pass-through voting on fund matters when a registered separate account is organized as a UIT. *See* Investment Company Act Release No. 15651 (March 30, 1987), 52 FR 11187 (adopting amendments to rule 6e-3(T)).

[144] *See supra* note 143.

[145] "Mirror" or "echo" voting is the voting of underlying fund shares for which contract owner or participant instructions have not been received in proportion to shares for which contract owner or participant instructions have been received. "Proportionate" voting is the voting of shares that relate to an insurance company's investment in the separate account in proportion to shares for which contract owner or participant instructions have been received.

[146] *See* rules 6e-2(b)(13)(v)(A), 6e-3(T)(b)(13)(v)(A), 17 CFR 270.6e-2(b)(13)(v)(A), 6e-3(T)(b)(13)(v)(A).

[147] 17 CFR 270.6e-2(b)(12), 6e-3(T)(b)(12).

arrangements within the current confines of the open-end and closed-end categories.

Proposed rule 23c-3 would facilitate periodic repurchases by closed-end investment companies and thus should may attract greater investment in closed-end companies, which may invest in less liquid assets, including venture capital and small business investments. Repurchase offers under the proposed rule would be exempted from certain tender offer rules under the Securities Exchange Act and thus would not be subject to the filing fees imposed on issuer tender offers under rule 13e-4; this exemption would reduce the filing costs, as well as legal costs, currently incurred by closed-end funds making issuer tender offers. Closed-end funds making periodic repurchases under rule 23c-3 would be exempted from the requirements to provide certain disclosure to shareholders and to the Commission pursuant to rule 13e-4. The rule would replace that requirement with a requirement to provide certain information to shareholders and to file copies of that disclosure with the Commission except for funds with a fundamental policy of making all repurchase offers for the same amount of securities; the Commission believes that the disclosure and filing required under rule 23c-3 should be less burdensome than the current requirements under rule 13e-4.

Comments are requested, however, on the above assessment of the costs and benefits associated with the proposed rules and rule changes. Commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical evidence.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rules 22e-3, 23c-3, and 27c-2 under the Investment Company Act of 1940 (the "Act"), proposed amendments to rules 0-1(e), and 22c-1 under the Act, proposed rule 14e-6 under the Securities Exchange Act of 1934 (the "Exchange Act"), and proposed amendments to rules 10b-6 and 13e-4 under the Exchange Act. The Analysis explains that the proposals are intended to permit investment companies to offer shareholders intermediate degrees of liquidity that are not currently available to shareholders of closed-end and open-end companies. The proposed rules also are intended to facilitate greater investment in investment companies that might hold less liquid securities than is permitted for open-end companies, including venture capital investments, securities issued by small businesses, and less liquid securities of foreign issuers. The Analysis describes the present regulatory framework, under which open-end companies which issue only redeemable securities must maintain a high degree of liquidity and closed-end funds may offer shareholders liquidity only through the cumbersome and costly mechanism of issuer tender offers. The Analysis states that several significant alternatives to the rules were considered, including imposing fewer requirements for small entities, but concludes that by making minimal changes to existing operational requirements for closed-end and open-end companies, the proposed rules provide flexibility and investor protection in a way that should minimize any impact on, or cost to, small businesses. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Robert G. Bagnall, at Mail Stop 10-4, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

VI. Statutory Authority

The Commission is proposing rules 22e-3 and 27c-2 pursuant to sections 6(c), 34(b), and 38(a) (15 U.S.C. 80a-6(c), 33(b), -37(a)) of the Act; rule 23c-3 pursuant to sections 6(c), 23(c), and 38(a) (15 U.S.C. 80a-6(c), -23(c), -37(a)) of the Act; amendments to rule 22c-1 pursuant to sections 22(c) and 38(a) of the Investment Company Act; amendments to rule 0-1(e) pursuant to sections 6(c) and 38(a) of the Act (15 U.S.C. 80a-6(c), -37(a)); amendment to rule 10b-6 pursuant to sections 2, 9(a)(6), 10(b), and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78i(a), 78j(b), 78(w)); amendment to rule 13e-4 pursuant to sections 9(a)(6), 13(e), and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(a), 78m(e), 78w(a)); rule 14e-6 pursuant to sections 14(d), 14(e), and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78n(d), -(e), 78w(a)). The authority citations for these actions precede the text of the actions.

List of Subjects In 17 CFR Parts 239, 240, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

VII. Text of Proposed Rules and Rule Amendments

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

* * * * *

2. Section 240.10b-6 is amended by redesignating paragraph (h) as paragraph (i) and adding new paragraph (h) to read as follows:

§ 240.10b-6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(h) The provisions of this section shall not apply to repurchases of equity securities pursuant to § 270.23c-3 by a closed-end investment company registered under the Investment Company Act. Any terms used in this paragraph (h) which are defined in the Investment Company Act of 1940 shall have the meanings specified in such Act.

* * * * *

3. Section 240.13e-4 is amended by removing the word "or" following the semicolon at the end of paragraph (h)(6), redesignating paragraph (h)(7) as paragraph (h)(8), and adding new paragraph (h)(7) to read as follows:

§ 240.13e-4 Tender offers by issuers.

* * * * *

(h) * * *

(7) Offers by closed-end companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a) to repurchase securities pursuant to Rule 23c-3 thereunder (17 CFR 270.23c-3); or

* * * * *

4. By adding § 240.14e-6 to read as follows:

§ 240.14e-6 Repurchase offers by certain closed-end registered investment companies.

Sections 240.14e-1 and 14e-2 shall not apply to any offer by a closed-end company registered under the Investment Company Act of 1940 (15 U.S.C. § 80a) to repurchase securities of which it is the issuer pursuant to § 270.23c-3.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for part 270 is amended by adding the following citation:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39, unless otherwise noted;

* * * * *

Section 270.22e-3 also issued under 15 U.S.C. 80a-6(c), 80a-33(b);

Section 270.23c-3 also issued under 15 U.S.C. 80a-23(c).

6. Section 270.0-1 is amended by revising the introductory text of paragraph (e) and paragraph (e)(2) to read as follows:

§ 270.0-1 Definition of terms used in this part.

* * * * *

(e) Definition of separate account and conditions for availability of exemption under §§ 270.6c-6, 270.6c-7, 270.6c-8, 270.11a-2, 270.14a-2, 270.15a-3, 270.16a-1, 270.22c-1, 270.22d-3, 270.22e-1, 270.22e-3, 270.26a-1, 270.26a-2, 270.27a-1, 270.27a-2, 270.27a-3, 270.27c-1, 270.27c-2, and 270.32a-2 of this part.

* * * * *

(2) As conditions to the availability of exemptive Rules 6c-6, 6c-7, 6c-8, 11a-2, 14a-2, 15a-3, 16a-1, 22c-1, 22d-3, 22e-1, 22e-3, 26a-1, 26a-2, 270a-1, 27a-2, 27a-3, 27c-1, 27c-2, and 32a-2, the separate account shall be legally segregated, the assets of the separate account shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

7. Section 270.22c-1 is amended by adding paragraph (d) to read as follows:

§ 270.22c-1 Pricing of redeemable securities for distribution, redemption and repurchase.

* * * * *

(d) Notwithstanding the provisions above, except as provided in §§ 270.6e-2 and 6e-3(T), no registered open-end company or registered separate account that is exempt from section 22(e) pursuant to § 270.22e-3 shall redeem or repurchase any redeemable security of which it is the issuer except at a net asset value computed as provided in § 270.22e-3.

8. By adding § 270.22e-3 to read as follows:

§ 270.22e-3 Exemption from section 22(e) for certain open-end companies.

(a) *Definitions.* For purposes of this section:

(1) *Periodic interval* shall mean an interval of one, two, or three months.

(2) *Redemption deadline* with respect to a tender of securities shall mean the date by which an investment company must receive tenders by security holders for redemption. A redemption deadline shall be expressed as a specified calendar day of the month or the next business day.

(3) *Redemption payment date* with respect to a tender of securities shall mean the date by which an investment company must pay securities holders for any securities redeemed. A redemption payment date shall occur not more than thirty-one days after the later of the preceding redemption deadline, if any, and the tender of a security for redemption.

(4) *Redemption pricing date* with respect to a tender of securities shall mean the date on which an investment company determines the net asset value applicable to the redemption of such securities. A redemption pricing date shall occur seven days before the next redemption payment date.

(5) In the case of a registered separate account organized as a unit investment trust, *majority vote of the outstanding voting securities of the company* shall mean the majority vote achieved, under section 2(a)(42) (15 U.S.C. § 80a-2(a)(42)), when shares of a company in which the registered separate account is invested are voted in the following manner:

(i) Shares that relate to a variable contract owner's units of participation in the registered separate account are voted pursuant to instructions received from such contract owner;

(ii) Shares that relate to units of participation by a contract owner who has not given instructions are voted in proportion to the shares for which instructions have been received; and

(iii) Shares that relate to an insurance company's seed money invested in the unit investment trust are voted in proportion to shares for which instructions were received.

(b) A registered open-end company other than a company holding itself out as a money market fund shall be exempt from the provisions of section 22(e) (15 U.S.C. § 80a-22(e)) prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security, *Provided* that such company redeems its securities as provided in either paragraph (b)(1) or paragraph (b)(2) of this section.

(1) A company may redeem securities of which it is the issuer at periodic intervals, *Provided* that:

(i) The company shall redeem the securities at the net asset value determined on the next redemption pricing date following a tender of securities pursuant to a policy, changeable only by a majority vote of the outstanding voting securities of the company, stating the circumstances in which the company will redeem shares pursuant to this section, including:

(A) The numbers of days between a redemption deadline and the next redemption pricing date and redemption payment date;

(B) The frequency of the periodic intervals at which the company will redeem its shares; and

(C) The means of determining those dates; and

(ii) The company shall permit tenders of securities to be withdrawn at any time until the next redemption deadline following such tenders but shall not permit tenders to be withdrawn thereafter.

(2) A company may make payment upon redemption of securities of which it is the issuer up to thirty-one days after the tender of such securities, *Provided* that the company shall redeem securities at the net asset value determined on the next redemption pricing date following the tender of such securities pursuant to a policy, changeable only by a majority vote of the outstanding voting securities of the company, stating the circumstances in which the company will redeem shares pursuant to this section, including the numbers of days between a tender of securities and the next redemption pricing date and redemption payment date.

(c)(1) At least eighty-five percent of the assets of the company shall consist of assets:

(i) That the company reasonably believes may be sold or disposed of in the ordinary course of business, at approximately the price used in computing the company's net asset value, within the following period: for a company relying on paragraph (b)(1) of this section, the period between a redemption deadline and the next redemption payment date; for a company relying on paragraph (b)(2) of this section, the period between a tender of securities and the next redemption payment date; or

(ii) That mature by the next redemption payment date.

(2) In the event that such assets fail to comply with the requirements of paragraph (c)(1) of this section, the board of directors shall cause the company to take such action as it deems

appropriate to ensure compliance with those requirements.

(3) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall establish written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on redemptions, and comply with the requirements of paragraph (c)(1) of this section. The board of directors shall review the procedures and the overall composition of the portfolio at least annually and on such other occasions as may be necessary in light of changes in the markets for the company's portfolio assets.

(d) A registered separate account organized as a unit investment trust that invests in an open-end company relying on paragraph (b) of this section shall be exempt from the provisions of section 22(e) (15 U.S.C. 80a-22(e)) prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security, *Provided* that such separate account:

(1) Redeems securities on the same basis as such open-end company; and

(2) Votes shares of such open-end company as provided in paragraph (a)(5) of this section.

(e) It shall be an untrue statement of material fact within the meaning of section 34(b) (15 U.S.C. 80a-33(b)) for a registered open-end company or registered separate account that is exempt from section 22(e) pursuant to this section, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) (15 U.S.C. 80a-24(b)) to hold itself out to investors as, or adopt a name which suggests that it is, a mutual fund or the equivalent of a mutual fund, or, in the case of a registered separate account organized as a unit investment trust, to represent in any such document that it is investing in a mutual fund.

9. By adding § 270.23c-3 to read as follows:

§ 270.23c-3 Periodic Repurchases of Securities by Closed-End Companies.

(a) *Definitions.* For purposes of this section:

(1) *Maximum repurchase amount* and "minimum repurchase amount" shall mean respectively the maximum and minimum amounts of a class of securities that an investment company may offer to repurchase pursuant to this section. The maximum and minimum repurchase amounts shall be expressed as percentages of the securities of such class outstanding on the repurchase deadline. The maximum repurchase amount shall not be greater than twenty-five percent. The minimum repurchase amount shall not be less than five percent.

(2) *Periodic interval* shall mean an interval of three, six, twelve, twenty-four, or thirty-six months.

(3) *Repurchase deadline* with respect to a repurchase offer shall mean the date by which an investment company must receive repurchase requests submitted by security holders in response to that offer or withdraw previously submitted repurchase requests. A repurchase deadline shall be the first calendar or business day, the last calendar or business day, or the fifteenth calendar day or the next business day, of the month.

(4) *Repurchase offer* shall mean an offer pursuant to this section by a closed-end company to repurchase securities of which it is the issuer.

(5) *Repurchase offer amount* shall mean the amount of the class of securities that is the subject of a repurchase offer, expressed as a percentage of such securities outstanding on the repurchase deadline, that an investment company offers to repurchase in a repurchase offer. The repurchase offer amount shall not be greater than the maximum repurchase amount nor less than the minimum repurchase amount. Before each repurchase offer, the repurchase offer amount for that repurchase offer shall be determined by the company or its investment adviser; *provided, however,* that if a company specifies a maximum repurchase amount equal to the minimum repurchase amount, no such determination shall be necessary.

(6) *Repurchase request* shall mean the tender of a security in response to a repurchase offer.

(b) A registered closed-end company or a business development company may repurchase a security of which it is the issuer from the holders of the security at periodic intervals, pursuant to repurchase offers made to all holders of the security, *Provided* that:

(1) The company shall repurchase the security for cash at the net asset value determined on the business day following the next repurchase deadline and shall pay the holders of the security within seven days after the repurchase deadline except for any period specified in paragraphs (b)(3) (ii) through (iv) of this section. The company may deduct from the repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the company and is reasonably intended to compensate the company for expenses directly related to the repurchase.

(2) The company shall repurchase the security pursuant to a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company ("repurchase policy"), stating:

(i) That the company will make repurchase offers at periodic intervals pursuant to this section, as this section may be amended from time to time;

(ii) The periodic intervals between repurchase offers;

(iii) The dates of repurchase deadlines or the means of determining the repurchase deadlines; and

(iv) The maximum and minimum repurchase amounts.

(3) The company shall not suspend or postpone a repurchase offer scheduled in accordance with its repurchase policy except pursuant to a vote of a majority of the directors, including a majority of the directors who are not interested persons of the company, and only:

(i) If the repurchase would cause the company to lose its status as a regulated investment company under Subchapter M of the Internal Revenue Code (26 U.S.C. 851–860);

(ii) For any period during which the New York Stock Exchange or any other exchange on which the securities owned by the company are principally traded is closed, other than customary week-end and holiday closings, or during which trading on such exchange is restricted;

(iii) For any period during which an emergency exists as a result of which disposal by the company of securities owned by it is not reasonably practicable, or during which it is not reasonably practicable for the company fairly to determine the value of its net assets; or

(iv) For such other periods as the Commission may by order permit for the protection of security holders of the company.

(4)(i) No less than twenty business days before each repurchase deadline, the company shall send to each holder of record and to each beneficial owner of the securities that are the subject of the repurchase offer a notification providing the following information:

(A) A statement that the company is offering to repurchase its securities from security holders at net asset value;

(B) Any fees applicable to such repurchase;

(C) The repurchase offer amount;

(D) The date of the repurchase deadline;

(E) The procedures for security holders to tender their securities;

(F) The procedures under which the company may repurchase such securities on a pro rata basis pursuant to paragraph (b)(5) of this section;

(G) The net asset value of the securities as of the date of the notification and the means by which security holders may ascertain the net asset value thereafter; and

(H) The market price, if any, of the securities as of the date of the notification, and the means by which security holders may ascertain the market price thereafter.

(ii) The company shall file copies of the notification with the Commission within three business days after sending the notification to security holders. The notification shall bear the caption "Notification of Repurchase Offer under Rule 23c-3" and shall show the file number of the company's registration under the Act. Three copies of the notification shall be filed, at least one of which shall be manually signed. The other copies may have facsimile or typed signatures. The format of the copies shall comply with the requirements for registration statements and reports under § 270.8b-12.

(iii) For purposes of sending a notification to a beneficial owner pursuant to paragraph (b)(4)(i) of this section, where the company has knowledge that securities that are the subject of a repurchase offer are held of record by a broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers in nominee name or otherwise, the company shall follow the procedures for transmitting materials to beneficial owners of securities that are set forth in § 240.14a-13 of this chapter.

(5) If security holders tender more than the repurchase offer amount, the company may repurchase an additional amount of securities not to exceed two percent of the securities of such class outstanding on the repurchase deadline, but the total amount repurchased shall not in any event exceed the maximum repurchase amount; *provided, however,* that if a company specifies a maximum repurchase amount equal to the minimum repurchase amount, the total amount repurchased may exceed the maximum repurchase amount but shall not exceed twenty-five percent of the securities outstanding on the repurchase deadline. If the company determines not to repurchase more than the repurchase offer amount, or if security holders tender securities in an amount exceeding the repurchase offer amount plus two percent of the securities outstanding on the repurchase deadline, the company shall repurchase the securities tendered on a pro rata basis; *Provided, however,* that this provision shall not prohibit the company from:

(i) Accepting all securities tendered by persons who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred shares and who tender all of their securities, before prorating securities tendered by others; or

(ii) Accepting by lot securities tendered by security holders who tender all securities held by them and who, when tendering their securities, elect to have either all or none or at least a minimum amount or none accepted, if the company first accepts all securities tendered by security holders who do not so elect.

(6) The company shall permit tenders of securities for repurchase to be withdrawn at any time until the repurchase deadline but shall not permit tenders to be withdrawn thereafter.

(7) The current net asset value of the company's securities shall be computed no less frequently than weekly on such day and at such specific time or times during the day that the board of directors of the company shall set. For purposes of section 23(b), the current net asset value applicable to a sale of common stock by the company shall be the net asset value next determined after receipt of an order to purchase such stock.

(8) A majority of the directors of the company shall be directors who are not interested persons of the company, and the selection and nomination of those directors shall be committed to the discretion of those directors.

(9) The company shall not issue any class of senior security or sell any senior security of which it is the issuer, except that the company shall be permitted to borrow, *provided* that immediately after any such borrowing there shall be an asset coverage of at least 300 per cent for all borrowings of the company; and *provided further* that in the event that such asset coverage shall at any time fall below 300 per cent the company shall, within three days thereafter (not including Sundays and holidays), reduce the amount of its borrowings to an extent that the asset coverage of such borrowings shall be at least 300 per cent.

(10)(i) A percentage of the company's assets equal to at least 150 per cent of the minimum repurchase amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment. When a company sends a notification to shareholders pursuant to paragraph (b)(4) of this section, a percentage of the company's assets equal to 150 per cent of the repurchase offer amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment. In the event that the company's assets fail to comply with the requirements in the preceding sentences of this subparagraph, the board of directors shall cause the fund to take such action as it deems appropriate to ensure compliance.

(ii) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall establish written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on repurchases, and comply with the liquidity requirements of paragraph (b)(10)(i) of this section. The board of directors shall review the procedures and the overall composition of the portfolio at least annually and on such other occasions as may be necessary in light of changes in the markets for the company's portfolio assets.

(11) The company, or any underwriter for the company, shall comply, as if the company were an open-end company, with the provisions of section 24(b) (15 U.S.C. 80a-24(b)) and rules issued thereunder with respect to any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors.

10. By adding § 270.27c-2 to read as follows:

§ 270.27c-2 Exemption from section 27(c)(1) for registered separate accounts exempt under § 270.22e-3.

(a) A registered separate account that is exempt from section 22(e) (15 U.S.C. § 80a-22(e)) pursuant to § 270.22e-3, and any depositor of or underwriter for such account, shall be exempt from section 27(c)(1) (15 U.S.C. 80a-27(c)(1)) with respect to any variable annuity or variable life insurance contract participating in such account.

(b) A registered separate account that is exempt from section 22(e) pursuant to § 270.22e–3, and any depositor of or underwriter for such account, shall be exempt from section 27(d) (15 U.S.C. 80a–27(d)) with respect to any variable annuity contract participating in such account to the extent necessary to permit compliance with the provisions of § 270.22e–3.

(c) Notwithstanding the provisions of paragraphs (b)(13)(v)(A) of §§ 270.6e–2 and 6e–3(T), a registered separate account that is exempt from section 22(e) pursuant to § 270.22e–3, and any depositor of or underwriter for such account, shall be exempt from Section 27(d) with respect to any variable life insurance contract participating in such account to the extent necessary to permit compliance with the provisions of § 270.22e–3.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933 PART 274-FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

11. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77a *et seq.*, unless otherwise noted.

12. The authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

Note: The Guides to Forms N–1A, N–2, N–3, and N–4 are not codified in the Code of Federal Regulations.

13. Adding Guide 34 to Form N–1A to read as follows:

Guide 34. Limited Redemption Funds.

A registrant that has adopted a fundamental policy permitting redemption of its shares at periodic intervals, or taking longer than seven days to pay redemption proceeds, must fully and prominently disclose this fact in its prospectus. This disclosure should include a prominent legend on the cover page of the prospectus stating that the registrant has adopted a limited redemption policy; that its shares, in the case of an interval fund, cannot be redeemed daily, or, in the case of an extended payment policy, that the proceeds of a redemption will be delayed and, as a result, that investment in the shares of the registrant may be unsuitable for certain investors. This legend should contain a cross-reference to the section in the prospectus in which these risks are discussed in greater detail.

The registrant should discuss fully in its prospectus the details of its limited redemption policy, including the fact that this policy may be changed only by a majority vote of its outstanding voting securities. This discussion should disclose all details of the procedures to be followed in redeeming shares, including the specific dates of, and intervals between, redemption, pricing and repayment, the revocability of redemption requests, and any fees or range of fees that may be charged in connection with the redemption of shares.

The registrant should highlight the factors that distinguish it from a mutual fund; in this regard, the registrant should discuss, if applicable, the risks of investing in less liquid securities, including the effects on pricing its shares for sales or redemptions. Under no circumstances should a registrant make any statements that could lead an investor to believe that the registrant is a mutual fund.

The registrant must disclose fully in its prospectus the principal speculative or risk factors associated with an investment in its shares. These factors should include matters such as: The market risk to which an investor may be subject as a result of the delay between the tender of shares and their pricing; the possible decrease in share value as a result of currency fluctuations between the date of tender and the redemption date if the registrant has invested all or a portion of its portfolio in foreign markets; the reduced liquidity of the registrant's shares and that they may be unsuitable for certain investors; and any other matters that bear on an investor's exposure to risk of loss.

Finally, if the registrant intends to invest in thinly traded, less liquid securities, including securities traded in less-developed foreign markets, the registrant should disclose as a special risk factor the impact on those markets and the concomitant impact on the registrant if it should experience substantial redemptions. These risks include the possibility that the registrant might not be able to liquidate portfolio securities in an orderly manner and would be required to accept drastically reduced prices or might not be able to sell securities at all, in which case the registrant would have to borrow to honor redemptions or may not be able to honor redemptions. Such registrants also should explain that because of the nature of the portfolio and, in the case of an interval fund, periodically concentrated redemption demands, this may be a greater risk than that posed by an investment in a regular mutual fund.

14. Adding Guide 10 to Form N–2 to read as follows:

Guide 10. Periodic Repurchases by Closed-End Funds

If a registrant intends to make periodic repurchases of its securities in accordance with the provisions of rule 23c–3,[1] the registrant should make full disclosure of this policy in its prospectus. In response to Item 1.1.b, the cover page of the prospectus should state that the registrant is a closed-end investment company that will make periodic repurchase offers for its securities, subject to certain conditions, and specify the anticipated frequency of such offers. This response should include a cross reference to those sections of the prospectus that discuss the registrant's repurchase policies and the risks attendant thereto.

The fee table required by Item 3.1 should state, as a specific caption under shareholder transaction expenses, the amount of any fees to be charged to shareholders in connection with the repurchase of their shares by the registrant.

In response to Item 8.2.c, the registrant should provide a detailed description of its fundamental policy related to share repurchases. The description of the repurchase policy should be distinct from the registrant's description of its other fundamental policies so that investors appreciate its significance. The description of the registrant's fundamental repurchase policy should include the following:

a.–That it is a fundamental policy that can be changed only by majority vote;

b. The intervals between repurchase offers, and the scheduled dates of the repurchases (i.e., whether repurchase offers will be made every three, six, twelve, twenty-four, or thirty-six months, and the dates of the repurchase deadlines);

c. The maximum and minimum amount of each repurchase offer;

d. Any circumstances in which the fund may postpone or fail to make a repurchase offer; and

e. The means by which the fund anticipates that repurchases will be funded, including whether the registrant will incur any debt to repurchase shares.

The registrant should provide a detailed description of the procedures that will be used in connection with periodic repurchase offers. This description should include the mechanics of the repurchase offer (*i.e.*, time periods between offer and repurchase, pricing mechanics and other matters related to the expected timing of and procedures associated with such repurchases); the way, if any, in which shareholders will be notified of repurchase offers; the tender procedures (including any special procedures that may be required where shares are held in street name); the revocability of repurchase requests; the means of determining the number of shares to be repurchased; the procedures to be followed in the event a repurchase offer is oversubscribed; the procedures for calculating the repurchase price; whether and how shareholders may readily ascertain the net asset value per share during the period preceding the "repurchase deadline" (the date by which investors must submit shares or revoke tenders previously made);[2] and the minimum and maximum percentage of shares that may be repurchased. Registrants are encouraged to use graphic presentations (such as a time line or calendar) so that investors can readily understand the time periods used by the funds and the significance of the repurchase deadline, the repurchase pricing date and the repurchase payment date.

In response to Item 8.3.a, the registrant should fully disclose all risks associated with

[1] *See* Guide 2 for a discussion of regulatory and disclosure issues related to share repurchases that are not subject to rule 23c–3.

[2] Under rule 23c–3, the registrant must repurchase its shares at their net asset value determined on the next business day after the next repurchase deadline. Thus, the net asset value of a registrant's shares prior to the repurchase deadline will be material information to investors in determining whether or not to tender shares.

the registrant's intention to make periodic repurchases of its securities, including:

• The risk that, in the event of the oversubscription of a repurchase offer, shareholders may be unable to liquidate their entire investment in the registrant at net asset value during that repurchase offer;

• The possibility that periodic repurchase offers may not eliminate any discount at which the registrant's shares trade;

• The effect of repurchase offers and related liquidity requirements on portfolio management and on the ability of the registrant to achieve its investment objectives, including the possibility that diminution in the size of the fund could result from repurchases in the absence of sufficient new sales of the fund's shares, and that this may decrease the fund's investment opportunities; and

• The effect that share repurchases and related financings might have on expense ratios and on portfolio turnover.

The means by which share repurchases will be funded generally would be material, and thus these means and any risks inherent in the policies relating to funding should be disclosed. If the registrant intends to incur debt to finance a share repurchase, the registrant should disclose the maximum amount of debt that may be incurred for that purpose, the restrictions imposed by the Investment Company Act and by rule 23c-3 on leverage, and the attendant risks of leveraging.[3] If the registrant believes that share repurchases will be funded with the proceeds of sales of portfolio securities, it should disclose that fact and the risk that the need to sell securities to fund repurchase offers may affect the market for the portfolio securities being sold, which may, in turn, diminish the value of an investment in the fund.

The effect that repurchases may have on the ability of the registrant to qualify as a regulated investment company under the Internal Revenue Code in the event that share repurchases have to be funded with proceeds from the liquidation of portfolio securities should also be discussed. Finally, registrants should discuss the potential tax consequences to investors and the registrant of share repurchases and related portfolio security sales in response to Items 10.4 or 22, as appropriate.

15. By adding Guide 38 to Form N-3 to read as follows:

Guide 38. Limited Redemption Funds

A registrant that has adopted a fundamental policy permitting redemption of its variable insurance contracts at periodic intervals, or taking more than seven days to pay redemption proceeds, must fully and prominently disclose this fact in its prospectus. This disclosure should include a prominent legend on the cover page of the prospectus stating that the registrant has adopted a limited redemption policy; that its variable insurance contracts, in the case of an interval fund, cannot be redeemed daily, or, in the case of an extended payment fund, that the proceeds of a redemption will be delayed. The legend should contain a cross-reference to the sections in the prospectus in which the redemption procedures followed by the registrant, and the risks of owning variable insurance contracts of an open-end management separate account that has adopted a limited redemption policy, are discussed in greater detail.

The registrant should discuss fully in its prospectus the details of its limited redemption policy, including the fact that this policy may be changed only by a majority vote of its outstanding voting securities. This discussion should disclose all details of the procedures to be followed in redeeming the registrant's variable insurance contracts, including: The specific dates of, and intervals between, redemption, pricing and payment; the revocability of redemption requests in interval funds; and any fees or range of fees that may be charged in connection with the redemption of the variable insurance contracts. The registrant also should highlight the factors that distinguish it from an open-end management separate account subject to the requirements of section 22(e). In this regard, the registrant should discuss the risks of investing in less liquid securities, including the effects on the pricing of sales of its variable insurance contracts. Under no circumstances should a registrant make any statements that could lead a contract owner to believe that the registrant operates like a traditional open-end management separate account.

The registrant must disclose fully in its prospectus the principal speculative or risk factors associated with owning a variable insurance contract of an open-end management separate account with a limited redemption or an extended payment policy. These factors should include matters such as: The less liquid nature if any of the registrant's portfolio; the market risk to which a contract owner may be subject as a result of the delay between the tender and the pricing of the registrant's variable insurance contracts; the possible decrease in the value of the registrant's variable insurance contracts as a result of currency fluctuations between the date of tender and the redemption date if the registrant has invested all or a portion of its portfolio in overseas markets; and any other matters that could adversely affect a contract owner's exposure to risk of loss.

Finally, if the registrant intends to invest in thinly traded, less liquid securities, including securities traded in less-developed foreign markets, the registrant should disclose as a special risk factor, the impact on those markets and the concomitant impact on the registrant if the registrant should experience substantial redemptions. These risks include the possibility that the registrant might not be able to liquidate portfolio securities in an orderly manner and would be required to accept drastically reduced prices or might not be able to sell securities at all, in which case the registrant would have to borrow to honor redemptions or would have to suspend redemptions. The registrant should explain that because of the nature of the portfolio and, in the case of an open-end management separate account with a limited redemption policy, periodically concentrated redemption demands, owning a variable insurance contract issued by the registrant may pose a greater risk than that posed by owning a variable insurance contract of a traditional open-end management separate account.

16. By adding Guide 13 to Form N-4 to read as follows:

Guide 13. Investment in Limited Redemption Funds

A registrant that has adopted a fundamental policy allowing it to invest in open-end companies that permit redemption of their shares at periodic intervals or that take longer than seven days to pay redemption proceeds must fully and prominently disclose this fact in its prospectus. The cover page of the prospectus should include a prominent legend that indicates: (i) The number, if any, of the registrant's subaccounts that are invested in interval funds and the timing of redemption, pricing and repayment of the registrant's variable insurance contracts; as well as (ii) the number, if any, of the registrant's subaccounts that are invested in extended payment funds and the amount of time which the registrant may take to pay redemption proceeds to owners of the variable insurance contracts of invested in those open-end companies. In addition, the legend should contain a cross-reference to the section in the prospectus that discusses redemption procedures followed by the registrant, and the risks of owning variable insurance contracts of a UIT separate account that has invested in an interval fund or extended payment fund.

The registrant should discuss fully in its prospectus the details and implications of its investment in open-end companies with limited redemption policies, including the fact that such policies may be changed only by a majority vote of its outstanding voting securities, as defined in rule 22e-3(a)(5) under the 1940 Act. This discussion should identify each of the registrant's subaccounts that invest in limited redemption funds and disclose all details of the procedures to be followed in redeeming the registrant's variable insurance contracts invested in such open-end companies, including: The specific dates of, and intervals between, redemption, pricing and payment, the revocability of redemption requests, and any fees or range of fees that may be charged in connection with the redemption of the variable insurance contracts. The registrant also should highlight the factors that distinguish variable insurance contracts invested in limited redemption funds from variable insurance contracts invested in open-end funds subject to the requirements section 22(e) of the 1940 Act. In this regard, the registrant should discuss the risks of investing in less liquid securities, including the effects on the pricing of sales of its variable insurance contracts. Under no circumstances should a registrant make any statements that could lead a contract owner to believe that variable insurance contracts invested in limited redemption funds are indistinguishable from variable insurance

[3] *See* paragraph (b)(9) of rule 23c-3 and Guide 6 to Form N-2. Guide 6 contains a detailed discussion of the Division's views on the risks associated with leverage. 148.

contracts invested in traditional open-end management companies.

The registrant must disclose fully in its prospectus the principal speculative or risk factors associated with owning a variable insurance contract of a UIT separate account investing in open-end companies with limited redemption policies. These factors should include matters such as: The less liquid nature if any of the portfolio of an open-end company following a limited redemption or extended payment policy fund, and consequently, the variable insurance contract of a UIT separate account invested in that open-end company; the market risk to which a contract owner may be subject as a result of the delay between the tender and pricing of the registrant's variable insurance contracts; the possible decrease in the value of the registrant's variable insurance contract as a result of currency fluctuations between the date of tender and the redemption date if the underlying fund has invested all or a portion of its portfolio in overseas markets; and any other matters that could adversely affect a contract owner's exposure to risk of loss.

Finally, if the registrant intends to invest in underlying open-end companies with limited redemption policies that invest in thinly traded, less liquid securities, including securities traded in less-developed foreign markets, the registrant should disclose as a special risk factor, the impact on those markets and the concomitant impact on the registrant if the registrant should experience substantial redemptions. These risks include the possibility that the underlying fund might not be able to liquidate portfolio securities in an orderly manner and would be required to accept drastically reduced prices or might not be able to sell securities at all, in which case the registrant would have to borrow to honor redemptions or would have to suspend redemptions. The registrant should explain that because of the nature of the portfolio of the underlying fund, and given the periodically concentrated redemption demands made of a UIT separate account investing in an open-end company with a limited redemption policy, owning a variable insurance contract issued by a UIT separate account investing in an open-end fund with a limited redemption policy may pose a greater risk than that posed by owning a variable insurance contract of a UIT separate account invested in an open-end company subject to section 22(e).

Dated: July 28, 1992.

By the Commission.

Jonathan G. Katz,
Secretary.

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17 CFR Part 270

[Release No. IC-18666, File No. S7-26-92]

RIN 3235-AF01

Investment Company General Partners Not Deemed Interested Persons; Investment Company Limited Partners Not Deemed Affiliated Persons

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules and requests for comment.

SUMMARY: The Commission is proposing for public comment a new rule under the Investment Company Act of 1940 that would exempt general partners of registered management companies and business development companies organized as limited partnerships ("limited partnership investment companies") from the definition of "interested person" under the Act. The proposed rule would give the director general partners of limited partnership investment companies meeting the requirements of the rule the same treatment afforded directors of corporations under the interested person definition. The Commission is also proposing a new rule that would exempt limited partners of a limited partnership investment company from the definition of "affiliated person" under the Act. The proposed rule would give limited partners the same treatment afforded shareholders of corporations under the affiliated person definition. The proposed rules, which are based on numerous orders granted by the Commission, are intended to obviate the need for limited partnership investment companies to seek exemptive orders from the Commission, thereby making it easier for investment companies desiring to use the limited partnership form to do so.

DATES: Comments must be received on or before October 5, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549. All comment letters should refer to File No. S7-26-92. 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: Edward J. Rubenstein, Attorney, Diane C. Blizzard, Deputy Chief of Office, or Karen L. Skidmore, Assistant Director, all at (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rules 2a19-2 and 2a3-1 under the Investment Company Act of 1940 (15 U.S.C. 80a-1, *et seq.*) (the "Act").

I. Background

A. Proposed Rule 2a19-2

1. The Statutory Problem

For tax and other reasons, some registered management companies and business development companies ("BDCs") [1] have sought to organize in limited partnership form. [2] These investment companies have not been able to use the limited partnership form, however, without obtaining a "start up" exemption from the Commission for certain of their general partners from the Act's definition of "interested person."

Relief is necessary because the Act requires that a certain percentage of the directors of an investment company not be "interested persons." [3] The

[1] A BDC is a venture capital fund that (i) is closed-end, (ii) makes certain specified investments, (iii) makes available significant managerial assistance to the businesses in which it invests, and (iv) elects to be regulated under the Act as a BDC. *See* section 2(a)(48) (15 U.S.C. 80a-2(a)(48)) (definition of a BDC). *See also* sections 6(f) and 54 through 65 (15 U.S.C. 80a-6(f), 80a-53 through 80a-64). BDCs were created as part of the Small Business Incentive Act of 1980, Pub. L. 96-477, 94 Stat. 2275 (codified at 15 U.S.C. 80a-2, -3, -25, -46, -53 through 64; 80b-2 to -9 (supp. IV 1980)) (the "1980 Amendments"), in order to remove some of the "burdens on venture capital activities that might create unnecessary disincentives to the legitimate provision of capital to small businesses." H.R. Rep. No. 1341, 96th Cong., 2d Sess. 21-22 (1980) (hereinafter "1980 House Report").

[2] Applicants have stated that the limited partnership form has the benefit of offering "pass through" income tax treatment typically available to corporations and business trusts under Subchapter M of the Internal Revenue Code while affording greater investment flexibility. *See, e.g.*, Panther Partners, L.P., Investment Company Act Release Nos. 18213 (June 24, 1991) (Notice of Application) and 18248 (July 24, 1991) (Order) (closed-end, non-BDC); The Multiple Advisers Fund, L.P., Investment Company Act Release Nos. 17406 (Mar. 28, 1990) (Notice of Application) and 17476 (May 8, 1990) (Order) (open-end, non-BDC). In addition to tax reasons, BDCs seem to favor the limited partnership as a more appropriate investment vehicle than a corporation or a business trust for a closed-end entity of limited duration that makes a limited number of investments. *See, e.g.*, Equitable Capital Partners II, L.P., Investment Company Act Release Nos. 17784 (Oct. 9, 1990) (Notice of Application) and 17843 (Nov. 6, 1990) (Order) (BDC).

[3] "Interested person" is defined in section 2(a)(19) (15 U.S.C. 80a-2(a)(19)). Section 10(a) (15 U.S.C. 80a-10(a)) provides that at least forty percent of the board of directors of a registered investment company must be independent. Section 56(a) requires that a majority of the directors or general partners of a BDC be independent. Other provisions requiring directors who are independent include

Continued

independent director provisions supply an independent check on management and provide a means of shareholder representation.[4]

At the same time that the Act requires independent directors, however, the Act defines "interested person" and "affiliated person" in a way that precludes a limited partnership investment company from having independent directors. That is because directors of limited partnerships are general partners,[5] and the Act defines the term "partner" in such a way as to make all partners affiliated persons of the investment companies with which they are associated.[6] The Act further provides that an affiliated person of an investment company is an interested person of the company.[7] So, a general partner is a "partner" and thus an affiliated person of the limited partnership investment company and, as such, is an interested person of the company. In addition, by virtue of being "copartners" of the investment adviser and/or principal underwriter,[8] the director general partners are also interested persons of these entities and of the investment company.[9]

The Act also defines a director as an affiliated person (and thus an interested person) of an investment company.[10] The Act, however, provides that, notwithstanding the other provisions, no person shall be deemed to be an interested person of an investment company *solely* because that person is a director of the investment company.[11] This exemption permits corporate directors with no other ties to the investment company to qualify as independent directors. Director general partners do not enjoy an analogous exemption, since they qualify for the exemption as *directors*, but not as *partners* and *copartners*. In other words, corporate directors are eligible for the exemption because they are interested persons *solely* because they are directors, but director general partners are partners as well as directors, and therefore are not eligible for the exemption.[12]

2. Administrative Actions

For years, an investment company's ability to organize as a limited partnership was severely hampered by state limited partnership laws that in effect prevented limited partners from voting. The Act requires that all shares issued by an investment company be voting shares and have equal voting rights with all other outstanding shares.[13]

As state laws changed, the Commission began considering exemptive applications under section 2(a)(19) and, since 1976,[14] has granted approximately forty such exemptions.[15] In issuing the exemptive orders, the Commission sought to assure that the limited partnership form of organization did not lead to a diminution of investor protection. For example, while the partnership's investment adviser typically serves as a general partner for purposes of contributing and holding a percentage interest necessary to qualify the partnership for federal tax purposes, the adviser has been required by the Commission to be exclusively a non-managing general partner because of concerns over the appropriateness of entities that are not natural persons serving as directors under the Act. In addition, to eliminate the possibility of economic "blackmail" by the investment adviser holding the participation interest necessary to assure partnership tax treatment, the Commission has limited the ability of the adviser general partner to withdraw from the partnership until a successor has been appointed.[16]

The Commission has sought to assure that director general partners are accountable to the limited partnership investment company and its investors to the same degree as corporate directors. For example, the Commission has required that director general partners be natural persons, assume all of the responsibilities and obligations imposed by the Act on directors, exclusively manage the affairs of the partnership, be

section 15(c) (15 U.S.C. 80a-15(c)), which provides that the investment advisory and principal underwriting contracts must be approved by a majority of the directors who are not interested persons of the investment adviser or principal underwriter, and section 32(a) (15 U.S.C. 80a-31(a)), which provides that a majority of the independent directors must select the investment company's accountant. *See also* sections 57(f), (j) and (n) (requiring independent directors of a BDC to approve certain transactions); and rules 12b-1(b)(2) (17 CFR 270.12b-1(b)(2)) (distribution plan of an open-end investment company must be approved by independent directors), and 17a-7(e) (17 CFR 270.17a-7(e)) (certain affiliated transactions permitted if approved by a majority of investment company's independent directors).

[4] *See, e.g.*, S. Rep. No. 184, 91st Cong., 1st Sess. 31, 33 (1969) (hereinafter "1970 Senate Report").

[5] Section 2(a)(12) (15 U.S.C. 2(a)(12)) defines "director" as "any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural person who is a member of a board of trustees of a management company created as a common-law trust." A general partner of a limited partnership who functions as a director meets this definition. *See, e.g.*, Murphy Favre Properties, Inc. (pub. avail. May 26, 1987), and Integrated Resources, Inc. (pub. avail. June 1, 1979). *See also* 1980 House Report, *supra* note 1, at 44, n.9 (general partners of business development companies are to be treated as directors under all provisions of the Act except where specified otherwise).

In addition to the individual general partners who manage the company and function as directors, a typical limited partnership investment company may have an entity general partner that serves as the investment adviser, and limited partners who are passive investors in the company. Affiliates of the adviser frequently serve as principal underwriter and perform administrative functions for the limited partnership investment company. *See, e.g.*, Prudential-Bache Special Situations Fund, L.P., Investment Company Act Release Nos. 17168 (Oct. 16, 1989) (Notice of Application) and 17212 (Nov. 13, 1989) (Order) (closed-end, non-BDC).

[6] Section 2(a)(3)(D) (15 U.S.C. 80a-2(a)(3)(D)) provides that "'affiliated person' of another person means * * * (D) any officer, director, partner, copartner, or employee of such other person."

[7] Section 2(a)(19)(A)(i) provides that "interested person" of an investment company means any affiliated person of such company.

[8] This assumes that, as is often the case, the investment adviser and/or the principal underwriter are general partners of the limited partnership investment company. *See supra* note.

[9] First, as copartners of the investment adviser and/or principal underwriter, the director general partners are affiliated persons of the investment adviser and/or principal underwriter under section 2(a)(3)(D) and thus are interested persons of the *investment adviser and/or the principal underwriter* under section 2(a)(19)(B)(i). Second, as interested persons of the investment adviser and/or principal underwriter, the director general partners are also interested persons of the *investment company* under section 2(a)(19)(A)(iii).

[10] *See* section 2(a)(3)(D).

[11] Section 2(a)(19)(A)(aa).

[12] There is nothing explicit in the legislative history of section 2(a)(19) that sheds light on why there is no analogous exemption for partners. *But see infra* note 28 (discussing the legislative history of the 1980 Amendments).

[13] Section 18(i) (15 U.S.C. 80a-18(i)). *See, e.g.*, The Commonwealth Fund (pub. avail. June 15, 1971) (also suggesting that the voting requirements would cause the partnership to lose the tax advantages of a limited partnership).

[14] The first exemption was granted in 1976 to Vance, Sanders Exchange Fund, an open-end investment company organized as a limited partnership in order to offer investors federal tax benefits that would not be available if the company were organized as a corporation. *See* Vance, Sanders Exchange Fund, Investment Company Act Release Nos. 9075 (Dec. 8, 1975) (Notice of Application) and 9111 (Jan. 5, 1976) (Order) (open-end, non-BDC). The company was organized in California, whose limited partnership law permitted limited partners to exercise the voting rights specified in section 18(i) without losing their limited liability.

[15] *See* Vance, Sanders Municipal Bond Fund, Ltd., Investment Company Act Release Nos. 10123 (Feb. 17, 1978) (Notice of Application) and 10158 (Mar. 15, 1978) (Order) (open-end, non-BDC); Fidelity Government Securities Fund, Ltd., Investment Company Act Release Nos. 10561 (Jan. 16, 1979) (Notice of Application) and 10589 (Feb. 12, 1979) (Order) (open-end, non-BDC). *See also* Prudential-Bache Special Situations Fund, L.P., *supra* note 5, and Dean Witter Capital Partners, L.P., Investment Company Act Release Nos. 17741 (Sept. 14, 1990) (Notice of Application) and 17798 (Oct. 15, 1990) (Order) (BDC).

[16] *See, e.g.*, orders cited *supra* notes 2, 5, 14, and 15.

elected by the limited partners, and act only as a group, not individually.[17]

The Commission also has imposed conditions and required representations designed to assure that limited partners have the same degree of protection that they would have were they corporate shareholders. Thus, the Commission has required that the limited partners have all of the rights of shareholders under the Act, and that if a limited partner transfers its interest, the general partners take all necessary action to assure that the transferee becomes a substituted limited partner with voting rights. The Commission has also restricted the ability of the general partners to cause a dissolution of the partnership or a loss of its favorable tax status, and restricted the adviser general partner's ability to bind or act on behalf of the partnership outside its capacity as investment adviser.[18] Finally, the Commission has imposed conditions designed to assure that a partnership does not inadvertently violate the Act. For example, it has required that there be no priorities on liquidation or otherwise that would give rise to a senior security under section 18.[19]

B. Proposed Rule 2a3–1

A slightly different problem exists for the limited partners of a limited partnership investment company. Shareholders of an investment company organized as a corporation or business trust are affiliated persons of the investment company if they own, control, or hold five percent or more of the voting securities of the investment company [20] (or have some other statutory affiliation). In contrast, *all* partners—including all limited partners—are affiliated persons of the investment company, *regardless* of the amount of securities they own.[21] Furthermore, as copartners, limited partners also are affiliated persons of all other limited and general partners of the investment company. Because section 17(a) (15 U.S.C. 80a–17(a)) generally prohibits investment company principal transactions with affiliated persons, and affiliated persons of affiliated persons, this creates enormous problems for limited partnership investment companies, their limited partners, and affiliated persons of their limited partners.[22] For example, if a bank or securities dealer is a limited partner in a limited partnership investment company, it is an affiliated person of the company under section 2(a)(3)(D) and may not engage in principal transactions with the company, even if it owns less than five percent of the partnership interests. This would not be true if the investment company were organized as a corporation. Thus, virtually all limited partnership investment companies have sought to have their limited partners exempted from section 2(a)(3)(D).[23]

There appears to be no reason to treat limited partners and shareholders of an investment company differently under the affiliated transactions provisions of the Act. Limited partners, like shareholders, are passive investors in the investment company, and where neither type of investor owns more than five percent of the voting securities, there is little, if any, potential for overreaching. Accordingly, the Commission has routinely exempted limited partners from the definition of "affiliated person," where they do not own, control, or hold with the power to vote five percent or more of the outstanding voting securities of the partnership.[24]

C. Need for the Rules

In amending the Act to add the definition of "interested person," [25] Congress recognized that situations might arise where persons "involuntarily" would become interested persons. It fully expected the Commission to use its exemptive authority under section 6(c) (15 U.S.C. 80a–6(c)) to administer the amendments in a flexible manner to exempt persons who were, in fact, able to act independently on behalf of investment company shareholders.[26]

The number and breadth of conditions imposed in past exemptive orders reflect the Commission's initial caution in permitting a form of organization for investment companies that was not used in 1940.[27] While the Act does not prescribe a particular organizational form, many of the Act's provisions assume a corporate form, and limited partnership investment companies must conform to these provisions. In addition, in the absence of protective conditions, there are certain risks inherent in the partnership form that are not present with corporations.[28]

Given the number and similarity of orders issued under sections 2(a)(19) and 2(a)(3), it is now appropriate to propose exemptive rules. Proposed rule 2a19–2 would codify four key requirements of past orders for the protection of shareholders of limited partnership investment companies. The Commission believes many of the other conditions imposed in past exemptive orders may be omitted as unnecessary for the protection of investors.

II. Discussion

A. Proposed Rule 2a19–2

Proposed rule 2a19–2 would exempt certain general partners of limited partnership investment companies from the definition of "interested person" in section 2(a)(19) in a manner similar to the exemption provided for other directors in section 2(a)(19)(A)(aa), provided that four key requirements are met. First, only general partners who are natural persons could serve as directors of the limited partnership investment company. Second, no general partner could act individually on behalf of the limited partnership investment company, with these exceptions: an

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[17] *Id.*

[18] *Id.* Other required conditions and representations have included requiring opinions of counsel that the voting rights afforded the limited partners under the Act will not subject them to liability as general partners, and that the partnership qualifies as a partnership for federal income tax purposes; requiring that the partnership indemnify and/or obtain insurance to make whole any limited partner that becomes liable for the partnership's liabilities; and requiring that all material contracts contain a provision limiting the claims of creditors to the assets of the partnership.

[19] *Id.*

[20] Section 2(a)(3)(A) provides that "'affiliated person' of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person."

[21] *See* section 2(a)(3)(D).

[22] Similarly, section 17(d) and rule 17d–1 thereunder (17 CFR 270.17d–1) generally prohibit "joint transactions" between a registered investment company and its affiliated persons, or affiliated persons of its affiliated persons.

[23] *See, e.g.*, Equitable Capital Partners, L.P., *supra* note 2; and Prudential-Bache Special Situations Fund, L.P., *supra* note 5.

[24] *See, e.g.*, applications and orders cited *supra* notes 2, 5. *See also* Chestnut Street Exchange Fund and the Sandridge Corporation, Investment Company Act Release Nos. 9438 (Sept. 14, 1976) (Notice of Application) and 9516 (Nov. 9, 1976) (Order) (open-end, non-BDC).

[25] Investment Company Amendments Act of 1970 (the "1970 Amendments"), Pub. L. No. 91–547, 84 Stat. 1413 (1970).

[26] 1970 Senate Report, *supra* note 4, at 33.

[27] The Act arguably has always envisioned partnerships, including the modern limited partnership. *See infra* note 52 and accompanying text.

[28] In adopting the 1980 Amendments, Congress recognized that general partners of a BDC organized as a limited partnership investment company would need to apply for exemptive relief under section 2(a)(19). 1980 House Report, *supra* note 1, at 44, n.9. Instead of amending that section, Congress decided to maintain the status quo because the Commission believed that the corporate form provided more certain rights and remedies to investors in a publicly-held investor pool and that, accordingly, orders permitting partnership form might need to be based on a compelling need. *Id.* at 34, n.5. Thus, in 1980, the Commission viewed the limited partnership form with some caution.

investment adviser, principal underwriter, or administrator could act in its capacity as such; a general partner could act within the scope of his or her authority as delegated by the board of directors; and a general partner could act to continue the business of the limited partnership investment company when no director general partners remain. Third, the limited partnership investment company and its director general partners must take whatever steps are necessary to assure that the limited partners' transferees are able to exercise all of the rights of shareholders under the Act. Fourth, a general partner could not withdraw from the partnership or reduce its partnership interest, if such withdrawal or reduction would cause the limited partnership investment company to lose its partnership tax classification, except on one year's notice, or unless such partner were the company's investment adviser and the company had terminated the advisory contract.

These requirements are intended to assure that general partners who receive the benefit of the rule's exemption are accountable to the limited partnership investment company and its investors to the same degree as are corporate directors. In addition, the requirements should assure that limited partners have essentially the same protection that they would have were they shareholders of a corporation.[29]

1. Scope of the Proposed Rule

a. *Other provisions of act still apply.* The Preliminary Note to the proposed rule provides that reliance on the rule does not exempt an investment company from any other requirement of the Act, or exempt a general partner that is an interested person under any other provision. The purpose of the Preliminary Note is twofold. First, past exemptive orders under section 2(a)(19) contained a number of requirements intended primarily to alert applicants to various provisions of the Act so that the applicants would not inadvertently violate these provisions or believe they were exempt from them.[30] The proposed rule has not incorporated most of these requirements, but the Preliminary Note is intended to remind companies and their sponsors of the Act's other requirements. Second, the Note is intended to make plain that the other provisions of section 2(a)(19) still apply, and thus a director general partner cannot rely on the rule if he or she is "interested" other than by being a partner or copartner.[31]

b. *Scope of exemption for director general partners.* The introductory paragraph of the proposed rule provides that a general partner serving as a director of a limited partnership investment company would not be deemed an "interested person" of the company, or of its investment adviser, or principal underwriter,[32] solely because of the director general partner's status as (i) a general partner of the company, or (ii) a copartner in the company with the adviser or underwriter, if four conditions are met. Because the proposed rule is intended to allow those general partners who serve as "directors" of the limited partnership investment company to be deemed independent, the exemption is only available to general partners who in fact function as directors. In addition, typically director general partners are interested persons of the limited partnership investment company not only because of their status as general partners, but also because they are copartners with the investment adviser and/or principal underwriter general partners.[33] The proposed rule does not exempt a director general partner who independently is an interested person by virtue of being a copartner of the investment adviser or underwriter general partners in a separate venture.

c. *Application to BDCs and registered Management companies.* Paragraph (b)(3) of the proposed rule defines the term "Limited Partnership Investment Company" to mean "a registered management company or a business development company that is organized as a limited partnership under state law and for federal income tax purposes." The rule would apply to both BDCs and registered management companies; the Commission has received and granted requests for relief from section 2(a)(19) from both types of investment companies.[34]

2. Director General Partners Must Be Natural Persons

Paragraph (a)(1) of the proposed rule provides that only general partners who are natural persons shall serve as directors of limited partnership investment companies. General partners that are not natural persons (such as the investment adviser, principal underwriter, or administrator) may not serve as directors; otherwise, directors could use shell corporations to insulate themselves from liability.[35] In addition, directors of a corporation must be natural persons. Since the proposed rule creates an exemption for general partners who function like directors of a corporation, the director general partners should also be natural persons.

Some have argued that the potential liability of general partners to creditors discourages many qualified individuals from serving as directors.[36] The Commission requests comment on whether corporations or other entities should be permitted to serve as directors of limited partnership investment companies, and how the issue of insulation from fiduciary obligations may be addressed.

Proposed paragraph (a)(1) also requires general partners qualifying for the exemption to function as directors and assume all of the responsibilities

[29] Many investment companies have organized as business trusts. Business trusts, like limited partnerships, generally are not required by state law to provide investors with all of the rights that corporate shareholders have. For example, typically trustees can terminate the business trust without shareholder approval, shareholders do not enjoy statutory limited liability, and annual meetings are not required. *See generally,* Sheldon A. Jones, *The Massachusetts Business Trust and Registered Investment Companies, 13* Del. J. Corp. L. 421, 453, and 458 (1988). In order to satisfy the requirements of the Act, and attract investors, however, business trusts have voluntarily adopted many attributes of corporations.

[30] *See* note 19 *supra* and accompanying text.

[31] For example, if a director general partner also were an employee of the investment adviser, he or she would not be exempt under the proposed rule because of his or her status as an affiliated person, and thus an interested person, of the investment adviser.

[32] Section 15(c) requires that a majority of directors who are not interested persons of the investment adviser or underwriter must approve the advisory and underwriting agreements. Since every general partner of a limited partnership investment company is an interested person of the investment company's investment adviser and underwriter (assuming, as is usually the case, that they are also general partners of the limited partnership investment company), the advisory and underwriting agreements could not be approved without an exemption.

[33] *See sections 2(a)(3)(D), 2(a)(19)(B)(i), and 2(a)(19)(A)(iii). See also supra* note 9.

[34] Since 1988, seventeen of twenty exemptive orders under section 2(a)(19) have been for BDCs.

[35] In addition, the Division has indicated that, since a corporation can only act through natural persons, it cannot perform the functions of a director. Rather, those persons who perform the director functions for the corporation—its directors—would be deemed to be the true directors. *See* Murphy Favre, *supra* note 5. This, in turn, would cause a violation of section 16(a) of the Act (15 U.S.C. 80a-16(a)), which prohibits any person from serving as a director of a registered investment company unless elected by the shareholders of the investment company, since the "real" directors—the directors of the corporation—would not have been so elected. *See* Integrated Resources, *supra* note 5.

[36] Nevertheless, many limited partnerships have registered or elected to be investment companies under the Act. Perhaps individuals are not dissuaded from serving as directors because, compared to industrial, manufacturing, or retail concerns, an investment company has fewer debts. The greatest creditor concern in the investment company context may be liability for law suits.

and obligations imposed by the Act on directors who are not interested persons. In effect, paragraph (a)(1) requires that the director general partners act only as a board of directors, and not individually. Thus, each director general partner will have only one vote, and the company must act by majority vote of all the directors, at a meeting or by written consent, except as the Act otherwise provides.[37]

Finally, paragraph (a)(1) would not allow limited partners to serve as directors. Limited partners generally enjoy limited liability under state law, just like corporate shareholders, unless they exercise "control" over the limited partnership.[38]

3. A General Partner May Not Act Individually to Bind the Partnership Except in Limited Circumstances

Paragraph (a)(2) would prohibit any general partner from acting individually on behalf of, or binding, the limited partnership investment company, except in the circumstances enumerated in the proposed rule. The reason for circumscribing the authority of any general partner—which includes director general partners, other general partners who are natural persons but not directors, and general partners who are not natural persons—to bind the limited partnership investment company is that under many partnership laws, absent a contrary provision in the partnership agreement, each general partner has the actual authority to bind the partnership.[39] This, of course, may add a risk for investors in limited partnerships that is not present in the case of corporations, where the directors may act only as a group. The proposed rule would reduce this risk by requiring that the partnership agreement contain a provision removing the general partners' actual authority to bind the partnership.

Paragraph (a)(2) provides three exceptions to this limitation. First, in their capacity as an investment adviser, principal underwriter, or administrator,[40] general partners may bind, and act on behalf of the limited partnership investment company, to the extent provided in their agreements with the company, and in the ordinary course of business.

Second, a general partner could act within the scope of his or her authority as delegated by the board of directors. This exception is intended to permit the board to delegate to a general partner duties that typically would be performed by the officers of corporations, such as negotiating and executing lease agreements.

Third, where no director general partners remain, the remaining general partners need to have the authority to call a meeting of the limited partners to determine whether to continue the business of the partnership. If the business of the partnership is to be continued, they must be able to arrange for the election of new director general partners, and carry on the business of the limited partnership investment company to the same extent as director general partners until new director general partners are elected. In this situation, the general partners may act on behalf of the limited partnership investment company, but only for such limited time as the Act permits to fill director vacancies. For a registered management company, this would be a maximum of sixty days;[41] for a BDC, this would be a maximum of ninety days.[42]

4. Rights of Transferees of Limited Partnership Interests

Paragraph (a)(3) requires that the limited partnership investment company take whatever steps are necessary so that transferees of limited partnership interests have all of the rights, including the voting rights, of limited partners. In contrast to the situation when a shareholder of a corporation transfers its interest, a transferee of a limited partnership interest does not necessarily or automatically assume or succeed to all of the voting rights of the transferor. Many states provide that a transferee of a limited partnership interest only becomes a limited partner if the partnership agreement so provides or all the partners consent.[43] The rule expressly requires that the partnership agreement contain such provisions.

Prior exemptive orders have imposed a number of other requirements that are not incorporated in the proposed rule. For example, in the past the Commission has required that the partnership obtain an opinion of counsel that the Act's shareholder voting rights, when exercised by the limited partners, would not subject the limited partners to liability as general partners under state law.[44] This requirement does not appear to be necessary. Clearly, sponsors have ample incentive and opportunity to organize and operate partnerships so that the Act is not violated and limited liability is preserved. In addition, potential shareholder liability, however remote as a practical matter, would be a matter for disclosure if material.[45] Moreover, the proposed rule would not preclude a limited partnership investment company from voluntarily obtaining an opinion of counsel.

The proposed rule also does not require, as past orders have, that the partnership indemnify any limited partner that is sued to satisfy an obligation of the partnership, and/or include in all material contracts with third parties a provision that claims of creditors are limited to assets of the limited partnership investment company.[46] These requirements were designed to protect the limited partners in the event that they should be deemed to have lost their limited liability under state law because of the exercise of the rights conferred on them by the Act. The Commission does not believe that these requirements need to be included in the proposed rule. The Commission, however, observes that it is customary practice for business trusts to include a provision in all material contracts limiting the liability of the investors.[47] Accordingly, the Commission specifically requests comment on whether it should require limited partnership investment companies to indemnify limited partners that lose their limited liability, and/or include in all material contracts a provision restricting claims of creditors to assets of the partnership.

5. Tax Considerations

Many, if not most, limited partnership investment companies seek ruling requests from the Internal Revenue Service (the "IRS") that they will be classified as a partnership for federal

[37] *See, e.g.*, Vance, Sanders Exchange Fund, *supra* note 14. *See also* Vance, Sanders Municipal Bond Fund, Ltd., and Fidelity Government Securities Fund, Ltd., *supra* note 15.

[38] *E.g.*, Del. Code Ann. tit. 6, section 17-303(a) (1990) ("A limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business.").

[39] *See, e.g.*, Cal. Corp. Code, section 15009(1) (West 1991), and Cal. Corp. Code, §§ 15618, 15643(a) (West 1991).

[40] As used in the rule, "administrator" refers to any separate entity performing administrative services for the limited partnership investment company; typically, the investment adviser, or an affiliate of the adviser, provides these services.

[41] Section 18(a).

[42] Section 56(b).

[43] *See, e.g.*, Cal. Corp. Code, section 15674 (West 1991); Del. Code Ann. tit. 6, section 17-704 (1990).

[44] *See, e.g.*, Panther Partners, L.P., *supra* note 2.

[45] *See* sections 11, 12, and 17 of the Securities Act of 1933 (15 U.S.C. 77k, 77l, 77q) and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and rule 10b-5 thereunder (17 CFR 240.10b-5).

[46] *See, e.g.*, Vance, Sanders Municipal Bond Fund, Ltd., and Fidelity Government Securities Fund Ltd., *supra* note 15.

[47] *See, e.g.*, Jones, *supra* note 29, at 443.

income tax purposes. In order for the IRS to consider such a ruling request, however, the general partnership as a group must hold at least one percent (or lesser amounts if total partnership interests exceed $50 million) of the interests, including limited partnership interests, in each material item of partnership income, gain, loss, deduction, or credit (the "Federal Tax Status Contribution" or "Contribution") at all times during the existence of the partnership, and the partnership agreement must expressly so provide.[48]

Typically, the investment adviser general partner holds all or most of the Federal Tax Status Contribution, but other general partners may contribute as well. (The general partners that hold all or part of the Federal Tax Status Contribution are referred to herein as "Contributing" general partners.) A Contributing investment adviser general partner may have great influence over a limited partnership investment company because its withdrawal from the general partnership or reduction of its Federal Tax Status Contribution could jeopardize the company's partnership tax classification. Of course, any Contributing general partner, in theory, has a degree of influence over the company.

Paragraph (a)(4) would not allow a Contributing general partner to withdraw or reduce its Contribution, without giving one year's prior written notice to the Limited Partnership Investment Company, if so doing would cause the company to lose its partnership tax classification. Paragraph (a)(4) would not prohibit a Contributing general partner from withdrawing if the partner's Contribution obligation were assumed by one of the remaining general partners or by a successor general partner. In addition, the prohibition would not apply where the Contributing general partner is the company's investment adviser and the company terminates its advisory agreement with such general partner. These provisions are intended to allow Contributing general partners to withdraw from the partnership under circumstances that will not harm investors.

The Commission requests comment on whether the proposed rule should restrict the ability of a Contributing general partner to reduce its Contribution or to withdraw. The Commission also specifically requests comment on whether paragraph (a)(4) of the proposed rule should be narrowed to include only general partners who have an advisory relationship with the company on the theory that the investment adviser is likely the only general partner with an incentive to exert influence through its Federal Tax Status Contribution. Finally, the Commission requests comment on whether paragraph (a)(4) of the rule should, as proposed, permit Contributing general partners to withdraw as general partners or reduce their contribution upon one year's written notice, or some other period of time, in the event that such Contributing general partners cannot find a general partner or partners to assume their Federal Tax Status Contributions.

The proposed rule does not incorporate other tax-related requirements of past exemptive orders. For example, the Commission has required that applicants provide a compelling tax or other justification for needing the limited partnership form.[49] This has been, in part, because the Commission believed that the corporate form provided more certain rights for investors than the limited partnership form.[50] Accordingly, the Commission only permitted investment companies to organize as limited partnerships if they could make a strong case that investors would receive benefits not otherwise available *and* complied with various other requirements imposed for the protection of investors.

Proposed rule 2a19–2 does not require limited partnership investment companies to justify their organization as limited partnerships. The requirements that the Commission has imposed over the years in granting relief from section 2(a)(19)—the essential ones having been retained in the proposed rule—have provided appropriate safeguards. Furthermore, Congress clearly contemplated that BDCs would organize in limited partnership form,[51] and there are other provisions suggesting that Congress also envisioned non-BDC investment companies in partnership form.[52] Nonetheless, the Commission requests that commenters address whether the limited partnership form should be used only by investment companies that have a tax or other business need, and what today might induce an investment company to organize in limited partnership form. In addition, the Commission requests comment on whether adoption of the rule will result in an increase in the number of funds operating as limited partnerships.

Finally, the definition of "Limited Partnership Investment Company" in paragraph (b)(2) of the proposed rule requires that a company be "organized as a limited partnership * * * for federal income tax purposes." The Commission requests comment on whether the proposed rule should further require that a Limited Partnership Investment Company actually be classified as a partnership for federal income tax purposes for the exemption to be available.[53]

6. Dissolution of the Limited Partnership

Under many partnership laws, the withdrawal of a general partner can cause dissolution of a limited partnership unless: (i) At least one other general partner remains, the partnership agreement permits the remaining general

[48] IRS Rev. Proc. 89–12, section 4.

[49] *See also* 1980 House Report, *supra* note 1, at 34, n.5 ("[t]he Committee understands that the Commission, presently, does not favor the issuance of such orders unless an applicant can make a compelling case that limited partnership status is essential to its proposed operations.").

[50] *See* 1980 House Report, *supra* note 1, at 34, n.5 ("the Commission apparently believes the corporate form provides more certain rights and remedies to investors * * *.").

[51] *See, e.g.*, section 56(a) which refers to a "business development company's directors *or general partners* * * *." (emphasis supplied). *See also* 1980 House Report, *supra* note 1, at 34, n.5 ("this legislation (the 1980 Amendments) explicitly recognizes the possibility that a business development company could be organized as a limited partnership.").

[52] *See, e.g.*, section 2(a)(3)(D) (defining "affiliated person" to include partners and copartners); section 2(a)(8) (15 U.S.C. 80a–2(a)(8)) (defining "company" to include a "partnership"). *See also* SEC, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 33 (1966) (hereinafter PPI Report) (stating that the "range of possible legal forms (of an investment company under the Act) includes partnerships"), and PPI Report at 33 n.4 (comparing business trusts, partnerships, and corporations).

[53] The proposed rule does not require, as past section 2(a)(19) orders have, that the limited partnership obtain an opinion of counsel or an IRS ruling, stating that the investment company will be taxed as a partnership for federal income tax purposes. *See* applications and orders cited *supra* notes 2, 5, 14, and 15.

In addition, some past orders have required that if the partnership is or becomes authorized to make in-kind distributions of portfolio securities to its partners, no such in-kind distributions will be made until such time as the partnership has obtained a no-action letter from the staff of the Commission or, alternatively, has obtained an order pursuant to section 206A of the Advisers Act (15 U.S.C. 80b–6a) permitting such distribution, *see, e.g.*, The Multiple Advisers Fund, L.P., *supra* note 2. Also, some orders have required the partnership to obtain an opinion of counsel that the distributions and allocations provided for in the partnership agreement are permissible under section 205 (15 U.S.C. 80b–5) and rule 205–3 of the Advisers Act (17 CFR 275.205–3) and section 15(a) of the Act. *See, e.g.*, Panther Partners, L.P., *supra* note 2. The Commission has not included these requirements.

partner to carry on the business of the partnership, and the remaining general partner does so; or (ii) all the partners agree to continue the partnership.[54] In most limited partnership investment companies, obtaining the consent of all the partners would be extremely burdensome. Thus, if the partnership agreement does not permit the remaining general partners to carry on the business, withdrawal of a general partner could cause dissolution. The Commission requests comment on whether rule 2a19–2 should require that partnership agreements provide that the remaining general partners shall continue the business of the limited partnership, or restrict the ability of the general partners to withdraw if doing so would effect a dissolution.

B. Proposed Rule 2a3–1

Proposed rule 2a3–1 would codify the orders that the Commission has issued to exempt from the definition of "affiliated person" in section 2(a)(3) investors that are "affiliated persons" under section 2(a)(3)(D) solely because of their status as limited partners of a limited partnership investment company. The rule would treat limited partners like shareholders and permit a limited partnership investment company to engage in transactions with its limited partners and their affiliated persons, to the same extent as if the investment company were organized as a corporation. Thus, registered management companies and BDCs organized as limited partnerships would no longer need to obtain exemptive orders.

As the Preliminary Note to the proposed rule states, reliance on the rule would not exempt a limited partner that is an affiliated person by virtue of any other provision of the Act. Thus, for example, if a limited partner directly or indirectly owns, controls, or holds with the power to vote, five percent or more of the outstanding voting securities of the limited partnership investment company, the investment adviser, or the principal underwriter, the limited partner would be an affiliated person of such person under section 2(a)(3)(A), notwithstanding this proposed rule. This is consistent with the treatment afforded shareholders.

III. Cost/Benefit of Proposed Action

Proposed rules 2a19–2 and 2a3–1 would not impose any significant burdens on investment companies. These rules would benefit investment companies desiring to organize as limited partnerships by reducing the costs and delays that they would otherwise incur by virtually eliminating the need to file exemptive applications. Additionally, the Commission would benefit because its staff would need to review very few applications for exemptive relief. Comment is requested, however, on these matters and on the costs or benefits of any other aspect of the proposed actions. Commenters should submit estimates of any costs and benefits perceived, together with any supporting empirical evidence available.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rules 2a19–2 and 2a3–1. The Analysis explains that proposed rules 2a19–2 and 2a3–1 would permit registered management companies and BDCs satisfying the requirements of the proposed rules to organize and operate under the Act as limited partnerships, without needing to obtain exemptive relief. It states that the proposed rules are intended to reduce significantly the number of exemptive applications filed with the Commission in this area, and continue to maintain the highest level of investor protection. It also states that the proposed rules contain no reporting or recordkeeping requirements. To the extent that the proposed rules would eliminate the need for limited partnership investment companies to file applications seeking exemptions from sections 2(a)(19) and 2(a)(3)(D) of the Act, they will reduce the costs incurred by smaller entities in preparing and filing exemptive applications. The Commission considered a number of significant alternatives to the proposed rules, including imposing fewer requirements for small entities, but prefers the proposed approach because it eliminates unnecessary burdens while preserving adequate investor protection. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Edward J. Rubenstein, Esq. or Diane C. Blizzard, Esq., both at Mail Stop 10–4, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

V. Statutory Authority

The Commission is proposing rules 2a19–2 and 2a3–1 under the exemptive and rulemaking authority set forth in sections 6(c) and 38(a) (15 U.S.C. 80a–6(c), –37(a)) of the Investment Company Act of 1940. The authority citations for these actions precede the text of the actions.

List of Subjects in 17 CFR Part 270

Investment Companies, Reporting and Recordkeeping Requirements, Securities

VI. Text of Proposed Rules

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

2. By adding § 270.2a3–1 to read as follows:

§ 270.2a3–1 Investment Company Limited Partners Not Deemed Affiliated Persons.

Preliminary Note to § 270.2a3–1: This § 270.2a3–1 exempts from the definition of affiliated person in section 2(a)(3) (15 U.S.C. 80a–2(a)(3)) those limited partners of investment companies organized in limited partnership form that are affiliated persons solely because they are partners under section 2(a)(3)(D) (15 U.S.C. 80a–2(a)(3)(D)). Reliance on this § 270.2a3–1 does not exempt a limited partner that is an affiliated person by virtue of any other provision.

No limited partner of a registered management company or a business development company, organized as a limited partnership and relying on § 270.2a19–2, shall be deemed to be an affiliated person of such company, or any other partner of such company, solely by reason of being a limited partner of such company.

3. By adding § 270.2a19–2 to read as follows:

§ 270.2a19–2 Investment company general partners not deemed interested persons.

Preliminary Note to § 270.2a19–2: This § 270.2a19–2 conditionally exempts from the definition of interested person in section 2(a)(19) (15 U.S.C. 80a-2(a)(19)) general partners of investment companies organized in limited partnership form. Compliance with the conditions of this § 270.2a19–2 does not relieve an investment company of any other requirement of this Act, or exempt a general partner that is an interested person by virtue of any other provision.

(a) *Director general partners not deemed interested persons.* A general partner serving as a director of a Limited Partnership Investment Company shall not be deemed to be an interested person of such company, or any investment adviser of, or principal underwriter for, such company, solely by reason of being a partner of the Limited Partnership Investment

[54] *See, e.g.*, Del. Code Ann. tit. 6, §§ 17–801, 17–402 (1990).

Company, or a copartner in the Limited Partnership Investment Company with any investment adviser of, or principal underwriter for, the company, *provided that* the Limited Partnership Agreement contains in substance the following:

(1) Only general partners who are natural persons shall serve as, and perform the functions of, directors of the Limited Partnership Investment Company.

(2) A general partner shall not have the authority to act individually on behalf of, or to bind, the Limited Partnership Investment Company, except:

(i) In such person's capacity as investment adviser, principal underwriter, or administrator;

(ii) Within the scope of such person's authority as delegated by the board of directors; or

(iii) In the event that no director of the company remains, to the extent necessary to continue the Limited Partnership Investment Company, but only for such limited periods as permitted under the Act to fill director vacancies.

(3) The assignees, transferees, and successors of the limited partners of the Limited Partnership Investment Company shall have all of the rights afforded shareholders under the Act.

(4) A general partner shall not withdraw from the Limited Partnership Investment Company or reduce its Federal Tax Status Contribution without giving one year's prior written notice to the Limited Partnership Investment Company, if such withdrawal or reduction would cause the company to lose its partnership tax classification. This paragraph (a)(4) shall not apply where the general partner is an investment adviser and the company terminates its advisory agreement with such general partner.

(b) *Definitions.*—(1) *Federal Tax Status Contribution* shall mean the interest (including limited partnership interest) in each material item of partnership income, gain, loss, deduction, or credit, as used in section 4 of the Internal Revenue Service's Revenue Procedure 89–12, or any successor provisions thereto.

(2) *Limited Partnership Investment Company* shall mean a registered management company or a business development company that is organized as a limited partnership under state law and for federal income tax purposes.

(3) *Partnership Agreement* shall mean the agreement of the partners of the Limited Partnership Investment Company as to the affairs of the limited partnership and the conduct of its business.

Dated: July 28, 1992.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18360 Filed 8–5–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 91N–0323]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Bronchodilator Drug Products; Request for Additional Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; request for additional comment; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 5, 1992, the comment period for the notice of proposed rulemaking amending the final monograph for over-the-counter (OTC) bronchodilator drug products to modify the wording of the drug interaction precaution statement required in the labeling of OTC bronchodilator drug products containing sympathomimetic amines (57 FR 27662, June 19, 1992). This action is being taken because the agency would like additional comments on a possible addition to the proposed drug interaction precaution statement. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by October 5, 1992.

ADDRESSES: 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: 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 the **Federal Register** of June 19, 1992 (57 FR 27662), FDA published a notice of proposed rulemaking to amend the final monograph for OTC bronchodilator drug products to revise the drug interaction precaution statement for OTC bronchodilator drug products containing sympathomimetic amines to read: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The closing date for comments on the proposal is August 18, 1992.

In the notice of proposed rulemaking, the agency discussed the history of the required drug interaction precaution statement and the reasons for revising its wording. The agency mentioned that there has been a resurgence in the use of MAOI drugs after a period of decline in the 1970's, and there is evidence that MAOI drugs are also being used to treat a wider variety of conditions, such as bulimia, panic disorders, phobic disorders, anxiety, and obsessive compulsive disorder (57 FR 27662). However, the use of MAOI drugs in hypertension has essentially ceased.

There are at least two types of monoamine oxidase (MAO) enzymes: the A form and B form. The two forms are characterized by differential substrate profiles, sensitivity to inhibition by clorgeline, and anatomical locations. MAO A preferentially deaminates norepinephrine and serotonin (5-hydroxytryptamine [5–HT]) and is sensitive to inhibition by clorgeline. MAO A is the unique form located in intestinal mucosa and placenta and predominates in peripheral nerve terminals. In contrast, MAO B preferentially deaminates phenethylamine and benzylamine, is inhibited by selegiline but not clorgeline, and is the unique form located in platelets. Both MAO A and MAO B are found in approximately equal proportions in the liver and brain.

The MAOI drugs marketed in the United States for psychiatric indications are nonspecific. They irreversibly inhibit both MAO A and MAO B. Selegiline is a relatively selective MAO B inhibitor indicated for use in Parkinson's disease treatment. At doses greater than 10 milligrams per day and, perhaps, at lower doses in some people, selegiline's selectivity decreases. Other, apparently more specific, MAO B inhibitors are now under development.

The agency did not address selegiline or MAO B inhibitors in the earlier proposal. The agency has not received

any reports of an interaction between selegiline and sympathomimetic amines. The agency invites any interested person with knowledge of such an interaction having occurred to provide that information to the agency.

Because of the relative nature of the selectivity of selegiline, the lack of knowledge about the precise mechanism of the MAOI-sympathomimetic amine interaction, and a lack of data on the effects of MAO B inhibitors on the pharmacokinetics and dynamics of sympathomimetic amines, the agency believes there is a need to consider whether the drug interaction precaution statement should be expanded to include MAO B drugs such as selegiline. If the warning statement were to be expanded, it would be revised to read: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

The agency is inviting specific additional comments on whether, from a public health perspective, it would be appropriate to expand the bronchodilator drug interaction precaution as indicated above. In order to fully consider this aspect of the proposed labeling, the agency is extending the comment period for this notice of proposed rulemaking an additional 60 days.

Interested persons may, on or before October 5, 1992, submit to the Dockets Management Branch (address above) written comments on the possible expansion of the drug interaction precaution statement proposed for OTC bronchodilator drug products containing sympathomimetic amines. Three 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 and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18618 Filed 8-5-92; 8:45 a.m.]

BILLING CODE 4160-01-F

21 CFR Part 341

[Docket No. 76N-052N]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Tentative Final Monograph for OTC Nasal Decongestant Drug Products; Request for Additional Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; request for additional comment; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 5, 1992, the comment period for the notice of proposed rulemaking amending the tentative final monograph for over-the-counter (OTC) nasal decongestant drug products to modify the drug interaction precaution statement proposed in the labeling of OTC oral nasal decongestant drug products containing sympathomimetic amines (57 FR 27658, June 19, 1992). This action is being taken because the agency would like additional comments on a possible addition to the proposed drug interaction precaution statement. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by October 5, 1992.

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: 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 the **Federal Register** of June 19, 1992 (57 FR 27658), FDA published a notice of proposed rulemaking to amend the tentative final monograph for OTC nasal decongestant drug products to include the following drug interaction precaution statement for OTC oral nasal decongestant drug products containing sympathomimetic amines to read: "Do not take this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The closing date for comments on the proposal is August 18, 1992. In the **Federal Register** of July 30, 1992 (57 FR 33663), FDA published a correction that changes the wording of the first sentence of the statement to read, "*Drug interaction precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor * * *."

In the notice of proposed rulemaking, the agency discussed the history of the drug interaction precaution statement and the reasons for revising its wording. The agency mentioned that there has been a resurgence in the use of MAOI drugs after a period of decline in the 1970's, and there is evidence that MAOI drugs are also being used to treat a wider variety of conditions, such as bulimia, panic disorders, phobic disorders, anxiety, and obsessive compulsive disorder (57 FR 27658). However, the use of MAOI drugs in hypertension has essentially ceased.

There are at least two types of monoamine oxidase (MAO) enzymes: the A form and B form. The two forms are characterized by differential substrate profiles, sensitivity to inhibition by clorgeline, and anatomical locations. MAO A preferentially deaminates norepinephrine and serotonin (5-hydroxytryptamine [5-HT]) and is sensitive to inhibition by clorgeline. MAO A is the unique form located in intestinal mucosa and placenta and predominates in peripheral nerve terminals. In contrast, MAO B preferentially deaminates phenethylamine and benzylamine, is inhibited by selegiline but not clorgeline, and is the unique form located in platelets. Both MAO A and MAO B are found in approximately equal proportions in the liver and brain.

The MAOI drugs marketed in the United States for psychiatric indications are nonspecific. They irreversibly inhibit both MAO A and MAO B. Selegiline is a relatively selective MAO B inhibitor indicated for use in Parkinson's disease treatment. At doses greater than 10 milligrams per day and, perhaps, at lower doses in some people, selegiline's selectivity decreases. Other, apparently more specific, MAO B inhibitors are now under development.

The agency did not address selegiline or MAO B inhibitors in the earlier proposal. The agency has not received any reports of an interaction between selegiline and sympathomimetic amines. The agency invites any interested person with knowledge of such an

interaction having occurred to provide that information to the agency.

Because of the relative nature of the selectivity of selegiline, the lack of knowledge about the precise mechanism of the MAOI-sympathomimetic amine drug interaction, and a lack of data on the effects of MAO B inhibitors on the pharmacokinetics and dynamics of sympathomimetic amine drugs, the agency believes there is a need to consider whether the drug interaction precaution statement should be expanded to include MAO B drugs such as selegiline. If the warning statement were to be expanded, it would be revised to read: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

The agency is inviting specific additional comments on whether, from a public health perspective, it would be appropriate to expand the nasal decongestant drug interaction precaution as indicated above. In order to fully consider this aspect of the proposed labeling, the agency is extending the comment period for this notice of proposed rulemaking an additional 60 days.

Interested persons may, on or before October 5, 1992, submit to the Dockets Management Branch (address above) written comments on the possible expansion of the drug interaction precaution statement proposed for OTC nasal decongestant drug products containing sympathomimetic amines. Three 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 and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18625 Filed 8-5-92; 8:45 a.m.]

BILLING CODE 4160-01-F

21 CFR Part 341

[Docket No. 90N-0420]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Antitussive Drug Products; Request for Additional Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; request for additional comment; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 5, 1992, the comment period for the notice of proposed rulemaking amending the final monograph for over-the-counter (OTC) antitussive drug products to require a drug interaction precaution statement in the labeling of OTC antitussive (relieves cough) drug products containing dextromethorphan or dextromethorphan hydrobromide (57 FR 27666, June 19, 1992). This action is being taken because the agency would like additional comments on a possible addition to the proposed drug interaction precaution statement. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by October 5, 1992.

ADDRESSES: 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: 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 the **Federal Register** of June 19, 1992 (57 FR 27666), FDA published a notice of proposed rulemaking to amend the final monograph for OTC antitussive drug products to include the following drug interaction precaution statement for OTC antitussive drug products containing dextromethorphan or dextromethorphan hydrobromide: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The closing date for comments on the proposal is August 18, 1992.

In the notice of proposed rulemaking, the agency discussed reports of adverse reactions, including fatalities, following the ingestion of prescription MAOI drugs and OTC drug products containing the ingredient dextromethorphan or dextromethorphan hydrobromide (referred to generally as dextromethorphan). The agency mentioned that there has been a resurgence in the use of MAOI drugs after a period of decline in the 1970's, and there is evidence that MAOI drugs are also being used to treat a wider variety of conditions, such as bulimia, panic disorders, phobic disorders, anxiety, and obsessive compulsive disorder (57 FR 27666 at 27668). However, the use of MAOI drugs in hypertension has essentially ceased.

There are at least two types of monoamine oxidase (MAO) enzymes: the A form and B form. The two forms are characterized by differential substrate profiles, sensitivity to inhibition by clorgeline, and anatomical locations. MAO A preferentially deaminates norepinephrine and serotonin (5-hydroxytryptamine [5-HT]) and is sensitive to inhibition by clorgeline. MAO A is the unique form located in intestinal mucosa and placenta and predominates in peripheral nerve terminals. In contrast, MAO B preferentially deaminates phenethylamine and benzylamine, is inhibited by selegiline but not clorgeline, and is the unique form located in platelets. Both MAO A and MAO B are found in approximately equal proportions in the liver and brain.

The MAOI drugs marketed in the United States for psychiatric indications are nonspecific. They irreversibly inhibit both MAO A and MAO B. Selegiline is a relatively selective MAO B inhibitor indicated for use in Parkinson's disease treatment. At doses greater than 10 milligrams per day and, perhaps, at lower doses in some people, selegiline's selectivity decreases. Other, apparently more specific, MAO B inhibitors are now under development.

The agency did not address selegiline or MAO B inhibitors in the earlier proposal. The agency has not received any reports of an interaction between selegiline and dextromethorphan or dextromethorphan hydrobromide. The agency invites any interested person with knowledge of such an interaction having occurred to provide that information to the agency.

Because of the relative nature of the selectivity of selegiline, the lack of knowledge about the precise mechanism of the MAOI-dextromethorphan interaction, and a lack of data on the effects of MAO B inhibitors on dextromethorphan's pharmacokinetics and dynamics, the agency believes there is a need to consider whether the drug interaction precaution statement should be expanded to include MAO B drugs such as selegiline. If the warning statement were to be expanded, it would be revised to read: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

The agency is inviting specific additional comments on whether, from a public health perspective, it would be appropriate to expand the dextromethorphan drug interaction precaution as indicated above. In order to fully consider this aspect of the proposed labeling, the agency is extending the comment period for this notice of proposed rulemaking an additional 60 days.

Interested persons may, on or before October 5, 1992, submit to the Dockets Management Branch (address above) written comments on the possible expansion of the drug interaction precaution statement proposed for OTC antitussive drug products containing dextromethorphan or dextromethorphan hydrobromide. Three 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 and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,
Deputy Commissioner for Policy.

[FR Doc. 92-18619 Filed 8-5-92; 8:45 a.m.]
BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5h

[CO-88-90]

RIN 1545-AQ60

Limitation on Net Operating Loss Carryforwards and Certain Built-in Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title 11 Case

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The document contains proposed regulations which provide guidance on determining the value of a loss corporation following an ownership change to which section 382(l)(6) of the Internal Revenue Code of 1986 (the "Code") applies. Under sections 382 and 383, the value of the loss corporation, together with certain other factors, determines the rate at which certain pre-change tax attributes may be used to offset post-change income and tax liability. The proposed regulations are needed to provide guidance to taxpayers concerning compliance with sections 382 and 383.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for October 29, 1992, must be received by October 8, 1992. See notice of public hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, Attn: CC:CORP:T:R (CO-88-90), room 5228, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: *Concerning the hearing,* Carol Savage, Regulations Unit, (202) 622-8452 (not a toll-free number). Concerning the regulation: Victor Penico of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention CC:CORP:T:R) or telephone (202) 622-7750 (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, Attn: 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 this regulation are in §§ 1.382-3(i) and 1.382-3(p) (ii). This information serves as evidence of an election to apply section 382(l)(6) of the Code in lieu of section 382(l)(5) and an election to apply the provisions of the proposed regulations retroactively. It is required by the Internal Revenue Service to assure that the proper amount of carryover attributes are used by a loss corporation following specified types of ownership changes.

The following estimates are an approximation 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 less time, depending on their particular circumstances.

The following estimates are for the § 1.382-3(1) election:

Estimated total reporting burden: 63 hours.

The estimated burden per respondent varies from 5 to 30 minutes, with an estimated average of 15 minutes.

Estimated number of respondents: 250.

Estimated annual frequency of responses: Once.

The following estimates are for the § 1.382-3(p)(ii) election:

Estimated total reporting burden: 750 hours.

The estimated burden per respondent varies from 5 to 30 minutes, with an estimated average of 15 minutes.

Estimated number of respondents: 3000.

Estimated annual frequency of responses: Once.

Background

This document contains a notice of proposed rulemaking that proposes additions to part 1 of title 26 of the Code of Federal Regulations (CFR) under section 382 of the Internal Revenue Code (Code). The proposed regulations provide guidance under sections 382 and 383 relating to the use of pre-change corporate tax attributes following an ownership change to which section 382(l)(6) applies. Sections 382 and 383

were amended by section 621 of the Tax Reform Act of 1986 (the "1986 Act") (Pub. L. 99–154; 100 Stat. 2085). Section 382 was further amended by section 10225 of the Revenue Act of 1987 (Pub. L. 100–203; 101 Stat. 1330–413), sections 1006, 4012, and 5077 of the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act") (Pub. L. 100–647; 102 Stat. 3393, 3656, and 3683), and sections 7205, 7304, 7811, 7815, and 7841 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239; 103 Stat. 2335, 2352, 2406, 2414, and 2427). For ownership changes occurring after final regulations are published, the final regulations will supersede related portions of 26 CFR 5h.5, which provide temporary regulations on the time and manner of making various elections under the Tax Reform Act of 1986.

Explanation of Provisions

Overview of Relevant Statutory Provisions

Under section 382(a) of the Code, if an ownership change (within the meaning of section 382(g)(1)) occurs with respect to a loss corporation (within the meaning of section 382(k)(l)), the amount of the loss corporation's taxable income for a post-change year that may be offset by the pre-change losses of the loss corporation cannot exceed the section 382 limitation. Under section 382(b), the section 382 limitation for a post-change year generally is the value of the loss corporation multiplied by the applicable long-term tax-exempt rate published periodically in the Internal Revenue Bulletin. Under section 383, the amount of the loss corporation's tax liability that may be offset by certain pre-change credits is also limited based on the section 382 limitation.

Section 382(e) of the Code generally provides that the value of the loss corporation is the value of the stock of such corporation (including any stock described in section 1504(a)(4)) immediately before the ownership change. This value is modified when a redemption or other corporate contraction occurs in connection with an ownership change (section 382(e)(2)), when the loss corporation contributions are made with a principal purpose of avoiding or increasing the section 382 limitation (section 382(l)(1)), and when the loss corporation has substantial nonbusiness assets (section 382(l)(4)).

Sections 382(l)(5) and (l)(6) of the Code set forth two special rules for ownership changes of loss corporations under the jurisdiction of a court in a title 11 or similar case.

Section 382(l)(5) generally provides that the section 382 limitation does not apply to a loss corporation that has such an ownership change if the loss corporation's pre-change shareholders and qualified creditors (determined immediately before the ownership change) own at least 50 percent of the value and voting power of the loss corporation's stock immediately after the ownership change and as a result of being pre-change shareholders or qualified creditors. As originally enacted in the 1986 Act, section 382(l)(6) provided that, if section 382(l)(5) did not apply to any reorganization described in section 368(a)(1)(G) or any exchange of debt for stock in a title 11 case, the value of the loss corporation under section 382(e) was the value of the loss corporation immediately after the ownership change. The 1988 Act amended section 382(l)(6) to provide that, in the requisite circumstances, the value of the loss corporation under section 382(e) is increased to reflect the increase (if any) in value of the loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction.

The Proposed Regulations

General Rules

The purpose of the 1988 Act amendment is to allow an increase in the value of the loss corporation's stock under section 382(l)(6) of the Code to the extent attributable to a conversion of debt into stock, but to deny an increase in such value attributable to the infusion of fresh capital. The relevant question, therefore, in applying section 382(l)(6) to a bankruptcy reorganization is whether an increase in the value of the loss corporation's stock is attributable to the conversion of debt into stock or the infusion of fresh capital.

In a bankruptcy reorganization, debt may be converted into stock through the direct issuance of stock for debt. Alternatively, such a conversion may be effected indirectly. For example, stock may be issued for cash and the cash proceeds distributed to creditors in satisfaction of the debt. In either case, the economic result to the loss corporation is the same: debt is converted into stock. Accordingly, the proposed regulations make the benefits of section 382(l)(6) of the Code available to a loss corporation in either case.

The proposed regulations implement these principles by providing that, when section 382(l)(6) of the Code applies, the value of the loss corporation for section 382 purposes generally is the lesser of (1) the value of the stock of the loss corporation immediately after the ownership change (the "stock value test") and (2) the value of the loss corporation's assets (determined without regard to liabilities) immediately before the ownership change (the "asset value test"). Thus, the proposed regulations generally treat all increases in the value of the loss corporation resulting from a bankruptcy reorganization as attributable to the conversion of debt into stock (the stock value test). However, if the value of the loss corporation's stock exceeds the value that would have resulted if the loss corporation's creditors had exchanged all of their debt for stock, the excess cannot be from the direct or indirect conversion of debt into stock. In such circumstances, the value of the loss corporation is limited to a value which approximates the value of the loss corporation's stock if the loss corporation's creditors had exchanged all of their debt for stock (the asset value test).

Interaction With the Stock-for-Debt Exception

The proposed regulations apply solely for purposes of section 382(l)(6) of the Code and do not apply for purposes of applying the common law stock-for-debt exception (that a debtor does not realize income from discharge of indebtedness when it issues stock in satisfaction of indebtedness). Accordingly, the proposed regulations do not alter the principle that the stock-for-debt exception does not apply when an insolvent debtor or a debtor in a title 11 case issues its stock for cash and uses that cash to satisfy its indebtedness for less than the amount owing on such indebtedness. See Rev. Rule. 92–52, 1992–27 I.R.B. 6 (stock-for-debt exchange is not aggregated with another exchange not involving stock to apply the stock-for-debt exception to the other exchange).

Interaction With Other Code Provisions Modifying the Value of the Loss Corporation

Section 382(l)(6) of the Code does not supersede the rules of sections 382(e)(2) (relating to redemptions or other corporate contractions), 382(e)(3) (relating to foreign corporations), 382(l)(1) (relating to capital contributions), and 382 (l)(4) (relating to substantial nonbusiness assets). Thus, as a general matter, the proposed regulations provide that those rules continue to apply when section 382(l)(6) applies to an ownership change of a loss corporation. The proposed regulations, however, coordinate the application of those rules with the general section 382(l)(6) rules described above so that

they operate consistently with each other.

To coordinate the application of section 382(e)(2) of the Code, the proposed regulations provide that the amount of any post-change redemption or corporate contraction to which section 382(e)(2) applies reduces the amount determined under the stock value test. The proposed regulations do not provide a similar reduction for the amount determined under the asset value test.

To coordinate the application of section 382(e)(3) of the Code, the proposed regulations provide that, in determining the value of the stock of any loss corporation that is a foreign corporation, only items connected with the conduct of a trade or business in the United States are taken into account. Similarly, in determining the value of the pre-change assets of any loss corporation that is a foreign corporation, only assets connected with the conduct of a trade or business in the United States are taken into account.

To coordinate the application of section 382(l)(1) of the Code, the proposed regulations provide that, when the loss corporation receives a capital contribution as part of a plan a principal purpose of which is to avoid or increase the section 382 limitation, the amount determined under the asset value test is reduced by the amount of such capital contribution. For this purpose, the proposed regulations treat the receipt of cash or property by the loss corporation in exchange for the issuance of indebtedness as a capital contribution if it is part of a plan a principal purpose of which is to increase the value of the loss corporation under the rules of section 382(l)(6). No reduction in the amount determined under the stock value test is required on account of these capital contributions.

To coordinate the application of section 382(l)(4) of the Code, the proposed regulations provide that, when the loss corporation has substantial nonbusiness assets, the amount determined under the stock value test is reduced by the excess of the fair market value of nonbusiness assets over the nonbusiness assets' share of indebtedness. The proposed regulations provide that in these circumstances the amount determined under the asset value test is reduced by the fair market value of the nonbusiness assets.

Anti-abuse Rule for Stock not Subject to Entrepreneurial Risks of Corporate Operations

The proposed regulations contain an anti-abuse rule designed to prevent deliberate artificial increases in the value of the loss corporation attributable to stock that is not subject to risks of corporate business operations. Under the rule, the amount determined under the stock value test is reduced by the value of stock that is issued with a principal purpose of increasing the section 382 limitation without subjecting the investment to the entrepreneurial risks of corporate business operations.

Special Limitation on Stock Value

The proposed regulations provide that the value of stock of a loss corporation issued in connection with an ownership change in a title 11 or similar case cannot exceed the amount of cash plus the value of any property (including indebtedness of the loss corporation) received by the loss corporation in consideration for the issuance of that stock. The rule is designed to avoid valuation disputes that otherwise might arise when taxpayers take the position that the "intrinsic" value of the stock is more than the amount paid for it (for example, because the stock trades at a higher price at some later date when trading stabilizes).

Second Ownership Change Within Two Years

Except as provided in regulations, section 382(l)(1) of the Code removes any capital contributions made within the two-year period immediately preceding an ownership change of a loss corporation from the value of that corporation for purposes of determining the section 382 limitation. If the value of a loss corporation in an ownership change was determined under section 382(l)(6) and a second ownership change occurred within the two-year period immediately following the first ownership change, section 382(l)(1) would reduce the value of the loss corporation with respect to the second ownership change by the amount of debt converted into stock that was previously taken into account under section 382(l)(6) with respect to the first ownership change. This could reduce the section 382 limitation with respect to the second ownership change as applied even to losses incurred or accrued prior to the first ownership change, a result that would frustrate the purposes of section 382(l)(6). Accordingly, the proposed regulations provide that section 382(l)(1) does not apply to any increase in value of the loss corporation previously taken into account under section 382(l)(6).

Election Under Section 382(l)(5)(H)

Section 382(l)(5)(H) of the Code provides that a loss corporation may elect not to have the provisions of section 382(l)(5) apply. The proposed regulations provide that the election is irrevocable and require that the election be made on the return of the loss corporation for the taxable year including or ending with the change date. These rules allow considerable time for a loss corporation that qualifies under section 382(l)(5) to determine that it wishes to forego the benefits of that section. In addition, these rules help prevent loss corporations from using the election to avoid the effect of section 382(l)(5)(D) (which imposes a section 382 limitation of zero if an ownership change occurs in the two-year period immediately following an ownership change to which section 382(l)(5) applies), either by making the election after a second ownership change or by making a protective election that is revoked after the expiration of the two-year period.

Effective Dates

The proposed regulations generally apply to any ownership change occurring after the date final regulations are published in the **Federal Register**. However, a loss corporation may elect to apply the rules in the final regulations in their entirety to any ownership change occurring on or before that date including ownership changes to which section 382(l)(5) of the Code applied.

Special Analyses

It has been determined that these proposed regulations 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, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request To Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Written comments, requests to appear, and

outlines of oral comments to be presented at a public hearing scheduled for October 29, 1992, must be received by October 8, 1992. See notice of public hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Victor Penico, Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR 1.381(a)–1 through 1.383–3

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5h

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR, chapter I, parts 1 and 5h are 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 continues to read in part and is amended by adding the citation for § 1.382–3(n)(2) to read as follows:

Authority: 26 U.S.C. 7805. * * * Section 1.382–3 also issued under 26 U.S.C. 382(m). Section 1.382–3(n)(2) also issued under 26 U.S.C. 382(l)(1)(B). * * *

Par. 2. Section 1.382–3 is amended by adding paragraphs (i) through (l), (m)(2), (n) and (p) to read as follows:

§ 1.382–3 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.

* * * * *

(i) *Election not to apply section 382(l)(5).* Under section 382(l)(5)(H), a loss corporation may elect not to have the provisions of section 382(l)(5) apply to an ownership change in a title 11 or similar case. This election is irrevocable and must be made by the due date (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date. The election is to be made by attaching the following statement to the tax return of the loss corporation for that taxable year: This is an election under § 1.382–3(i) not to apply the provisions of section 382(l)(5) to the ownership change occurring pursuant to a plan of reorganization confirmed by the court on [insert confirmation date]."

(j) *Value of the loss corporation in an ownership change to which section 382(l)(6) applies.* Section 382(l)(6) applies to any ownership change occurring pursuant to a plant of reorganization in a title 11 or similar case to which section 382(l)(5) does not apply. In such case, the value of the loss corporation under section 382(e) is equal to the lesser of—

(1) The value of the stock of the loss corporation immediately after the ownership change (determined under the rules of paragraph (k) of this section); or

(2) The value of this loss corporation's pre-change assets (determined under the rules of paragraph (l) of this section).

(k) *Rules for determining the value of the stock of the loss corporation*—(1) *Certain ownership interests treated as stock.* For purposes of paragraph (j)(1) of this section—

(i) Stock includes stock described in section 1504(a)(4) and any stock that is not treated as stock under § 1.382–2T(f)(18)(ii) for purposes of determining whether a loss corporation has an ownership change; and

(ii) Stock does not include an ownership interest that is treated as stock under § 1.382–2T(f)(18)(iii) for purposes of determining whether a loss corporation has an ownership change.

(2) *Coordination with section 382(e)(2).* In the case of a redemption or other corporate contraction occurring after and in connection with the ownership change, the value of the stock of the loss corporation under paragraph (j)(1) of this section is reduced under section 382(e)(2).

(3) *Coordination with section 382(e)(3).* If the loss corporation is a foreign corporation, in determining the value of the stock under paragraph (j)(1) of this section, only items treated as connected with the conduct of a trade or business in the United States are taken into account.

(4) *Coordination with section 382(l)(1).* Section 382(l)(1) does not apply in determining the value of the stock of the loss corporation under paragraph (j)(1) of this section.

(5) *Coordination with section 382(l)(4).* If, immediately after the ownership change, the loss corporation has substantial nonbusiness assets (as determined under section 382(l)(4)(B) taking into account only those assets the loss corporation held immediately before the ownership change), the value of the stock of the loss corporation under paragraph (j)(1) of this section is reduced by the excess of the value of such nonbusiness assets over those assets' share of the loss corporation's indebtedness (determined under section 382(l)(4)(D) taking into account the loss corporation's assets and liabilities immediately after the ownership change).

(6) *Special rule for stock not subject to the risk of corporate business operations*—(i) *In general.* The value of the stock of the loss corporation under paragraph (j)(1) of this section is reduced by the value of stock that is issued with a principal purpose of increasing the section 382 limitation without subjecting the investment to the entrepreneurial risks of corporate business operations.

(ii) *Coordination of this paragraph (k)(6) and other rules affecting value.* If the value of the loss corporation is modified under another rule affecting value, appropriate adjustments are to be made so that such modification is not duplicated under this paragraph (k)(6).

(7) *Limitation on value of stock.* For purposes of paragraph (j)(1) of this section, the value of stock of the loss corporation issued in connection with the ownership change cannot exceed the cash and the value of any property (including indebtedness of the loss corporation) received by the loss corporation in consideration for the issuance of that stock.

(l) *Rules for determining the value of the loss corporation's pre-change assets*—(1) *In general.* Except as otherwise provided in this paragraph (l), the value of the loss corporation's pre-change assets is the value of its assets (determined without regard to liabilities) immediately before the ownership change.

(2) *Coordination with section 382(e)(2).* Section 382(e)(2) does not apply in determining the value of the pre-change assets of the loss corporation under paragraph (j)(2) of this section.

(3) *Coordination with section 382(e)(3).* If the loss corporation is a foreign corporation, in determining the value of the pre-change assets under paragraph (j)(2) of this section, only assets treated as connected with the conduct of a trade or business in the United States are taken into account.

(4) *Coordination with section 382(l)(1).* The value of the pre-change assets of the loss corporation under paragraph (j)(2) of this section is reduced by the amount of any capital contribution to which section 382(l)(1) applies. For purposes of applying this paragraph (l)(4), the receipt of cash or property by the loss corporation in exchange for the

issuance of indebtedness is considered a capital contribution if it is part of a plan a principal purpose of which is to increase the value of the loss corporation under paragraph (j) of this section.

(5) *Coordination with section 382(l)(4).* If, immediately after the ownership change, the loss corporation has substantial nonbusiness assets (as determined under section 382(l)(4)(B) taking into account only those assets the loss corporation held immediately before the ownership change), the value of the loss corporation's pre-change assets is reduced by the value of the nonbusiness assets.

(m) *Continuity of business requirement* * * *

(2) *Under section 382(l)(6).* If section 382(l)(6) applies to an ownership change of a loss corporation, section 382(c) applies to the ownership change.

(n) *Ownership change in a title 11 or similar case succeeded by another ownership change within two years*—(1) *Section 382(l)(5) applies to the first ownership change.* If section 382(l)(5) applies to an ownership change and, within the two-year period immediately following such ownership change, a second ownership change occurs, section 382(l)(5) cannot apply to the second ownership change and the section 382(a) limitation with respect to the second ownership change is zero.

(2) *Section 382(l)(6) applies to the first ownership change.* If the value of a loss corporation in an ownership change was determined under section 382(l)(6) and a second ownership change occurs within the two-year period immediately following the first ownership change, the value of the loss corporation under section 382(e) with respect to the second ownership change is not reduced under section 382(l)(1) for any increase in value of the loss corporation previously taken into account under section 382(l)(6) with respect to the first ownership change.

* * * * *

(p) *Effective date for rules relating to section 382(l)(6)*—(1) *In general.* Paragraphs (i), (j), (k), (l), (m)(2), and (n)(2) of this section apply to any ownership change occurring after [INSERT DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER].

(2) *Ownership change to which section 382(l)(6) applies occurring on or before* [INSERT DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. In the case of an ownership change occurring on or before [INSERT DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER], the loss corporation may elect to apply the rules of paragraphs (j), (k), (l), (m)(2), and (n)(2) of § 1.382-3 in their entirety. The election must be made by the later of the due date (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date or the date that the loss corporation files its first tax return after [INSERT DATE THAT IS 60 DAYS AFTER FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER].

The election is made by attaching the following statement to the return: "This is an election to apply §§ 1.382-3 (j), (k), (l), (m)(2), and (n)(2) of the income tax regulations to the ownership change occurring pursuant to a plan of reorganization confirmed by the court on [INSERT CONFIRMATION DATE]." In connection with making this election, on the same return the loss corporation may also elect not to apply section 382(l)(5) to the ownership under paragraph (i) of this section (if the loss corporation has not already done so pursuant to § 5h.5(a) (2) and (3) of this chapter). If, under the applicable statute of limitations, the loss corporation may file amended returns for the year of the ownership change and all subsequent years (an "open year"), an electing loss corporation must file an amended return for each prior affected year to reflect the elections. If, under the applicable statute of limitations, the loss corporation may not file an amended return for the year of the ownership change or any subsequent year (a "closed year"), an electing loss corporation must file an amended return for each affected open year to reflect the elections and the section 382 limitation resulting from the ownership change must be appropriately adjusted for the earliest open year (or years) to reflect the difference between the amount of pre-change losses actually used in closed years and the amount of pre-change losses that would have been used in such years applying the rules of paragraphs (j), (k), (l), (m)(2), (n)(2) of this section to the ownership change.

PART 5h—TEMPORARY REGULATIONS—ELECTIONS UNDER VARIOUS PUBLIC LAWS

Par. 3. The authority citation for part 5h continues to read in part and is amended by removing "382(l)(5)(H)," in the citation for § 5h.5 to read as follows:

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

Par. 4. Effective on [INSERT DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER], § 5h.5 is amended as follows:

1. The table in paragraph (a)(1) is amended by removing the entry for "621(a)".

2. The table in paragraph (a)(4)(ii) is amended by removing the entry for "621(a)".

2. The table in paragraph (a)(4)(ii) is amended by removing the entry for "621(a)".

George O'Hanlon,

Acting Commissioner of Internal Revenue.

[FR Doc. 92-18322 Filed 8-5-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 5h

[CO-88-90]

RIN 1545-AQ60

Limitation on Net Operating Loss Carryfowards and Certain Built-In Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title II Case; 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 which provide guidance on determining the value of a loss corporation following an ownership change to which section 382(1)(6) of the Internal Revenue Code of 1986 applies.

DATES: The public hearing will be held on Thursday, October 29, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, October 8, 1992.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, 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, (CO-88-90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-8452 or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 382 of the Internal Revenue Code. The proposed

regulations appear elsewhere in 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 Thursday, October 8, 1992, 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. 92-18474 Filed 8-5-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD14 92-05]

RIN 2115

Safety Zone; Pacific Missile Range Facility (PMRF), Barking Sands, Island of Kauai, HI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone in the waters near the Pacific Missile Range Facility (PMRF), Barking Sands, Kauai, Hawaii. The rulemaking is needed to protect the public and property from the hazards related to the launching of Strategic Target System vehicles at PMRF. The safety zone is intended to ensure that all persons and vessels remain clear of the down-range area during launches of Strategic Target System vehicles.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Comments may be mailed to Coast Guard Marine Safety Office, Honolulu, 433 Ala Moana Boulevard, Honolulu, Hawaii, 96813-4909, or may be delivered to the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is (808) 541-2068.

The Coast Guard Marine Safety Office, Honolulu, Hawaii maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the foregoing address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) A. C. Curry, Port Safety and Security Branch, Marine Safety Office, Honolulu, Hawaii, (808) 541-2068.

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 rulemaking (CGD14 92-05) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person 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 Captain of the Port, Honolulu, Hawaii, 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 principal persons involved in drafting this document are Lieutenant (junior grade) A.C. Curry, Project Officer, Marine Safety Office Honolulu, and Lieutenant Commander H. A. Black, Project Attorney, Fourteenth Coast Guard District Legal Office.

Background and Purpose

This safety zone has been requested by the PMRF and the U.S. Army Strategic Defense Command for the launching of Strategic Target System (STARS) vehicles from PMRF on the island of Kauai, Hawaii. The Strategic Defense Command intends to launch the first of its STARS vehicles in late August, 1992. The program will involve approximately four launches per year over a ten year period. The launches involve rocket operations, the potential hazards to any vessels or persons along the launch ground path due to rocket blast and the possibility of falling debris.

Implementation of a permanent safety zone will enhance safe navigation off the Island of Kauai, Hawaii, by defining an established, consistent area that must be kept clear during STARS launches. The permanently defined area will eliminate the need to create quarterly safety zones and will provide clear, consistent notice to all mariners of the affected danger areas.

Regulatory Evaluation

This proposal 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 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). Because it expects the impact of this proposal to be minimal, 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 contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal 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**."

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

For the 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:

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

2. A new section 165.1406 is added to read as follows:

§ 165.1406 Safety Zone: Pacific Missile Range Facility (PMRF), Barking Sands, Island of Kauai, Hawaii.

(a) *Location.* The following area is established as a safety zone during launch operations at PMRF, Kauai, Hawaii: The waters bounded by the following coordinates: (22°01.2'N, 159°47.3'W), (22°01.2'N, 159°50.7'W), (22°06.3'N, 159°50.7'W), (22°06.3'N,159°44.8'W).

(b) *Activitation.* The above safety zone will be activated during launch operations at PMRF, Kauai, Hawaii. The Coast Guard will provide notice that the safety zone will be activated through published and broadcast local notice to mariners prior to scheduled launch dates.

(c) *Regulation.* The area described in paragraph (a) of this section will be closed to all vessels and persons, except those vessels and persons authorized by the Commander, Fourteenth Coast Guard District, or the Captain of the Port (COTP) Honolulu, Hawaii, whenever Strategic Target System (STARS) vehicles are to be launched by the United States Government from the PMRF, Barking Sands, Kauai, Hawaii.

(d) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: July 21, 1992.

Richard C. Vlaun,

Captain, U.S. Coast Guard Captain of the Port, Honolulu, Hawaii.

[FR Doc. 92-16691 Filed 8-5-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 300 and 308

[Docket No. 115CCR; FRL-3825-4]

Recovery of Costs for CERCLA Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is authorized to recover from responsible parties under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the costs it has incurred for response actions taken for releases or threats of releases of hazardous substances. This proposal clarifies for purposes of response actions taken by EPA: What costs are recoverable, including direct costs, indirect costs, and interest; how these costs are determined; what information will support EPA's cost recovery efforts by describing the response action taken and providing an accurate accounting of all costs incurred; and, certain terms in the CERCLA statute of limitations for cost recovery actions.

The proposed regulation would amend certain provisions and establish new regulations on CERCLA Cost Recovery. The proposed regulation is intended to clarify certain aspects of the cost recovery process and thereby avoid unnecessary costs and delays involved in that process whether they occur during settlement negotiations or administrative or judicial proceedings.

DATES: Comments on this proposal must be received on or before October 5, 1992.

ADDRESSES: Interested persons may participate in this rulemaking by submitting comments to Francis J. Biros, CERCLA Enforcement Division (OS-510W), Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

DOCKET: Copies of materials relevant to this rulemaking are contained in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 115CCR). The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding federal holidays. Appointments to review the docket may be made by calling 202-260-3046.

FOR FURTHER INFORMATION CONTACT: Sally Martiny, U.S. Environmental Protection Agency (OS-510W), at 703-308-8454, or the RCRA/CERCLA Hotline 1-800-424-9346 (703-920-9810 in the Washington, DC metro area).

SUPPLEMENTARY INFORMATION:

The preamble is organized as follows:

I. Introduction
A. Authority
B. Background
C. Statutory Provisions
II. Issues Addressed by the Proposed Rule
A. Costs Recoverable Under CERCLA
B. Determining Costs
1. Direct Costs
2. Indirect Costs
3. Interest
C. Documenting Response Actions and Costs
D. CERCLA Statute of Limitations
E. Public Comment
III. Section-by-Section Summary
IV. Summary of Supporting Analyses

I. Introduction

A. Authority

Today's proposed rule will amend 40 CFR part 300 and establish a new 40 CFR part 308, CERCLA Cost Recovery. The authority to amend 40 CFR part 300 is cited in this regulation. The authority to issue 40 CFR part 308 is found in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), (42 U.S.C. 9601 *et seq.*), referred to as CERCLA. Section 115 of CERCLA authorizes the President to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of title I of CERCLA. These duties and powers have been delegated to the U.S. Environmental Protection Agency (EPA) pursuant to Executive Order 12580 (52 FR 2923).

B. Background

CERCLA gives the United States broad authority to respond directly to releases or threats of releases of hazardous substances into the environment or releases or threats of releases into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. In addition to authorizing direct federal response, CERCLA authorizes the federal government to compel responsible parties to take response actions at their own expense. CERCLA establishes a Trust Fund, known as the Hazardous Substance Superfund (Superfund), to pay for federal government response actions. It is financed primarily with a tax on crude

oil and certain chemicals. Executive Order 12580 delegates to EPA primary responsibility for implementing the Superfund program.

In 1980, CERCLA established a five-year, $1.6 billion Trust Fund. In 1986, amendments to CERCLA reauthorized the Superfund program for five years and increased the size of the Trust Fund by $8.5 billion. In 1990, Congress reauthorized the Superfund program for three additional years to 1994 and extended the taxing provisions for four years to 1995. This extension will add $5.1 billion to the Trust Fund. The Congress has appropriated, and EPA has obligated approximately $8.5 billion by the end of fiscal year (FY) 1991 in the implementation of the Superfund program. Disbursements at the end of FY 1991 were approximately $6.0 billion.

CERCLA authorizes the federal government, states, and Indian tribes, as well as private parties, to recover their response action costs from those responsible for releases or threats of releases of hazardous substances. CERCLA's legislative history reflects Congress' concern that the objectives of the statute would not be met without a highly successful enforcement program achieving privately funded cleanups and recovering government response costs (see e.g., 132 Cong. Rec. S14903, remarks of Sen. Stafford (October 3, 1996)). Both avenues are needed because EPA, by itself, could not secure the financial and human resources necessary to address the problems associated with the nation's uncontrolled hazardous waste sites.

This proposed rule focuses on the cost recovery aspect of CERCLA. Cost recovery actions under CERCLA potentially involve billions of dollars and complex litigation. The time and costs incurred by the United States and responsible parties in preparing for, negotiating, and litigating these cases have been and will continue to be substantial.

This proposed rule is designed to reduce some of that time and cost burden, by clarifying some of the major issues related to cost recovery.

C. Statutory Provisions

Section 107(a) of CERCLA authorizes the United States to recover, "all costs of removal or remedial action incurred by the United States * * * not inconsistent with the national contingency plan." Pursuant to section 107(a), the following parties are liable:

(1) the owner and operator of a vessel or a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, * * *

These persons are referred to as responsible parties. Courts have interpreted CERCLA's liability standard to provide for joint and several, as well as strict, liability for these responsible parties.

Section 104 of CERCLA authorizes EPA to take a "removal" or "remedial" action or any other response action consistent with the national contingency plan, which EPA deems necessary to protect public health and the environment, whenever there is a release or a substantial threat of release of a hazardous substance into the environment, or whenever there is a release or substantial threat of release of any pollutant or contaminant into the environment that may present an imminent and substantial danger to public health or welfare. These actions are authorized to be taken to protect the public health, or welfare, or the environment.

Section 101(23) of CERCLA defines "remove" or "removal" to include short-term responses to clean up or remove releases or threats of releases of hazardous substances from the environment. These so-called "traditional" physical removals may include installing security fencing, removing and disposing drums or spills of chemicals or containing and treating contaminated soils or sludges on- or off-site. In order for EPA to undertake these removal actions and pay for them out of the Superfund, the action must cost less than $2 million and last less than one year, unless a waiver is granted pursuant to section 104(c)(1) of CERCLA. This statutory limitation does not apply to removal actions taken by responsible parties.

In addition to these "traditional" physical removals, CERCLA's definition of removal also includes certain other activities, including studies and investigations of releases and threats of releases to determine their nature and extent, and other actions taken to plan and direct response actions pursuant to section 104(b) of CERCLA. Removal activities prior to a remedial action refer to preliminary assessments (PAs), site investigations (SIs), remedial investigations/feasibility studies (RI/FSs), a record of decision (ROD) that describes the remedy selected for the site, and remedial design (RD).

Section 101(24) of CERCLA defines "remedy" or "remedial" generally to include long-term efforts to mitigate or permanently remedy problems at a site. They may be taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate or otherwise cause substantial danger to present or future public health or welfare or the environment. There is no statutory dollar limit to these response actions. According to the national contingency plan, 40 CFR part 300, EPA will not expend Superfund monies for a remedial action at a site unless it is on the NPL. This NPL-limitation does not apply to remedial actions undertaken by responsible parties or to removal actions.

CERCLA and the national contingency plan include within the definitions of removal and remedial actions related enforcement activities such as cost recovery activities under section 107(a). Both removals and remedials are considered to be "response" actions. "Response" actions are defined in section 101(25) of CERCLA as "remove, removal, remedy, and remedial action, all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto."

EPA ranks hazardous sites according to the severity of the problem at the site and places those deserving priority attention on its National Priorities List (NPL). Information upon which a site's ranking is based is collected as part of the PA and SI. As of July 29, 1991, the NPL included 1,188 sites, including 116 federal facility sites, with an additional 23 sites proposed for inclusion on the NPL. Final and proposed sites now total 1211. 56 FR 35840 (1991).

II. Issues Addressed by the Proposed Rule

A. Costs Recoverable Under CERCLA

CERCLA section 107(a) provides authority to federal agencies to bring an action against responsible parties for recovery of all costs incurred for removal or remedial action not inconsistent with the national contingency plan. The proposed rule would define the scope of costs that are recoverable by EPA in enforcement actions filed under section 107(a). First, the proposed rule in § 308.20, would

codify the liability standard in CERCLA section 107(a)(4)(A) which states that responsible parties are liable for federal costs of response actions incurred not inconsistent with the national contingency plan. Second, in § 308.25, the rule would make clear that "all costs of removal of remedial action incurred," referenced in section 107(a), include the categories of direct costs, indirect costs, and interest. These costs are incurred by EPA in performing all the Superfund response activities authorized by CERCLA and governed by the national contingency plan. Direct costs are expenditures which are made for site-specific response action and which are identified in individual site accounts in EPA's financial management system. Indirect costs are operation and management costs, comparable to overhead, which support site response actions and the Superfund program in general, but which cannot be directly accounted for on an individual site basis. Interest on federal expenditures is specifically recoverable under section 107(a) of CERCLA. As discussed below in section B. Determining Costs, of this preamble, the proposed rule would further define and describe the method for determining direct costs, indirect costs, and interest.

The proposed rule would clarify two significant and related issues concerning the costs recoverable by the United States under section 107(a): First, that indirect costs are recoverable; and second, that defendants in section 107(a) cost recovery actions, in addressing the issue of whether costs are incurred in a manner not inconsistent with the national contingency plan, cannot avoid payment of United States' costs on the grounds that such costs are "unnecessary" or "unreasonable." The proposed rule is consistent with and supported by current federal case law addressing CERCLA issues in cost recovery actions.

The clear weight of federal court case law supports recovery of the United States' indirect costs. See, for example, *United States* v. *Ottati & Goss*, 900 F.2d 429 (1st Cir. April 4, 1990); *United States* v. *R.W. Meyer, Inc.*, 889 F.2d 1497 (6th Cir. November 20, 1989); *United States* v. *Bell Petroleum Services, Inc.*, 734 F. Supp. 771 (W.D. Tex. March 8, 1990); and *United States* v. *Northeastern Pharmaceutical and Chemical Co.* ("*NEPACCO*"), 579 F. Supp. 823, 850 (W.D. Mo. 1984), *aff'd in part and rev'd in part on other grounds*, 810 F.2d 726 (8th Cir. 1986), *cert. den.*, 108 S. Ct. 146 (1987). The United States is entitled to recover its proportionate overhead expenses, which comprise a large portion of Superfund expenditures, this is clearly consistent with Congressional intent, reflected in section 107(a), that the United States recover "all costs of removal or remedial action incurred." Recovery of indirect costs in recovery actions is also consistent with standard business practices in the private sector with respect to allocation of costs.

Case law has also established that responsible parties in section 107(a) actions cannot avoid payment of costs on the grounds that such costs are "unnecessary" or "unreasonable." Section 107(a)(4)(A) does not qualify the term "all costs." Attempts by responsible parties to impose additional restrictions on the United States' right to recover costs, such as arguments that the United States cannot recover "unnecessary," "unreasonable," or "excessive" costs, or the costs of "inefficient response actions, have been rejected by the courts, which have concluded that the express terms of the statute preclude such limitations. See *NEPACCO*, 579 F. Supp. at 851, 810 F.2d at 748.

This interpretation of CERCLA is consistent with Congress' intent that private parties take the lead in cleaning up Superfund sites. As Congress envisioned the process, responsible parties would be encouraged by the standards of strict, joint and several liability, and the United States' right under section 107 to recover "every dollar" expended at sites, to undertake cleanups voluntarily. 132 Cong. Rec. S14935, remarks of Sen. Durenberger (October 3, 1986). Thus, more resources would be "spent on necessary and effective cleanup of Superfund sites, and less on convoluted litigation * * *" 132 Cong. Rec. S14922, remarks of Sen. Simpson (October 3, 1986). It was Congress' intent that responsible parties have an incentive to conduct voluntary cleanups, rather than wait perhaps years to conduct lengthy, resource-intensive litigation over the wisdom shown by EPA personnel when implementing valid Superfund response actions.

Case law has clarified the burden of proof which the United States must meet to recover its actual costs in cost recovery actions, and the burden which defendants must meet once the United States has established in *prima facie* case. See *NEPACCO*, 579 F. Supp. at 850, 810 F. 2d at 747. The United States must prove that the defendants in a section 107 action are liable. Then, the United States must demonstrate that it conducted a removal or remedial action and establish the costs which were incurred for that action.

When the United States has met its burden of proof under section 107(a), the burden shifts to the defendants to show that costs were incurred inconsistent with the national contingency plan. If defendants fail to meet this burden of proof, the United States is entitled to recover all of its response costs.

The proposed regulation does not address the issue of recoverability of costs in the circumstance where a court rules that the United States, in conducting a removal or remedial action, failed to comply with a requirement of the national contingency plan. EPA solicits public comment on whether the regulation should include further clarification of the CERCLA section 107(a)(4)(A) liability standard in this respect. EPA is considering adopting the standard developed by the court in *O'Neil* v. *Picillo*, 682 F. Supp. 706 (D.R.I. 1988), *aff'd* 883 F.2d 176 (1st Cir. 1989). The clarification would state that where the Agency does not materially comply with the applicable requirements of the national contingency plan, and as a result, incurs costs demonstrably in excess of those costs that would have been incurred in the absence of such material noncompliance with the national contingency plan, recoverable costs (i.e. the "costs of removal or remedial action incurred by the United States * * * not inconsistent with the national contingency plan," 42 U.S.C. 9607(a)(4)(A)), would not include the demonstrably excess costs incurred as a direct result of the noncompliance with the national contingency plan. The clarification would further state that where material noncompliance with the national contingency plan does not result in demonstrably excess costs, all costs of response action are recoverable costs.

B. Determining Costs

EPA incurs costs, including direct and indirect costs, in taking response actions. Other federal agencies, states, and Indian tribes also may incur costs for response actions. As mentioned previously, these entities have independent authority under CERCLA section 107(a) to recover their response action expenditures. However, while states or other federal agencies, as well as EPA, may be the lead agency for response actions as provided in the national contingency plan, EPA is generally the lead agency for recovery under CERCLA section 107 of most response action expenditures. Accordingly, the provisions of this proposed rule apply to cost recovery actions initiated by EPA and are not

binding on other federal agencies, states, or Indian tribes.

States receiving funds under Superfund cooperative agreements, however, are required to comply with the uniform administrative requirements for grants and cooperative agreements to states and local governments at 40 CFR part 31, and the administrative requirements specifically related to cooperative agreements and state contracts for Superfund response actions at subpart O of 40 CFR part 35. These regulations include requirements for the completion and maintenance of certain documentation and information necessary for the administration of grants and cooperative agreements.

With respect to federal agencies, where EPA incurs costs by reimbursing other federal agencies for work performed under interagency agreements, and plans to include these costs as part of a cost recovery action, EPA will request, pursuant to terms of interagency agreements, that such other federal agencies maintain documentation and information regarding response actions and costs consistent with the documentation and information provisions in this proposed rule.

1. Direct Costs

The proposed rule would define direct costs as disbursements (also known as "outlays" or "expenditures") recorded in individual site accounts in EPA's financial management system. The terms "disbursement" and "financial management system" are used in this rule in accordance with standard and established federal government practice discussed below.

Direct costs are expenditures which are made for the execution of a site response action and are identified in the individual site accounts in the Agency's financial management system. They include EPA employee salaries and benefits, travel costs, EPA payments for goods and services furnished by organizations other than EPA under contracts (with private companies), interagency agreements (with other federal agencies), cooperative agreements (with states pursuant to section 104(d) of CERCLA), grants to groups of individuals (Technical Assistance Grants), preauthorized response claims made by responsible parties performing response actions under a "mixed funding" settlement agreement pursuant to section 122 of CERCLA, reimbursements made pursuant to section 106(b) of CERCLA, and indemnification claims under section 119 of CERCLA. They include any other site-specific response costs, including oversight costs, incurred by the Agency under authority of CERCLA and the national contingency plan.

The Agency's direct costs include all costs of other organizations performing site-specific response actions under Superfund contracts, cooperative agreements, interagency agreements, and grants. For example, in contracts with private companies performing site-specific work, the contractors' overhead and profit, along with direct labor and material costs, is part of the costs to EPA of those contracts. Overhead and profit is included in company invoices for site work at those sites and is charged in EPA's financial management system as a direct cost to EPA. Similarly, EPA's payments to federal agencies and states through interagency agreements and cooperative agreements, respectively, for site-specific work includes their indirect costs.

The federal government's recognition and recording of disbursements is in accordance with Office of Management and Budget (OMB) Circular A-34 "Instructions on Budget Execution" and title 2 of the General Accounting Office (GAO) Policies and Procedures Manual for Guidance of Federal Agencies. Title 2 was promulgated pursuant to 31 U.S.C. 3511, which grants the Comptroller General of the United States authority to prescribe accounting principles, standards, and requirements for each executive agency.

EPA's financial management system consists of the total of: (1) Agency financial systems, both manual and automated, for planning, budget formulation and execution, program and administrative accounting, and audit; and, (2) all other systems for recording and classifying financial data and reporting financial information, including purchasing, property, inventory, etc. This description is based on the definition of financial management system from OMB Circular A-127 "Financial Management Systems."

EPA's accounting policies and procedures are based on the laws, regulations, and policies cited above and other applicable authorities discussed below. In recording direct costs in the individual site accounts, EPA employs a variety of systems, methods, and techniques. As required by title 7, chapter 6 of GAO's Policies and Procedures Manual for Guidance of Federal Agencies, EPA reviews and approves basic payment documents before any disbursements are made. Superfund direct costs are based on records such as timecards, timesheets, vouchers, invoices and electronic transfers. In addition, some direct costs are recorded through journal entries and journal voucher transfers from other accounts.

EPA's financial management system incorporates numerous accounting and internal controls in accordance with 31 U.S.C. 3512. These controls ensure that obligations and costs comply with applicable law and that the revenues and expenditures applicable to Agency operations are recorded and accounted for properly. The controls also ensure that accounts and reliable financial and statistical reports are prepared.

The foregoing discussion has focused on EPA's accounting of costs. Under 31 U.S.C. 3512, other federal agencies are subject to the same controls and regulations as EPA and consequently follow similar, though not necessarily identical, internal procedures implementing these controls and regulations. As explained above, EPA's direct costs include payments to other federal agencies pursuant to interagency agreements. Under Agency policies and procedures, EPA does not account for these payments as direct costs until the other federal agency has incurred the costs and submitted an invoice for reimbursement to EPA. In turn, other federal agencies are subject to the same controls and regulations regarding the recording of disbursements discussed above, as apply to EPA. Both EPA and government-wide policies require recipient federal agencies to maintain adequate internal controls and support for all charges to interagency accounts. Consequently, all payments to other federal agencies have been subject to extensive review and control by the time the charges are recorded as direct costs in EPA's financial management systems.

2. Indirect Costs

The proposed rule would define indirect costs as disbursements from the Superfund for the operation and management of the Superfund program that are not direct costs. It also would provide a methodology for determining the indirect cost pool and indirect cost rate. Since the purpose of appropriations from the Superfund is to support CERCLA goals and objectives, any charge to the Trust Fund supports the clean-up process at Superfund sites. Accordingly, EPA believes that any cost to Superfund not charged to a specific site should be included in the indirect cost pool. This definition, together with that for direct costs, would make all disbursements from the Superfund potentially eligible for cost recovery.

Indirect costs are support costs, comparable to a private company's

overhead, which support site response actions, or the Superfund program in general, but which cannot be directly accounted for on an individual site basis. EPA's indirect costs may include payments for non-site-specific activities under contracts, grants, and interagency agreements. Indirect costs include:

1. Administrative management (e.g., facilities, personnel, finance budget, procurement, and other support services);

2. Enforcement, legal, and audit services (e.g., non-site-specific costs from EPA's Offices of General and Regional Counsels, Inspector General, and Enforcement);

3. Program management (all non-site-specific costs for EPA's program offices and 10 regional hazardous waste management divisions for such functions as management, and policy direction and formulation);

4. Initial site analysis costs (preliminary assessments and site investigations of potential Superfund sites); and,

5. Research and development (R&D) costs.

EPA excludes, and will continue to exclude from its indirect cost pool certain other response action costs, which are accounted for on a site-specific basis, and their associated indirect costs. These costs include:

(1) Unrecovered response action costs expended on sites where less than 100% of total expenditures are recovered through settlements with responsible parties and no further cost recovery at the site is pursued;

(2) Response costs at sites where there are no financially viable responsible parties (orphan sites), at sites where no responsible parties have been identified, and at sites where response costs are not pursued; and

(3) Costs associated with federal facilities sites.

EPA also has not sought other indirect costs, such as the total of all indirect costs incurred in fiscal years 1981 and 1982. Under EPA's Superfund financial management policy, these costs were applied to the startup of the Superfund program.

From 1983 to date, EPA's accounting methodology has resulted in a limited amount of indirect costs being allocated to sites for cost recovery. This is a result of two major factors relating to EPA's current allocation methodology. The first factor involves the composition of the indirect cost pool. Certain sub-categories of the first three types of indirect costs listed above (for example, equipment costs and related depreciation expense) were omitted from the cost recovery process. Initial site analysis costs and R&D were excluded in their entirety.

The second factor limiting EPA's allocation of indirect costs to sites for cost recovery involves the methodology by which the indirect cost pool is currently distributed. In this process, EPA divides the total of its indirect cost pool by the total of site-specific and non-site-specific employee hours to compute an hourly indirect cost rate. However, EPA's indirect cost rate is applied only to site-specific employee hours when computing a site's share of indirect costs. Since these site-specific employee hours have amounted to approximately 35% of the total Superfund employee hours, only this portion of the indirect cost pool is distributed to sites for potential cost recovery. The remaining 65% of the indirect cost pool is not allocated to sites in any manner and is therefore excluded from potential cost recovery.

The Agency is fully aware that this combination of factors significantly limits recovery of certain indirect costs. The General Accounting Office, in its report, Superfund: A More Vigorous and Better Managed Enforcement Program Is Needed, December 1989, estimated that all of these practices have had the effect of excluding a total of $800 million in indirect costs through fiscal year 1988 from potential cost recovery.

Selection of this indirect cost allocation methodology was not based on the premise that certain indirect costs were not recoverable, but instead was based on a consideration of efficient administration of this methodology by the Agency's then current financial management system. Generally accepted accounting principles would permit the allocation of all of the costs of the Superfund program to sites. This has been recently supported by a federal district court awarding EPA indirect costs in a CERCLA cost recovery action. See *United States* v. *Royal N. Hardage, et al.* ("Hardage"), Civ. No. 86-1401P, slip op. at 103 (W.D. Okla. August 9, 1990). The court in *Hardage* found that EPA's current system of cost distribution allocates 35% of Superfund non-site-specific costs and that under generally accepted accounting principles, allocation of 100% would be appropriate. Accordingly, today's proposed rule would revise EPA's indirect cost methodology to ensure implementation of a full cost accounting approach which allocates all costs of the Superfund program to sites.

EPA's current indirect cost allocation methodology is a cost-based approach and includes certain non-Superfund costs in the indirect cost pool. This approach was adopted by EPA from recommendations made by Ernst & Young, inc., EPA's CPA consultant, in its report, Evaluation of Existing EPA Cost Accounting Principles and Procedures and Recommendations for a Cost Allocation Process and Methodology for Superfund Sites, August, 1983. Expenditures from appropriations other than Superfund were included because the Superfund program received certain benefits and support from other Agency appropriations, primarily the Salaries and Expenses appropriation. The proposed rule would change the current procedures by limiting indirect costs to disbursements from the Superfund appropriation. This change is consistent with EPA's current financial management policy to bridge the cost allocation and budgetary accounting systems in the Superfund program.

The proposed rule would also provide the methodology for allocating indirect costs to specific sites. The proposed methodology would divide the indirect cost pool by site-specific employee hours in determining an indirect cost rate. Therefore, all indirect costs would be recoverable if full cost recovery at every site were pursued. However, full cost recovery at every site will not always be pursued. For example, certain sites have no viable responsible parties for a cost recovery action. Indirect costs allocated to the site would not be reallocated to other sites and would not be pursued. EPA specifically requests public comment on the indirect cost allocation methodology described in today's proposed rule and also requests comment from the public on alternative allocation methodologies for Superfund indirect costs.

The first step in determining an hourly indirect cost rate would be to divide the indirect cost pool into two categories. The first major category would include indirect costs that support the Superfund program on a national basis.

National indirect costs consist of two components. The first component consists of EPA headquarters indirect costs described as follows.

• Superfund program management costs are Superfund dollars that headquarters expends for the Office of Solid Waste and Emergency Response to maintain program support, such as Regional coordinators and national policy and guidance. The funds expended in headquarters program management offices benefit all sites. This program management includes payments to site response contractors for effort which supports the Superfund program as a whole rather than individual sites. It also includes costs

incurred by EPA under reimbursable interagency agreements with other federal agencies, for example, the National Institute of Environmental Health Sciences. The amount of such general support effort is determined from reports submitted annually by the site response contractors. All site response contractors are subject to this process. For FY 1991, the headquarters program management costs were approximately $180 million in Superfund expenditures. For the period of FY 1981 through FY 1991, these costs are estimated to be approximately $725 million. The estimated expenditure consists of actual disbursements for the period FY 1981 through FY 1991. The expenditures reported for the other six categories of indirect costs, described below, were also derived in the same manner.

• Superfund headquarters management and support costs are Superfund costs incurred by EPA primary and subordinate headquarters offices which provide administrative, legal, and management support. These primary offices during FY-1990 consist of the Office of the EPA Administrator; the Office of General Counsel; the Office of Administration and Resources Management; the Office of Enforcement; the Office of Policy, Planning and Evaluation; the Office of the Inspector General; and, the Office of International Activities. Superfund costs incurred include those for offices subordinate to these primary offices. For FY 1991, the headquarters management and support costs were approximately $90 million in Superfund expenditures. Through FY 1991, these costs are estimated to be approximately $450 million in total Superfund expenditures.

The Agency's organization and office structure has changed over time and could change in the future. As an example, the Office of Administration and Resources Management and the Office of Policy, Planning and Evaluation were once the single Office of Planning and Management. Also, the Office of Enforcement and Compliance Monitoring was recently reorganized to the Office of Enforcement. The management and support offices listed above represent the current Agency structure. Any future office reorganization may result in the incorporation of a new office(s) in this functional category.

• Other EPA headquarters program office indirect costs are Superfund expenditures in program offices other than those listed above to support the Superfund program. These offices, include the Office of Water, the Office of Air, and the Office of Pesticides and Toxic Substances. For example, the costs of policy work conducted in the office of Pesticides and Toxic Substances may support regulatory work in the Superfund program. These costs are the costs of providing Superfund support on an as-needed basis for areas in which the program office has expertise. For FY 1991, the other program office costs were approximately $5 million in Superfund expenditures. Through FY 1991, these costs are estimated to be approximately $25 million in total Superfund expenditures.

• Equipment/depreciation costs are Superfund expenditures incurred by EPA for Superfund for non-site-specific capital equipment, namely, equipment with a unit prices exceeding $5,000. Examples include electronic data processing equipment and photocopying machines. Generally accepted accounting principles require that the expense recognition for equipment be through depreciation. Effective with the final rule, depreciation will be computed and form the basis for inclusion as the indirect costs. This depreciation is predominantly a headquarters cost although there is some depreciation in EPA's regional accounts. For FY 1991, equipment and depreciation costs were approximately $10 million in Superfund expenditures. Through FY 1991, these costs are estimated to be approximately $75 million in total Superfund expenditures.

• Research and development costs are Superfund expenditures for scientific studies including innovative technology studies, health effects studies and procedures, and research on the use of scientific techniques in Superfund. The innovative technology studies refers to the Superfund Innovative Technology Evaluation (SITE) Program. This program evaluates the feasibility of an innovative technology before it becomes generally available and used. This cost category supports the Superfund program in general. EPA was considering alternative methods for determining the appropriate allocation (direct costing or indirect costing) of the research costs to sites, considering the benefits provided by this research. EPA has now determined that such research is properly allocated as indirect costs based on the long-term benefits of such costs and the prevalent private sector practice of charging such costs as indirect in accordance with generally accepted accounting principles. However, the costs of implementing innovative technology at a site where such technology is selected by EPA as the remedy at the site are direct costs. For FY 1991, the research and development costs were approximately $75 million in Superfund expenditures. Through FY 1991, these costs are estimated to be approximately $250 million in total Superfund expenditures.

• Initial site analysis costs are generally for preliminary assessments and site investigations of potential Superfund sites. These costs represent Superfund expenditures on potential Superfund sites before any decision is made regarding the need for further EPA action, including removal response action and listing on the NPL. Given the nature of these activities, EPA proposes to account for these expenditures as indirect costs.

Initial site analysis costs represent a cost to the Agency for operating and managing the Superfund programs. When a concerned party provides EPA with information on a potential Superfund site, the Agency responds by evaluating the site to determine if any federal action is necessary. To date, EPA has performed preliminary assessments on over 30,000 such potential Superfund sites. EPA's proposed policy to account for initial site analysis costs as indirect costs is consistent with generally accepted accounting principles for treating costs of this nature, i.e. initial or "up-front" costs, as indirect or overhead costs. For example, many private businesses' initial, "up-front" costs include costs associated with providing estimates or bids on the costs of their services to potential clients. Some of these bids will be successfully and result in acceptance by a client, and other bids will not. The recovery of these initial estimating costs occurs through billings to all clients. A portion of the price billed to clients will generally include a *pro rata* share of all estimating costs as indirect costs.

A specific example involves the bid and proposal costs incurred by prospective federal government contractors. The Federal Acquisition Regulations (48 CFR 31.205–18) permit contractors to include bid and proposal costs as part of the indirect costs charged to the federal government. These costs are allowable regardless of whether the bid was successful (resulting in the award of a contract), or unsuccessful (resulting in no award).

Under this proposed regulation, EPA's indirect cost pool will include all initial site analysis costs. The recovery of these costs will occur through the application of the indirect cost rate to all sites. For FY 1991, these initial site analysis costs were approximately $60 million in Superfund expenditures.

Through FY 1991, these costs are estimated to be approximately $350 million in total Superfund expenditures.

The second component of national indirect costs consists of costs incurred by other federal agencies, under allocation transfer interagency agreements, in support of the national Superfund program. Currently, only health effects research conducted by the Agency for Toxic Substances and Disease Registry pursuant to section 104(i)(5) of CERCLA is included. Unlike the work of other federal agencies, which is charged as direct costs to the Superfund, these health effects studies will not be conducted for specific sites and cannot be charged reasonable as direct costs.

Pursuant to section 104(i)(5)(D) of CERCLA, the costs for health effects research are to be borne by manufactures and processors under the Toxic Substances Control Act, registrants under the Federal Insecticide, Fungicide, and Rodenticide Act and responsible parties under CERCLA. This proposed rule would consider costs of health effects research which cannot be allocated to these manufacturers, processors and registrants as indirect costs in EPA's indirect cost pool. Generally, health effects research included in EPA's indirect cost pool will cover those hazardous substances that are no longer manufactured or used as pesticides or which are chemicals (or mixtures of chemicals) that are disposed of at hazardous waste sites and cannot be linked with any such manufacturer, processor or registrant.

The second major category of indirect costs consists of Superfund program and administrative management incurred in each of EPA's ten regional offices. These costs are incurred for region-specific activities which apply to all sites in the respective region. Examples include planning and directing Superfund response activities within the region and regional financial and personnel services. For FY 1991, the indirect costs for EPA's regions were approximately $125 million in Superfund expenditures. Through FY 1991, these indirect costs are estimated to be approximately $600 million in total Superfund expenditures.

After determining the indirect cost pool from the national and regional indirect costs expenditures, the next step in determining the indirect cost rate would be to identify each region's total direct and indirect Superfund employee hours. A region's direct Superfund employee hours are employee hours charged to individual Sueprfund sites (resulting in salaries being charged as direct costs). Indirect Superfund employees hours are hours charged in a region to the Superfund program but not to individual Superfund sites.

Once the national indirect costs, regional indirect costs, and regional Superfund employee hours are determined, indirect costs rates can be calculated. First, national indirect costs are distributed to each region by multiplying the total national indirect costs by the percentage (ratio) of each region's total Superfund hours (direct and indirect) to the combined total of all regions' total Superfund hours (direct and indirect). The proposed rule refers to this percentage as a region's "allocation percentage."

Next, each region's indirect cost pool would be calculated by adding a region's distribution of the national indirect costs, as calculated above, to its own indirect costs which support the Superfund program.

To compute the regional indirect cost rate, the total regional indirect cost pool is divided by regional Superfund site hours. To identify indirect costs for a specific site, the regional indirect cost rate is multiplied by regional Superfund site hours charged to the site.

The nature of the indirect cost allocation process results in the establishment of provisional or interim indirect cost rates. The establishment of provisional indirect cost rates is a generally accepted cost accounting concept and accepted business practice. The indirect cost allocation process can result in three or more separate indirect cost rates for a particular fiscal year until a final, audited rate is established after the end of the fiscal year. The first rate would be established at the beginning of the fiscal year based on the best available information. In most cases, this provisional rate would be based on the prior fiscal year's indirect cost rate. After completion of the current fiscal year, the indirect cost rate would be recalculated based on actual fiscal year disbursements. This may result in a revised provisional indirect cost rate. There may be additional revisions to the provisional indirect cost rate based on accounting adjustments such as reclassification of costs. Finally, EPA's indirect costs undergo audit by EPA's Office of Inspector General. Upon completion of the audit, EPA would determine the final indirect cost rates.

The proposed rule contains provisional indirect cost rates for each EPA region for fiscal years 1983–1988. These rates were determined using the proposed methodology.

After promulgation of the proposed rule, the provisional and final indirect cost rates for past and future fiscal years would also be published in the **Federal Register** with public comment requested. The last published rate for any fiscal year would be in effect for purposes of calculating indirect costs in EPA cost recovery actions until a new rate is published. Resolved cost recovery actions would not be affected by the publication of a new rate.

Thus, the FY 1988 rates would apply to cost distributions made in FY 1989 through FY 1993 until new rates for these years are published. In addition, indirect cost rates for prior fiscal years may be recalculated and new rates published. Any such recalculations would occur, as described above, if new information becomes available based on recommendations from Agency internal audits (e.g. Office of Inspector General audits) or from accounting adjustments made pursuant to Agency financial management policy.

The indirect cost rates for fiscal years 1981 and 1982 were not calculated. In the past, EPA has not sought recovery of indirect costs for those years and believes that it is inappropriate to change that policy at this time. At the inception of the Superfund program, the Agency made the decision that indirect costs for these fiscal years would be applied to startup of the Superfund program and would not be recovered.

As a matter of enforcement discretion, after the effective date of the final rule, EPA will apply the new indirect cost rates to all cost recovery actions that have not been finally resolved. EPA will apply discretion with respect to application of the new indirect cost rates in cases where a demand for indirect costs has been made, based on the prior rates, and the settlement negotiations and/or litigation have proceeded to a point where EPA believes application of the new rates would have an adverse impact on the settlement negotiations and/or litigation.

The docket to today's proposed rule contains the complete calculations and information describing the methodology and specific calculations used to determine the EPA regional hourly indirect cost rates from FY–1983 to FY–1988 included in § 308.50.

3. Interest

Section 107(a) of CERCLA states:

[t]he amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under

this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954.

Prior to enactment in 1986 of this provision for charging interest in CERCLA, EPA had the authority to collect pre-judgment interest on recoverable costs under Superfund. See *NEPACCO*, 579 F. Supp. at 852. Accordingly EPA charges responsible parties with interest on recoverable costs in all cost recovery actions.

The intent of today's rule is to clarify certain terms in CERCLA relating to charging of interest, and to clarify the interest rate and method of calculating interest in cost recovery actions. The proposed rule would establish the "date of expenditure," under section 107(a), as the date identified in EPA's financial management system for the expenditure event involved. The event date established depends on the type of transaction or method of payment.

For transactions where EPA arranges for a check payment by the U.S. Department of Treasury, the date of expenditure is the date of the check. Examples of this type of transaction include payments to contractors and vendors and to EPA employees reimbursing travel expenditures. For payroll transactions, EPA uses a bi-weekly pay period ending on alternate Saturdays. Any payroll date of expenditure is the second Tuesday following the Saturday ending a pay period. This date may be either the date of checks to employees receiving checks or the effective date of electronic transfers for those employees paid by electronic fund transfer to their bank accounts.

There are other transactions involving electronic fund transfers such as EPA reimbursements to other federal agencies (e.g. the U.S. Coast Guard), performing work under interagency agreements. Another example is a state cooperative agreement where payments are made by EPA to a state under a letter-of-credit arrangement. In these cases, the date of expenditure is the date EPA is notified of the electronic fund transfer by the U.S. Department of Treasury.

There are some transactions where the direct, site-specific disbursement is charged by means of a journal voucher transfer from another account to which the disbursement was originally charged. In these instances, the date of expenditure is determined by EPA as the date applicable to the original charge.

The date of expenditure for indirect costs would be the same as the date of expenditure of the related Superfund regional employee site-specific payroll costs. As explained previously in this preamble, the indirect costs for a site are determined by application of the indirect cost rate to direct Superfund employee site-specific hours expended.

The proposed rule would also clarify the date of written demand as the earlier of the date of mailing of a special notice letter, demand letter, or other correspondence which demands past costs and which may include an estimate of future costs. Alternately, the date of written demand is the date of filling of a section 107(a) cost recovery action in federal district court by the Department of Justice.

Special notice letters are issued by EPA pursuant to CERCLA section 122(e). They inform responsible parties of their potential liability for response costs, mark the start of a statutory moratorium period on certain EPA actions, and initiate the process of formal negotiations for responsible party conduct of response action at a site.

In accordance with EPA policy, special notice letters may include a demand, pursuant to section 107(a), that responsible parties reimburse EPA for the costs the Agency has incurred in conducting response activities at the site; identify the actions EPA has undertaken and the cost of conducting the actions; indicate that the Agency anticipates expending additional funds on activities at the site; estimate future costs for these activities; and, demand payment of interest for past and future response costs incurred by EPA.

A demand letter is a request that responsible parties reimburse the Superfund for a specified amount associated with one or more response activities. Prior to filing a cost recovery lawsuit, as a matter of policy, EPA sends a written demand letter to responsible parties pursuant to section 107(a). Demand letters may be issued for each separate response activity conducted at a site and may include estimates of future costs, where appropriate. Response activities at Superfund sites may include individual or multiple operable units of removals, remedial investigations and feasibility studies (RI/FSs), remedial designs (RDs), and remedial actions (RAs).

EPA believes that interest begins to accrue for those costs already expended from the date of written demand unless there was a prior written demand, in which case, interest would accrue from the date of the prior written demand. Interest begins to accrue for subsequent expenditures, i.e. future costs, upon the date of expenditure. Specified sums in special notice letters, demand letters, and other correspondence demanding costs issued by the Agency are not an indication of EPA's willingness to settle for those amounts in any case.

The proposed rule would also establish a procedure for assessing interest which is consistent with the manner in which the U.S. Department of Treasury earns interest on the investment of Superfund tax revenues. The U.S. Department of Treasury compounds interest annually on Superfund tax revenues. The procedure proposed in today's rule would compound interest for cost recovery purposes, by adding at the end of the fiscal year, unpaid principal to unpaid accrued interest to determine new unpaid principal. Interest then accrues on the new unpaid principal for the new fiscal year.

In defining certain terms and methodologies for determining interest, today's proposed regulation is not intended to affect or preclude EPA's recovery of interest under any legal or equitable authority or principles. This view is consistent with the court's opinion in *United States* v. *Bell Petroleum Services, Inc.*, 734 F. Supp. 771 (W.D. Tex. March 8, 1990) which construed the statutory language regarding interest in CERCLA section 107 as a guideline for the court to follow in determining interest, not as a strict requirement which could bar recovery of interest.

C. Documenting Response Actions and Costs

Today's proposed rule amends 40 CFR 300.160 to specify the documents and information that EPA will complete and maintain to support CERCLA cost recovery actions. EPA proposes that the documents and information specified meet the requirements of the national contingency plan to describe the response action taken and provide an accurate accounting of costs incurred for that action by the Agency for purposes of CERCLA section 107(a) cost recovery actions. This section of the proposed rule would not apply to documentation requirements that the Agency may issue by policy or regulation relating to claims against the Superfund pursuant to CERCLA sections 111 and 112; petitions for reimbursement pursuant to CERCLA section 106(b); and, reimbursements to local governments pursuant to CERCLA section 123.

This part in the proposed rule would apply prospectively to cost information assembled and response action documented by EPA on or after the effective date of the promulgation of the final regulation. It is EPA's intent,

however, to adopt the documentation process defined in the proposed amendment to 40 CFR 300.160 as an interim policy which would apply to current cost recovery actions, where appropriate.

The detailed process for completion and maintenance of documents and information in § 300.160(a)(3) and (4) of the proposed rule would not directly apply to other federal agencies, states, and Indian tribes. As stated previously in this preamble, it is EPA's intent to require that federal agencies, under terms of Superfund interagency agreements, complete and maintain documents and information to support cost recovery actions consistent with the requirements of the proposed rule.

Certain parts of the proposed rule, however, particularly § 308.50, EPA Indirect Costs, of the new 40 CFR part 308 will apply, when final, to cost recovery actions under section 107 of CERCLA which have not been finally resolved. The remaining provisions of part 308 would apply to cost recovery actions initiated after the effective date of the final rule.

The proposed rule would clarify that documentation sufficient to describe what the costs of the response action were incurred for would be provided in two categories. The first category, documentation that covers the actual response action taken, would be work initiation documents that EPA issues to contractors and lead agencies describing the work to be undertaken to implement the selected response action. Documents issued to contractors by EPA in this category would be work assignments and other technical directive documents. If the lead agency implementing the response action is not EPA, but rather is a state, or federal agency, documentation in this category would be the appropriate cooperative agreement or interagency agreement that is issued by EPA when it initiates the implementation of response action. If the response action includes a technical assistance grant to a group of individuals, the documentation would be the appropriate grant issued by EPA. Amendments to all these documents would also be provided.

The second category would be documents that describe the technical aspects of the implementation of the response action taken. In general, these documents would be deliverables, i.e., periodic, interim, and/or final project reports, that may be required under EPA's work initiation orders. These documents would be reports prepared by EPA officials, or reports prepared by contractors, states, local governments, federal agencies, or groups of individuals for submission to EPA officials which are completed pursuant to requirements in work initiation documents and which describe the actual response actions that have been taken. These documents would be reports prepared describing progress of implementation of the response action and final reports describing the completion of response action.

The proposed rule than clarifies EPA's approach to account for costs incurred for site-specific response actions. Certain information would be completed and maintained concerning the costs incurred by the Agency. For direct costs this information would be the site identification code and name; names, salary (including benefits amounts), and hours charged for all EPA employees providing site-specific work; names of payees, amounts and dates paid for purchases and contract charges incurred for site activities by EPA vendors, and as applicable, identification of related contracts, purchase orders, or invoices, as well as related journal vouchers.

The identification of site-specific costs incurred by EPA vendors may result from two different types of accounting transactions. EPA vendors submit an invoice for their services on a site-specific basis. Costs for these services can be identified by the invoice. However, there are also situations where contract costs, originally billed as non-site-specific costs are reclassified to direct site-specific accounts. This reclassification, in certain cases permits more accurate cost accounting. The reclassified non-site-specific contract costs represent contract specific administrative costs that are best allocated to the sites for which the contractor expended the costs.

There may be other situations for which costs are reclassified from non-site-specific accounts to site-specific accounts such as the reclassification of pre-FY 1986 contract disbursements based on special reports submitted by the contractors. The document accounting for these transactions is a journal voucher. Therefore, depending on the type of transaction, an invoice or a journal voucher, provides the appropriate information for the contract disbursements.

For cooperative agreements with state and local governments and interagency agreements with federal agencies, this information would be the names of recipient entities (e.g. departments, agencies, etc.), amounts and dates paid, and agreement identification numbers for all costs incurred.

In addition, this information would include employee name, amounts and dates paid, destination, and travel authorization number for all site-specific travel by EPA employees.

For indirect costs, the information completed and maintained by EPA would be the applicable annual regional hourly indirect cost rate, the identification of the Superfund employee site-specific hours upon which the hourly rate is applied, and the corresponding indirect cost totals for each government fiscal year involved. For interest charges, the information would include the amounts and dates paid of costs on which the interest is calculated and the total of interest charges for the site.

Up to the present, this information has been provided in extensive and voluminous documents to responsible parties and courts in cost recovery actions. This has resulted in enormous transaction costs to EPA and responsible parties and has frequently delayed the outcome of administrative and judicial cost recovery proceedings. The procedure proposed in this rule would substantially streamline the cost accounting associated with EPA's cost recovery actions by shifting Agency practice to cost accounting by means of manual and automated reports.

Recent changes in the conduct and practice of governmental and private business financial transactions form the basis for EPA's decision to adopt the approach in the proposed rule for accounting for federal costs incurred in the Superfund program. With advances in business technology, government and private financial transactions are moving away from use of documentation paper (hardcopy), to the transmission, recording and storage of electronic impulses in computerized financial management systems. For example, U.S. Department of Treasury confirmation of expenditures pursuant to approved EPA vouchers is currently received electronically. EPA does not receive hardcopy documentation of these expenditures. The Agency believes that government and other business transactions increasingly will be conducted electronically in the future. The proposed rule reflects this inevitable trend in utilization of advanced technology by providing that the Agency will furnish certain information that would account for federal costs expended in the Superfund program. The information would include the significant data elements that would be sufficient to meet the Agency's obligations under the national contingency plan to establish Superfund expenditures. The information would be provided in the form of automated or manual reports listing the detailed

information stated in the proposed amendment, 40 CFR 300.160(a)(4). Example documents containing the financial information required by the proposed rule are included in the docket to today's proposed rule.

The documentation and information specified in the proposed rule would in all cases be sufficient to form the basis for EPA's cost recovery action and satisfy the requirements of § 300.160(a)(1) of the national contingency plan. There may be instances, however, where certain documents and information may not be available because of the urgency of the response action or other circumstances beyond the control of EPA. For example, progress reports describing the response action taken may not be produced in every case by EPA contractors, or states under cooperative agreements. In cases where certain documentation and information specified in today's rule are not available, EPA will identify other documentation and information which describes the response action taken and provides an accurate accounting of costs as required by the national contingency plan.

In clarifying the scope of § 300.160(a)(1), the proposed rule excludes documentation and information which do not describe the response action taken or provide an accurate accounting of costs incurred. For example, "pre-award" documentation associated with the procurement of contracts for response action work does not relate to, and would not be part of the documentation and information to be completed and maintained by EPA to support a cost recovery action. These documents do not provide information on the selection or implementation of the response action taken at any site that relates to the nature and extent of costs incurred, since these pre-award documents are prepared prior to performance of any actual work under the contract. Similarly, national or regional EPA contracts (e.g. those providing for general advisory and assistance services to the Agency), would not be part of the documentation and information produced for cost recovery actions because they do not contain descriptions of site-specific response action and do not contain information related to costs incurred with respect to any Superfund site.

Other documents which would not be among the documents produced under § 300.160(a)(1) in a specific cost recovery action include general audit reports or audit work papers that do not relate to a particular site. Such general audit reports, however, that are used as a basis for calculation of provisional or final indirect cost rates would be made available when EPA publishes these rates in the **Federal Register**, in accordance with procedures proposed in this rule.

EPA also believes that preliminary, interim, or draft documents, or portions of these documents are not necessary to meet the documentation and information requirements of today's proposed rule in cost recovery actions under CERCLA. Accordingly, EPA does not intend to produce these preliminary, interim, or draft documents pursuant to the procedures for cost recovery actions proposed in today's proposed rule. Final, or "last draft" documents would meet the provisions in the proposed § 300.160(a)(2) of the rule to support a cost recovery action.

In summary, EPA believes that the proposed documentation and information amendments to 40 CFR 300.160 will contribute to the swift resolution of cost recovery actions under section 107(a) of CERCLA.

D. CERCLA Statute of Limitations

Section 113(g)(2) of CERCLA states:

An initial action for recovery of costs referred to in section 107 must be commenced:

(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action;

(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have incurred.

Because of the complexity of the Superfund program and the many types of activities that are involved in removal and remedial actions, the Agency believes it would be helpful in cost recovery actions if definitions of certain terms in section 113(g)(2) were available in the context of EPA's response action procedures. Accordingly, to provide more clarity, the proposed rule would define certain of the terms used in section 113(g)(2).

As indicated above, the proposed rule applies to EPA cost recovery actions. The proposed rule's definition of certain statute of limitations terms are based on administrative events that occur in EPA's Superfund response action procedures. The administrative events that may occur in the Superfund program activities of other governmental entities and parties may significantly differ from those that occur in EPA. The definitions of statute of limitations events, therefore, do not apply to cost recovery actions taken by other governmental entities or parties.

The proposed rule would define "completion of removal action" only in the circumstances where remedial actions are also undertaken at the site. Superfund remedial actions are always preceded by certain removal actions. The removal actions may include traditional physical removals (those taken to prevent, mitigate, and cleanup releases or threat of releases of hazardous substances), as well as studies or investigations conducted under section 104(b) of CERCLA (as clarified by the national contingency plan). Examples of studies and investigations include remedial investigations and feasibility studies (40 CFR 300.430), and remedial design activities (40 CFR 300.435). Because of the complexity of the response process and the fact that several of these removal actions may be taken simultaneously or in sequence at a site, the completion of the removal action for purposes of cost recovery may be difficult to ascertain. The proposed rule would define all pre-remedial response actions as removal actions and define the "completion of the removal action" for cost recovery purposes as the date of the last remedial design report prepared by EPA preparatory to implementation of remedial construction activities at the site.

The term "completion of removal action" at sites where only traditional physical removal actions addressing releases or threat of releases of hazardous substances are undertaken would not be defined by the proposed rule.

The term "physical on-site construction" for remedial actions would be defined by the proposed rule to be limited to actions that occur after completion and approval of the remedial design and the issuance by EPA, the lead agency, or prime contractor of a

notice to begin remedial action ("notice to proceed") by authorized personnel. A notice to proceed is a written communication issued to the contractor conducting the response action once work plans and other contract documents have been reviewed and approved by the lead agency or prime contractor official. In every case, the date of initiation of physical onsite construction would occur after the last remedial design report has been approved and the notice to proceed has been issued. In effect, the rule proposes that only construction following approval of the last remedial design report and issuance of the notice to proceed is construction within the meaning of CERCLA section 113(g)(2)(B).

Under the provisions of section 113(g)(2)(B), where a declaratory judgment on liability has been entered by a court, the statutory limitation period for a subsequent action is extended to three years after "completion of all response action." The declaratory judgment is binding on all subsequent actions to recovery response costs or damages. Subsequent actions under section 107(a) by the Agency, however, must be commenced no later than three years after completion of all response action. Under the proposed rule, the term "all response action" as used in CERCLA section 113(g)(2)(B) would include, but would not be limited to, all response actions that occur before the date on which the Superfund Site Close-Out Report is signed by an EPA Regional Administrator. The Close-Out Report is issued following a final inspection of the site by EPA staff. A description of a Close-Out Report can be found in "Procedures for Completion and Deletion of Sites From the National Priorities List" (OSWER Directive 9320.2-03a, April, 1989, amended by OSWER Directive 9320.2-03b, December, 1989). Since a Close-Out Report is prepared for each operable unit at a site, the Close-Out Report for the last operable unit would be used for purposes of identifying the completion of "all response action". The Close-Out Report date was selected because it is a definable date included in a document developed at every site which provides the overall technical justification for response action completion.

EPA considered other options for defining "all response action" including administrative completion of federal funding of restoration activities as provided in 40 CFR 300.435. The Close-Out Report, however, is a definable administrative event, which would occur for all Superfund sites, at a time when all federal funding will have been concluded. EPA specifically requests public comment on this definition of the "all response action" event.

E. Public Comment

EPA requests public comment on all aspects of today's rule. However, the preamble discussion identifies certain issues addressed in today's rule on which EPA specifically requests public comment. These issues include the following.

1. Further clarification of the CERCLA section 107 (a)(4)(A) liability standard in the circumstance where a court rules that the United States, in conducting a removal or remedial action, failed to comply with a requirement of the national contingency plan.

2. The indirect cost allocation methodology proposed in today's rule and alternative allocation methodologies for Superfund indirect costs.

3. The definition of "all response action" as that term is used in section 113(g)(2)(B) addressing the circumstance where a declaratory judgment on liability having been entered by a court, the statutory limitation period for a subsequent action is extended to three years after "completion of all response action."

Comments on this proposed rule must be received within sixty days of publication in the **Federal Register**.

III. Section-by-Section Summary

40 CFR Part 300 National Oil and Hazardous Substances Pollution Contingency Plan

Section 300.160 of the national contingency plan establishes requirements for the lead agency to complete and maintain certain documentation to support all actions under the national contingency plan and to form the basis for cost recovery. Section 300.160(a)(1), which describes the general categories of documentation, would not be changed by the proposed rule.

However, four new subparagraphs to paragraph (a) would be added. These subparagraphs would set forth EPA's obligations under § 300.160(a)(1) specifically with respect to cost recovery actions. Subparagraph (2) would make it clear that documentation and information specified in the succeeding two subparagraphs would apply to EPA and would satisfy the terms of § 300.160(a)(1) of the national contingency plan with respect to cost recovery actions. Subparagraph (3) would define what documentation is sufficient to describe the response action taken. Subparagraph (4) would define what information is sufficient to accurately account for federal costs incurred for each site-specific response action. Subparagraph (5) would make it clear that in those cases where all of the documentation and information specified in subparagraphs (3) and (4) are not available, EPA would identify other documentation and information which describes the response action taken and provides an accurate accounting of costs which would meet the requirements of § 300.160(a)(1) of the national contingency plan, and would be sufficient to form the basis for a cost recovery action. This Part of the proposed rule would apply prospectively to cost information assembled and removal or remedial actions documented for cost recovery actions instituted by EPA on or after the effective date of the final rule.

40 CFR Part 308 CERCLA Cost Recovery

This part would be new. It would consist of three subparts: Subpart A—General—, §§ 308.10 and 308.12; Subpart B—Actions for Recovery of Costs under CERCLA—, §§ 308.20 through 308.30; and Subpart C—Categories of Costs—, §§ 308.40 through 308.60.

Section 308.10 would describe the scope and applicability of part 308. Part 308 would specify what costs are recoverable in cost recovery actions under section 107(a)(1)-(4) (A) and (D) of CERCLA for recovery of costs incurred by EPA. Part 308 would also clarify certain response action events that relate to the statute of limitations applicable to cost recovery actions under section 107, that are expressed CERCLA section 113(g)(2). In addition to costs incurred by EPA, costs incurred by other federal agencies would be EPA costs if incurred for response actions funded by EPA through interagency agreements. Costs incurred by states or local governments would be EPA costs if incurred for response actions funded by EPA through a CERCLA section 104(d)(1) cooperative agreement.

Section 308.12 would define the terms used in part 308 as they are defined in section 101 of CERCLA or 40 CFR part 300, unless otherwise stated.

Section 308.20 would codify responsible party liability for federal costs under section 107(a)(4) (A) and (D) of CERCLA. Subject to defenses in section 107(b) of CERCLA, responsible parties under section 107(a) of CERCLA are liable for all costs of response actions incurred by the United States not inconsistent with the national contingency plan and for the costs of any health assessment or health effects study carried out under section 104(i)(5)

of CERCLA. Section 308.25 would define recoverable costs as all costs including direct and indirect costs, and interest on those costs.

Section 308.30 would explain the terms "completion of removal action," "physical on-site construction," and "all response action" for Superfund response action events as those terms are used in section 113(g)(2) of CERCLA in determining when cost recovery actions must be initiated.

Section 308.40 would explain that EPA direct costs are disbursements recorded in individual Superfund site accounts in EPA's financial management system.

Section 308.50(a) would explain that EPA indirect costs are all disbursements from Superfund for the operation and management of the Superfund program that are not direct costs. Section 308.50(b) would provide the method of determining an hourly indirect cost rate for each EPA region that would be used to determine the indirect costs for a specific response action. Section 308.50(b) would also clarify that health effects research costs conducted by the Agency for Toxic Substances and Disease Registry pursuant to section 104(i)(5) of CERCLA would be recovered as indirect costs. Section 308.50(c) would contain a table of provisional indirect cost rates for each of EPA's ten regions for fiscal years 1983 through 1988. The proposed rule states that provisional and final rates would be published, for subsequent years after the completion of the fiscal year. The last published rate would remain in effect until a new provisional or final rate was published for the relevant year.

Section 308.60 would clarify "date of expenditure" and "date of demand" as those terms are used in section 107(a) of CERCLA for determining interest. It also explains the "date of expenditure" for purposes of interest accrual prior to the enactment of the CERCLA amendments of 1986. This section would also clarify how interest is calculated.

IV. Summary of Supporting Analyses

A. Regulatory Impact Analysis

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or,

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking would not affect the economy by $100 million annually because the regulation would not increase the liability of responsible parties and would not increase the response costs at Superfund sites. The costs for which responsible parties are liable would not be affected by this rulemaking. Because the proposed regulation provides for full cost accounting for indirect costs, it is possible that the regulation may result in a small increase in the costs recovered from responsible parties, but any such increase would be only an incremental addition to the costs recovered without this rule. The rulemaking would not directly increase costs or prices for consumers, industries, or federal, state, or local government. The regulation would not contain any new standards, criteria, or performance levels to be achieved by the regulated community. Furthermore, the rulemaking would not have adverse affects on competition, employment, investment, productivity, or innovation because the regulation seeks only to expedite cost recovery actions and reduce the Agency's resource burden in documenting response costs.

This proposed rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organization, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effects on small entities as required by the Regulatory Flexibility Act. The proposed rule imposes no new economic burdens on small entities. The proposed rule also does not affect any liability that small entities may have as responsible parties under CERCLA. Therefore, I certify that today's proposed rule will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act

This regulation is not subject to the provisions of the Paperwork Reduction Act. Any collection of information in this regulation is required in the course of an enforcement action against a specific party or parties and, therefore, is exempt from coverage under the Act.

List of Subjects

40 CFR Part 300

Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Superfund.

40 CFR Part 308

Administrative practice and procedure, Claims, Freedom of information, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Superfund.

Dated: July 28, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR ch. I is proposed to be amended as follows.

PART 300 NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

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

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Section 300.160 is amended by redesignating paragraphs (a)(2) and (a)(3) as (a)(6) and (a)(7), and by adding paragraphs (a)(2) through (a)(5) to read as follows:

§ 300.160 Documentation and cost recovery.

(a) * * *

(2) The documentation and information specified in paragraphs (a)(3) and (a)(4) of this section shall be sufficient to form the basis for an EPA cost recovery action.

(3) Documentation that describes the site-specific response action taken referred to in paragraph (a)(1) of this section, specifically:

(i) Contractual, grant, cooperative agreement, or interagency agreement documents that describe the response action to be taken; and,

(ii) Progress reports and final reports by EPA officials, or by contractors, states, other federal agencies, or groups of individuals to EPA officials that

describe the implementation of the response action taken.

(4) Information that provides an accurate accounting of federal costs incurred for each site-specific response action referred to in paragraph (a)(1), of this section, specifically:

(i) For direct costs, as described in § 308.40 of this chapter:

(A) Site identification code number and name(s);

(B) Names, hours charged, and salary (including benefits amounts) paid to EPA employees who provided site-specific work;

(C) The names of vendors or payees, amounts paid, dates paid, and as applicable, the identification of related invoices, contracts, or purchase orders, as well as all related journal vouchers, for purchases and contract charges associated with the site;

(D) The names of recipient(s), amounts and dates paid, and grant and agreement number(s) for all costs involving cooperative agreements with any state or local governments, technical assistance grants awarded to groups of individuals, and interagency agreements with other federal agencies; and,

(E) The employee name, amounts and date paid, destination, and travel authorization number for all site-specific travel by EPA employees.

(ii) For indirect costs, as described in § 308.50 of this chapter, for each fiscal year involved:

(A) The applicable regional indirect cost rates;

(B) The site-specific Superfund employee hours upon which the rates are applied; and,

(C) The indirect cost totals.

(iii) For interest charges, as described in § 308.60 of this chapter:

(A) The amounts and the dates upon which interest is calculated; and,

(B) The amounts and the total interest charges for the site.

(5) Where certain documentation and information described in paragraphs (a)(3) and (4) of this section are not available, EPA shall identify other documentation and/or information which describes the response action taken and provides an accurate accounting of costs incurred.

* * * * *

3. Part 308 is added to read as follows:

PART 308—CERCLA COST RECOVERY

Subpart A—General

Sec.
308.10 Scope and applicability.
308.12 Definitions.

Subpart B—Actions for Recovery of Costs under CERCLA

308.20 Liability.
308.25 Recoverable costs.
308.30 Definitions of events affecting limitations of actions to recover costs.

Subpart C—Categories of Costs

308.40 EPA direct costs.
308.50 EPA indirect costs.
308.60 Interest.

Authority: 42 U.S.C. 9601–9657; E.O. 12580, 52 FR 2923.

Subpart A—General

§ 308.10 Scope and applicability.

(a) This part specifies the cost that are recoverable under section 107(a)(4)(A) and (D) of CERCLA, and defines certain events that determine the period in which actions under section 107 for recovery of costs may be brought pursuant to section 113(g)(2) of CERCLA.

(b) This Part does not apply to costs incurred by other federal agencies, states, or Indian tribes. With respect to these entities, this part applies where the EPA in an action under section 107 of CERCLA is seeking recovery of its costs expended in a response action under an interagency agreement, cooperative agreement, or grant.

§ 308.12 Definitions.

Terms in this part shall have the meaning set forth in section 101 of CERCLA as amended and the national contingency plan at 40 CFR part 300.

Subpart B—Actions for Recovery of Costs under CERCLA

§ 308.20 Liability.

Subject to the defenses provided in section 107(b) of CERCLA, persons identified in section 107(a) of CERCLA are liable to the United States for all costs of response actions incurred by the United States Government not inconsistent with the national contingency plan, 40 CFR part 300, including, as indirect costs, the costs of any health assessment or health effects study carried out under section 104(i)(5) of CERCLA.

§ 308.25 Recoverable costs.

Costs recoverable under § 308.20 of this subpart include direct and indirect costs and interest on those costs. These cost categories are described in subpart C of this part.

§ 308.30 Definitions of events affecting limitations of actions to recover costs.

For purposes of defining certain events that determine the statutory limitation periods applicable to cost-recovery actions pursuant to section 113(g)(2) of CERCLA, the following applies:

(a) The term "completion of the removal action" for sites where remedial actions are taken means the date of the final remedial design prepared in connection with the final remedial action at the site.

(b) The term "physical on-site construction" for remedial actions is limited to actions that occur after completion of the remedial design and issuance of the Notice to Proceed on which remedial action personnel are authorized to begin remedial construction activities.

(c) The term "all response action" in Section 113(g)(2)(B) of CERCLA includes, but is not limited to, all response actions that occur before the Superfund Site Close-Out Report is signed by EPA's Regional Administrator.

Subpart C—Categories of Costs

§ 308.40 EPA direct costs.

EPA Direct costs consist of disbursements which are recorded in individual Superfund site accounts in EPA's financial management system.

§ 308.50 EPA indirect costs.

(a) EPA indirect costs are disbursements from Superfund for the operation and management of the Superfund program which are not direct costs under § 308.40 of this subpart.

(b) EPA indirect costs for a site-specific response are determined on a fiscal year basis as follows:

(1) Indirect costs are divided into two exclusive categories:

(i) *National.* Those indirect costs, including health effects research conducted by the Agency for Toxic Substances and Disease Registry pursuant to section 104(i)(5) of CERCLA, which support the Superfund program on a national basis.

(ii) *Regional.* Those indirect costs which support the Superfund program in EPA's regional offices.

(2) Total Superfund regional employee hours, which are hours charged by employees of EPA's regional offices to the Superfund through EPA's timekeeping and payroll system are determined by summing the two categories of hours:

(i) Hours charged to individual Superfund sites, resulting in associated salaries being charged as direct costs; and,

(ii) Hours charged to Superfund, but not to individual Superfund sites.

(3) For each of EPA's regions, an allocation percentage is determined by dividing each region's total Superfund

hours (defined by paragraph (b)(2) of this section) by the total Superfund hours of all regions combined.

(4) National indirect costs are distributed to the EPA regions by multiplying the total national indirect costs by each region's allocation percentage as determined in paragraph (b)(3) of this section.

(5) A regional indirect cost pool for each of the EPA regions is the total of the amount determined in paragraph (b)(1)(ii) of this section and the region's share of national indirect costs determined in paragraph (b)(4) of this section.

(6) For each region, the indirect cost rate is the regional indirect cost pool determined in paragraph (b)(5) of this section divided by the direct Superfund hours in the region determined in paragraph (b)(2)(i) of this section.

(7) The indirect costs for a specific site are determined by multiplying the regional indirect cost rate from paragraph (b)(6) of this section by the direct Superfund hours charged to the site from paragraph (b)(2)(i) of this section.

(c) Indirect Cost Rates.

(1) Indirect cost rates shall be determined using the procedures in paragraphs (b)(1) through (b)(6) of this section.

(2) The regional indirect cost rates for fiscal years 1983 through 1988 are as follows:

	Fiscal year					
	1983	1984	1985	1986	1987	1988
Region 1	$237	$192	$188	$255	$244	$303
Region 2	245	232	220	256	240	361
Region 3	228	212	217	347	318	376
Region 4	289	286	270	330	296	374
Region 5	171	199	180	239	251	331
Region 6	200	187	208	271	269	320
Region 7	185	184	157	198	197	333
Region 8	383	162	161	176	178	295
Region 9	148	145	138	206	211	326
Region 10	177	178	229	308	270	269

(3) Public notice of indirect cost rates. EPA will publish the indirect cost rate for each region in the Federal Register after the completion of the fiscal year. The last published rate remains in effect until a new rate is published.

§ 308.60 Interest.

(a) For the recovery of interest for costs incurred not inconsistent with the national contingency plan, the following applies:

(1) The date of demand for payment of a specified amount in writing by EPA is the earliest of the date of mailing of a:

(i) Special notice letter;

(ii) Demand letter; or,

(iii) Other correspondence including a demand for a specified amount in writing for response costs; or,

(iv) The date of filing of a cost recovery action under section 107 of CERCLA by the Department of Justice on behalf of the EPA.

(2) The date of expenditure shall be the date identified in the EPA's financial management system for the type of transaction or method of payment on which interest will be calculated.

(b) The interest rate applicable on any unpaid principal balances during a fiscal year shall be the same as the yield on the annual investment of Superfund trust balances. The yield on the annual investment of Superfund trust balances is determined by the U.S. Department of Treasury.

(c) At the end of each fiscal year, EPA will add unpaid accrued interest for that year to the unpaid principal balance. The total is the new fiscal year's unpaid principal balance.

[FR Doc. 92-18572 Filed 8-5-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

RIN 1090-AA34

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises a rule published by the Department in the September 9, 1991, issue of the Federal Register (56 FR 45897). The rule implemented Government-wide requirements established by the Office of Management and Budget (OMB) under OMB circulars for the administration of assistance agreements.

This revision will implement, for grants and cooperative agreements, the Secretarial Outreach Issue Paper Decision—Issue 4—Endorsement of Commercial Products or Services. The Secretary determined that as a matter of Departmental Policy, there should be a provision in all contracts (exceeding $25,000), assistance agreements, and Memoranda of Understanding/Agreement (MOAs) which would prevent the nongovernmental party from using the arrangement to imply Government endorsement of a product, service or position which the recipient represents in its commercial advertising.

DATES: Comments must be received by September 8, 1992.

ADDRESSES: Comments should be mailed to Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 1849 C St., NW., Mail Stop 5512, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, (Chief, Acquisition and Assistance Division), (202) 208-6431.

SUPPLEMENTARY INFORMATION: Bureaus and offices within the Department are entering into a variety of partnership agreements with profit, as well as non-profit organizations, through which the Bureaus receive support of various kinds. This may include dissemination of information about programs, promotion of activities of mutual interest which further those programs, and generation of financial and other types of support, where authorized. These types of agreements are consistent with a Departmental and an Administration emphasis on partnerships and cooperative efforts to accomplish public purposes, and therefore are encouraged. However, under these agreements, there is risk that certain promotional material produced under the agreement, such as publications, advertisements in newspapers, magazines and on television, might improperly infer agency endorsement of a product, service or position which the recipient represents. Such endorsements violate the provisions of Executive Order 12731, October 17, 1990, which states: "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order." Those standards include:

(1) Performing official duties impartially and not giving preferential treatment to any organization or individual; (2) Avoiding the use of public office for private gain; and (3) Making no unauthorized commitments or promises of any kind purporting to bind the Government.

The provision that prohibits the use of public office for private gain has been interpreted by the Office of Government Ethics to mean the private gain of anyone, including Federal officials, contractors, cooperators, partners, etc.

As a result, the Department of the Interior's regulations on Employee Responsibilities and Conduct, at 43 CFR 20.735-17(f) implement the Executive Order by stating: "Endorsements. Employees are prohibited from endorsing in an official capacity the proprietary products or processes of

manufacturers or the services of commercial firms for advertising, publicity, or sales purposes. Use of materials, products, or services by the Department does not constitute official endorsement."

Following the consideration of several alternative policies and procedures to ensure compliance with these directives in various types of contracts and agreements, the Secretary decided to adopt the policy of including a provision in all contracts (exceeding $25,000), assistance agreements, and Memoranda of Understanding/Agreement.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the Addresses section of this preamble. Comments must be received on or before September 8, 1992.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities, since this rule merely implements a Secretarial decision concerning the prohibition of recipients to use the Department's use of services and products provided as an endorsement. This proposed revision to the rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Effects

The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants Administration, Grant program.

It is proposed that title 43 of the Code of Federal Regulations be amended as set forth below:

Dated: July 9, 1992.

John Schrote,

Assistant Secretary—Policy, Management and Budget.

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

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

Authority: E.O. 12731; E.O. 12549; sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301; Pub. L. 98–502; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128; and OMB Circular A–133.

Subpart A—Administrative and Audit Requirements and Cost Principles for Assistance Programs

2. Subpart A is amended as set forth below.

a. Section 12.2 is amended by adding paragraph (d) to read as follows:

§ 12.2 Policy.

* * * * *

(d)(1) The Department of the Interior's regulations on Employee Responsibilities and Conduct at 43 CFR 20.735–17(f), implement Executive Order 12731, "Principles of Ethical Conduct for Government Offices and Employees," by prohibiting employees from endorsing in an official capacity the proprietary products or processes of manufacturers or the services of commercial firms for advertising, publicity, or sales purposes. The regulations also specify that use of materials, products, or services by the Department does not constitute official endorsement.

(2) In the event that a grant/cooperative agreement awarded to a recipient, other than a State or local government, including Federally-recognized Indian tribal governments, authorizes joint dissemination of information and promotion of activities being supported, the following provision shall be made a term and condition of the award:

(i) For non-research awards:

Recipient shall not publicize or otherwise circulate, promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies Governmental, Departmental, Bureau, or government employee endorsement of a product, service, or position which the recipient represents. No release of information relating to this award may state or imply that the Government approves of the recipient's work products, or considers the recipient's work product to be superior to other products or services.

Recipient must obtain prior Government approval for any public information releases concerning this award which refer to the Department of the Interior or any Bureau or employee (by name or title). The specific text, layout photographs, etc. of the proposed release must be submitted with the request for approval.

A recipient further agrees to include this provision in a subaward to any subrecipient, except for a subaward to a State, local government, or to a Federally-recognized Indian tribal government.

(ii) for research awards:

All manuscripts submitted for publication or other public releases of information regarding this project shall carry the following disclaimer: 'The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.'

A recipient further agrees to include this provision in a subaward to any subrecipient, except for a subaward to a State, local government, or to a Federally-recognized Indian tribal government, awarded as a result of the agreement.

(3) Recipient requests for clearance of public releases will be coordinated with the cognizant Ethics Officer in all cases, except for public releases related to research awards.

[FR Doc. 92–18590 Filed 8–5–92; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR–4, Notice No. 5]

Railroad Accident Reporting, Open Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice of open meeting.

SUMMARY: In order to explore matters related to the accident/incident reporting system, FRA will hold an informal open meeting on Tuesday, August 18, 1992, in Washington, DC with members of the Association of American Railroads (AAR) Uniformity Committee. The meeting will be open to any interested person who wishes to attend as an observer. FRA may schedule additional informal meetings to the extent that interest is expressed by other parties.

DATES: The open meeting will be held on Tuesday, August 18, 1992, at 10 a.m.

ADDRESSES: The open meeting will be held in rooms 6200 and 6202, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Stan Ellis, Office of Safety, FRA, Washington, DC 20590. Telephone: (202) 366-6299 (FTS 366-6299).

Principal Attorney: Sarah Landise, Office of the Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366-0635 (FTS 366-0635).

SUPPLEMENTARY INFORMATION: On March 14, 1990, FRA issued an advance notice of proposed rulemaking (ANPRM) soliciting comments and suggestions from the public regarding methods of improving all aspects of FRA's injury and accident reporting system and its governing regulations (49 CFR part 225). 55 FR 9469. Interested parties were invited to participate in a public hearing on May 17, 1990, and to file written comments prior to May 25, 1990.

The written comments received by FRA provided additional information and raised further issues related to the matters discussed in the ANPRM. In addition, FRA has received significant oral comments on same subject. Representatives of the railroads participating in the AAR Uniformity Committee expressed an interest in exploring possibilities concerning the format in which accident/incident data is gathered pursuant to the FRA Guide for Preparing Accident/Incident Reports. Since these issues bore on regulatory obligations and may touch on issues within the scope of the advance notice, FRA determined that the meeting should be open to any interested person who wishes to observe.

Consequently, FRA has scheduled the open meeting for Tuesday, August 18, 1992, beginning at 10 a.m. in rooms 6200 and 6202 of the Nassif Building, 400 Seventh Street NW, Washington, DC.

The meeting will be open to any interested person who wishes to attend as an observer. FRA may schedule additional informal meetings to the extent that interest is expressed by other parties.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 92-18626 Filed 8-5-92; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

Pacific Coast Groundfish Fishery

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

ACTION: Extension of comment period for an amendment to a fishery management plan.

SUMMARY: NMFS announces the extension of the comment period for Amendment 6 to the Pacific Coast Groundfish Fishery Management Plan (FMP) from August 4 to August 21, 1992.

DATES: Comments on Amendment 6 must be received on or before August 21, 1992.

ADDRESSES: Comments on Amendment 6 should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

Copies of Amendment 6 with its Draft Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Suite 420, Portland OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; Rodney McInnis at (310) 980-4040; or the Pacific Fishery Management Council at 503-326-6352.

SUPPLEMENTARY INFORMATION: On June 10, 1992, NMFS published a notice of availability for Amendment 6 to the FMP (57 FR 24589) that provided the opportunity for public comments through August 4, 1992. Amendment 6, if approved, would establish a license limitation limited entry program for trawl, longline, and trap (or pot) gear in the Pacific Coast groundfish fishery off Washington, Oregon, and California. The public has requested an extension of the comment period for Amendment 6 to enable affected persons to study Amendment 6 and its proposed implementing regulations together. The comment period for the proposed implementing regulations (57 FR 32499, July 22, 1992), which contain information integral to Amendment 6, is July 17 to August 31, 1992. Consequently, the public comment period for Amendment 6 is extended to August 21, 1992, providing interested persons adequate time to review and provide comments on the two documents simultaneously.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

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

Dated: July 31, 1992.

Joe P. Clem,

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

[FR Doc. 92-18629 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 152
Thursday, August 6, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of 6319 Salvage Timber Sale Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a fire recovery and salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In 1990, 58 acres of timber adjacent to the Clinton Creek Timber Sale were killed as a result of an escaped prescribed burn. In 1990, the Wallace Ranger District proposed a timber sale to salvage and rehabilitate the burned area. The District Ranger determined through an environmental analysis documented in the 6319 Salvage Timber Sale Environmental Assessment (EA) that there is good cause to expedite these actions in order to rehabilitate National Forest system lands and recover damaged resources. Salvage of commercial sawtimber within the fire area must be accomplished within the summer of 1992 to avoid further deterioration of sawtimber.

EFFECTIVE DATE: Effective on August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Williams, District Ranger, Wallace Ranger District, Idaho Panhandle National Forests; Box 14; Silverton, Idaho 83867.

SUPPLEMENTARY INFORMATION: The Clinton Creek Timber Sale was logged between 1977 and 1990. The units adjacent to the proposed salvage areas were treated with a prescribed burn in the fall of 1990. Approximately 58 acres of timber outside the harvest units were burned by an escaped fire. The fire-killed timber is within Management Areas 1 and 6 as designated by the Idaho Panhandle Forests Plan, August 1987. Management Area 1 includes lands designated for timber production. Management Area 6 includes lands designated for timber production within big game summer range. In December 1990, the Wallace District Ranger proposed the salvage of fire killed trees. This proposal was designed to meet the following needs, (a) salvage merchantable timber products, (b) provide for long-term growth and production of commercially valuable wood products, (c) provide snag dependent species habitat and elk security, and (d) contribute to watershed recovery through application of management practices designed to minimize erosion and sedimentation potential. An interdisciplinary team was convened, and scoping began in 1990. Seven issues were identified and were the basis for the analysis of the environmental consequences discussed in the EA.

The interdisciplinary team developed two alternatives, the No Action alternative and the Proposed Action (Salvage) alternative. The environmental consequences associated with these alternatives are disclosed in the EA which was prepared for the proposal.

The selected alternative (Proposed Action) would salvage 185 MBF of dead timber on 58 acres. No new road construction or reconstruction is planned for this sale. All salvage areas are accessible from existing roads.

The sale and accompanying rehabilitation work is designed to accomplish the objectives as quickly as possible, minimize salvage volume lost, reduce risk of injury to naturally regenerating seedlings, facilitate prompt reforestation of burned areas, initiate watershed and fisheries habitat recovery projects, and restore and maintain elk security. To expedite implementation of this decision, procedures outlined in 36 CFR part 217(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

"Decisions related to rehabilitation of National Forest System lands and recovery of forest resources from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exist to exempt such decisions from review under this part."

Based on the environmental analysis documented in the 6319 Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 30, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-18631 Filed 8-5-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Arbo Creek Fire Salvage Project From Appeal

AGENCY: Forest Service, Northern Region, USDA.

ACTION: Notification that a fire recovery and timber salvage sale project is exempt from appeals under provisions of 36 CFR part 217.

SUMMARY: In October 1991, the Arbo Creek burned approximately 2,980 acres on the Kootenai National Forest. Lands within the burn area were treated to stabilize slopes and prevent damage to watersheds and other resources. The Three Rivers District Deputy Ranger determined these initial efforts were not sufficient to meet long-term objectives of the Kootenai National Forest Plan (Forest Plan). In May 1992, the Deputy District Ranger proposed a timber recovery and vegetative rehabilitation project consisting of four major actions: (1) salvage timber damaged by fire and windthrow on 317 acres; (2) construct 0.2 miles of specified, 0.2 miles of temporary and 18.4 miles of reconstructed roads to facilitate removal of timber (all temporary roads would be recontoured, revegetated, and closed after harvest operations); (3) reforest and revegetate by planting tree and shrub species on 1,319 acres of burned and salvaged areas; and (4) conduct fuel reductions on 317 acres of burned and salvaged areas.

The Deputy District Ranger has determined, through an environmental analysis documented in the Arbo Creek Fire Salvage Environmental Assessment (EA), that there is good cause to expedite these actions for rehabilitation of National Forest System Lands and recovery of damaged resources. Salvage of commercial sawtimber within the fire

area must be accomplished quickly to avoid further deterioration of sawtimber.

This is notification that the decision to implement the Arbo Creek Fire Salvage on the Kootenai National Forest is exempted from appeal. This conforms with the provisions of 36 CFR 217(a)(11).

EFFECTIVE DATE: Effective on August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Charles E. Harris, Deputy District Ranger, Three Rivers Ranger District, Kootenai National Forest, 1437 North Highway 2, Troy, Montana 59935.

SUPPLEMENTARY INFORMATION: In October 1991, the Arbo Creek Fire burned and blew down timber on 2,980 acres of the Kootenai National Forest. Approximately 800 acres of the affected timber is within Management Areas that are considered suitable for timber production under the Forest Plan. A fire rehabilitation team surveyed the fire area and assessed damage to forest resources. Wildlife habitats were altered by reducing effective cover and security areas when vegetation was removed by the fire. Fishery habitats and riparian areas were altered when stabilizing woody material in stream channels were partly or completely removed by the fire. In other areas, blowdown has blocked fisheries movement upstream and lowered water quality.

In October and November 1991, the most severely burned and disturbed areas were hand seeded. Additional acres in isolated areas of the fire were seeded and fertilized by helicopter; however, winter weather precluded extensive seeding operations.

In December 1991, the Three Rivers Deputy District Ranger proposed projects to recover damaged timber and rehabilitate areas affected by the fire. The proposal was designed to meet the following needs: (1) recover merchantable timber products; (2) rehabilitate stands damaged by fire and windthrow to expedite the establishment of wildlife hiding cover, promote watershed stabilization, and enhance future timber production; and (3) provide for the recovery of conditions essential to sustain ecological systems in the area by promoting species diversity.

An interdisciplinary team of resource specialists was formed to analyze opportunities to accomplish the identified purpose and need. An environmental analysis of these actions was started in December 1991. Public input was solicited through newspaper, mailings, and an open house. In addition, contacts were made with other interested State and Federal agencies. As a result, three environmental issues were identified and formed the foundation for the analysis of environmental effects disclosed in the EA.

The EA discloses the analysis of five alternatives, including a "no action" alternative. Alternatives analyzed recovery actions ranging from treatment of 317 acres, 183 acres, 168 acres, and no treatments. Estimated recovery of timber salvage material ranges from a high of 4.0 MMBF to no salvage operations.

The selected alternative (Alternative 5) includes four major actions. The first is to harvest approximately 317 acres of killed or damaged timber within the analysis area. Harvest in all cases is limited to removal of dead, blowdown, and trees damaged beyond recovery. Second, an estimated 0.2 miles of specified, 0.2 miles of temporary, and 18.4 miles of reconstructed roads will be needed to facilitate removal of timber. All temporary roads will be recontoured, revegetated, and closed after timber harvest operations are completed. Third, reforestation and revegetation of 1,319 acres would be accomplished by planting a mixture of coniferous species and shrubs. The objectives for these planting include: (1) reforestation of lands suitable for timber production as soon as possible; (2) establishment of wildlife hiding cover and winter forage for moose at a faster rate than natural conditions would allow; and (3) increased diversity of plant species as the area recovers. Fourth, treatment of fuels on burned and salvaged areas would be accomplished by broadcast burn and grapple piling. The objectives for these treatments include: (1) reduce fuel loadings to lower the potential of a secondary wildfire and reburn, (2) break up continuous fuels to assist in future wildfire containment; and (3) break up fuel concentrations that would prohibit wildlife movement in travel corridors.

Further delay in removal of the dead and damaged trees will render them unmerchantable as sawtimber; a lack of reforestation and revegetation treatments will result in unacceptable delays affecting long-term timber yields, effectiveness of wildlife and fisheries habitat, and failure to treat unacceptable amounts of down fuel loadings increases the potential for future catastrophic wildfire. Due to the length of time required to develop an acceptable project and evaluate its environmental effects, the time remaining for accomplishment has become critical. Additional delays will result in further damage to presently undamaged resources and would decrease the ability to recover timber and other resources affected by the 1991 Arbo Creek Fire.

To expedite this recovery of salvage timber and associated rehabilitation work, procedures outlined in 36 CFR part 217 are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System Lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as, wildfires * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Arbo Creek Fire Salvage EA and the Deputy District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 30, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-18832 Filed 8-5-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(28a3)-1-92]

Foreign-Trade Subzone 146C, Fedders North America, Inc., Effingham, IL; Request for Expansion of Manufacturing Authority; Room Air Conditioners

The Foreign-Trade Zones Board (the Board) has been notified pursuant to § 400.28(a)(3) of the Board's regulations by the Bi-State Authority, grantee of FTZ 146, Lawrence County, Illinois, with additional information as to the sourcing of foreign components for activity under FTZ procedures at the Fedders North America, Inc., room air conditioner manufacturing plant in Effingham, Illinois (FTZ Subzone 146C).

The Board authorized subzone status for the Fedders plant in March, 1992 (Board Order 561, 57 FR 9103, 3-16-92). Manufacturing authority involves the production of room air conditioners for the U.S. market and for export using certain materials and components sourced from abroad, which account for

some 20 percent of finished product material value.

The original application listed certain components being sourced from aboard. The Board has now been notified that certain components were inadvertently omitted. The FTZ Staff has reviewed the list and concluded that public comment should be invited on the following items which are subject to inverted tariffs based on the 2.2 percent duty rate for finished air conditioners: compressors (HTSUSA# 8414.30, duty rate: 3.4%), overloads and start assists (8414.90.20402, 3.4%), power cords (8544.60.200009, 5.3%), reversing valves (8481.20.00007, 3.7%), insulation (8548.00.00002, 3.9%), heating coils (8516.29.00908, 3.7%), grooved copper tubing (7407.10.10000, 6.3%), and aluminum (7607.11.00006, 5.3%). The manufacturing activity otherwise remains unchanged.

Zone procedures would exempt Fedders from Customs duty payments on the foreign components used in production for export. On domestic sales, the firm would be able to choose the duty rate for finished air conditioners (2.2%) to apply to foreign-origin components (average duty rate 4.3%).

Public comment is invited from interested parties. Submission (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 26, 1992. A copy of the request will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 30, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-18695 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-017]

Pads for Woodwind Instrument Keys From Italy; 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 the petitioner, Prestini Musical Instruments, the Department of Commerce has conducted an administrative review of the antidumping duty order on pads for woodwind instrument keys from Italy. This review covers Pads Manufacturer SRL, a manufacturer/exporter of this merchandise to the United States, and the period September 1, 1990 through August 31, 1991. We have preliminarily determined that there were no shipments during the review period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Jospeh A. Fargo or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On September 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 47457) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on pads for woodwind instrument keys from Italy. On September 18, 1991, the petitioner, the Prestini Musical Instruments, requested an administrative review of Pads Manufacturer SRL (Pads), a manufacturer/exporter of this merchandise to the United States. We initiated the review, covering September 1, 1990 through August 31, 1991, on October 18, 1991 (56 FR 52254). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Act). The final results of the last administrative review in this case were published in the **Federal Register** on April 22, 1987 (52 FR 13265).

Scope of the Review

Imports covered by the review are shipments of pads for woodwind instrument keys from Italy, classifiable under item number 9209.99.40 of the Harmonized Tariff Schedules (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of Italian pads for woodwind instrument keys, Pads, and the period September 1, 1990 through August 31, 1991.

Preliminary Results of the Review

Because there were no shipments during the period September 1, 1990 through August 31, 1991, we based the cash deposit rate on the last margin found for Pads. We preliminarily determine that the cash deposit rate for Pads shall continue to be 1.03 percent.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pads for woodwind instrument keys from Italy, 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 the reviewed company will be that established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period (3) if the exporter is not a firm covered in this review, previous reviews, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "All Others" rate established in the final results of this administrative review. 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 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 24, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-18616 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-061]

Precipitated Barium Carbonate From Germany; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Determination Not To revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on Precipitated Barium Carbonate from Germany.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation (19 CFR 353.25(d)(4) (1991)). We had not received a request to conduct an administrative review of the antidumping duty order on precipitated barium carbonate from Germany (46 FR 20438, June 25, 1981) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the duty order and served written notice of the intent to revoke to each interested party on the Department's service list.

On June 10, 1992, Chemical Products Corporation, an interested party, objected to our intent to revoke this duty order. Therefore, because an interested party objects to the revocation, we no longer intend to revoke this duty order.

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18612 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-082]

Sugar From Germany; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination Not To revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on sugar from Germany.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on sugar from Germany (44 FR 33878, June 13, 1979) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding and served written notice of the intent to revoke to each interested party on the Department's service list.

On June 10, 1992, certain interested parties (the American Sugar Cane League, the American Sugarbeet Growers Association, the Florida Sugar Cane League/Rio Grande Valley Sugar Growers, the Hawaiian Sugar Planter's Association, the Sugar Cane Growers Cooperative of Florida, the U.S. Beet Sugar Association, and the U.S. Cane Sugar Refiners' Association) objected to our intent to revoke the finding. Additionally, on June 30, 1992, the Florida Sugar Marketing and Terminal Association, Inc., an interested party, objected to our intent to revoke the finding. Therefore, because several interested parties objected to the revocation, we no longer intend to revoke this finding.

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18609 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-078]

Sugar From France; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on sugar from France.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on sugar from France (44 FR 33878, June 13, 1979) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding and served written notice of intent to revoke to each interested party on the Department's service list.

On June 10, 1992, certain interested parties (the American Sugar Cane League, the American Sugarbeet Growers Association, the Florida Sugar Cane League/Rio Grande Valley Sugar Growers, the Hawaiian Sugar Planters' Association, the Sugar Cane Growers Cooperative of Florida, the U.S. Beet Sugar Association, and the U.S. Cane Sugar Refiners' Association) objected to our intent to revoke the finding.

Additionally, on June 30, 1992, the Florida Sugar Marketing and Terminal Association, Inc., an interested party, objected to our intent to revoke the finding. Therefore, because several interested parties objected to the revocation, we no longer intend to revoke this finding.

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18611 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-077]

Sugar From Belgium; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on sugar from Belgium.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on sugar from Belgium (44 FR 33878, June 13, 1979) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding and served written notice of the intent to revoke to each interested party on the Department's service list.

On June 10, 1992, certain interested parties (the American Sugar Cane League, the American Sugarbeet Growers Association, the Florida Sugar Cane League/Rio Grande Valley Sugar Growers, the Hawaiian Sugar Planters' Association, the Sugar Cane Growers Cooperative of Florida, the U.S. Beet Sugar Association, and the U.S. Cane Sugar Refiners' Association) objected to our intent to revoke the finding. Additionally, on June 30, 1992, the Florida Sugar Marketing and Terminal Association, Inc., an interested party, objected to our intent to revoke the finding. Therefore, because several interested parties objected to the revocation, we no longer intend to revoke this finding.

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18610 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92-00010." A summary of the application follows.

Summary of the Application

Applicant: Pacific Roller Die Co., Inc., d.b.a. PRD Company, Inc. ("PRD"), 1321 West Winton Avenue, Hayward, California 94545. Contact: Matthew P. Mitchell, Attorney, telephone: (510) 845-2528.

Application No.: 92-00010.

Date Deemed Submitted: July 29, 1992.

Members (in addition to applicant): None.

Export Trade

1. Products

Spiral lock-seam pipe mills and ancillary equipment and related spare and replacement parts.

2. Services

Sales and field service including demonstration of Products; training of customers in use of Products; set-up and repair relating to Products; and furnishing of manuals, specifications, drawings and layouts.

e. Technology Rights

Technology rights, including, but not limited to, patents, know-how and trademarks that relate to Products and Services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, The Commonwealth of the Northern Marina Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, PRD seeks to:

1. Investigate and assess export sales opportunities.

2. Consult with manufacturer on customer requirements including Products, Services and Technology Rights required, timing of delivery, and special features and, in that connection, may

(a) Disclose to manufacturer PRD's plans and specifications for Products to be manufactured by manufacturer for PRD; and

(b) Consult with manufacturer with respect to the status of its production capacity relative to desired Products and delivery dates.

3. Negotiate purchase prices, delivery and payment terms of Products, Services, and Technology Rights with manufacturer.

4. Negotiate sales prices, delivery and payment terms of Products, Services, and Technology Rights with export customers.

5. Acquire Products, (including renovation and rebuilding of used Products), Services and Technology Rights exclusively from manufacturer for resale in Export Markets.

6. Act as manufacturer's exclusive distributor of Products, Services, and Technology Rights in Export Markets.

7. Periodically negotiate changes in prices to be paid to manufacturer for Products on the basis of manufacturer's costs and the exchange rate between United States and Canadian currency and may, in that connection, discuss manufacturer's costs with manufacturer.

8. Furnish manuals, drawings, layouts, and other documentation and engineering assistance to customers for both PRD designs and manufacturer's designs.

9. Perform field service on Products, including startup, training, warranty service and out-of-warranty troubleshooting and repair, and call upon manufacturer to perform field service tasks at PRD's discretion.

10. Compensate manufacturer for field service provided by manufacturer's employees, and, in that connection, discuss the direct payroll, fringe benefits and out-of-pocket costs of manufacturer's field service representatives with manufacturer.

11. Claim compensation from manufacturer for warranty repair work done by PRD's employees, and, in that connection, discuss the direct payroll, fringe benefits and out-of-pocket costs of PRD's field service representatives with manufacturer.

12. Permit manufacturer a right of first refusal to renovate or rebuild used Products acquired by PRD for resale in Export Markets at a price (including both-way freight) no higher than PRD's cost of performing the same work, and may, in that connection, discuss with manufacturer PRD's cost of performing that work.

13. Manufacture itself, or acquire from other sources, Products that PRD is able to sell but that manufacturer is unable to manufacture.

Definition

"Manufacturer" means IMW Industries, Ltd. a company incorporated under the laws of British Columbia, Canada.

Dated: July 31, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-18696 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Business Development Center Applications: Raleigh/Durham/TRIAD, North Carolina; Correction

Dated: July 31, 1992.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice; Correction.

SUMMARY: FR Doc. 92-14717 was published on page 27963 in the Federal Register of Tuesday, June 23, 1992.

Certain corrections are necessary due to the fact that the geographic service area omitted TRIAD and the mailing address for submission of RFA responses has changed. The corrections are:

(1) In the first paragraph of the Summary, the last sentence read, "The MBDC will operate in the Raleigh/Durham, North Carolina geographic service area." It should read, The MBDC will operate in the Raleigh/Durham/TRIAD, North Carolina geographic service area.

(2) The closing date for submitting an application is changed from July 24, 1992 to September 8, 1992.

(3) The mailing address for submission of RFA responses is corrected to: U.S. Department of Commerce, Washington Regional Office, Minority Business Development Agency, 1255 22nd Street, NW., 7th floor, suite 701, Washington, DC 20037.

Sunny L. Guider,

Chief, Business Development.

[FR Doc. 92-18692 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of permit modification (P77#39).

On June 11, 1992, notice was published in the Federal Register (57 FR 24777) that an application had been filed by the NMFS, Southwest Fisheries Science Center, P.O. Box 271, La Jolla, California 92038, to modify Scientific Research Permit No. 704 to: (1) Replace the term "unspecified numbers" in the original permit with the following to indicate the numbers of animals which could be harassed during previously authorized aerial survey activities: 86,000 northern elephant seals (*Mirounga angustirostris*), 143,000 California sea lions (*Zalophus californianus*), and 46,000 harbor seals (*Phoca vitulina*), (2) inadvertently harass up to 69,000 Steller sea lions (*Eumetopias jubatus*) during aerial photographic census, and (3) approach elephant seals for body measurements.

Notice is hereby given that on July 27, 1992, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that the Permit: (1) Was applied for in good faith; (2) does not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was issued in accordance with and is subject to parts 220-222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit and modification are available for review, by appointment, in the Permit Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/713-2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802-4213 (310/980-4015);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802-4213 (310/980-4015);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE. BIN C15700, Seattle, WA 98115 (206/526-6150); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, Suite 6, Juneau, AK 99802 (907/586-7221).

Dated: July 27, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-18594 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,058,602 (Serial No. 5-712,854), titled "Synthesis, Structure and Antitumor Activity of 5, 6-Dihydro-5-Azacytidine," to Cancer Therapy and Research Foundation of South Texas, having a place of business in San Antonio, TX. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The compound 5,6-dihydro-5-azacytidine, 5 AC[H], and non-toxic acid addition salts such as the hydrochloride, together with its preparation form 5-azacytidine (5-AC) by reduction of the 5,6-double bond of 5-AC with an alkali metal borohydride such as sodium borohydride. Additionally, 5,6-dihydro-5-azacytidine, 5AC[H], has antitumor activity for murine leukemia systems L1210 and P388 as an injectable. With respect to the parent compound, 5-AC, the antitumor activity of 5AC[H] is comparable and exhibits a more favorable therapeutic index. It also has better solution stability over a broad pH range.

The availability of Patent No. 4,058,602 for licensing was published in the **Federal Register**, Vol. 42, No. 71, p. 19369 (April 13, 1977). A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00 (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92-18659 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-04-M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,053,776 (Serial No. 5-689,757) titled "Sub-Micron Particle Detector," to Niagara Scientific, Inc., having a place of business in E. Syracuse, NY. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The sub-micron particle detector is an instrument to detect submicron particles by charge-transfer attachment. The instrument is made up of a charging chamber with two concentric cylindrical electrodes, a remote third collector electrode, and a pump to force ambient air through the charging chamber and into the collection electrode. The innermost electrode of the charging chamber is supplied with a radioactive material having a gold foil covering. This material can create a small bipolar region symmetrical to the inner electrode where primary ionization takes place. Positive ions created in this region move to the larger outside unipolar region to attach themselves to sub-micron particles. These charged particles are then forced from the charged chamber at which time they may either impinge on the collection electrode to create a measurable axial current or the particles may enter a size discrimination chamber. Should they enter this discrimination chamber, particles of a given mobility or size are collected by two additional concentric cylindrical electrodes.

The availability of Patent No. 4,053,776 for licensing was published in the **Federal Register**, Vol. 56, No. 145, p. 35851 (July 29, 1991). A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 to $3.00 (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92-18658 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-04-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 92-2-91SCD]

Ascertainment of Whether Controversy Exists Concerning Distribution of 1991 Satellite Carrier Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Copyright Royalty Tribunal directs all claimants to the royalty fees paid by satellite carriers for secondary transmissions to home dish owners during 1991 to file with the Tribunal a notice of intent to participate in the distribution of these funds by August 24, 1992.

In response to the Tribunal's July 1, 1992 inquiry, joint comments were received from Program Suppliers, Joint Sports, Broadcast Claimants, Public Broadcasting Claimants, American Society of Composers, Authors and Publishers, SESAC, Inc., Broadcast Music, Inc., CBS, Inc., National Broadcast Company, Inc., Capital

Cities/ABC, Inc. and Devotional Claimants. These parties indicated that the 1989, 1990 and 1991 Satellite Carrier Royalty Distribution Proceeding should be combined into a single consolidated proceeding. The Tribunal directs that any other interested parties comment by September 15, 1992 regarding such consolidation.

The Tribunal further directs that all interested parties submit comments by September 15, 1992 advising as to the status of settlement negotiations and whether a controversy exists with regard to the 1991 satellite carrier royalty fees and if a declaration of controversy is requested, the proposed recommendations concerning the scheduling and conduct of such proceedings.

DATES: August 24, 1992 and September 15, 1992.

ADDRESSES: An original and five copies of the comments should be addressed to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., Suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: J.C. Argetsinger, Commissioner, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., Suite 918, Washington, DC 20009 (202-606-4400).

Dated: August 3, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92-18690 Filed 8-5-92; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On June 29, 1992 the Secretary of the Air Force determined that the World War II service of a group known as "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division), Who Served Overseas as a Result of a Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945" shall be considered "active duty" under the provisions of Public Law 95-202 and be eligible for benefits according to all laws administered by the Department of Veterans Affairs (VA).

To receive recognition, each applicant must establish they:

1. Were employed by Consolidated Vultree Aircraft Corporation (Consairway Divsion) as a flight crew personnel (pilot, co-pilot, navigator, flight engineer, radio operator or

2. Were employed by Consolidated Vultree Aircaft Corporation (Consairway Division) as aviation ground support personnel (aircraft mechanic, station manager, dispatcher) and

3. Served outside the continental United States in direct support of Air Transport Command-directed flight operations during the period December 14, 1941 through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: HQ AFMPC/DPMARS2, Randolph AFB, TX 78150-6001, ATTN: Sgt White.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from U.S., USAAF passes to leave the limits of an overseas base, military orders, miscellaneous USAAF papers, etc. Additionally, the captain of a flight crew may provide written confirmation for other crew members on his flight.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330-1000, telephone (703) 692-4745.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-18589 Filed 8-5-92; 8:45 am]

BILLING CODE 3910-01-M

Active Duty Service Determinations for Civilian or Contractual Groups

On July 16, 1992, the Secretary of the Air Force determined that the World War II service of a group known as "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Pan American World Airways and Its Subsidiaries and Affiliates, Who Served Overseas as a Result of Pan American's Contract With the Air Transport Command and Naval Air Transport Service During the Period December 14, 1941 through August 14, 1945" shall be considered "active duty" under the provisions of Public Law 95-202 and be eligible for benefits according to all laws administered by the Department of Veterans Affairs (VA).

To be eligible for VA benefits, each member of the group must establish they:

1. Were employed by Pan American World Airways or one of its subsidiaries and affiliates under contract to Air Transport Command or Naval Air Transport Service: Pan American Airways—Africa Ltd., American Export Air, Pan Am Air Ferries, Pan Air Africa, Panagra (Pan American-Grace Airlines), and China National Aviation Corporation.

2. Were employed by Pan American World Airways (per criterion 1) as a flight crew personnel (pilot, co-pilot, navigator, flight engineer, radio operator) or

3. Were employed by Pan American World Airways (per criterion 1) as aviation ground support personnel (aircraft mechanic, station manager, dispatcher) and

4. Served outside the continental United States in direct support of Air Transport Command or Naval Air Transport Service-directed flight operations during the period December 14, 1941 through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: HQ AFMPC/DPMARS2, Randolph AFB, TX 78150-6001, ATTN: Sgt White.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be any employment records from Pan American headquarters. Other supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC or NATS performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from U.S., USAAF

passes to leave the limits of an overseas base, military orders, miscellaneous USAAF papers, etc. Additionally, the captain of a flight crew may provide written confirmation for other crew members on his flight.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330-1000, telephone (703) 692-4745.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-18588 Filed 8-5-92; 8:45 am]

BILLING CODE 3910-01-M

Active Duty Service Determinations for Civilian or Contractual Groups

On June 29, 1992, the Secretary of the Air Force determined that the World War II service of a group known as "Honorably Discharged Members of the American Volunteer Guard, Eritrea Service Command During the Period June 21, 1942 to March 31, 1943" would be considered "active duty" under the provisions of Public Law 95-202 and be eligible for benefits according to all laws administered by the Department of Veterans Affairs.

To be eligible for VA benefits, each member of the group must establish they:

1. Served honorably with the AVG, Eritrea during the period beginning June 21, 1942 to March 31, 1943 as evidenced by:

a. An AVG, Eritrea discharge certificate or letter

or

b. Identification as an Honorably discharged AVG, Eritrea member in other credible publications or documents.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: U.S. Army Reserve Personnel Center (DARP-VSE-N), 9700 Page Blvd., St. Louis, MO 63132-5200.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be any records from the Eritrea Service Command or those items listed in the eligibility criteria.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330-1000, telephone (703) 692-4745.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-18587 Filed 8-5-92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Intent to Prepare an Environmental Impact Statement for an Updated Master Plan for Prado Basin

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army hereby announces its intention to prepare an Environmental Impact Statement to assess the environmental effects of updating a Project Master Plan for the Prado Flood Control Reservoir.

SCOPING: The Army Corps of Engineers will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the Environmental Impact Statement. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the Statement, and potential mitigation measures associated with the proposed action.

A public scoping meeting will be held on Wednesday, 19 August 1992 from 6:30 p.m. till 9 p.m. at the El Prado Golf Course Club House, 6555 Pine Avenue, Chino, California. Individuals and agencies may offer information or data relevant to the environmental or socioeconomic concerns and the Environmental Impact Statement scoping by attending the public scoping meeting, or by writing to the address listed below.

FOR FURTHER INFORMATION CONTACT: Comments and suggestions on the scoping process, and requests to be placed on the mailing list for announcements should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL-PD-RN, P.O. Box 2711, Los Angeles, CA 90053.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers intends to prepare an Environmental Impact Statement to assess the environmental effects associated with updating the Master Plan for the Prado Flood Control Reservoir. The public will have the opportunity to comment on this Statement before any action is taken to implement the updated master plan.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-18660 Filed 8-5-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.129U]

Rehabilitation Continuing Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To support cooperative agreements for training centers that serve either a Federal region or another geographic area and provide a broad, integrated sequence of training activities. The Rehabilitation Continuing Education Programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to increase the availability of qualified personnel for the vocational rehabilitation and independent living rehabilitation of individuals with handicaps. National Education Goal five calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including institutions of higher education.

Deadline for Transmittal of Applications: 10/01/92.

Deadline for Intergovernmental Review: 12/02/92.

Applications Available: 08/14/92.

Available Funds: $3,084,694.

Estimated Range of Awards: $326,000-$540,000.

Estimated Average Size of Awards: $440,670.

Estimated Number of Awards: 7.

Note: Applications are invited for the provision of training for Department of Education Regions II, III, VI, VII, VIII, IX, and X only. The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85,

and 86: and (b) The regulations for this program in 34 CFR Parts 385 and 389.

For Applications: Telephone (202) 205-8327; individuals who are hearing impaired or others who use a TDD may call the Federal Dual Party Relay Service on 1-800-877-8339 (in the Washington, DC area (202) telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

FOR FURTHER INFORMATION CONTACT: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 205-9481.

Program Authority: 29 U.S.C. 774.

Dated: July 30, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-18623 Filed 8-5-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.254]

State Literacy Resource Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide Federal financial assistance to assist State and local public and private nonprofit efforts to eliminate illiteracy through a program of State literacy resource centers grants. Accordingly, this program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, National Education Goal 5 calls for all Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: States are eligible to receive grants under this Program.

Deadline For Transmittal of Applications: September 30, 1992.

Deadline For Intergovernmental Review: November 29, 1992.

Applications Available: Application materials have been sent to Governors in the States.

Available Funds: $5,000,000.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 Parts 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 460 and 464.

For Information Contact: Joan Seamon, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 4428, Mary E. Switzer Building), Washington, DC 20202-7240. Telephone: (202) 205-8270. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1208aa.

Dated: July 31, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 92-18624 Filed 8-5-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF86-517-001, et al.]

Oswego Hydro Partners L.P., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Oswego Hydro Partners L.P.

[Docket No. QF86-517-001]

July 27, 1992.

On July 20, 1992, Oswego Hydro Partners L.P., tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to ownership structure and amends the length of the transmission line component of the facility.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Gordonsville Energy, L.P. (Unit II)

[Docket No. QF92-167-000]

July 27, 1992.

On July 21, 1992, Gordonsville Energy, L.P. (Applicant) tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to the ownership of the facility and clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Ridge Generating Station, L.P.

[Docket No. QF92-158-000]

July 27, 1992.

On July 21, 1992, Ridge Generating Station, L.P., tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to ownership structure of the facility.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Crockett Cogeneration, A California Limited Partnership

[Docket No. QF84-429-001]

July 28, 1992.

On July 24, 1992, Crockett Cogeneration, a California Limited Partnership (Applicant) tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to the computations of the operating and efficiency values under various operating scenarios. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Indiantown Cogeneration, L.P.

[Docket No. QF90-214-001]

July 8, 1992.

On July 28, 1992, Indiantown Cogeneration, L.P., tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to ownership structure of the facility.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Co.

[Docket No. ER92-728-000]

July 29, 1992.

Take notice that The Detroit Edison Company (Detroit Edison) on July 17, 1992, tendered for filing (1) Original Sheet Nos. 10b, 10c, 22c, 22d, 22e, and 22f to Detroit Edison's FERC Electric Tariff, Volume No. 1 which is a rate schedule which provides for the sale of experimental seasonal peaking capacity and energy, and (2) an executed service agreement between Detroit Edison and Wolverine Power Supply Cooperative for the sale of such capacity and energy.

Detroit Edison states that pursuant to the rate schedule, it will make available, on an experimental basis, up to an aggregate total of 100 MW of seasonal peaking capacity and energy during the months of October through March to eligible wholesale for resale customers

who execute a service agreement and submit a seasonal capacity reservation.

Detroit Edison requests an effective date of October 1, 1992 for both the service proposed under the rate schedule and the service agreement executed by Wolverine Power Supply Cooperative.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Hampshire

[Docket No. ER92-634-000]

July 29, 1992.

Take notice that Public Service Company of New Hampshire (PSNH), on July 17, 1992, tendered for filing a Public Service Company of New Hampshire Service Agreement for Non-Firm Transmission Service between PSNH and Littleton Municipal Light Department (Littleton) as an amendment to its June 11, 1992 filing in this docket.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER92-739-000]

July 29, 1992.

Take notice that on July 21, 1992, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as "Southern Companies"), tendered for filing Amendment No. 1 dated July 20, 1992, to Service Schedule EP of the Interchange Contract between Jacksonville Electric Authority and Southern Companies. The Amendment extends the term and includes other modifications to Schedule EP.

Southern Company Services, Inc. requests expedited review of the Amendment so that transactions may occur as soon as possible.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Co.

[Docket No. ER92-738-000]

July 29, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 21, 1992, tendered for filing a Second Supplement, dated as of July 2, 1992 (Second Supplemental Agreement) to the Capacity Credit Sales Agreement, dated June 5, 1991, between PP&L and Baltimore Gas and Electric Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 105.

The Second Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 28, 1992 in Docket No. ER92-411-000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1992.

PP&L states that a copy of its filing was served on Baltimore Gas and Electric Company, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Co.

[Docket No. ER92-727-000]

July 29, 1992.

Take notice that on July 16, 1992, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing two Capacity Sales Agreements for the sales to Vermont Electric Generation and Transmission Cooperative, Inc. (VEG&T) and the city of Westfield Gas and Electric Light Department (Westfield) of unit capacity and energy from CL&P.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective March 1, 1992 and March 28, 1992.

NUSCO states that copies of these rate schedules have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Co.

[Docket No. ER92-730-000]

July 29, 1992.

Take notice that on July 20, 1992, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing an Interruptible Power Supply Service Agreement between CL&P and Wallingford Electric Division (Wallingford).

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective July 27, 1992.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties and to the Connecticut Department of Public Utility Control.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's regulations.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Hartwell Energy Limited Partnership

[Docket No ER92-521-000]

July 29, 1992.

Take notice that on July 22, 1992, Hartwell Energy Limited Partnership tendered for filing an amendment to its filing filed on May 4, 1992 in this docket.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas Gas and Electric Co.

[Docket No. ER92-732-000]

July 29, 1992.

Take notice that on July 21, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing proposed changes to the following full requirement customers:

FERC No.	Other party
171	Blue Mound, KS.
174	Bronson, KS.
170	Elsmore, KS.
176	Haven, KS.
169	LaHarpe, KS.
179	Mindenmines, KS.
172	Moran, KS.
177	Mount Hope, KS.
175	Savonburg, KS.

KG&E states that the purpose of the changes is to extend the term of the existing contracts for an additional ten years. The changes are proposed to become effective September 24, 1992.

Copies of the filing were served upon the cities and the Kansas Corporation Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Central Power and Light Co.

[Docket No. ER92-610-000]

July 29, 1992.

Take notice that on July 20, 1992, Central Power and Light Company (CPL) made a supplemental filing in the above referenced matter in response to a Staff request for additional information.

Comment date: August 12, 1992, in accordance with Standard Pargaragph E at the end of this notice.

15. Pennsylvania Power & Light Co.

[Docket No. ER92-736-000]

July 29, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 21, 1992, tendered for filing a Supplement (Fourth Supplemental Agreement), to the Capacity and Energy Sales Agreement (Agreement), dated January 28, 1988, as supplemented by a First Supplemental Agreement dated August 10, 1988, and by a Second Supplemental Agreement dated May 31, 1989, between PP&L and Baltimore Gas and Electric Company (BG&E), and by a Third Supplemental Agreement dated May 24, 1991, which is on file with the Commission as PP&L's Rate Schedule FERC No. 92. The Fourth Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement, which was accepted for filing by the Commission on May 28, 1992 in Docket No. ER92-411-000.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act ad § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1992.

PP&L states that a copy of its filing was served on Baltimore Gas and Electric Company, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Co.

[Docket No. ER92-512-000]

July 29, 1992.

Take notice that New England Power Company (NEP), on July 22, 1992, tendered for filing supplemental information to its filing in this docket which NEP had originally submitted on April 30, 1992. According to NEP, the supplemental information provides additional and explanatory information about its termination of transmission agreements for entitlements in the Rowe Nuclear Plant.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Co.

[Docket Nos. EL88-1-003, ER88-31-002, ER88-32-002, ER90-270-003, and ER90-271-003]

July 29, 1992.

Take notice that on July 15, 1992, Indiana Michigan Power Company (I&M) tendered its compliance filing in the above-referenced dockets, in compliance with the Commission's June 3, 1992 Opinion and Order on Initial Decision.

Copies of the filing were served upon Richmond Power & Light, the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Kansas Gas and Electric Co.

[Docket No. ER92-733-000]

July 29, 1992.

Take notice that on July 21, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing proposed changes to the following partial requirements municipalities:

FERC No.	Other party
134	Augusta, KS.
144	Burlington, KS.
181	Chanute, KS.
149	Coffeyville, KS.
161	Fredonia, KS.
166	Iola, KS.
154	Mulvane, KS.
153	Neodesha, KS.
162	Oxford, KS.
156	Wellington, KS.
155	Winfield, KS.

KG&E states that the purpose of the changes is to extend the term of the existing contracts for an additional ten years. The changes are proposed to become effective September 24, 1992.

Copies of the filing were served upon the cities and the Kansas Corporation Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Pennsylvania Power & Light Co.

[Docket No. ER92-735-000]

July 29, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 21, 1992, tendered for filing a Supplement, dated as of July 1, 1992 (Second Supplemental Agreement), to the Capacity Credit Sales Agreement, dated February 15, 1991, between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company, Pennsylvania Electric Company and Metropolitan Edison Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 102. The Second Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 28, 1992 in Docket No. ER92-411-000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1992.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board of Regulatory Commissioners.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power & Light Co.

[Docket No. ER92-729-000]

July 29, 1992.

Take notice that on July 20, 1992, Florida Power & Light Company (FPL) tendered for filing the Letter Agreement Extending the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and Tampa Electric Company (Letter Agreement). FPL requests that the Letter Agreement be made effective June 27, 1992.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Pennsylvania Power & Light Co.

[Docket No. ER92-734-000]

July 29, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 21, 1992, tendered for filing a Second Supplement, dated as of July 6, 1992 (Second Supplemental Agreement), to the Capacity Credit Sales Agreement (Agreement), dated May 28, 1991 between PP&L and Atlantic City Electric Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 106. The Second Supplemental Agreement revises the Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement. The revised rate was accepted for filing by the Commission

on May 28, 1992 in Docket No. ER92-411-000.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1992.

PP&L states that a copy of its filing was served on Atlantic City Electric Company, the Pennsylvania Public Utility Commission, and the New Jersey Board of Regulatory Commissioners.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Gordonsville Energy, L.P. (Unit I)

[Docket No. QF92-166-000]

July 30, 1992.

On July 21, 1992, Gordonsville Energy, L.P. (Unit I) tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to the ownership of the facility and clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Portland General Electric Co.

[Docket No. ER92-705-000]

July 30, 1992.

Take notice that on July 10, 1992, Portland General Electric Co. (Portland) tendered for filing a Notice of Cancellation of FERC Rate Schedules Nos. 3, 17, 19, 22, 24, 25, 29, 30, 34, 39, 40, 44, 60, 74 and 76.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corp.

[Docket No. ER92-741-000]

July 30, 1992

Take notice that on July 23, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing, as a rate schedule, a supplement amendment between Niagara Mohawk and Consolidated Edison Company of New York, Inc. (Consolidated Edison) dated July 10, 1992.

Niagara presently has on file an agreement with Consolidated Edison dated April 1, 1979 last amended December 20, 1992. The original agreement is to provide transmission service for the delivery of diversity power and energy from the Power Authority of the State of New York (PASNY) to Consolidated Edison. The diversity power and energy is in turn exchanged by PASNY with Hydro Quebec. This agreement is designated as Niagara Mohawk Rate Schedule FERC No. 113. This new amendment is being transmitted as a supplement to the existing agreement and supersedes and amends Supplement No. 13.

The July 10, 1992 amendment, which is a supplement to the original agreement, revises the transmission rates. Niagara requests a waiver of the Commission's prior notice requirements in order to allow the July 10, 1992 amendment to become effective April 1, 1992. Niagara Mohawk states that the proposed changes are in accordance with Rate Schedule No. 113.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Interstate Power Co.

[Docket No. ER92-743-000]

July 30, 1992.

Take notice that on July 24, 1992, Interstate Power Company (IPW) tendered for filing Amendment Nos. 2, 4 and 5 to the Electric Service Agreement between the City of Blue Earth and Company. These amendments revise the contract term, firm power commitment and transmission loss factors.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Cop.

[Docket No. ER92-742-000]

July 30, 1992.

Take notice that on July 23, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an amendment sent by Niagara Mohawk to Consolidated Edison Company of New York, Inc. (Con Ed) dated July 10, 1992, providing for certain transmission services to Con Ed. This amendment is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 90. This new amendment is being transmitted as a supplement to the existing agreement.

Under Rate Schedule No. 90, Niagara delivers Fitzpatrick power and energy between the New York Power Authority and Con Ed. Paragraph 2.3 of Rate Schedule No. 90, states that Niagara Mohawk will recalculate the annual fixed-charge rate effective September 1 of each year for the ensuing 12-month period using previous year-end data and cost of capital data as determined by the New York State Public Service Commission in Niagara Mohawk's most recent retail electric rate proceeding. Niagara requests an effective date of September 1, 1992.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Interstate Power Co.

[Docket No. ER92-744-000]

July 30, 1992.

Take notice that on July 24, 1992, Interstate Power Company (IPW) tendered for filing Amendment Nos. 1 and 2 to the Electric Service Agreement between the City of Strawberry Point and Company. These amendments revise the firm power commitment and transmission loss factors.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. The Montana Power Co.

[Docket No. ER92-745-000]

July 30, 1992.

Take notice that on July 24, 1992, The Montana Power Company (Montana), tendered for filing a revised Appendix 1 as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests that the rate has an effective date of November 1, 1991, and, therefore, requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Ocean State Power

[Docket No. ER92-746-000]

July 30, 1992.

Take notice that on July 27, 1992, Ocean State Power (Ocean State) tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplement No. 13 to Rate Schedule FERC No. 1

Supplement No. 10 to Rate Schedule FERC No. 2
Supplement No. 9 to Rate Schedule FERC No. 3
Supplement No. 10 to Rate Schedule FERC No. 4

The Supplements to the rate schedules request approval of Ocean State's proposed rate of return on equity for the period beginning on April 28, 1992, the requested effective date of the Supplements, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1993. Ocean State is filing the Supplements pursuant to § 7.5 of each of Ocean State's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively, and the Commission's orders in Ocean State Power, 38 FERC ¶ 61,140 at 61,380 (1987) and 44 FERC ¶ 61,261 at 61,985 (1988), and in Ocean State Power II, 59 FERC ¶ 61,360 (1992). The Supplements constitute a rate decrease.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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, N.E., 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 motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18669 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10440-001 Alaska]

Alaska Power & Telephone Co.; Availability of Environmental Assessment

July 31, 1992.

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 major license for the proposed Black Bear Lake Project, to be located on Black Bear Lake in the First Judicial District on Prince of Wales Island, Alaska, near the communities of Craig and Klawock, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed 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. 92-18670 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10900-000 New Hampshire]

Thomas Hodgson & Sons, Inc.; Availability of Environmental Assessment

July 31, 1992.

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 minor license for the existing China Mill Project located on the Suncook River in the towns of Allenstown and Pembroke, Merrimack County, New Hampshire, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has 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. 92-18671 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-608-000, et al.]

Granite State Gas Transmission, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Granite State Gas Transmission, Inc.

[Docket No. CP92-608-000]

July 27, 1992.

Take notice that on July 23, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed in Docket No. CP92-608-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to add a new delivery point in Portsmouth, New Hampshire, for the delivery of natural gas to its affiliated distribution company customer, Northern Utilities, Inc. (Northern Utilities), under the certificate issued to Granite State in Docket No. CP82-515-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Granite State requests authorization to establish a new delivery point for deliveries to Northern Utilities at a point on the former Pease Air Force Base, in Portsmouth, New Hampshire, where Granite State has existing meter and regulator facilities for measuring the deliveries of gas to a central heating plant on the base property. Granite State contends that the base has been leased to a publicly owned development agency, Pease Development Authority, and plans for its redevelopment to non-military uses are in a preliminary stage. Granite State further contends that the Development Authority plans to lease hangers and other buildings on the base to non-military tenants for commercial purposes. It is stated that the newly leased buildings will require natural gas for space heating during the forthcoming winter. It is also stated that Granite State can construct a meter and regulator at an existing meter location on the base as an interim arrangement to deliver gas to Northern Utilities and

Northern Utilities, in turn, can construct the necessary lateral and service lines on the base to provide space heating service in the buildings and hangers that will be leased by the Development Authority.

It is stated that during the forthcoming winter, the maximum daily requirements are estimated to be 240 dekatherms with an annual requirement of 24,000 dekatherms. It is further stated that the potential maximum daily requirement, if as many as 20 buildings are converted to commercial use, is 1,000 dekatherms with an annual requirement of 96,000 dekatherms.

Comment date: September 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP92-591-000]

July 29, 1992.

Take notice that on July 2, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-591-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add delivery points to two existing sales customers, Kokomo Gas and Fuel Company (Kokomo) and Northern Indiana Public Service Company (NIPSCO), under its blanket certificate issued in Docket No. CP83-83-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that NIPSCO recently acquired the assets of Kokomo and has requested additional contract flexibility by adding Kokomo's delivery point to its own contract and by adding NIPSCO's three delivery points to Kokomo's contract. Panhandle indicates that the maximum volume of gas to be delivered at the delivery points would not exceed the proposed maximum daily delivery obligation. Panhandle also states that the addition of the delivery points to the contracts would have no impact on Panhandle's peak day or annual deliveries.

Comment date: September 14, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. American Central Gas Companies, Inc.

[Docket No. CI87-386-002]

July 30, 1992.

Take notice that on July 20, 1992, American Central Gas Companies, Inc. (American Central) of Suite 3260, 5847 San Felipe Street, Houston, Texas 77057, filed an application under sections 4 and 7 of the Natural Gas Act (NGA) to amend the blanket certificate issued to American Central Gas Pipeline Company (American Pipeline).

American Central requests authorization to make sales in interstate commerce for resale of all natural gas subject to the Commission's NGA jurisdiction, including imported natural gas, which is purchased from any supplier. American Central also requests redesignation of the name of the certificate holder from American Pipeline to American Central. American Central's application is on file with the Commission and open for public inspection.

Comment date: August 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

4. Westcoast Energy Marketing Ltd.

[Docket No. CI92-64-000]

July 30, 1992.

Take notice that on July 20, 1992, Westcoast Energy Marketing Ltd. (WEML) of 1333 West Georgia Street, Vancouver, British Columbia, Canada V6E 3K9, filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. WEML's application is on file with the Commission and open for public inspection.

Comment date: August 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

5. Norcen Marketing Inc.

[Docket No. C192-65-000]

July 30, 1992.

Take notice that on July 21, 1992, Norcen Marketing Inc. (NMI) of 715-5th Avenue, SW., Calgary, Alberta, Canada T2P 2X7, filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas, without source or market restriction. NMI's application is on file with the Commission and open for public inspection.

Comment date: August 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

6. Louisiana Gas Marketing Company

[Docket No. C192-66-000]

July 30, 1992.

Take notice that on July 27, 1992, Louisiana Gas Marketing Company (LGM) of P.O. Box 3102, Tulsa, Oklahoma 74101, filed an application under section 7 of the Natural Gas Act (NGA) for a blanket certificate of public convenience and necessity authorizing sales in interstate commerce for resale, with pregranted abandonment, of all categories of natural gas subject to the Commission's jurisdiction. LGM requests that the certificate cover its sales and others selling gas to LGM and others selling gas through LGM acting as agent on their behalf with blanket limited-term abandonment authority for producers or other suppliers of such gas to LGM to the extent such gas is released by interstate, intrastate or Hinshaw pipelines or other purchasers to such producers or suppliers for sale by LGM or by such producers or suppliers through LGM acting as their agent. LGM's application is on file with the Commission and open for public inspection.

Comment date: August 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP86-578-035]

July 30, 1992.

Take notice that on July 20, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing revised tariff sheets to comply with the Commission's order issued June 18, 1992.[1]

Northwest states its filing responds to requirements of the June 18, 1992 order that Northwest file revised tariff sheets to correct Northwest's sales commodity rates commencing with the effective date of Northwest's GIC tariff provisions and that Northwest submit statements concerning the time period that would be applicable for any continued recovery of carrying costs related to past gas prepayments in light of the pending abandonment of sales service to most of Northwest's sales customers in Docket No. CP92-79.

Northwest states that in compliance with the Commission's order, Northwest is resubmitting applicable substitute

[1] 59 FERC ¶ 61,331.

tariff sheets to correct the past deficiency in revenues which resulted from the Commission's previously ordered adjustment to base sales commodity rates concerning gas prepayments in connection with implementation of a GIC, so that corrected substitute tariff sheets may be made effective for the period commencing January 1, 1991.

Northwest states that copies of the filing were mailed to each party in the above-referenced docket and to all affected customers and regulatory commissions.

Comment date: August 6, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-687-006]

July 30, 1992.

Take notice that on July 22, 1992, Transcontinental Gas Pipe Line Company ("Transco"), Post Office Box 1396, Houston, Texas 77251, filed pursuant to sections 7(b) and 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity granted by the commission by orders issued January 17, 1991 [2] and June 11, 1991 [3] in Docket Nos. CP90-687-000, CP90-687-001, CP90-687-002 and CP90-687-003, to (1) reallocate authorized firm transportation capacity to certain shippers to be effective November 1, 1992, (2) add Piedmont Natural Gas Company, Inc. as a shipper under this project commencing November 1, 1993, (3) partially abandon effective November 1, 1993 a part of the firm transportation capacity authorized for Public Service Electric and Gas Company, (4) partially vacate the firm transportation service authorized for North Atlantic Utilities Inc., and (5) vacate the respective firm transportation services authorized for Indeck Energy Services of Yonkers, Inc. and Long Lake Cogeneration Corporation ("Long Lake"), all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

There is no reallocation proposed on Long Lake's firm capacity of 31,355 Mcf per day. The authorization sought in the application comprises a relocation among twelve shippers of the remaining 250,000 Mcf per day of firm transportation capacity certificated by the Commission. No new facilities are required.

Comment date: August 20, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Florida Gas Transmission Company

[Docket No. CP92-614-000]

July 30, 1992.

Take notice that on July 27, 1992, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed a prior notice request with the the Commission in Docket No. CP92-614-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add an existing delivery point to two existing sales service agreements under which FGT is currently serving Okaloosa County Gas District (Okaloosa), under FGT's blanket certificate issued in Docket No. RP89-50 *et al.*, all as more fully described in the request which is open to public inspection.

FGT proposes to add the existing Five Flags delivery point in Santa Rosa County, Florida, to Okaloosa's firm sales and preferred sales service agreements under FGT's FERC Rate Schedules G and I, respectively. FGT states that it would charge rates and abide by the terms and conditions of Rate Schedules G and I. FGT would deliver 12,020 MMBtu of natural gas per peak day and 2,877,842 MMBtu of natural gas annually to Okaloosa at the Five Flags delivery point for residential and commercial end-users. FGT further states that the total gas volumes to be delivered at the Five Flags delivery point would not exceed Okaloosa's currently authorized entitlements under the G and I Service Agreements.

Comment date: September 14, 1992, in accordance with Standard paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.20). 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 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 filing 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 is 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .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 in any proceeding herein must file a petition to

[2] Preliminary Determination and Order Issuing Certificates and Terminating Dockets, 54 FERC ¶ 61,032.

[3] Order Granting Certificate and Granting In Part and Denying in Part Requests for Clarification and Rehearing, 55 FERC ¶ 61,415.

intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18607 Filed 8-5-92; 8:45am]

BILLING CODE 6717-01-M

[Docket No. JD92-07974T Montana-7]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 31, 1992.

Take notice that on July 28, 1992, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Greenhorn and Phillips members of the Greenhorn Formation in Phillips County, Montana, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as:

Section 36, Township 32 North, Range 31 East: All
Section 31, Township 32 North, Range 32 East: S/2

The notice of determination also contains BLM's findings that the referenced portion of the Greenhorn and Phillips members of the Greenhorn Formation meet 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. 92-18672 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07899T New Mexico-34]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 31, 1992.

Take notice that on July 22, 1992, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Dakota Formation in Rio Arriba and San Juan Counties, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described on the attached appendix.

The notice of determination also contains BLM and the New Mexico Department of Energy, Minerals and Natural Resources' findings that the referenced portion of the Dakota 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 Regulation 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.

Appendix

Rio Arriba and San Juan Counties, New Mexico

Township 27N, Range 7W
Sections 7-1-12: All, 15: W/2, 16-21: All, 22: W/2, 27: NW/4, 28: N/2, 29-30: All.
Township 28N, Range 7W
Sections 7-36: All.
Township 27N, Range 8W
Sections 1-36: All.
Township 28N, Range 8W
Sections 7-36: All.
Township 29N, Range 8W
Sections 7-36: All.
Township 25N, Range 9W
Sections 4-9: All, 17: W/2, 18: All.
Township 26N, Range 9W
Sections 5-9: All, 15-23: All, 26-35: All.
Township 27N, Range 9W
Section 31 All.
Township 28N, Range 9W
Sections 7-36: All.
Township 29N, Range 9W
Sections 3-36: All.
Township 30N, Range 9W
Sections 31-34: All.
Township 25N, Range 10W
Sections 1-6: All, 11-13: All.
Township 26N, Range 10W
Sections 1-36: All.
Township 27N, Range 10W
Sections 1-36: All.
Township 28N, Range 10W
Sections 7-36: All.
Township 29N, Range 10W
Sections 1-36: All.
Township 30N, Range 10W
Sections 19-23: All, 25-36 All.

The area of application contains 245,900 acres, more or less, of Federal, State, Fee and Indian lands.

[FR Doc. 92-18673 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07975T Texas-65]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 31, 1992.

Take notice that on July 27, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Lower Wilcox (Matthew) Formation underlying a portion of DeWitt and Lavaca Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area includes parts of the John Garelli Survey, A-198 (approximately the S/2); the James A. Moody Survey, A-333 (small portion of the SE/4) and the John Garelli Survey, A-199 (approximately the S/2).

The notice of determination also contains Texas' findings that the referenced portion of the Lower Wilcox (Matthew) 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. 92-18674 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI92-67-000]

AIG Trading Corp.; Application for Blanket Certificate With Pregranted Abandonment

July 31, 1992.

Take notice that on July 28, 1992, AIG Trading Corporation (AID) filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction, without rate restrictions. AIG's application is on file with the Commission and open for public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before August 21, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, AIG will not have to appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18675 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-32-004]

Colorado Interstate Gas Co.; Compliance Filing

July 31, 1992.

Take notice that on March 6, 1992, Colorado Interstate Gas Company (CIG), tendered for filing Fifth Revised Sheet No. 55 of CIG's FERC Tariff, Original Volume No. 1, which reflect revised tariff language in compliance with the Commission's February 6, 1992 order.

CIG states that copies of the filing were served upon the active parties to this proceeding based on the Commission's service list.

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 August 7, 1992. 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. 92-18676 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-187-000, CP91-2448-000 (Consolidated), and FA91-23-001 (Not Consolidated)]

Florida Gas Transmission Co.; Informal Settlement Conference

July 31, 1992.

Take notice that an informal settlement conference will be convened in these proceedings on September 2, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purposes of exploring the possible settlement of the issues in Docket Nos. RP91-187-000 and CP91-2448-000, which relate to cost of service, incentive rates, throughput and bidding procedures for interruptible capacity as well as the issues related to accounting for linepack gas in Docket No. FA91-23-001.

As party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Warren C. Wood at (202) 208-2091 or Donald Williams at (202) 208-0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18677 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-18-000]

Kentucky West Virginia Gas Co.; Prefiling Conference

July 31, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 2, 1992, at 10 a.m., in Washington, DC at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of the conference is to address Kentucky West Virginia Gas Company's summary of its proposal to comply with Order No. 636.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call Carmen Gastilo at (202) 208-2182.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18678 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-136-024]

National Fuel Gas Supply Corp.; Refund Report

July 31, 1992.

Take notice that on July 27, 1992, National Fuel Gas Supply Corporation ("National") filed a report of refunds pursuant to Section V of the Settlement approved by the Commission in the above-captioned proceedings.

National states that it has distributed all applicable refunds to its customers on July 24, 1992, in accordance with § 154.67 of the Commission's Regulations. Also, copies of the Refund Report and associated workpapers were served upon both National's customers and upon all interested state regulatory agencies.

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 August 7, 1992. 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. 92-18679 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-120-004]

Panhandle Eastern Pipe Line Co.; Compliance Filing

July 31, 1992.

Take notice that on July 28, 1992, in compliance with the Commission's order of June 29, 1992, in the above-referenced proceeding, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the tariff sheets listed on Appendix A attached to filing, to its FERC Gas Tariff, Original Volume Nos. 1 and 2.

Panhandle states that the June 29, 1992 Order accepted Panhandle's April 29, 1992, compliance filing in the above-referenced proceeding, but directed Panhandle to file revised tariff sheets to reflect two modifications to the bases utilized in developing the rates submitted in the April 29, 1992 compliance filing. First, the Commission directed Panhandle to file revised tariff sheets in which the rates are based on net plant adjusted for depreciation calculated at the applicable rate for gathering plant through the end of the test period. Panhandle states that the tariff sheets reflect this revision. Second, the Commission directed Panhandle to file revised tariff sheets reflecting either the functionalization of the Wattenberg system adopted in Docket No. CP90-1050-000 or a functionalization which places all of the Wattenberg system in the gathering function. Panhandle states since the Commission has not acted in Docket No. CP90-1050-000, it is submitting tariff sheets which reflect the functionalization of the Wattenberg system as gathering except for minor amounts of communications equipment and general plant.

Panhandle states that copies of the filing are being mailed to the customers, interested state regulatory agencies, and parties in this proceeding.

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 August 7, 1992. 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. 92-18680 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-48-019]

Transwestern Pipeline Co.; Report of Refunds

July 31, 1992.

Take notice that on June 26, 1992, Transwestern Pipeline Company (Transwestern) tendered a Report of Refunds in the captioned docket. It states that under the settlement filed March 3, 1992, in Docket No. RP89-48-000, requiring it to make refunds to its customers for the period October 1990 through March 1992, it made refunds on May 29, 1992 (with additional adjusting refunds made June 24, 1992), as required by the settlement.

Transwestern further states that the refunds, totalling $10,120,295.33, including interest, were based on the difference between the rates paid by each shipper and the interim rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., 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 August 7, 1992. 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. 92-18681 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-50-000]

Valero Interstate Transmission Co.; Conference

July 31, 1992.

Take notice that on Tuesday, August 11, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Valero Interstate Transmission Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Richard White at (202) 208-0491 or Robert Steinberg at (202) 208-1032.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18682 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Phoenix Area Projects Proposed Rate Adjustments

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rescheduling of public comment forums and consultation and comment periods for the Phoenix Area Projects Proposed Rate Adjustments.

SUMMARY: Western Area Power Administration (Western) is announcing a rescheduling of public comment forums and consultation and comment periods for the rate adjustments for the Parker-Davis Project (P-DP), Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie), and Boulder Canyon Project (BCP). These public comment forums were originally announced in the following Federal Registers:

May 8, 1992, 57 FR 19903-19904, AC Intertie

May 8, 1992, 57 FR 19904-19906, P-DP

June 10, 1992, 57 FR 24641-24643, BCP

This action is taken in response to public comment that additional time is needed for comments on some unresolved issues relative to these rate adjustments.

PROCEDURES: A revised power repayment study for each project will be made available during the consultation and comment period.

Following the close of each consultation and comment period, Western will prepare, if necessary, another power repayment study for each of the projects which will include any changes due to consideration of public comments. Western will recommend the results of those studies as the final proposed rates to the Assistant Secretary for Conservation and Renewable Energy to be placed in effect on an interim basis as provisional rates and submitted to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

EFFECTIVE DATES: The consultation and comment period for the P-DP, AC Intertie, and BCP rate adjustments will now end on September 28, 1992.

Western will also receive oral and written comments at the following public comment forums:

Boulder Canyon Project, September 10, 1992, 10 a.m., Gila Room, Omni Adams Hotel, 111 North Central Avenue, Phoenix, AZ

Parker-Davis Project, September 11, 1992, 9 a.m.-Noon, Gila Room, Omni Adams Hotel, 111 North Central Avenue, Phoenix, AZ

Pacific Northwest-Pacific Southwest Intertie Project, September 11, 1992, 1:30 p.m., Gila Room, Omni Adams Hotel, 111 North Central Avenue, Phoenix, AZ

The forums will be transcribed by a court reporter. Written comments should be received by the end of the consultation and comment period to be assured consideration. Comments may be sent to: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005.

A copy of the written comments should also be sent to: Ms. Marilyn Eiler, Assistant Area Manager for Power Marketing, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the P-DP, AC Intertie, and BCP are established pursuant to the various laws cited for each of the projects in their respective initial Federal Register notices as listed above.

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary of DOE delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

The procedures for public participation in rate adjustments for power and transmission serviced marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Issued at Golden, Colorado, July 29, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-18686 Filed 8-5-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34032; FRL-4076-1]

Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on November 4, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete on or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 11 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before November 4, 1992 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product Name	Delete From Label
000004-00196	Benomyl 50% WP	Post harvest uses on apples and pears
000572-00254	Benomyl Fungicide	Post harvest use on cherries, ornamentals, roses
000707-00201	Kelthane 4F Flowable Agricultural Miticide	Beans (dry), grapefruit, kumquats, lemons, limes, oranges, tangelos, tangerines, cotton, hops
031910-00002	Aquatreat DMN-30	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910-00007	Aquatreat DN-30	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910-00011	Aquatreat DMN-9	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910-00012	Aquatreat DMN-360	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910-00016	Aquatreat DMN-25E	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910-00018	Aquatreat DMN-25L	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration No.	Product Name	Delete From Label
031910-00020	Aquatreat DMN-80	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
059639-00015	Dibrom 8 Emulsive	Tobacco

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000572	Rockland Corp., 686 Passaic Ave., P.O. Box 809, west Caldwell, NJ 07007.
000707	Rohm and Haas Co., Agri. Chemical Registration Regulatory Affairs, Independence Mall West, Philadelphia, PA 19105.
031910	Alco Chemical Division, National Starch Chemical Co., 909 Mueller Dr., P.O. Box 5401, Chattanooga, TN 37406.
059639	Valent U.S.A. Corp., 1333 N. California Blvd., P.O. Box 5401, Walnut Creek, CA 94596.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: July 23, 1992.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 92-18129 Filed 8-5-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 27, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW, Suite 640, Washington, DC 20036, (202) 452-1422. for further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513, Persons wishing to comment on this information collection should contact Jonas Neihadt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-169.

Title: Section 43.51 and 43.53—Reports and Records of Communications Common Carriers and Certain Affiliates.

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: 374 responses; 16.12 hours average burden per response; 6,029 hours total annual burden.

Needs and Uses: The reports required by §§ 43.51 and 43.53 are the means by which the FCC gathers information concerning the activities of carriers which it examines. In CC Docket No. 90-337, Regulation of International Accounting Rates, the Commission, among other things, amended § 43.51(a) and added a new § 43.51(d). See OMB control number 3060-0454 for OMB-approved modifications. Also, the Order on Reconsideration issued in CC Docket No. 85-204, clarified the distinction between indirect and true transit traffic and restored to rules § 43.53(a) the exemption from filing requirements of true transit traffic. The action taken in the proceeding produces no significant burden impact. The information contained in these reports is used by FCC to determine whether the activities reported have affected or are likely to affect adversely the carrier's service to the public or whether these activities result in undue or unreasonable increases in charge. If this information was not reported, the FCC would not be able to ascertain the impact of these activities on the just and reasonable rates as required by the Communications Act.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-18530 Filed 8-5-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Tampa Port Authority/Eller & Company, Inc.; Agreement(s) Filed

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, 1100 L Street, NW., room 10325. 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.: 224-003079-013.
Title: Tampa Port Authority/Eller & Company, Inc. Terminal Lease Agreement.
Parties:
The Tampa Port Authority ("Authority") Eller & Company, Inc.
Synopsis:
The Agreement sets forth payment schedules wherein Eller will reimburse the Authority for monies due as provided for in the Agreement.

Agreement No.: 224-010825-007.
Title: Los Angeles/Evergreen Marine Terminal Agreement.
Parties:
City of Los Angeles ("Port") Evergreen Marine Corporation (Taiwan), Ltd. ("Evergreen").
Synopsis: The amendment reflects a change in Evergreen's corporate address and an adjustment in the boundary line of property Evergreen leases from the Port. This adjustment does not change the amount of land leased or the compensation due.

Dated: July 31, 1992.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 92-18598 Filed 8-5-92; 8:45 am]
BILLING CODE 6730-01-M

Tampa Port Authority/Harborside Refrigerated Services, Inc.; Agreement(s) filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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, 1100 L Street, NW., room 10325. Interested parties may submit protests or 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 and protests are found in § 560.6 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 244-002810-008.
Title: Tampa Port Authority/Harborside Refrigerated Services, Inc. Terminal Agreement.
Parties: Tampa Port Authority ("TPA"), Harborside Refrigerated Services, Inc., ("Harborside").
Filing Party: Harold E. Welch, Tampa Port Authority, P.O. Box 2192, Tampa, Florida 33601.
Synopsis: This modification provides for payment schedules wherein Harborside will reimburse TPA for funds due under the lease agreement.

Dated: July 31, 1992.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 92-18599 Filed 8-5-92; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 31, 1992.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATE: Comments are welcome and should be submitted on or before September 8, 1992.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)
OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202-395-7340)

Request for OMB approval to extend, without revision, the following report:

1. *Report title:* Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks.
Agency form number: FFIEC 004.
OMB Docket number: 7100-0034.
Frequency: Annually (for the report), quarterly and on occasion (for recordkeeping and disclosure requirements).
Reporters: Executive officers and principal shareholders of member banks.
Annual reporting hours: 6,255.
Estimated average hours per response: 1.27 hours (1 hour of reporting burden, 2.35 hours of recordkeeping burden)
Number of respondents: 4,925 (3,940 executive officers and principal shareholders filing the report, 985 state member banks fulfilling the recordkeeping burden)
Small businesses are affected.
General description of report: This information collection is mandatory [12 U.S.C. 1972(2)(G); and 12 U.S.C. 375(a)(6) and (10), and § 375(b)(7)] and is given confidential treatment [12 CFR 215.22(d); and 5 U.S.C. 552(b)(4) and (6)].
Abstract: Executive officers and principal shareholders of member banks who are indebted to correspondent banks must file the FFIEC 004 report on such indebtedness to them or their related interests. State member banks are required to retain these reports for a period of three years.

Board of Governors of the Federal Reserve System, July 31, 1992.
William W. Wiles,
Secretary of the Board.
[FR Doc. 92-18636 Filed 8-5-92; 8:45 am]
BILLING CODE 6210-01-M

Credit Commercial de France, S.A.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have 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.

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 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Credit Commercial de France, S.A., Paris, France; to engage *de novo* through its subsidiary, CCF - Mellon Partners, Pittsburgh, Pennsylvania, in acting as an investment or financial adviser pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted worldwide.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Central Banking Group, Inc., Oklahoma City, Oklahoma; to engage *de novo* through its subsidiary, Central Financial Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and credit disability insurance which is directly related to extensions of credit by the credit extending affiliates of Central Banking Group, Inc. pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18637 Filed 8-5-92; 8:45 am]

BILLING CODE 6210-01-F

First Bank System, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 31, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; and Central Bancorporation, Inc., Denver, Colorado; to acquire Western Capital Investment Corporation, Denver, Colorado, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in the State of Colorado.

Board of Governors of the Federal Reserve System, July 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18638 Filed 8-5-92; 8:45 am]

BILLING CODE 6210-01-F

Southwest Bancshares, Inc., 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 August 31, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Southwest Bancshares, Inc., Trumann, Arkansas; to acquire 100 percent of the voting shares of Caraway Bancshares, Inc., Caraway, Arkansas, and thereby indirectly acquire Caraway Bank, Caraway, Arkansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with Worthington Bancshares, Inc., Worthington, Minnesota, and thereby indirectly acquire First National Bank in Worthington, Worthington, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Western Bancshares, Inc., Van Horn, Texas; to acquire 74.63 percent of the voting shares of Coahoma State Bank, Coahoma, Texas.

Board of Governors of the Federal Reserve System, July 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18639 Filed 8-5-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Proposed Border Station, Located East of Calexico, CA; Intent To Prepare an Environmental Impact Statement

The General Services Administration (GSA) hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the proposed border station, located east of Calexico, California. The EIS will evaluate the proposed project, the no-action alternative, and expansion of the existing port of entry in Calexico. Scoping will be accomplished by correspondence and through a public scoping meeting with interested persons, organizations, and federal, state and local agencies.

Written comments on the scope of alternatives and potential impacts should be addressed to the GSA's EIS contractor, Environmental Science Associates, Inc., at the following address: 4221 Wilshire Blvd., suite 480, Los Angeles, California 90010–3512.

Written comments should be sent to Environmental Science Associates by August 19, 1992. Comments will also be accepted at a public scoping meeting to be held on August 12, 1992, at the location indicated below.

Comments and suggestions will be solicited at a public scoping meeting to be held at: El Centro Community Center, 375 South First Street, El Centro, California 92243.

The meeting will be held on August 12, 1992, in two sessions: from 2 p.m. to 4 p.m., and from 7 p.m. to 9 p.m., during which time interested parties can discuss and comment on the proposed project. All comments received during the meeting will be made part of the administrative record for the EIS and will be evaluated as part of the scoping process.

For further information contact Mr. Al Liu, General Services Administration, Public Buildings Service, Planning Staff (9PL), 525 Market Street, San Francisco, California 94105 (415) 744–5252.

GSA will prepare an EIS on a proposal to design and construct a new border station to be located approximately six miles east of the city of Calexico, California. The scoping process will determine the scope of issues to be addressed in the EIS and to identify the significant issues related to the proposed project. Scoping will be conducted in a manner consistent with NEPA guidelines. GSA will serve as lead agency for the preparation of the EIS.

GSA invites interested individuals, organizations, and federal, state and local agencies to participate in defining the reasonable alternatives to be evaluated in the EIS and in identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments can be made verbally at the public scoping meeting or in writing as mentioned above. During scoping, comments should focus on identifying specific impacts to be evaluated and suggesting alternatives that minimize adverse impacts while achieving similar objectives. Comments may also identify issues which are not significant or which have been covered by a prior environmental review. Scoping should be limited to commenting on alternatives and not commenting on preferences. There will be an opportunity to comment on preferences after the Draft EIS is completed.

If you wish to be placed on the mailing list to receive further information during the EIS process, please contact Environmental Science Associates or GSA at the address listed above.

The project purpose is to design and construct a new border station in the vicinity of Calexico, California to accommodate the increasing traffic flows at the existing commercial import and export facility and border station in downtown Calexico.

The project is a coordinated effort between the governments of U.S. and Mexico to help facilitate trade and commerce between the two countries. In response to an initial site proposal from Mexico, an interagency team was formed in 1989 by GSA, U.S. Customs Service, Immigration and Naturalization Service, U.S. Department of Agriculture, International Boundary and Water Commission, and assisted by the California Department of Transportation, to investigate potential sites for a new border station in the area east of Calexico. The survey identified four broad areas which appeared to be feasible and the results were provided to Mexico. In 1991, Mexico proposed a site in Mexicali, opposite an area called Zone Four in the U.S. survey, that was approximately six miles east of the city of Calexico. The U.S. and Mexican government exchanged diplomatic notes to establish the initial site agreement.

GSA proposes to construct the new border station on an 83-acre site bordered on the south by the All American Canal and on the east by the South Alamo Canal. The proposed design includes 12 primary lanes, 36 secondary inspection spaces, a 100-truck dock, five buildings totalling 75,000 square feet, 185,000 square feet of primary and secondary commercial and noncommercial inspection canopies, and the construction of a clear span bridge across the All American Canal. The site plan provides for future expansion of the facilities.

GSA will evaluate all significant environmental, social, and economic impacts of the alternatives to be analyzed in the EIS. Impacts anticipated include, but are not limited to, changes in land use, induced growth, changes in traffic patterns, changes to the natural environment, noise, historic resources, and air quality. The impacts will be evaluated and measures to mitigate significant adverse impacts will be addressed.

The Draft EIS will be prepared based upon the scoping efforts. After its publication, the Draft EIS will be available for public and agency review and comment. A Final EIS will be prepared that addresses the comments on the Draft EIS.

Dated: July 30, 1992.

Edwin W. Thomas,

Regional Administrator (9A).

[FR Doc. 92–18661 Filed 8–5–92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development.

[Docket No. N-92-3369; FR-3180-N-03]

Notice of Deadline Extension; FY 1991 and 1992 Fund Availability; Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning Development, HUD.

ACTION: Notice of deadline extension.

SUMMARY: HUD is extending the application deadline for the Community

Development Block Grant Program for Indian Tribes and Alaskan Native Villages (ICDBG), for Fiscal Years 1991 and 1992, for those applicants who were adversely affected in their application preparation as a result of floods that took place in Supai Canyon in Arizona following the heavy rainfall of July 24–25, 1992. Today's document extends the deadline to August 13, 1991.

DATES: For qualified applicants, the application deadline is extended to August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen M. Rhodeside, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of HUD, room 7184, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1322. To provide service for persons who are hearing or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: on April 7, 1992, HUD published a Notice of Fund Availability announcing the availability of funds for the ICDBG Program for Indian Tribes and Alaskan Native Villages for Fiscal Years 1991 and 1992 (57 FR 11852). In today's notice, HUD is extending the application deadline, but solely for those applicants who were adversely affected in their preparation of applications as a result of the flood that took place in Supai Canyon in Arizona following the heavy rainfall of July 24–25, 1992. For those applicants who qualify, the application deadline is being extended to August 13, 1992. No additional extensions of time for applications for the ICDBG program are anticipated. An applicant may qualify for an extension of the application deadline if:

(a) The applicant submits a signed statement with its application, describing the reasons which justify a delayed submission pursuant to this Notice; and

(B) HUD determines that the signed statement adequately demonstrates that the applicants ability to prepare or submit the ICDBG application was substantially impaired as a result of the floods that took place in Supai Canyon in Arizona following the heavy rainfall of July 24–25, 1992.

If HUD approves the certification, the application will be accepted for review. A qualified applicant may submit such an application, or may revise and resubmit a previously submitted application, as long as the application is postmarked by no later than midnight August 13, 1992 or received by the Office of Indian Programs, Region IX, CPD Division, Two Arizona Center, suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004–2361, by August 13, 1992. All submission requirements other than the date by which the applications must be received remain unaffected by this Notice.

Dated: August 3, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92–18688 Filed 8–5–92; 8:45 am]

BILLING CODE 4210-29-M

[Docket No. N-92-3440; FR-3294-C-02]

Announcement of Allocations for Housing Opportunities for Persons With AIDS; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice; correction.

SUMMARY: This notice corrects the list of eligible metropolitan areas (EMAs) contained in the announcement of availability of funding for the Housing Opportunities for Persons with AIDS program. The list of EMAs listed the Community Development Block Grant communities within each eligible metropolitan area that may participate in selecting the community to be the designated "applicant" for the area. For the San Juan, Puerto Rico metropolitan area, one community was inadvertently omitted from the list. This correction does not affect the amount of the allocations listed for that EMA or for the Commonwealth of Puerto Rico.

Accordingly, in FR Doc. 92–16790, published in the Federal Register on July 20, 1992 (57 FR 32124), the Department corrects the chart on page 32128 by adding, after the line beginning "Trujillo Alto Municipio", a line that reads:

Vega Baja Municipio..... 55,987 .....

Dated: July 30, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92–18604 Filed 8–5–92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-92-4333-11]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Notice.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands during the official running of two competitive off-road vehicle events. This action is being taken to provide for public safety and protect adjacent resources. The following events are included in this notice.

September 6, 1992 Valley Off-Road Racing Association
Yerington 250—Permit Number NV–03516–92–05

October 3, 1992—High Sierra Motorcycle Club
Carson Valley Qualifier—Permit Number NV–03516–92–15

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. Each permittee is required to clearly mark and monitor the event route during the closure period. Specific information on each event is as follows:

Spectators shall remain in safe locations as directed by event officials and BLM personnel during the conduct of both events. All vehicles not participating in the event shall maintain a maximum speed of 10 MPH within designated spectator and pit areas.

1. Valley Off-Road Racing Association Yerington 250 Off-Road Race—Permit Number NV–03516–92–05. This event is located on roads and washes near Yerington, Nevada in Douglas and Lyon Counties, within T12N R24E; T13N R24E; T14N R24E; T13N R25E. Bureau Lands to be closed include existing roads and washes identified on the ground as the 1992 Yerington 250 Off-Road Race and Bureau Lands within 500 feet of either side except at designated pit and spectator areas. This closure will be in effect from 6 a.m. until midnight on September 6, 1992.

2. High Sierra Motorcycle Club Carson Valley Qualifier—Permit Number NV-03516-92-15. This event is located on roads and trails near Gardnerville, Carson City and Dayton, Nevada in Douglas, Carson City and Lyon Counties within T13N R20E; T13N R21E; T14N R20E; T14N R21E; T14N R22E; T15N R20E; T15N R21E; T15N R22E; T16N R21E; T16N R22E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1992 Carson Valley Qualifier (Brunswick Canyon Road will be closed to through traffic, Sunrise Pass Road will have traffic regulated) and Bureau Lands within 500 feet of either side except at designated pit and spectator areas. This closure will be in effect from 7 a.m. until 8 p.m October 3, 1992.

Dated: July 22, 1992.

James W. Elliott,

District Manager.

[FR Doc. 92-18694 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-020-02-4212-11; AZA-24652]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification, Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, recreation and public purpose lease/conveyance.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Golden Valley Chamber of Commerce under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Golden Valley Chamber of Commerce proposes to use the lands for Chamber of Commerce headquarters.

Gila and Salt River Base and Meridian, Mohave County, Arizona

Township 21 North, Range 18 West
Sec. 8, S½SE¼SE¼NE¼NE¼.
Comprising 1.25 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purpose Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Those rights for road purposes granted to the Mohave County Board of Supervisors by Permit No. AZA-17931 for Verde Road.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms or appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purpose Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: July 28, 1992.

David J. Miller,

Associate District Manager.

[FR Doc. 92-18665 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-32-M

[UT-040-02-4212-14; UTU-67778]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice..

SUMMARY: The Bureau of Land Management is proposing to sell, under section 203 of the Federal Land Policy and Management Act of 1976, public land described as Salt Lake Meridian, T. 29 S., R. 7 W., sec. 5, SE¼SE¼SE¼, containing 10 acres located in Beaver County, Utah. Because of the location in relation to other private land and the past history of use, the land will be sold by direct sale to Frank and Freida H. Harris at the appraised fair market value of $2,500. The purpose of the sale is to dispose of land which, because of its location and other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.

DATES: Comments must be submitted on or before September 21, 1992. The sale will be conducted no sooner than October 5, 1992.

ADDRESSES: All comments concerning this proposed sale should be addressed to Gordon Staker, District Manager, Cedar City District, 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Area Manager, at 365 South Main, Cedar City, Utah 84720 (801) 586-2458.

SUPPLEMENTARY INFORMATION: The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or on May 3, 1993, whichever occurs first. Only the surface estate will be sold. The patent, when issued will contain a reservation for all minerals to the United States, together with the right to prospect for, mine and remove the minerals. There will also be reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: July 23, 1992.

Ron Montagna,

Associate District Manager.

[FR Doc. 92-18663 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-110-4310-33-6350-08; G2-331]

Notice of Availability: Draft RMP/EIS; Medford District, OR

AGENCY: Bureau of Land Management, Medford District Office, Interior.

ACTION: Notice of Availability of Draft Resource Management Plan/Environmental Impact Statement for the Medford District, Oregon.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(f) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, a Draft Resource Management Plan/Environmental Impact Statement (DRMP/EIS) for the Medford District, Oregon, has been prepared and is available for review and comment. The Draft RMP/EIS describes and analyzes future options for managing approximately 866,300 acres of mostly forested public land and 4,670 acres of nonfederal surface ownership with federal mineral estate administered by the Bureau of Land Management (BLM)

in Jackson, Josephine, Douglas, Curry, and Coos counties in southwestern Oregon.

Decisions generated during this planning process will supersede land use planning guidance presented in the Josephine and Jackson/Klamath Management Framework Plans (MFPs) as amended.

Copies of the Draft RMP/EIS or a summary of it may be obtained from the Medford District Office. Public reading copies will be available for review at the public libraries in Applegate, Ashland, Central Point, Coos Bay, Eagle Point, Jacksonville, Phoenix, Rogue Community College, Rogue River, Ruch, Shady Cove, Southern Oregon State College, Talent, and White City and at the Jackson, Josephine, Douglas, Curry, and Coos counties office buildings, all government document depository libraries, and at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC.

Public Room, Oregon State Office, 1300 N.E. 44th Avenue, Portland, Oregon 97208.

Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504.

All other BLM offices in western Oregon.

Open houses with opportunities to discuss the Draft RMP/EIS will be held at the Medford District Office and other locations in southwestern Oregon. The dates, times, and locations will be announced in a separate mailer as well as in the local news media.

DATES: Written comments on the Draft RMP/EIS must be submitted or postmarked no later than December 21, 1992.

ADDRESSES: Written comments should be addressed to Dave Jones, District Manager, Bureau of Land Management, Medford District, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Gretchen Lloyd, RMP Team Leader, Medford District Office; Phone (503) 770-2200.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS describes and analyzes seven alternatives to address the following issues: (1) Timber production practices; (2 & 3) Old growth forests and habitat diversity; (4) Threatened and endangered (and other special status) species habitat (including habitat for the northern spotted owl); (5) Special areas; (6) Visual resources; (7 & 8) Stream/riparian/water quality; (9) Recreation resources; (9a) Wild and scenic rivers; (10) Land tenure; and (11) Rural interface area management.

In BLM's Preferred Alternative, water quality would be maintained or improved primarily by a combination of best management practices and exclusion of selected areas from planned timber harvest. Particularly important exclusion areas would be the riparian zones of perennial streams and other streams that sustain fish.

Approximately 207,000 acres would be managed to maintain and strengthen a system of old growth emphasis areas, which is expected to increase the amount of old growth stands in the planning area from 102,000 acres to 194,000 acres over the next 100 years.

About 125,300 acres would be managed for timber production, including 256,400 acres managed under substantial restrictions to protect or enhance other resource values. The annual allowable timber sale quantity would be 18 million cubic feet (105 mmbf). To contribute to biological diversity, standing trees, snags, and down, dead woody material would be retained.

In addition to protecting listed or proposed threatened and endangered species as required by the Endangered Species Act, BLM would manage habitats of federal candidate, state listed, and Bureau-sensitive species to maintain their populations at a level that would help prevent listing of the species.

Management would provide for a wide variety of recreation opportunities with particular emphasis on enhancement of opportunities for water-based recreation.

Five stretches of river covering about 24 miles would be found suitable for designation under the Wild and Scenic River Act. Approximately 100 other miles of river found eligible for designation and studied by BLM would be found not suitable for designation.

Most BLM-administered lands would remain available for leasing of oil and gas and geothermal resources. Only about 22,300 acres would be closed to leasing. Most BLM-administered lands would also remain available for location of mining claims, with only 37,600 acres closed.

The RMP/EIS proposes continuing the designation of all five existing areas of critical environmental concern (ACEC), three existing environmental education areas (EEAs), and designation of 22 new ACECs and one new EEA. The Preferred Alternative would designate or redesignate the following ACECs with the noted restrictions.

ACEC	Restrictions				
	Rights-of-way	Timber harvest	ORV use	Mineral leasings	Mining location
Existing: ACECs					
Eight Dollar Mountain	R	P	R	R	R
King Mountain Rock Garden	R	P	P	R	R
Table Rocks	P	P	P	R	P
Brewer Spruce	P	P	P	R	P
Woodcock Bog	P	P	P	R	P
New: ACECs					
Bobby Creek	R	P	R	R	R
Crooks Creek	R	P	R	R	R
Franch Flat	R	P	R	R	R
Hole-In-The Rock	R	P	R	R	R
Hoxie Creek	R	P	R	R	R
Iron Creek	R	P	R	R	R
Jenny Creek	R	P	R	R	R
Moon Prairie	R	P	R	R	R
Pilot Rock	R	P	R	R	R
Poverty Flat	R	P	R	R	R
Sterling Mine Ditch	R	P	R	R	R
Tin Cup	R	P	R	R	R
Brewer Spruce Enlargement	P	P	P	R	P
Grayback Glade	P	P	P	R	P
Holton Creek	P	P	P	R	P

ACEC	Restrictions				
	Rights-of-way	Timber harvest	ORV use	Mineral leasings	Mining location
Lost Lake	P	P	P	R	P
North Fork Silver Creek	P	P	P	R	P
Old Baldy	P	P	P	R	P
Oregon Gulch	P	P	P	R	P
Pipe Fork	P	P	P	R	P
Round Top Butte	P	P	P	R	P
Scotch Creek	P	P	P	R	P

R=Use allowed with restrictions.
P=Use prohibited.

There were 12 potential ACEC areas identified that met the BLM's ACEC criteria of relevance and importance that are not included in the Preferred Alternative. They include: Bill Creek, Cedars of Beaver Creek, Dakubetede, Enchanted Forest, Flounce Rock (which was designated an EEA), Larkspur, Little Hyatt, Pacific Crest Trail, Rock Creek, Rogue River, Siskiyou Mountain Natural Area, and Williams Watershed. Two other areas (Section Six and Slide Creek) nominated for potential ACEC designation did not meet the relevance and importance criteria.

This Notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs and the requirements of the final revised Department of the Interior/ Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (FR Vol. 47, No. 173, pg. 39454).

Dated July 31, 1992.

David A. Jones,

Medford District Manager.

[FR Doc. 92-18693 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-33-M

[NV-940-02-4212-22]

Filing of Plat of Survey; Nevada

Dated: July 24, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plat of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on July 13, 1992.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6543.

SUPPLEMENTARY INFORMATION: The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on July 13, 1992:

Mount Diablo Meridian, Nevada

T. 40 N., R 55 E.—Supplemental Plat of Section 36.

T. 42 N., R 60 E.—Supplemental Plat of Section 5.

T. 32 N., R 61 E.—Supplemental Plat of Section 18.

T. 33 N., R 62 E.—Supplemental Plat of Section 7.

These surveys were accepted June 23, 1992, and were executed to meet certain administrative needs of the Bureau of Land Management.

The above-listed surveys are now basic record for describing the lands for all authorized purposes. This survey will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

Roberta G. Steele,

Deputy State Director, Nevada.

[FR Doc. 92-18692 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-940-02-4212-22]

Filing of Plat of Survey; Nevada

Dated: July 24, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plat of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on July 16, 1992.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6543.

SUPPLEMENTARY INFORMATION: The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on July 16, 1992:

Mount Diablo Meridian, Nevada

T. 42 N., R. 62 E.—Supplemental Plat of Section 34.

This survey was accepted July 1, 1992, and was executed to meet certain administrative needs of the Bureau of Land Management.

The above-listed survey is now the basic record for describing the lands for all authorized purposes. This survey will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

Robert G. Steele,

Deputy State Director, Nevada.

[FR Doc. 92-18691 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(f)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 9, 1992, Red River Foods, Inc., 7100 Beaufont Springs Drive, Suite 550, Richmond, Virginia 23225, made application to the Drug

Enforcement Administration to be registered as an importer of marijuana (7360) a basic class of controlled substance in Schedule I. This application is exclusively for the importation of marijuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 8, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 31, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–18664 Filed 8–5–92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27, 337]

Cebcor Service Corporation Dallas, TX; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 1, 1992 in response to a worker petition which was filed on June 1, 1992 on behalf of workers at CEBCOR Service Corporation, Dallas, Texas.

An active certification covering the petitioning group of workers remains in effect (TA–W–27, 336). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 30th day of July, 1992

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–18641 Filed 8–5–92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,334]

Gemini Mining Corporation, Stoystown, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Gemini Mining Corporation, Stoystown, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27,334; Gemini Mining Corporated Stoystown, Pennsylvania (July 29, 1992).

Signed at Washington, DC this 30th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–18648 Filed 8–5–92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,002]

Komatsu Dresser Co., Libertyville, IL; Negative Determination Regarding Application for Reconsideration

By an application dated May 29, 1992, Local #1643 of the United Automobile Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 11, 1992 and published in the **Federal Register** on May 28, 1992 (57 FR 22492).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact the increased import criterion and the "contributed importantly" test of the Worker Group Requirements of the Trade Act of 1974 were not met in the period relevant to the worker petition.

Its claimed that the domestic labor content of construction machinery produced at Libertyville has declined from 70 percent in 1978 to about 30 percent in 1992. The union further states that production has been transferred from Libertyville to Korea and Poland.

Investigation findings show that the domestic labor content of construction machinery produced at Libertyville has not changed in the period relevant to the petition. The base period to measure changes in imports on the subject petition is 1990. Accordingly, worker separations resulting from a reduced domestic labor content in construction machinery produced at Libertyville or the transfer of production to foreign sources and their subsequent importation prior to March 4, 1991 would not be coverable. Section 223(b)(1) of the Trade Act does not permit the certification of workers separated more than one year prior to the date of the petition.

Investigation findings also show that company imports of construction machinery, which include imports from Korea, decreased in 1991 compared to 1990. Company officials have indicated that there has been no transfer or production to foreign sources in the period applicable to the petition.

Other investigation findings show that the demand for construction machinery has been weak for the past two years because of the recession and the lack of new construction projects.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92–18649 Filed 8–5–92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,979 et al.]

Mobil Exploration and Producing U.S. Inc., et al.; Amendment Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the amended certification on petition TA-W-26,979 et al. which was published in the Federal Register on July 24, 1992 (57 FR 33015) in FR Document 92-17527.

The impact date on line 17 in the second column on page 33015 should read "January 1, 1992" instead of "January 1, 1991". The Department inadvertently set the impact date as January 1, 1991.

Signed in Washington, DC, this 30th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18650 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,978]

Mobil Research & Development Corporation (MRDC) Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Mobil Exploration and Producing Services, Incorporated (MEPSI), a/k/a Mobil Exploration & Production Technical Center, Headquartered in Dallas, TX and Operating at Other Sites in the Following States: TA-W-26,978A, California, TA-W-26,978B, Colorado, TA-W-26,978C, Kansas, TA-W-26,978D, Louisiana, TA-W-26,978E, New Mexico, TA-W-26,978F, Oklahoma, TA-W-26,978G, Texas and TA-W-26,978H.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 30, 1992 applicable to all workers of MEPSI at the locations indicated above. The notice was published in the Federal Register on May 19, 1992 (57 FR 21304).

New findings from the company show that workers at the Mobil Research and Development Corporation (MRDC) were integrated into production with Mobil Exploration & Producing, U.S. (MEPUS) whose workers are certified under TA-W-26,965; 26,966; 26,976; 26,977; 26,979 and 26,983. In 1992, MRDC experienced a decline from MEPUS for their services. As a result of the decline for MRDC services, MRDC was combined with MEPSI to form a new entity called Mobil Exploration Technical Center (MEPTECH) headquartered in Dallas, Texas.

The amended notice applicable to TA-W-26,978 is hereby issued as follows:

All workers of Mobil Exploration and Producing Services, Inc., (MEPSI) headquartered in Dallas, Texas and operating at various locations in California, Colorado, Kansas, Louisiana, New Mexico, Oklahoma and Texas and all workers of the Mobil Research & Development Corporation, Dallas, Texas (MRDC) and together with MEPSI also known as Mobil Exploration & Production Technical Center, (MEPTECH), Dallas, Texas who became totally or partially separated from employment on or after January 1, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

Signed at Washington, DC, this 30th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18651 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,050]

Murphy Exploration and Production Company New Orleans, LA and Diamond M-Odeco Drilling, Inc., Houston, TX and Operating in the States of Texas (TA-W-27,050A) and Louisiana (TA-W-27,050B); Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 19, 1992, applicable to all workers of Murphy Exploration and Production Company, New Orleans, Louisiana. The notice was published in the Federal Register on June 12, 1992 (57 FR 25060).

New information from the company shows that the Diamond M Corporation purchased the drilling division of Murphy Oil (Odeco) on January 31, 1992 and changed its name to Diamond M-Odeco Drilling, Inc. The Diamond M-Corporation was a contract driller for unaffiliated firms engaged in the production of crude oil or natural gas. The Diamond M Corporation experienced decreased revenues and employment in 1991 compared to 1990. Diamond M-Odeco Drilling, Inc., meets all the requirements for a successor-in-interest firm to the drilling division of Murphy Exploration and Production Company.

The intent of the Department's certification is to include all workers of Murphy Exploration and Production Company and its successors who were adversely affected by increased imports.

The amended notice applicable to TA-W-27,050 is hereby issued as follows:

All workers of Murphy Exploration and Production Company, New Orleans, Louisiana and its drilling division successor, Diamond M-Odeco Drilling, Inc., Houston, Texas and operating at other locations in the States of Texas and Louisiana who became totally or partially separated from employment on or after March 3, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18652 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-30-M

Advisory Panel for the Dictionary of Occupational Titles (APDOT); Renewal

In accordance with the provisions of the Federal Advisory Committee Act, after consultation with the General Services Administration, the Secretary of Labor has determined that the renewal of the Advisory Panel for the Dictionary of Occupational Titles (APDOT) is in the public interest.

The committee will provide advice to the Assistant Secretary for Employment and Training on the technical feasibility, advisability and practicality of methodologies, techniques, and systems for producing, publishing, and disseminating a new edition of the Dictionary of Occupational Titles (DOT). The committee will provide the Assistant Secretary with recommendations on these matters following its scheduled meetings.

The APDOT shall be comprised of representatives of the user community and interested entities who reflect the points of view of users including Government, vocational training, education, private sector including employers and academic communities. The members shall not be compensated and shall not be deemed to be employees of the United States by virtue of their membership in the APDOT.

The APDOT will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act.

Interested persons are invited to submit comments regarding the renewal of the Advisory Panel for the Dictionary of Occupational Titles (APDOT). Such comments should be addressed to Mr.

Robert J. Litman, Acting Director, U.S. Employment Services, Employment and Training Administration, U.S. Department of Labor, room N-4470, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 535-0157.

Signed at Washington, DC this 31st day of July, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-18647 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

This notice also amends a petition for modification in the **Federal Register**, dated June 29, 1992 (57 FR 28882) of application of mandatory safety standard to correct the company address as follows:

1. Red Oak Mining Company; Amendment

[Docket Nos. M-92-62-C and M-92-63-C]

Red Oak Mining Company, P.O. Box 210, Westover, Pennsylvania 16692 has filed petitions to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) and 30 CFR 75.326 (aircourses and belt haulage entries) for its South Mine (I.D. No. 36-07810) located in Cambria County, Pennsylvania. The petitioner proposes to use belt air at the faces on all present and future belt installations and states that the proposed method will provide no less than the same measure of protection as the standard.

2. The Pittsburgh & Midway Coal Mining Company

[Docket No. M-92-78-C]

The Pittsburgh & Midway Coal Mining Company, 6400 South Fiddler's Green Circle, Englewood, Colorado 80111 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its North River No. 1 Mine (I.D. No. 01-00759) located in Fayette County, Alabama. The petitioner proposes to use high-voltage cables to power longwall mining equipment. The petitioner states that the proposed method will guarantee no less than the same measure of protection as would the mandatory standard.

3. Laurel Run Mining Company

[Docket No. M-92-79-C]

Laurel Run Mining company, Star Route Box 425, Mt. Storm, WV 26739 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Portal No. 2 Mine (I.D. No. 46-04190) located in Grant County, Kentucky. The petitioner proposes to use belt air to ventilate the working face and to remove restrictions on the velocity of air in the belt entries and use a low-level carbon monoxide detection system to monitor the air in the belt entries. The petitioner states that the proposed method will provide the same measure of protection as would the mandatory standard.

4. Leeco, Inc.

[Docket No. M-92-80-C]

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741-8799 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Mine No. 63 (I.D. No. 15-16413) located in Perry County, Kentucky. The petitioner proposes to establish boundary lines 200 feet from adjacent abandoned mine workings, and 50 feet from abandoned areas in the mine with the coal lying between the boundary lines and the abandoned workings designated as the drill zone and horizontal test holes shall be drilled into the coal seam in advance of working faces within the drill zone. The petitioner states that the proposed method will provide a higher degree of safety to the miners than the would the mandatory standard.

5. Quemahoning Collieries

[Docket No. M-92-81-C]

Quemahoning Collieries, R. D. 1, Hooversville, Pennsylvania 15936 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mine No. 1 (I.D. No. 36-07446) located in Somerset County, Pennsylvania. The petitioner proposes to use belt air to ventilate the working face and install low-level carbon monoxide detection system in all belt entries. The petitioner states that the proposed method will provide no less than the same measure of protection than would the mandatory standard.

6. Quemahoning Collieries

[Docket No. M-92-82-C]

Quemahoning Collieries, R. D. 1, Hooversville, Pennsylvania 15936 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatice fire sensor and warning device systems; minimum requirements; general) to its Mine No. 1 (I.D. No. 36-07446) located in Somerset County, Pennsylvania. The petitioner proposes to install a low-level carbon monoxide detection system in all belt entries where a monitoring system identifies a sensor location instead of at each belt flight. The petitioner states that the proposed method will provide no less than the same measure of protection as would the mandatory standard.

7. Consolidation Coal Company

[Docket No. M-92-83-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Osage No. 3 Mine (I.D. No. 46-01455) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, the petitioner proposes to establish check points to test for methane and the quantity of air in the Old 8 West Return to the Statler air shaft instead of traveling the affected area in its entirety. The petitioner states that the proposed method will at all times guarantee no less than the same measure of protection to the miners of Osage No. 3 mine as would the mandatory standard.

8. Big Dog Coal Company, Inc.

[Docket No. M-92-84-C]

Big Dog Coal Company, Inc., P.O. Box 913, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas; adjacent Mines; drilling of boreholes) to its Mine No. 4 (I.D. No. 44-06638) located in Lee County, Virginia. The petitioner proposes to drill five holes in the face of the entry spaced at 5 feet intervals with one hole in each corner of the entry and 3 holes in the face of the entry and all will be drilled to a depth of 30 feet.

9. Westmoreland Coal Company

[Docket No. M-92-85-C]

Westmoreland Coal Company, P.O. Box 553, Charleston, West Virginia 25322 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Holton Mine (I.D. No. 44-04197) located in Lee County, Virginia. The petitioner requests that several provisions in MSHA's Decision and Order issued on October 30, 1990, for docket number M-89-114-C be amended.

10. Perchinski Coal Company

[Docket No. M-92-86-C]

Perchinski Coal Company, 1118 Brock Street, Ashland, Pennsylvania has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Perchinski Slope No. 2 Mine (I.D. No. 36-08302 located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) with an increased rope strength/safety factor and secondary safety rope connection to transport persons instead of using safety catches or other no less effective devices.

11. Hecla Mining Company

[Docket No. M-92-08-C]

Hecla Mining Company, Box C-8000, Coeur d'Alene, Idaho 83814-1931 has filed a petition to modify the application of 30 CFR 57.12013 (splices and repairs of power cables) to its Lucky Friday Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petitioner proposes to use 120 volt terminations on its pull bottles and use a nonconductive fastener such as a wire nut connector to troubleshoot and replace pull bottles when they breakdown. The petitioner states that the proposed provision of the mandatory standard will guarantee no less than the measure of protection as the standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 8, 1992. Copies of these petitions are available for inspection at that address.

Dated: July 30, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-18653 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 8, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202)-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93-95 Theater Program: Support to Individuals Application Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals.

Use: Guideline instructions and applications elicit relevant information from individuals that apply for funding under the Theater Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 445.

Average Burden hours Per Response: 14.2.

Total Estimated Burden: 6,360.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92-18613 Filed 8-5-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NEA.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by August 31, 1992, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by August 25, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 Theater Program: Support to Organizations Application Guidelines.

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit arts organizations that apply for funding under the Theater Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 507.

Average Burden Hours per Response: 40.3.

Total Estimated Burden: 20,436.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92-18615 Filed 8-5-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting;

Date and Time: August 25, 1992; 8:30 a.m. to 5 p.m.

Place: Room 540B, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Devendra P. Garg, Program Director, 1800 G Street, NW., rm. 1108, Washington, DC, 20550. Telephone: (202) 357-9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR proposals submitted to the Dynamic Systems and Control Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 3, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-18654 Filed 8-5-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974; Minor Revisions to Systems of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision of systems of records.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its Privacy Act Systems of Records to divide NRC-18, "Investigative Offices Index, Files, and Associated Records—NRC," into two separate systems of records. One system of records will retain the former number, NRC-18, and will be entitled "Office of the Inspector General Index File and Associated Records—NRC." The second system of records, NRC-23 will be entitled "Office of Investigations Indices, Files, and Associated Records—NRC." This action is being taken to distinguish the functions of each office and the types of records found in each system of records, and to adopt the National Archives and Records Administration (NARA) requirements for the retention and disposal of each office's records.

EFFECTIVE DATE: The revised systems of records will become effective without further notice on September 8, 1992, unless comments received on or before that date cause a contrary decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments may be examined at the NRC Public Document Room at 2120 L Street, NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sarah N. Wigginton, Acting Chief, Freedom of Information/LPDR Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555, Telephone: 301-492-8133 or toll free 800-368-5642.

SUPPLEMENTARY INFORMATION: The Inspector General Act, originally passed in 1978, was amended in 1988 (Pub. L. 100-504) to add five new Inspectors General (IG) to selected Federal agencies. The NRC was one of the five agencies designated to receive a statutory IG. The responsibilities of the former NRC Office of Inspector and Auditor (OIA) were transferred to the new OIG.

The need to separate the dual system was identified in order to distinguish the functions of each office and the types of records found in each system of records, and to reflect NARA retention and disposition schedules for IG and OI records. NRC-18 and NRC-23 retain the (k)(1), (k)(2), and (k)(6) exemptions that were approved when NRC-18 was published as a duel system on September 18, 1986 (51 FR 33150 and 33158) and retained when the entire systems of records were republished on August 20, 1990 (55 FR 33970).

1. NRC-18, Office of the Inspector General Index File and Associated Records—NRC, supersedes the former NRC-18, Investigative Offices Index, Files, and Associated Records—NRC, and is being revised to read as follows:

NRC-18

SYSTEM NAME:

Office of the Inspector General Index File and Associated Records—NRC.

SYSTEM LOCATION:

Office of the Inspector General, NRC, 4350 East West Highway, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual cases and matters of concern to the Office of the Inspector General and correspondents on subjects directed or referred to the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEMS:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records that are arranged by subject matter, title, or identifying number(s) or letter(s). The system incorporates the records of all Office of the Inspector General correspondence, cases, matters, memoranda, and materials, including, but not limited to, audit reports, investigative reports, inspection reports, correspondence to and from the Office of the Inspector General, memoranda, legal papers, evidence, exhibits, audit data, investigative data, and work papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, Pub. L. 100-504 (1988); 42 U.S.C. 2035(c), 2201(c), and 5841(f)(1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency

or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant.

b. A record in the system of records relating to a case or matter falling within the purview of the Office of the Inspector General that has been referred for audit, inspection, or investigation may be disclosed as a routine use to the referring agency, group, organization, or individual of the status of the case or matter or of any decisions or determinations that have been made.

c. A record in the system of records relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual.

d. A record in the system of records relating to a case or matter may be disclosed as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States.

e. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

f. A record in the system of records in the nature of an audit, inspection, or investigation report relating to the integrity and efficiency of the Commission's operation and management may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations.

g. A record in the system of records may be disclosed for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from index cards or indices by the name or identifier of the individual or entity and from the jackets or files by number(s) and/or letter(s) assigned and appearing on the index cards or indices.

SAFEGUARDS:

The index is maintained in approved security containers and lockable filing cabinets; and the indices, associated records, disks, tapes, etc., are located in lockable metal filing cabinets, safes, storages rooms, or similar secure facilities. All records under visual control during duty hours and available only to authorized personnel who have a need to know and whose duties require access to the information.

RETENTION AND DISPOSAL:

a. *Investigative Case Files.*

a. Files containing information or allegations that are of an investigative nature but do not related to a specific investigation—Destroy when 5 years old.

2. All other investigative files, except those that are usually significant—Place in inactive file when case is closed. Cut off inactive file at end of fiscal year. Destroy 10 years after a cutoff.

3. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures)—To be determined by the National Archives and Records Administration on a case-by-case basis.

b. *Audit and Related Case Files.* Cut off at end of fiscal year in which case is closed. Destroy 8 years after cutoff.

c. *Index/Indices.* Destroy or delete with the related records or sooner if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORDS ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will be maintained pursuant to the Commission's Policy Statement on Confidentiality, Management Directive 8.8, "Management of Allegations" (formerly NRC Manual Chapter 0517), and other procedures concerning confidentiality as determined by the Inspector General and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; employees of Federal, State, local, and foreign agencies; and other persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

2. NRC-23, Office of Investigations Indices, Files, and Associated Records—NRC, contains OI information formerly contained in the superseded former NRC-18, and is being added to read as follows:

NRC-23

SYSTEM NAME:

Office of Investigations Indices, Files, and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Investigations, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual cases and matters of concern to the Office of Investigations and correspondents on subjects directed or referred to the Office of Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical and numerical index files bearing individual names and identifiers, and a numerical index of case numbers. These indices provide access to associated records that are arranged by subject matter, title, or identifying number(s) or letter(s). The system incorporates the records of all office of Investigations correspondence, cases, memoranda, materials including, but not limited to, investigative reports, confidential source information, correspondence to and from the Office of Investigations, memoranda, fiscal data, legal papers, evidence, exhibits, technical data, investigative data, work papers, and management information data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2035(c), 2201(c), and 5841(f) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant.

b. A record in the system of records relating to a case or matter falling within the purview of the Office of Investigations may be disclosed as a routine use to the referring agency, group, organization, or individual of the status of the case of matter or of any decisions or determinations that have been made.

c. A record in the system of records relating to an individual held in custody pending arraignment, trial, or sentence, or after a conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual.

d. A record in the system of records relating to a case or matter may be disclosed as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States.

e. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

f. A record in the system of records may be disclosed for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is manually stored on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from indices by the name or identifier of the individual or entity, and from the files by number(s) and/or letter(s) assigned and appearing in the indices.

SAFEGUARDS:

The index is maintained in approved security containers and lockable filing cabinets; and the indices, associated records, disks, tapes, etc., are located in lockable metal filing cabinets, safes, storage rooms, or similar secure facilities. All records are under visual control during duty hours and are available only to authorized personnel who have a need to know and whose duties require access to the information.

RETENTION AND DISPOSAL:

a. Inquiry case files—Retain closed inquiry case files in office for 2 years, then retire to the office of Information Resources Management. Destroy 10 years after cases are closed.

b. Investigation Case Files:

1. Significant headquarters official case files (received media attention, were of significant interest to Congress, involved extensive litigation, etc.) are retained by the government permanently. Hold in office for 2 years after closing, then retire to the Office of Information Resources Management. Transfer closed case files in 10-year blocks to the National Archives.

2. Other headquarters official case files—Hold in office 2 years after closing, then retire to the Office of Information Resources Management. Destroy 10 years after cases are closed.

3. Regional office or investigator working files—Retained in regional files for 6 months. At the end of 6 months, they are forwarded to headquarters and combined with the headquarters files.

c. Index/Indices—Destroy or delete with related records or sooner if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will be maintained pursuant to the Commission's Policy Statement on Confidentiality, Management Directive 8.8, "Management of Allegations" (formerly NRC Manual Chapter 0517), and the procedures covering confidentiality in Chapter 7 of the Office of Investigations Procedures Manual and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; and other persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

Dated at Rockville, MD, this 24th day of July 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-18657 Filed 8-5-92; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.34, "Monitoring Criteria and Methods To Calculate Occupational Radiation Doses," provides criteria acceptable to the NRC staff that may be used by licensees to determine when monitoring is required. The guide also describes methods acceptable to the NRC staff for calculating occupational radiation doses when the intake is known.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the

current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23d day of July 1992.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 92-18656 Filed 8-5-92; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.36, "Radiation Dose to the Embryo/Fetus," provides guidance on methods acceptable to the NRC staff for calculating radiation dose to an embryo/fetus.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price.

Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23d day of July 1992.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 92-18655 Filed 8-5-92; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Open Yucca Mountain Tour

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987 (Public Law 100-203), the Board will be taking a bus tour of the Yucca Mountain site on Friday, October 16, 1992. The tour, which is open to the public, will be conducted by the U.S. Department of Energy (DOE). The purpose of the tour is to update Board members on site-characterization activities being performed by the DOE and its contractors at Yucca Mountain. The tour will begin at the Valley Bank Center, 101 Convention Center Drive, Las Vegas, Nevada, at 7 a.m. and return to the Valley Bank Center at approximately 6 p.m.

All who wish to join the tour must provide the following information to Paula Alford, (703) 235-4473 or FAX (703) 235-4495.

1. Full name (e.g.-Frank B. Randall, Jr.).
2. Social security number.
3. Date of birth (month, day, and year).
4. Place of birth (city and state, or country if non-U.S.).
5. Country of citizenship (indicate U.S. or actual country).

U.S. citizens must call or fax their data to Ms. Alford by September 30, 1992. Non-U.S. citizens must call or fax their data to Ms. Alford by September 16, 1992.

Absolutely no one will be registered for the tour after the applicable cutoff dates.

Those who attend the tour must provide their own lunch and beverage. The DOE will provide ice chests and water during the tour. Recommended clothing for the tour includes a jacket or raingear, sturdy walking shoes, a hat, and sunscreen lotion.

The Nuclear Waste Technical Review Board was created by Congress in the NWPAA to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for that waste.

For further information, contact Paula N. Alford, Director, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: August 3, 1992.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 92-18634 Filed 8-5-92; 8:45 am]

BILLING CODE 6820-AM-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final wildlife amendments to the Columbia River Basin Fish and Wildlife Program (Bonneville, The Dalles, John Day and McNary Dams).

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then. In 1989, the Council amended the program to establish wildlife mitigation goals and a process for adopting wildlife loss estimates developed by wildlife agencies and Indian tribes as starting points for wildlife mitigation measures. To be used as starting points, loss estimates must first be amended into the Council's program.

On March 10, 1991, the Council voted to initiate proceedings pursuant to section 4(d)(1) of the Northwest Power Act to consider amending the program to include wildlife loss estimates for the

Bonneville, The Dalles, John Day and McNary hydroelectric projects. Comments were received through November 7, 1991, and hearings were held in Idaho, Montana, Oregon, and Washington.

FINAL ACTION: The Council adopted the proposed amendments at its February 11, 1992 meeting.

FOR FURTHER INFORMATION CONTACT: The final amendments and a response to public comments are available on request (request document number 92-11). In addition, the Council's wildlife mitigation process is explained in a document called "Wildlife Mitigation Rule and Response to Comments," document number 89-35. The loss estimates, entitled "Wildlife Impact Assessment, Bonneville, McNary, The Dalles, and John Day Projects" are also available upon request. Those wishing to receive copies of any of these papers should contact the public affairs division in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, telephone 503-222-5161, or toll free in Idaho, Montana, Oregon and Washington 800-222-3355.

Edward Sheets,

Executive Director.

[FR Doc. 92-18666 Filed 8-5-92; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Affairs, Washington, DC 20549.

Revision

Regulation 14A File No. 270-56

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval proposed revisions to Regulations 14A which sets forth rules governing the solicitation of proxies. Regulation 14A, as revised, would affect approximately 8,733 filers and cause filers to incur an average estimated burden of 92 hours per response.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, (PRA Project No. 3235-0059), Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 28, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18608 Filed 8-5-92; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash, (202) 272-2142

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Affairs, Washington, DC 20549

Extensions

Regulation S, File No. 270-315
Form 144, File No. 270-112
Form N-2, File No. 270-21

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval extensions on the following:

Form 144 affects approximately 31,136 filers and results in 62,672 total annual burden hours.

Regulation S is assigned one burden hour for administrative convenience since the regulation does not impose any burden with respect to the collection of information.

Form N-2 affects approximately 120 filers and results in 195,600 total annual burden hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, (PRA Project Nos. 3235-0101, 3235-0357 and 3235-0026), Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Margaret H. McFarland,

Deputy Director.

[FR Doc. 92-18667 Filed 8-5-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18874; 812-7772]

Daily Money Fund, et al.; Application

July 30, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Daily Money Fund; Daily Money Fund II, Daily Tax-Exempt Money Fund; Fidelity Special Situations Fund; Fidelity Beacon Street Trust; Fidelity Broad Street Trust; Fidelity California Municipal Trust; Fidelity California Municipal Trust II; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Trust; Fidelity Commonwealth Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Recovery Fund; Fidelity Corporate Trust; Fidelity Court Street Trust; Fidelity Court Street Trust II; Fidelity Delaware Trust; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Destiny Portfolios; Fidelity Devonshire Trust; Fidelity Diversified Trust; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Franklin Street Trust; Fidelity Fund; Fidelity Government Securities Fund; Fidelity Income Fund; Fidelity Income Trust; Fidelity Institutional Cash Portfolios; Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Institutional Trust; Fidelity Institutional Investors Trust; Fidelity Investment Series; Fidelity Investment Trust; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Municipal Trust; Fidelity Money Market Trust; Fidelity Money Market Trust II; Fidelity Mt. Vernon Street Trust; Fidelity Municipal Trust; Fidelity Municipal Trust II; Fidelity New York Municipal Trust; Fidelity New York Municipal Trust II; Fidelity Oliver Street Trust; Fidelity

Puritan Trust; Fidelity Securities Fund; Fidelity Securities Trust; Fidelity Select Portfolios; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Trend Fund; Fidelity Union Street Trust; Fidelity Union Street Trust II; Fidelity U.S. Investments-Bond Fund, L.P.; Fidelity U.S. Investments-Government Securities Fund; L.P.; Fidelity Yen Performance Portfolio, L.P.; Spartan U.S. Treasury Money Market Fund; Tax-Exempt Portfolios; Variable Insurance Products Fund; Variable Insurance Products Fund II; Zero Coupon Bond Fund (each of the foregoing investment companies are collectively referred to herein as the "Trusts"); each series of a Trust; and all other investment companies or series thereof for which Fidelity Management & Research Company ("FMR"); Fidelity Distributors Corporation ("FDC"); National Financial Services Corporation ("NFSC"), or their subsidiaries or affiliates, act or will in the future act as investment adviser or principal underwriter;[1] FMR; FDC; and NFSC.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) of the Act to permit the issuance and sale of an unlimited number of classes of securities by the Funds. These classes would be identical in all respects except for differences related to expenses incurred solely by a particular class of Fund shares, voting rights, certain exchange privileges, and class designation.

FILING DATES: The application was filed on August 12, 1991 and was amended on November 25, 1991, April 28, 1992, and July 27, 1992.

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 August 24, 1992, 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 5th Street NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272-7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicants seek a conditional order under section 6(c) of the Act on behalf of each Trust and each of its series and all other investment companies or series thereof for which FMR, FDC, or NFSC, or their subsidiaries or affiliates, act or will in the future act as investment adviser or principal underwriter (said Trusts and series thereof, and said other investment companies and series thereof are collectively referred to herein as "Funds" and individually as a "Fund").

2. Certain of the Trusts currently are organized as business trusts under the laws of either the Commonwealth of Massachusetts or the State of Delaware. Each such Trust that is organized in Massachusetts is registered under the Act. It is expected that each such Trust that is organized as a Delaware business trust will be registered under the Act in the near future.[2] Most of the Trusts are series companies and may issue one or more series.

3. FMR, a registered investment adviser, acts as each Fund's investment manager and provides the Funds with administrative services. FMR is a wholly owned subsidiary of FMR Corp., a holding company. FDC, a direct subsidiary of FMR Corp., acts as the distributor of all the Funds, other than the three Funds for which NFSC, an indirect subsidiary of FMR Corp., serves as distributor.

4. The Funds currently are offered and sold to customers consisting of the general public, as well as institutional investors. Shares of beneficial interest ("Shares") of some of the Funds are sold with an initial sales charge with scheduled variations in accordance with applicable provisions of rule 22d-1 under the Act. In addition, some Funds have adopted a rule 12b-1 plan under the Act providing for the use of up to .65 of 1% of their respective net assets annually to aid in the distribution of Fund Shares. These currently issued and outstanding Shares are hereinafter referred to as the "Existing Shares."

5. As a result of increased segmentation of the market for mutual funds, applicants believe that it is imperative that the Funds be able to tailor their services and expenses, to the extent possible, to the needs of the particular investor. To accomplish this, and to expand their marketing alternatives, the Funds are contemplating the creation of new shares.

6. Each Fund may create and offer an unlimited number of different classes of Shares ("New Shares") in connection with (a) a distribution plan adopted pursuant to rule 12b-1 under the Act ("12b-1 Plan"); and/or (b) a non-rule 12b-1 Shareholder services plan ("Shareholder Services Plan"); or (c) no 12b-1 Plan or Shareholder Services Plan. The New Shares offered subject to the 12b-1 Plan and the Shareholder Services Plan are hereinafter referred to as the "12b-1 Shares" and the "Shareholder Services Plan Shares," respectively. The 12b-1 Plan and the Shareholder Services Plan are sometimes collectively referred to herein as "Plans." All classes of Shares issued by the Funds in connection with any order granted in response to the application will comply with all representations and conditions contained therein.

7. Under each type of Plan, the Fund would enter into servicing agreements ("Service Agreements") with banks, brokerdealers, or other institutions ("Service Organizations") under which the Service Organizations would provide certain account administration services to their customers who from time to time beneficially own Shares offered in connection with a particular Plan or Plans.

8. The personal and account maintenance services to be provided by Service Organizations to their customers under a Shareholder Services Plan may include, but are not limited to, the following: Acting as the sole shareholder of record and nominee for all shareholders; maintaining account records for each shareholder who beneficially owns Shareholder Services Plan Shares; opening and closing accounts; answering questions and handling correspondence from shareholders about their accounts;

[1] Certain existing Trusts do not presently intend to rely on the requested relief and have not signed the application. In the future, such Trusts may rely on any order granted pursuant to the application if they determine to create multiple classes of shares in accordance with the representations and conditions in the application.

[2] In addition, certain of the Trusts are organized as limited partnerships. It is intended that the requested order apply to these Trusts, and any similar partnership organized in the future, in anticipation of their future reorganization into either business trust or corporate forms.

processing shareholder orders to purchase, redeem, and exchange Shareholder Services Plan Shares; posting interest; handling the transmission of funds representing the purchase price or redemption proceeds; issuing confirmations for transactions in Shareholder Services Plan Shares by shareholders; distributing current copies of prospectuses and shareholder reports; assisting customers in completing application forms, selecting dividend and other account options, and opening custody accounts with the Service Organization; providing account maintenance and accounting support for all transactions; and similar personal services and/or shareholder account maintenance services as may be agreed to by the Service Organization in the future (collectively, the "Shareholder Services Plan Services").

9. The distribution-related services to be provided by Service Organizations to the Funds and/or their customers under the 12b–1 Plan of a Fund may include, but are not limited to, the following: advertising the availability of services and products; designing material to send to customers and developing methods of making such materials accessible to customers; providing information about the product needs of customers; providing facilities to solicit Fund sales and to answer questions from prospective and existing investors about the Fund; receiving and answering correspondence from prospective investors, including requests for sales literature, prospectuses, and statements of additional information; displaying and making sales literature and prospectuses available on the Service Organization's premises; acting as liaison between shareholders and the Fund, including obtaining information from the Fund, and providing performance and other information about the Fund; and providing additional personal services and/or shareholder account maintenance services like those listed above as Shareholder Services Plan Services or additional distribution-related services as may be agreed to by the Service Organization in the future (collectively, the "12b–1 Plan Services"). The Service Agreement would further provide for compensation to broker-dealers for their efforts to sell the 12b–1 Plan Shares to their brokerage customers and prospective customers.

10. The provision of Shareholder Services Plan Services and 12b–1 Plan Services under the Plans would augment (and not be duplicative of) the services to be provided to each fund by its investment adviser and distributor and by the party which provides custody and recordkeeping services to each particular Fund. In addition, in the event that a Fund adopts both a Shareholder Services Plan and a 12b–1 Plan, the Trustees will assure that, to the extent that the Plans may be deemed to overlap in some respects, compensation shall not be duplicative as the result of the use of both Plans.

11. Under each type of Plan, the Funds would pay a Service Organization for its services and assistance in accordance with the terms of the Plan and the particular Service Agreement. Such payments are hereinafter referred to as "Service Payments." The expense of such payments would be borne entirely by the beneficial owners of the class of New Shares of the fund to which the Service Agreement relates.

12. Service Payments paid to a Service Organization pursuant to a 12b–1 Plan would not exceed the amount permitted under applicable regulations of the National Association of Securities Dealers, Inc. ("NASD"). Currently the amount of Service Payments under a 12b–1 Plan is expected to be up to .65% per annum of the average daily net asset value of the 12b–1 Plan Shares. The level of payments permitted under the 12b–1 Plan shall be changed only pursuant to approval by the shareholders of the affected class of a Fund. Service Payments pursuant to a Shareholder Services Plan would not exceed the amount permitted under applicable NASD regulations. Currently, such Service Payments are expected to be up to .25% per annum of the average daily net asset value of those shares beneficially owned by customers of the bank, trust company, or other financial institution with respect to which personal and account maintenance services are performed under a Shareholder Service Plan. The Service Payments would not be increased over the above limits unless the Commission in the future approves regulations promulgated by the NASD authorizing higher payments.

13. Each New Share or Existing Share in a particular Fund would represent, regardless of class, an interest in the same portfolio of investments of the Fund and would have identical voting, dividend, liquidation, and other terms and conditions, except that: (a) Each class of New Shares would have a different class designation; (b) each class of New Shares offered in connection with a Plan would bear the expense of the Service Payments that would be made under the Service Agreements that have been entered into with respect to such class; (c) each class of New Shares also could bear certain other expenses that are directly attributable only to the class, including (i) transfer agent fees identified by applicants as being attributable to a specific class of Shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholders reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of Shares; (iv) SEC registration fees incurred by a class of Shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) trustees' fees or expenses incurred as a result of issues relating to one class of Shares; and (vii) accounting expenses relating solely to one class of Shares (collectively referred to herein as "Class Expenses"); (d) only the holders of the New Shares of the class or classes involved would be entitled to vote on matters pertaining to a Plan and any related agreements relating to such class or classes; [3] and (e) each class would have different exchange privileges. No Class Expenses other than those enumerated above would be charged without obtaining an amendment of the exemptive order requested in the application.

14. The gross income of all Funds will be allocated among the classes of Shares on the basis of the relative applicable net asset values. Expenses of the Trusts that have established multiple portfolios that cannot be attributed directly to any one Fund ("Trust Expenses") generally will be allocated to each Fund based on the relative net assets of such Fund.[4] Certain expenses may be attributable to a particular Fund, but not a particular class ("Fund Expenses"). All such Fund Expenses incurred by a Fund would be borne on the basis of the relative net asset values of the classes of that Fund, except for the Service Payments that are made under a Plan that has been adopted in connection with a class of Shares and except for Class Expenses. Finally, Class Expenses may be attributable to a

[3] Shares offered in connection with the Shareholder Services Plan will not necessarily be accorded the voting rights specified in rule 12b-1, although the trustees may approve a Shareholder Services Plan with such rights. If an issue relating to a Plan, or a Service Agreement related thereto, is submitted to a vote of shareholders, only the holders of the Shares of the class or classes affected by the Plan or Service Agreement would be entitled to vote.

[4] From time to time, the Trusts may allocate expenses among Funds using alternative methods, including allocation based on the number of shareholders of each Fund.

particular class of Shares of a Fund. All Class Expenses incurred by a class of Shares would be borne on a *pro rata* basis by the outstanding Shares of such class.

15. Because of the Service Payments and Class Expenses that may be borne by each class of Shares, the net income of (and dividends payable to) each class may be different than the net income of (and dividends payable to) the other classes of Shares in the same Fund. Dividends paid to each class of Shares in a Fund would, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the expenses of Service Payments and Class Expenses, would be determined in the same manner and paid in the same amounts. In the case of each of the Funds that are not money market funds, which do not maintain a constant net asset value per share, and do not declare dividends on a daily basis, the net asset value per share of the classes of Shares of the Fund will vary.

16. Except as noted below, each class of Shares may be exchanged only for Shares of the same class in another Fund within the same "group of investment companies" as that term is defined in rule 11a-3(a) under the Act. Shares of each Fund within the same group of investment companies will be exchangeable for shares of each of the other Funds within that group with the same characteristics. This privilege would apply irrespective of whether the shares in question are newly created 12b-1 Plan Shares or Shareholder Services Plan Shares, or Existing Shares with those characteristics. Accordingly, for example, Existing Shares subject to a rule 12b-1 plan of one Fund would be exchangeable for newly-created 12b-1 Plan Shares of another Fund. Notwithstanding the foregoing, exchanges will be permitted among different classes should a shareholder cease to be eligible to purchase Shares of the original class by reason of a change in the shareholder's status.

Applicants' Legal Analysis

1. Applicants request an exemptive order pursuant to section 6(c) of the Act because the proposed issuance and sale of New Shares might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act. The creation of the New Shares may result in Shares of a class having "priority over [another] class as to * * * payment of dividends" and having unequal voting rights because, under the proposed arrangement, certain classes of Shares in the same Fund would bear the expense of Service Payments and Class Expenses and would enjoy exclusive voting rights with respect to matters concerning the Plans.

2. Applicants believe that the proposed allocation of expenses and voting rights relating to the Plans is equitable, and would not discriminate against any group of shareholders. Although investors purchasing shares offered in connection with a Plan would bear the costs associated with the related services, they would also enjoy the benefits of those services and, in the case of Rule 12b-1 Plan Shares, exclusive shareholder voting rights with respect to matters affecting such Plan. Conversely, investors purchasing Shares that are not covered by such Plan would not be burdened with such expenses, or enjoy such voting rights.

3. Applicants believe that by offering New Shares in connection with Plans as described above, and also by creating and offering Shares independently of Plans, the Funds may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors. If New Shares are created and Plans adopted as described, the Funds will be able to address more precisely the needs of the particular investors and cause the associated expenses to be borne by such investors. Applicants acknowledge that this objective might be achieved through the organization of new investment portfolios, but believe that it would be inefficient and economically unfeasible to organize a separate investment portfolio for each class of Shares created. Applicants assert that not only would unnecessary accounting, bookkeeping, and legal costs be incurred in organizing and operating such new portfolios, but the management of the new portfolios, as well as any existing portfolios, might be hampered. For these reasons, the Funds seek to create new classes of Shares, rather than new portfolios.

4. Applicants maintain that the proposed arrangement does not involve borrowing, and does not affect the Funds' existing assets or reserves. Nor would the proposed arrangement increase the speculative character of the Shares of a Fund, since all Shares of a Fund will participate in all of the Fund's appreciation, income, and all of the Fund's expenses (with the exception of the proposed Service Payments and Class Expenses) on the basis of the relative applicable net assets of the classes.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Each class of Shares of a Fund will represent interests in the same portfolio of investments, and be identical in all aspects, except as set forth below. The only differences between the classes of Shares of a Fund will relate solely to one or more of the following: (a) The method of financing certain Class Expenses, which are limited to any or all of the following (i) transfer agent fees identified by applicants as being attributable to a specific class of Shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of Shares; (iv) Commission registration fees incurred by a class of Shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) trustees' fees or expenses incurred as a result of issues relating solely to one class of Shares; and (vii) accounting expenses relating to one class of Shares; (b) expenses assessed to a class pursuant to a Shareholder Services Plan and/or 12b-1 Plan with respect to a class; (c) the fact that the classes will vote separately with respect to the Fund's Shareholder Services Plan and/or 12b-1 Plan; (d) the different exchange privileges of the classes of Shares; and (e) the designation of each class of Shares of a Fund. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of Shares shall not be so allocated until approved by the Commission pursuant to an amended order.

2. The trustees of the Trusts, including a majority of the independent trustees, will approve the offering of different classes of Shares (the "Multi-Class System") prior to the implementation of that system by a particular Fund. The minutes of the meetings of the trustees of the Trusts regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class System is in the best interest of both the Funds and their shareholders.

3. The initial determination of the Class Expenses that will be allocated to

a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the boards of trustees of the Trusts including a majority of the trustees who are not interested persons of the Trusts. Any person authorized to direct the allocation and disposition of monies paid or payable by the Funds to meet Class Expenses shall provide to the boards of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of the Trusts pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts among the interests of the classes of Shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Fund's distributor and advisor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Fund's distributor and advisor at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. Any 12b-1 Plan adopted or amended to permit the assessment of a rule 12b-1 fee on any class of Shares which has not had its rule 12b-1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of Shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective, or within such other period as required by the Commission staff via undertaking in the registration statement relating to such class, or, if applicable, in the amendment to the registration statement offering such class.

6. The distributor of each Fund will adopt compliance standards as to when each class of Shares may be sold to particular investors. Applicants will require all persons selling Shares of the Funds to agree to conform to such standards.

7. The Shareholder Services Plans will be adopted and operated in accordance with the procedures set forth in rule 12b-1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1. In evaluating the Shareholder Services Plans, the trustees will specifically consider whether (a) such Plans are in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Shareholders Services Plans are required for the operation of the applicable classes, (c) the Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Funds, providing similar services, and (d) the fees for such services are fair and reasonable in the light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

8. Each Service Agreement entered into pursuant to a Shareholder Services Plan will contain a representation by the Service Organization that any compensation payable to the Service Organization in connection with the investment of customers' assets in the Funds (a) will be disclosed by it to the customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Service Organization.

9. Each Service Agreement entered into pursuant to a Shareholder Services Plan will provide that, in the event an issue pertaining to a Shareholder Services Plan is submitted for shareholder approval, the Service Organization will vote any Shares held of its own account in the same proportion as the vote of those Shares held for its customers' accounts.

10. The trustees will receive quarterly and annual statements concerning the amounts expended under the Shareholder Services Plans and 12b-1 Plans and the related Service Agreements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of Shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

11. Dividends paid by a Fund with respect to each class of its Shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Service Payments made by a class under a Plan and any Class Expenses will be borne exclusively by that class.

12. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission staff upon written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an associate Director, the Chief Accountant, the Chief Financial Analyst, and Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and ongoing reports would be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

13. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of Shares and the proper allocation of expenses among the classes of Shares and this representation has been concurred with by the Expert in the initial report referred to in condition (12) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition

(12) above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

14. The prospectuses of each class of Shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund Shares may receive different compensation with respect to one particular class of Shares over another in the Funds.

15. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Trusts with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the trustees.

16. The Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of Shares in every prospectus, regardless of whether all classes of Shares are offered through each prospectus. The Funds will disclose the respective expenses and performance data applicable to all classes of Shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of Shares, it will also disclose the respective expenses and/or performance data applicable to all classes of Shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds's net asset value or public offering price will present each class of Shares separately.

17. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization of or acquiescence in any particular level of payments that any Fund may make pursuant to its Rule 12b-1 Plan or Shareholder Services Plan in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18668 Filed 8-5-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1665]

Shipping Coordinating Committee; Maritime Safety Committee and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, December 2, 1992, in room 2415, at US Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations, including the discussion of papers received and draft U.S. positions, for the 61st Session of the Maritime Safety Committee (MSC) and associated bodies of the International Maritime Organization (IMO) which is scheduled for December 7-11, 1992, at IMO Headquarters in London. In addition, the SHC will discuss draft U.S. positions for the IMO working group on strategy for port interface which is scheduled to meet December 14-16, 1992, at IMO headquarters.

Among other issues, items of particular interest are:

—Consideration and adoption of amendments to Safety of Life at Sea '74 and related codes.

—Reports of Technical Sub-Committees.

—Flag State compliance.

—Role of the human element in maritime casualties.

—Construction and safety aspects of oil tankers and bulkers

—Marine transport of radioactive materials.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Gene F. Hammel, U.S. Coast Guard (G-CI), room 2114, 2100 Second Street, SW., Washington, DC 20593 or by calling (202) 267-2280.

Dated: July 6, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92-18585 Filed 8-5-92; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 92-36; Notice 2]

Koito Manufacturing Co., Ltd.; Receipt of Petition for Determination of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Correction.

SUMMARY: On July 29, 1992, NHTSA published in the **Federal Register** a notice of receipt of a petition from Koito Manufacturing Co., Ltd. for determination of Inconsequential Noncompliance with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment," Federal Motor Vehicle Safety Standard (FMVSS) No. 108. (57 FR 33543) This notice corrects the docket number to read "[Docket No. 92-36; Notice 1];" the July 29, 1992, notice had read "[Docket No. 92-35; Notice 1]."

Issued on: July 31, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-18627 Filed 8-5-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-16; Notice 2]

Determination That Nonconforming 1989 Mitsubishi Galant Super Salon Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1989 Mitsubishi Galant Super Salon passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1989 Mitsubishi Galant Super Salon passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1989 Mitsubishi Galant), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective on August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer R-90-009), petitioned NHTSA to determine whether 1989 Mitsubishi Galant Super Salon passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 3, 1992 (57 FR 13790), to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 13 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Mitsubishi Galant Super Salon is substantially similar to a 1989 Mitsubishi Galant originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 31, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-18635 Filed 8-5-92; 8:45 am]

BILLING CODE 4910-59-M

Denial of Motor Vehicle Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

The Center for Auto Safety (CAS) petitioned the agency on April 1, 1992, to order owner notification and remedy of 1985 and later Coachmen motorhomes "that have the hot exhaust pipe extending directly out from under the (fuel) filler pipe." CAS suggested that during the filling of the fuel tank, fuel could spill onto the hot pipe and vaporize, creating a fire hazard, if an ignition source is present. CAS first petitioned the agency to order the recall of these vehicles in July 1985.

In 1985, the agency denied the CAS petition for the following reasons:

1. Past testing indicated that gasoline will not ignite when spilled on a hot surface such as a tailpipe.
2. Motor vehicles should not be refueled with the engine running.
3. Several hundred thousand vehicles produced by Chrysler, Ford, and General Motors had been produced over a number of years prior to 1985, with the fuel filter located above the tailpipe. Agency files failed to identify motorhomes or vans which experienced a fire caused by gasoline dripping onto tailpipes.

CAS filed this current petition, based on the following NHTSA statement, that appeared in the Comments of the National Highway Traffic Safety Administration Regarding The September 26, 1991 Statement of Clarence M. Ditlow, Director, Center for Auto Safety, Before the U.S. Environmental Protection Agency, October 25, 1991. The tests referred to below are the tests mentioned in reason number 1 above.

The tests referred to by CAS were conducted over 15 years ago. The test temperatures were much lower than those experienced in late model vehicles that have to comply with much more stringent emission standards. The criteria used in 1985 is not sufficient for the basis of decisions made today, given what is now known about operating conditions and temperatures of modern engines and exhaust systems * * *. Exhaust system temperatures have been measured over the last 5 years and are now often 600 to 700 degrees hotter than common exhaust temperatures of 10 years ago.

The petitioner noted that Coachmen was building motorhomes with the tailpipe exiting under the fuel filler after 1985, and that more stringent EPA regulations have been in effect with regard to motorhome conversion vans since 1985. Therefore, the petitioner speculated that gasoline may be dripping onto tailpipes with temperatures in the 1,200 to 1,400 degree Fahrenheit (F) temperature range, thereby presenting a risk of fire. The facts, as discussed below, demonstrate that this is not the case.

A motor vehicle exhaust system is composed of five basic components: the exhaust manifold, the exhaust pipe, the catalytic converter, the muffler, and the tailpipe. The *exhaust pipe* is the section of tubing of the exhaust system that runs from the engine exhaust manifold to the entrance into the muffler or catalytic converter. It is this section of a modern exhaust system, along with the exterior surface of the catalytic converter, where the highest temperatures occur. The section of tubing that runs from the muffler to the rear of the vehicle is the *tailpipe*. This is the section of an exhaust system where the lowest temperatures exist. The highest temperatures in the tailpipe occur as a "hot spot" at a bend in the tailpipe, e.g., where the pipe goes over the rear axle, not near the exit end of the tailpipe. In situations where temperatures of the exhaust pipe or catalytic converter approach 1,200 degree F, the temperatures at the exit end of the tailpipe, according to testing conducted

by the U.S. Forest Service and General Motors, do not exceed 600 degrees F. The Forest Service tests, which were conducted with the cooperation of NHTSA, determined that exhaust system surface temperatures were usually the highest at the first bend of the exhaust pipe (where the general direction of the exhaust gas flow first becomes horizontal in the exhaust pipe) and at the outlet of the catalytic converter. The temperatures usually remain high from the first bend to the outlet area of the catalytic converter. Temperatures then decrease along the exhaust system until the area where the tailpipe "kicks up" over the rear axle. The Forest Service tests also indicated that the exit end of the tailpipe cools very rapidly as soon as the engine returns to idle or is stopped.

Both the National Advisory Committee for Aeronautics and the American Petroleum Institute have completed studies and published reports concerning the ignition risk of gasoline on hot surfaces in open air. With regard to unleaded automotive gasoline (including 100 octane), when tested for auto-ignition by heated steel, iron, copper, or nickel surfaces (in open air or shrouded to simulate a vehicle's underhood condition) the minimum temperatures required for auto-ignition exceed 1,000 degrees F.

The petitioner inaccurately describes the location of the "hot" exhaust pipe in these vehicles. The Coachmen motorhomes *do not* "* * * have the hot exhaust pipe extending directly out from under the filler pipe." It is the exit end of the tailpipe, a much cooler component than an exhaust pipe, that extends outward below the filler pipe opening. Based on available test results, the temperature of this area of the tailpipe does not approach the minimum temperature necessary for auto-ignition of gasoline, under any operation conditions.

CAS, in their original petition dated July 9, 1985, also asserted that if gasoline spilled onto the tailpipe, even if auto-ignition does not occur, a vapor cloud might be formed that could result in a "hazardous ball of fire, * * * if there is any kind of ignition source." NHTSA is aware that, *in the presence of an ignition source,* fuel spillage while refueling will likely result in a fire because the vapor that forms above the spilled gasoline will ignite. When gasoline is spilled on any warm surface, such as asphalt, concrete, or warm body sheet metal, vaporization will occur much quicker.

NHTSA is concerned with the formation of vapor clouds. Vapor clouds that form from evaporative emission systems have resulted in safety problems and vehicle safety recalls. In such instances, the vapor can collect in the underhood areas where the hottest sections of the exhaust system, such as the exhaust pipe and catalytic converter, are located. Such vapor clouds could remain in such locations and become safety hazards while the vehicle is either moving or stationary. The formation of gasoline vapor clouds coupled with the presence of ignition sources which can occur in the motor vehicle operating environment are of concern to the agency and is precisely why NHTSA has safety concerns associated with on-board vapor recovery systems.

In contrast, ignition of vapors from fuel spilling on tailpipes or other surfaces during refueling does not appear to be a real-world problem. Any vapor cloud that might form due to fuel spillage on a tailpipe during refueling will dissipate very quickly in the open environment of a refueling station, particularly once the vehicle departs, and could not migrate into underhood or underbody areas near hotter exhaust system components.

Thus, these vapors would not be exposed to surfaces of such temperatures that ignition could occur. Further, because the vapors dissipate quickly upon vehicle movement, they would not be exposed to ignition sources associated with motor vehicle crashes. As pointed out in NHTSA's denial of the original CAS petition in 1985, "Several hundred thousand vehicles produced by Chrysler, Ford, and General Motors over a period of many years have been built with the gasoline filler location above the tailpipe." NHTSA was not aware in 1985, nor is NHTSA now aware, of any fires either caused or intensified by such a configuration. NHTSA is aware of only two fires involving any Coachmen motorhouses, and neither of these fires were the result of fuel spilling on the tailpipe.

Coachmen has reported that they are not aware of any reports of fire resulting from gasoline spilling on a tailpipe from any source, including vehicle owners and CAS. This includes all the incidents of fuel expulsion, which would cause gasoline to fall on the tailpipe as would happen in refueling overflows. It should be noted that fuel expulsion is a safety concern. Coachmen conducted a safety recall of certain vehicles in 1985 for this problem, as described below.

Coachmen has taken several actions since 1985 that are relevant to this discussion.

1. In August 1985, Coachmen safety recall 85V106. This recall was to prevent fuel expulsion when the fuel filler cap was removed. The recall included a new two-stage pressure release cap requiring a second 90 degree rotation after the initial release of pressure. A permanent exterior warning label was also installed immediately over the fuel fuller opening, instructing individuals refueling the vehicle not to turn the cap the final 90 degrees until all pressure has been released.

2. In July 1987, General Motors developed a vent kit to vent fuel vapors from the fuel tank to the rear of the vehicle away from any potential ignition source, when the internal tank pressure exceeded approximately 1 psi (less than ½ the pressure required to open the vent in the fuel filler cap). Coachmen put this kit into production in July 1987 and furnished kits to dealers to retrofit all 1985 through 1987 vehicles.

3. In July 1987, Coachmen began moving the mufflers on some of their new models forward and exiting the tailpipes in front of the rear wheels, in order to reduce heat around the rear-mounted fuel tank. Additional models were included in September 1987 and the remaining models in December 1987.

In summary, a review of all the pertinent information leads to the following conclusion:

1. The tailpipe that extends under the Coachmen fuel filler opening is not subject to the elevated temperatures referred to by NHTSA in the document cited by CAS in their petition. The temperatures in this area of the tailpipe are below the minimum temperatures required for auto-ignition of gasoline on a hot surface.

2. From 1985 through December 1987, Coachmen produced approximately 14,000 motorhomes with the fuel filler opening located above the exit of the tailpipe. In spite of the fact that these vehicles have been on the road for at least 4 years, NHTSA is not aware of a single fire that was caused or aggravated by fuel spilling on the tailpipe as suggested by CAS. Thus, a review of the available information revealed no indication of safety risk in 1985 through 1987 Coachmen motorhomes regarding fuel spillage on the tailpipe.

3. The petitioner has provided no information indicating that fires have occurred, or will occur, due to the location of the fuel filler opening above the tailpipe.

4. Coachmen has taken several actions, including a safety recall, to minimize the likelihood of fuel spilling on the tailpipe.

5. Fuel vapors due to gasoline spilling on a tailpipe during refueling do not

create the safety concern associated with fuel vapors stored on a vehicle. Refueling vapors such as these that might result from fuel spilling on a tailpipe dissipate quickly and, compared to stored vapors, are not exposed to ignition sources associated with the overall motor vehicle environment.

In consideration of the available information, it is concluded that there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to determine whether a safety-related defect trend exists does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Public Law 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 31, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-18689 Filed 8-5-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 31, 1992.

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 Office 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.

Office of Thrift Supervision

OMB Number: 1550-0014.

Form Number: None.

Type of Review: Extension.

Title: Request to Convert From a Mutual Institution to a Stock Institution—Form AC (Application for Conversion), and Exhibits (Form PS—Proxy Statement, and Form OC-Offering Circular).

Description: 12 CFR 563b states that no mutual association shall convert to a stock association without the prior written consent of the Office of Thrift Supervision.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 70.

Estimated Burden Hours Per Respondent: 500 hours.

Frequency of Response: Other (only required when converting to stock form).

Estimated Total Reporting Burden: 35,000 hours.

Clearance Officer: Colleen Devine, (202) 906-6025, Office of Thrift Supervision, 2d Floor, 1700 G Street NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-18685 Filed 8-5-92; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 29, 1992.

The Department of Treasury has made revisions and resubmitted 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: 1545-0123.

Form Number: IRS Form 1120, Schedule D (Form 1120), Schedule H (Form 1120), Schedule PH (Form 1120).

Type of Review: Resubmission.

Title: U.S. Corporation Income Tax Return (1120), Capital Gains and Losses (Schedule D), U.S. Personal Holding Company (PHC) Tax (Schedule H), Section 280H Limitations for a Personal Service Corporation (PSC) (Schedule PH).

Description: Form 1120 is used by corporations to compute their taxable income and tax liability, Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of section 280H. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 2,462,931.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1120	Schedule D	Schedule H	Schedule PH
Recordkeeping	68 hours 38 minutes	6 hours 56 minutes	5 hours 59 minutes	15 hours 19 minutes.
Learning about the law or the form	27 hours 49 minutes	2 hours 29 minutes	34 minutes	5 hours 10 minutes.
Preparing the form	52 hours 14 minutes	4 hours 56 minutes	39 minutes	6 hours 52 minutes.
Copying, assembling, and sending the form to the IRS	8 hours 2 minutes	48 minutes		4 hours 32 minutes

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 469,458,657 hours.

Clearance Officer: Garrick Shear (202) 535-4297, 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. 92-18600 Filed 8-5-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 29, 1992.

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.

Office of Thrift Supervision

OMB Number: 1550-0023.
Form Number: OTS Form 1313, Monthly Cost of Funds Survey Systems Worksheet, Officer Certification.
Type of Review: Revision.
Title: Thrift Financial Report (TFR).
Description: OTS collects financial data from insured institutions and their subsidiaries in order to assure their safety and soundness as depositories of the personal savings of general public. The OTS monitors trends in financial positions so that adverse conditions can be reminded promptly. These respondents are primarily savings associations.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,100.
Estimated Burden Hours Per Respondent/Recordkeeper: 21 hrs., 32 min.
Frequency of Response: Monthly, Quarterly, Annually.
Estimated Total Reporting/ Recordkeeping Burden: 551,040 hours.
Clearance Officer: Colleen Devine (202) 906-6025, Office of Thrift Supervision 2d Floor, 1700 G Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92-18601 Filed 8-5-92; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 30, 1992.

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: 1545-0055.
Form Number: IRS Form 1001.
Type of Review: Extension.
Title: Ownership, Exemption, or Reduced Rate Certificate.
Description: This form is used by owners of certain types of income to report to a withholding agent, both the ownership and any reduced or exempt tax rate under tax conventions or treaties, and, if appropriate, to claim a release of tax withheld at source. The withholding agent uses the information to determine the appropriate withholding.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 100,000.
Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—4 hours, 32 minutes. Learning about the law or the form—1 hour. Preparing and sending the form to the IRS—1 hour, 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 665,000 hours.
OMB Number: 1545-0823.
Regulation ID Numbers: FI-221-83 NPRM and FI-100-83 TEMP.
Type of Review: Extension.
Title: Indian Tribal Governments Treated As States For Certain Purposes.
Description: The regulations provide that if the governing body of a tribe, or its subdivision, is not designated as an Indian tribal government or subdivision thereof for purposes of sections 7701(a)(4) and 7871, it may apply for a ruling from the IRS.
Respondents: Other: Indian Tribal Governments and Their Subdivisions.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (once).
Estimated Total Reporting Burden: 25 hours.
OMB Number: 1545-1059.
Form Number: IRS Forms 7018 and 7018-A.
Type of Review: Extension.
Title: Employer's Order Blank for Forms (7018) Employer's Order Blank for 1993 Information Returns (7018-A).
Description: Forms 7018 and 7018-A allow taxpayers who must file information returns a systematic way to order information tax forms materials.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,473,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 73,650 hours.
Clearance Officer: Garrick Shear (202) 535-4297, 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 3000, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92-18602 Filed 8-5-92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 30, 1992.

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.

Departmental Offices

OMB Number: 1505-0125.
Form Number: None.
Type of Review: Extension.
Title: Section 2.18 and 2.23 of a Revised 31 CFR part 2, National Security

Information. Mandatory Declassification Review and Access by Historical Researchers and Former Presidential Appointees.

Description: Information is used to substantiate the status as a U.S. citizen or permanent resident alien with respect to requests for mandatory declassification review under Executive Order 12356 and to ensure payment of fees incident to such requests and for service provided to historical researchers and former Presidential appointees.

Respondents: Individuals or households, State or local governments.

Estimated Number of Respondents: 3.

Estimated Burden Hours Per Response: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hours.

Clearance Officer: Lois K. Holland (202) 622-1563, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

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. 92-18603 Filed 8-5-92; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This Document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Buyers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: July 30, 1992.

By direction of the Secretary.

J. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Veterans Mortgage Life Insurance—Change of Address Statement, VA Form 29-0563.
2. The form is used by VA to request information needed for determining continued entitlement to Veterans Mortgage Life Insurance.
3. Individuals or households.
4. 20 hours.
5. 5 minutes.
6. On occasion.
7. 240 respondents.

[FR Doc. 92-18698 Filed 8-5-92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not sent requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 8, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Records Management Service.

Extension

1. Obtaining Supplemental Information from Hospital or Doctor, VA Form Letter 29-551B.
2. The form letter is used to request medical evidence from the insured's attending physician or hospital regarding the continuation of disability insurance.
3. Individuals or households.
4. 61 hours.
5. 15 minutes.
6. On occasion.
7. 244 respondents.

[FR Doc. 92-18699 Filed 8-5-92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 8, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Medical Information for Reinstatement, VA Form Letter 29-762.
2. The form letter is used by veterans' attending physicians to supply medical information that is required to determine eligibility for reinstatement of insurance and/or total disability income provisions.
3. Individuals or households.
4. 240 hours.
5. 30 minutes.
6. On occasion.
7. 480 respondents.

[FR Doc. 92-18700 Filed 8-5-92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 8, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement of Person Claiming to Have Stood in Relation of Parent, VA Form 21-524.
2. This form is used to gather information about the relationship of the claimant to the veteran in claims for Pension Dependency and Indemnity Compensation.
3. Individuals or households.
4. 4,000 hours.
5. 2 hours.
6. On occasion.
7. 2,000 respondents.

[FR Doc. 92-18701 Filed 8-5-92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Departments of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information (1) The title of the information collection, and the Department form number(s), if applicable (2) a description of the need and its use; (3) who will be required or asked to respond (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response, and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 8, 1992.

Dated: July 30, 1992.

By the direction of the Secretary.

B. Micheal Berger,

Director, Records Management Service.

Revision

1. Request for Information Concerning Medical, Legal or Other Expenses, VA Form 21-8416.
2. This form is used by a claimant to report medical, legal, or other expenses paid in connection with claims for income-based benefits.
3. Individuals or households.
4. 32,133 hours.
5. 20 minutes.
6. On occasion.
7. 96,400 respondents.

[FR Doc. 92-18702 Filed 8-5-92; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Readjustment of Vietnam and Other War Veterans Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Readjustment of Vietnam and Other War Veterans will be held September 10 and 11, 1992. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting will be held at Techworld in room 1105 located at 801 I Street, NW, Washington, DC. The meetings on September 10 and 11 will both begin at 8:30 a.m. and conclude at 4:30 p.m. The agenda for September 10 will consist of presentation, discussion and update of VA services and activities regarding women veterans experiencing psychological difficulties related to exposure to traumatic sexual abuse and/or assault while in the military. The first day's agenda will also cover a review of findings and recommendations regarding the Readjustment Counseling Service Vet Centers.

On September 11 the Committee will review issues, recommendations and objectives regarding services to homeless veterans and will conduct a planning meeting to identify topics and objectives for the coming year. The second day's agenda will also consist of a review and discussion of VA activities regarding the celebration commemorating the tenth anniversary of the Vietnam Veterans Memorial.

Both day's meeting will be open to the public up to the seating capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202-535-7554).

Dated: July 30, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-18697 Filed 8-5-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 152
Thursday, August 6, 1992

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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 11, 1992.

PLACE: 2033 K St., N.W., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Applications of the Commodity Exchange, Inc. for contract designation in Platinum futures and options
—Application of the Commodity Exchange, Inc. for contract designation in Palladium futures
—Applications of the Chicago Board of Trade for contract designation in International Commodity Index futures and options

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–18818 Filed 8–4–92; 3:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, August 11, 1992.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–18819 Filed 8–4–92; 3:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 25, 1992.

PLACE: 2033 K St., N.W., Washington, DC Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Chicago Board of Trade for contract designation in Agricultural Index futures
—Application of the Chicago Board of Trade for contract designation in Barge Freight Rate Index futures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–18820 Filed 8–4–92; 3:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, August 25, 1992.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-18821 Filed 8-4-92; 3:15 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:45 a.m., Tuesday, August 25, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–18822 Filed 8–4–92; 3:15 pm]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92–18197.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 6, 1992, 10:00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Gephardt for President Committee, Inc. Request for Extension to Make Repayment to United States Treasury (LRA #328) (Continued from meeting of July 30, 1992)
Jack Kemp for President Committee, Inc. Request for Extension to Make Repayment (Continued from meeting of July 30, 1992)
Advisory Opinion 1992–20: Mr. Frederick T. Spahr of the American Speech-Language-Hearing Association ("ASHA") and ASHA PAC ("ASHA–PAC"). (Continued from meeting of July 30, 1992)
Advisory Opinion 1992–23: Mr. Thomas N. Edmonds on behalf of Mr. James Jay Baker. (Continued from meeting of July 30, 1992)
Transfers of Funds from State to Federal Campaigns Final Rule. (Continued from meeting of July 30, 1992)
Notice of Proposed Rulemaking on Transfers Between Federal Candidate Committees. (Continued from meeting of July 30, 1992)

DATE AND TIME: Tuesday, August 11, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, August 13, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992–24: Mr. Reed F. Bilbray of Pilzer for Congress
Advisory Opinion 1992–27: Mr. Jan Baran on behalf of the National Republican Senatorial Committee ("NRSC")
Advisory Opinion 1992–28: Mr. Stevenson H. Waltien, Jr. of Leahy for U.S. Senator Committee
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Harris,
Administrative Assistant.

[FR Doc. 92–18835 Filed 8–4–92; 3:49 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., August 5, 1992.

PLACE: Room 12126, 1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 91–30—*Sea-Land Dominicana, S.A. and Sea-Land of Puerto Rico, Inc. v. Sea-Land Service, Inc.*—Consideration of the Record.

2. Docket No. 91-10—*Orient Overseas Container Line, Inc. v. Espee Trading Corporation*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92-18731 Filed 8-3-92; 4:29 pm]

BILLING CODE 6730-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting and Hearing

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability and hearing on personal assistance services. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94-409).

DATES:

Quarterly Meeting

September 10, 1992, 9:00 a.m. to 12:00 noon
September 11, 1992, 9:00 a.m. to 12:00 noon

Hearing on Personal Assistance Services

September 10, 1992, 1:00 p.m. to 5:00 p.m.

LOCATION: Boston Marriott Hotel Long Wharf, 296 State Street, Boston, Massachusetts 02109, (617) 227-0800.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW., Suite 814, Washington, DC 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95-602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98-221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

The quarterly meeting of the National Council and the hearing on personal assistance services shall be open to the Public. The proposed agenda includes:

Hearing on Personal Assistance Services
Report from Chairperson and Executive Committee
Update on the Reauthorization of the Rehabilitation Act Amendments of 1992
Update on NIDRR
Update on ADA Watch
Update on public policy studies: education: technology; and, health insurance
Committee Meetings/Committee Reports
Unfinished Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on August 3, 1992.

Ethel D. Briggs,

Executive Director.

[FR Doc. 92-18733 Filed 8-4-92; 9:20 am]

BILLING CODE 6820-BS-M

POSTAL RATE COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, August 12, 1992.

PLACE: Commission Conference room, 1333 H Street, NW, Washington, DC 20268-0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1993.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 92-18729 Filed 8-3-92; 4:28 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 57, No. 152
Thursday, August 6, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Project I.D. No. 06-10-93001-01]

Business Development Center Applications: Oklahoma City MBDC

Correction

In notice document 92-16979 appearing on page 32003 in the issue of Monday, July 20, 1992, make the following correction in the third column, in the **SUMMARY** paragraph, in the last line "August 4, 1992" should read "August 14, 1992".:

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-720-000, et al]

Century Power Corp., et al. Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92-17701 beginning on page 33335 in the issue of Tuesday, July 28, 1992, on page 33336, in the first column, under "**8. Pacific Gas and Electric Co.**", "[Docket No. ER89-34-004]" should read "[Docket No. EL89-34-004]".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Golden-Cheeked Warbler for Review and Comment

Correction

In notice document 92-16907 beginning on page 31733 in the issue of Friday, July 17, 1992, make the following correction on page 31733, in the first column, in the **DATES:** paragraph, "August 3, 1992" should read "August 31, 1992".

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 515

Privacy Act Procedures

Correction

In proposed rule document 92-15880 beginning on page 30353 in the issue of Wednesday, July 8, 1992, make the following correction:

On page 30357, in the second column, in the last line, "happens" should read "appears".

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 571 and 577

Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act

Correction

In proposed rule document 92-15877 beginning on page 30584 in the issue of Thursday, July 9, 1992, make the following corrections:

1. On page 30584, in the first column, under **Background**, in the first paragraph, in the second line, "24 U.S.C. 2701" should read "25 U.S.C. 2701".

2. On the same page, in the second column, in the first full paragraph, in the tenth line, "propose rule" should read "propose rules".

§ 571.8 [Corrected]

3. On page 30589, in the second column, in § 571.8, in the fourth line, "matter" was misspelled.

§ 577.1 [Corrected]

4. On page 30591, in the third column, in § 577.1(a)(1), in the third line, "closures;" should read "closure;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AGL-7]

Proposed Transition Area Establishment; Cottage Grove, WI

Correction

In proposed rule document 92-15678 beginning on page 30178, in the issue of Wednesday, July 8, 1992, make the following correction:

§ 71.1 [Corrected]

On page 30179, in the first column in § 71.1, in the fifth line "December" should read "November".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Field Organization—Portland, ME

Correction

In proposed rule document 92-17758 appearing on page 33461 in the issue of Wednesday, July 29, 1992, make the following correction:

In the first column, in the **DATES** paragraph, in the second line, "September 28, 1993" should read "September 28, 1992".

BILLING CODE 1505-01-D

federal register

Thursday
August 6, 1992

PART II

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans: Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612-931]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families (ACF), HHS.

ACTION: Announcement of availability of competitive financial assistance for American Indian, Native Hawaiian, Alaskan Natives and Native American Pacific Islanders for social and economic development projects.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1993 funds for social and economic development projects. Financial assistance provided by ANA is designed to promote the goal of self-sufficiency for Native American tribes and organizations through support of locally determined social and economic development strategies (SEDS) and the strengthening of local governance capabilities.

DATES: The closing dates for submission of applications are October 9, 1992, February 5, 1993 and May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson (202) 690-7727 or Hank Aguirre, (202) 690-7714, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., 344F, Washington, DC. 20201-0001.

SUPPLEMENTARY INFORMATION

A. Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1993 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaskan Natives, Native Hawaiians, and Native American Pacific Islanders through social and economic development (SEDS) strategies. Native American Pacific Islanders are defined as American Samoan Natives and indigenous peoples of Guam, the Commonwealth of the Northern Marianas, and the Republic of Palau. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Public Law 93-644, 88 Stat. 2324, 42 U.S.C. 2991b for local governance and social and economic development projects.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement. A Native American community is self-sufficient when it can generate and control the resources which are necessary to meet the needs of its members and to meet its own social and economic goals.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaskan Native villages, and in the leadership of Native American groups. Progress toward the goal of self-sufficiency requires active development with regard to the strengthening of governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and economic well-being of individuals, families and communities. Progress toward self-sufficiency is based on the community's ability to develop a social and economic development strategy and to plan, organize, and direct resources in a comprehensive manner to achieve the community's long-range goals.

The Administration for Native Americans bases its program and policy on three interrelated goals:

(1) *Governance*: To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) *Economic Development*: To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) *Social Development*: To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

To achieve these goals, ANA supports tribal and village governments, and other Native American organizations, to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities. The ANA SEDS approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic, political, and cultural factors in each community makes such self-determination necessary. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

(2) Economic, governance, and social development are interrelated, and development in one area should be balanced with development in the others in order to move toward self-sufficiency. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to develop self-sufficient communities.

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health and economic well-being are maintained within the community and that support governance and economic goals.

Without a careful balance between all of these, a community's development efforts could be jeopardized. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services. Conversely, inadequate social support services and training could seriously impede productivity and local economic development. Additionally, the governmental infrastructures must be put in place to support or institute social and economic development and growth.

B. Proposed Projects To Be Funded

The fundamental task which Native American communities face is to develop those social and economic strategies (SEDS) that support their local goals, resources, and cultural values. The Administration for Native Americans assists local communities to undertake one-to-three year development projects that are a part of long-range comprehensive plans to move toward social and economic self-sufficiency. The Administration for Native Americans expects its applicants to have undertaken a long-range planning process to address the community's development. Such long-range planning must consider the maximum use of all available resources,

directing those resources to development opportunities, and addressing how to overcome the local issues that hinder social and economic growth in the community. The Administration for Native Americans encourages applicants to design project strategies to achieve their specific but interrelated governance, and social and economic objectives and to use available human, natural, financial, and physical resources to which the applicant has access. Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund, such as construction, will be financed through other sources. All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but supported by funds other than ANA's. The Administration for Native Americans does not fund programs which operate indefinitely or would have a need for ANA funding on a recurring basis.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. "Core administration" is defined as those functions which provide the ongoing management and administrative support to an organization. The management and administrative functions needed to carry out an ANA approved project are not considered "core administration." However, ANA does fund the salaries of approved staff for time to implement a funded ANA project. The Administration for Native Americans does not provide funds for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Goal 1: Governance Development. Effective governance is a necessary foundation and condition for the social and economic development of Indian tribes, Alaskan Native villages, and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the governmental, judicial and/or administrative infrastructures of tribal and village governments; (2) increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency; and (3) increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States. Under its governance development goal, ANA strongly encourages tribal and village councils, and other governing bodies, to strengthen and streamline their established administrative and management procedures that influence their institutional management systems. The purpose of this capacity is to develop and implement effective social and economic development strategies and their comprehensive community long term goals and to improve their day-to-day governmental management. By improving governance and management capabilities, Indian Tribes, Alaskan Native villages, and Native American groups can better define and achieve their goals, promote greater efficiency, and the effective use of all available resources.

Applications in this area are generally under the following categories:

- Status clarification
- Tribal recognition
- Amendments to tribal constitutions; court procedures and functions; by-laws or codes; council or executive branch duties and functions;
- Improvements in administration and management of tribes/villages.

Goal 2: Economic Development is the long-term mobilization and management of economic resources to achieve a diversified economy. It is characterized by the effective and planned distribution of economic resources, services, and benefits. It also includes the participation of community members in the productive activities and economic investments of the community, and the pursuit of economic interests through methods that balance economic gain with social development, supported by an adequate governmental infrastructure.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members. It involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over, the projects and institutions that protect the health and economic well-being of individuals and families, and preserve the values, language, and culture of the community.

Social and Economic Development Strategies (SEDS)

Building on developing the foundation for strong local governance, ANA supports tribal and village governments' and other Native American organizations' corollary plans to achieve coordinated and balanced development through the implementation of social and economic development strategies (SEDS). These interrelated strategies and their objectives should describe in detail how the community coordinates and directs all resources (Federal and non-Federal) toward locally determined priorities, and how the community and its members are assisted in ways that promote greater economic and social self-sufficiency. In addition, SEDS strategies that combine balanced social and economic and governance goals should also address how to obtain independent sources of revenue for the community or how the venture supports the long-term goals.

C. Eligible Applicants

Current ANA grantees whose project period terminates in fiscal year 1993 (October 1, 1992—September 30, 1993) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA grantees, the following organizations are eligible to apply:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Public and nonprofit private agencies serving Native Hawaiians;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States.
- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects;

• Nonprofit Native organizations in Alaska with village specific projects; and

• Nonprofit Alaskan Native community entities or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

Under section 803 of the Native American Programs Act of 1974, as amended, colleges and universities are not eligible applicants unless they serve Native Hawaiians or the other Native American Pacific Islanders.

This program announcement does not apply to current grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

Note: A separate program announcement for fiscal year 1993 funding will also be published specifically for Alaskan Native applicants (Program Announcement 93612-932). In fiscal year 1993, Alaskan Native entities are eligible to submit an application under either announcement, but are limited to a single application for each closing date.

An Alaskan Native applicant may apply for the:

(1) October 9, 1992 closing date of Program Announcement 93612-931; and

(2) February 5, 1993 closing date for Program Announcement 93612-931 OR for Program Announcement 93612-932; and

(3) May 14, 1993 closing date for Program Announcement 93612-931 OR for Program Announcement 93612-932.

Those Alaskan Native organizations who want to develop social and economic development strategies (SEDS) for other applicant groups under this program announcement (93612-931) are now able to compete for project money that does not have a specific project funding amount limit.

D. Available Funds

Approximately $14 million of financial assistance is anticipated to be available under this program announcement for American Indian, Alaskan Native, Native Hawaiian, and Native American Pacific Islander projects. This program announcement is being issued in anticipation of the appropriation of funds for FY 1993, and is contingent upon final appropriations.

Each tribe, Native American organization, or other eligible applicant can receive only one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should understand that a multi-year project is a project on a single theme that requires more than 12 months to complete. The project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period. Funding after the first 12 month budget period of an approved multi-year project is non-competitive.

The budget period for each multi-year project grant is 12 months. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project, according to the approved Objective Work Plan (OWP), the availability of Federal funds, and compliance with the applicable statutory, regulatory and grant requirements, including timely objective progress reports (OPRs).

F. Grantee Share of Project

Grantees, with the exception of organizations in the Native American Pacific Islands, must provide at lest 20 percent of the total approved cost of the project, which may be cash or in-kind contributions.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95-134, as amended (48 U.S.C. 1469a) which requires HHS to waive any requirement for local matching funds under $200,000 (including in-kind contributions). Applications from groups in the United States serving Native American Pacific Islanders in the United States are required to provide a 20 percent match or apply for a waiver under 45 CFR 1336.50(b)(3) of the Native American Program Regulations. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the ANA Application Kit. An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, room 344F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201-0001, Attention: Earldine Glover, Phone: (202) 690-7727.

Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201-0001, Attention: ANA 93612-931.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement. The following points should be taken into consideration by all applicants:

• Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.

• Complete applications that conform to all the requirements of this program announcement are subject to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with Native American Tribes, communities and organizations evaluates each application against the published criteria in this announcement. The review will result in a numerical score attributed to each application. The results of this review assist the

Commissioner to make final funding decisions.

• The Commissioner's funding decision also takes into account the analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.

• The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.

• After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria.

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine:

• That the applicant is eligible in accordance with the Eligible Applicants Section of this announcement.

• That the application narrative, forms and materials submitted are adequate to allow the review panel to undertake an indepth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the five evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in Introduction and Program Purpose of this announcement), include a social and economic development strategy, and address the specific developmental steps toward self-sufficiency that the specific tribe or Native American community is undertaking. The five programmatic and management criteria are closely related to each other. They are considered as a whole also in judging the overall quality of an application. Points are awarded only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application explains how specific social, governance and economic long-range community goals relate to the proposed project and strategy. It explains how the community intends to achieve these goals. It clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated social and economic development strategy.

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all of ANA applicants.

(2) *Organizational Capabilities and Qualifications.* (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve of the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) *Project Objectives, Approach and Activities.* (45 points)

The application proposes specific project objective work plans with activities related to the SEDS strategy and the overall long-term goals. The objective work plan(s) in the application include(s) project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

• are measurable and/or quantifiable in terms of results or outcomes;

• are based on the fully described and locally determined balanced SEDS strategy narrative for governance or social and economic development;

• clearly relate to the community's long-range goals which the project addresses;

• can be accomplished with the available or expected resources during the proposed project period;

• indicate when the objective, and major activities under each objective, will be accomplished;

• specify who will conduct the activities under each to achieve the objective; and,

• support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points)

The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the community meet its goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points)

There is a detailed budget provided for each budget period requested. The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement). Sufficient cost and other detail is included and explained to facilitate the determination

of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable profit within a future specified time frame.

I. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) *Program Guidance.*

• The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's governance, social or economic development leading to its self-sufficiency. The Administration for Native Americans does not fund on the basis of need alone.

• In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these and/or progress to date, as well as the size of the population to be served. The appropriateness and potential of the proposed project in strengthening and promoting the goal of the self-sufficiency of a community will be determined by reviewers.

• An application should describe a clear relationship between the proposed project, the SEDS strategy, and the community's long-rang goals or plan.

• The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact on the community that the project will have.

• Supporting documentation or other testimonies from concerned interests other than the applicant should be included to provide support for the feasibility and the commitment of other resources to implement or conduct the proposed project.

In the ANA Project Narrative, Section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

• Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or to start a business if the applicant includes a business plan that clearly describes its feasibility and the plan for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these as a guide to its development of an economic development project or business that is part of the application. The more information provided a review panel, the better able the panel is to evaluate the potential for the success of the proposed project.

• A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several differing areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, the delivery of human services such as health, day care, counseling, education, and training.

(2) *Technical Guidance.*

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• There is no maximum or minimum amount of Federal funds that may be requested.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

• The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from a Federally recognized tribe or an organization serving members of a Federally recognized tribe must be from the governing body of the tribe.

• An application from a Native American organization must be from the governing body of the applicant.

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR parts 74 and 92.)

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year

and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

(3) *Projects or activities that generally will not meet the purposes of this announcement.*

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS strategy long-range development plan. The Administration for Native Americans is not interested in funding 'wish lists' of business possibilities. The Administration for Native Americans expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies on the potential success to the business prior to the submission of the application.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions.

• Project goals which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, Social Development).

• Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members.

• Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

• The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual Ch. 3, § E).

• Projects originated and designed by consultants who are not members of the applicant organization, tribe or village who prepared the application and provide a major role for themselves in the proposed project.

The Administration for Native Americans will critically evaluate applications in which the acquisition of major capital equipment (i.e., oil rigs, agricultural equipment, etc.) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are October 9, 1992, February 5, 1993 and May 14, 1993.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, The Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadlines. Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

(1) Received on or before the deadline date at the address specified in Section H, Application Submission, or

(2) Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: June 8, 1992.

S. Timothy Wapato,

Commissioner, Administration for Native Americans.

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federal register

Thursday
August 6, 1992

Part III

International Trade Commission

19 CFR Part 207

U.S.-Canada Free-Trade Agreement; Amended Interim Rules and Request for Comments

INTERNATIONAL TRADE COMMISSION

19 CFR Part 207

Implementing Regulations for the U.S.-Canada Free-Trade Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice of amended interim rules and request for comments.

SUMMARY: The Commission is amending with a request for comments subpart G of part 207 of its Rules to conform the Commission's regulations with amendments to the U.S.—Canada Free-Trade Agreement Implementation Act of 1988 (FTA Implementation Act) contained in section 134 of the Customs and Trade Act of 1990 (hereinafter "technical amendments"). The Commission's amendments modify the Commission's regulations that were issued to conform with the FTA Implementation Act.

The substantive amendments to subpart G delegate authority to the Secretary of the Commission to issue protective orders, set forth what information is available to authorized persons, redefine "authorized persons," add filing requirements paralleling those in the Article 1904 Binational Panel Rules (Article 1904 Rules), and expand what action constitutes a violation.

DATES: Effective date: August 6, 1992. Comments on the interim rules will be considered if received on or before September 21, 1992.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter addressed to Paul R. Bardos, Acting Secretary, should be sent to the U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Abigail A. Shaine, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3094. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD Terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION:

Background

On Friday, December 30, 1988 the Commission published in the **Federal Register**, the interim rules with a request for comments, 53 FR 53248 (December 30, 1988), which rules were amended at 54 FR 36289 (September 1, 1989). These rules govern procedures for filing a Notice of Intent to Commence Judicial Review (§ 207.92) and procedures for granting access to proprietary information (§ 207.93), for governing any access to privileged information (§ 207.94) and for the imposition of sanctions for violations of the administrative protective orders (APO) (§§ 207.100 through 207.120.) No comments were received from the public on these rules.

On August 20, 1990, technical amendments were made by section 134 of the Customs and Trade Act of 1990 (Pub. L. 101-382) (August 20, 1990), to the FTA Implementation Act (Pub. L. 101-449) (September 28, 1988). The U.S. and Canadian Governments also have amended the Rules of Procedure for Article 1904 Rules). The Commission's amended interim rules bring its regulations into compliance with the amendments to the statute and the Article 1904 Rules.

Paragraph 134(4)(A) of the technical amendments amends the type of information that will be made available to authorized persons. The provision, codified at 19 U.S.C. 1677f(f)(1)(A), clarifies that the Commission will make proprietary information available to authorized persons and privileged information available to those persons specifically designated by the panel. To administer this access, a new § 207.93(a) provides authority to the Secretary of the Commission to issue protective orders for information released under 19 U.S.C. 1677f(f)(1)(A). In addition, amendments to § 207.93 (b) through (g) reflect this statutory clarification and the delegation of authority to the Secretary.

Paragraph 134(4)(B)(iv) of the technical amendments modifies section 403 of the FTA Implementation Act, codified at 19 U.S.C. 1677f(d)(1)(B), defining "authorized persons." The amendment adds to that definition officers or employees of the Government of Canada designated by an authorized agency of Canada to whom disclosure is necessary in order to make decisions regarding the convening of Extraordinary Challenge Committees (ECCs) under Chapter 19 of the U.S.-Canada Free-Trade Agreement (FTA). Changes to § 207.93 of the Commission's rules reflect the authority of the Commission to grant the Canadian interagency group access to proprietary information under APO.

Section 134(4)(D) of the technical amendments broadens the definition of a prohibited act to include as sanctionable the knowing receipt of information, the receipt of which constitutes a violation of any provision of a protective order. Section 207.100(c) of the Commission's rules clarifies what type of activity is prohibited by this provision. For ease of reading, "prohibited act" has been made a defined term and inserted, where appropriate, in §§ 207.100 through 207.120.

In addition, the Article 1904 Rules have been modified by the United States and Canada. Among other changes, the amended Article 1904 Rules now provide that the members of a binational panel, assistants to panelists, court reporters, and translators shall file their protective order applications with the responsible Secretary, who will then file these applications with the Commission. Under the Article 1904 Rules, as revised, any amendments, modifications, or revocations of a protective order must be filed with the responsible Secretariat. These amended interim rules reflect this additional notification requirement.

In preparing these amended interim rules, the Commission edited them by eliminating unnecessary repetition and by conforming terminology with that used in 19 CFR part 207, subparts A through C. In addition, three new definitions have been added: "Prohibited act," "service address," and "service list."

The Commission is reissuing interim rules, rather than proposed final rules because of the possibility of an appeal to a binational panel of impending Commission determinations involving goods from Canada. To ensure that the Commission's rules are consistent with the statute and consonant with the revised Article 1904 Rules and to avoid having the Commissions's rules change in the middle of a panel review, these regulations are effective upon publication in the **Federal Register**. After considering any comments the Commission will finalize the rules as soon as practicable.

These interim rules are exempt from the requirements of Section 553 of the Administrative Procedure Act (5 U.S.C. 553) because they are integral to the implementation of chapter 19 of the FTA and thus relates to a foreign affairs function of the United States.

The Commission has determined that these rules do not constitute a major rule for the purposes of Executive Order ("EO") 12291 (46 FR 13193, Feb. 17, 1981) because it does not meet the criteria described in section 1(b) of the EO. Moreover, because this rule concerns a foreign affairs function of the United States, it is not a rule within the meaning of section 2(a) of the EO.

The Regulatory Flexibility Act is inapplicable to this rule because it does not affect a large number of small

entities and because the rule was not required by section 553 of the Administrative Procedure Act ("APA") or by any other law to be promulgated as a proposed rule before its issuance as a final rule.

Explanation of Changes to Amended Interim Rules

Throughout these rules, in keeping with general Commission practice, all gender-specific pronouns have been replaced by specific nouns if possible; if not possible, both masculine and feminine pronouns are used.

Section 207.90

There is no substantive difference between the revised interim rule and the original interim rule.

Section 207.91 Definitions

Except as noted, all limitations as to the applicability of defined terms have been eliminated to indicate that the defined terms apply throughout the rules.

Administrative Law Judge

The citation to the section of the statute governing APA hearings is changed from sections 556 and 557 to section 554, because the latter provision includes by reference sections 556 and 557.

Agreement

There is no substantive difference between the revised interim rule and the enacted interim rule.

Article 1904 Rules

Because the Article 1904 Rules were recently amended, the Commission's amended interim rules reference those rules, as amended.

Canadian Secretary

There is no substantive difference between the revised interim rule and the enacted interim rule.

Charged Party

The revised definition incorporates the new definition of the term "prohibited act."

Clerical Person

There is no substantive difference between the revised interim rule and the enacted interim rule.

Final Determination

There is no substantive difference between the revised interim rule and the enacted interim rule.

Investigative Attorney

There is no substantive difference between the revised interim rule and the enacted interim rule.

Party

The revised definition clarifies that, for the purposes of sanctions proceedings, as distinguished from the definition of Party in the Article 1904 Rules, the word "party," in the singular, refers to the parties in the sanctions proceedings, that is, the investigative attorney or the charged party.

Privileged Information

The revised definition incorporates the criterion for privileged information subject to release under protective order provided for in the amended 19 U.S.C. 1677(f)(1)(A).

Prohibited Act

Incorporating a "violation of a protective order, inducing a violation of a protective order, and the knowing receipt of information, the receipt of which constitutes the violation of a protective order" into a single defined term, mirror the statutory definition of prohibited act, incorporate changes effected by the technical amendments and make the sanctions provisions easier to read.

Service Address

This new definition sets forth the place where a person can be served when these rules require service.

Service List

This new definition mirrors the definition of service list in the Article 1904 Rules and clarifies who is to be served with particular documents throughout these rules.

Section 207.93

Section 207.93(a)

Section 403 of the FTA Implementation Act, codified in part at 19 U.S.C. 1677f(f)(1)(A), provides for the Commission, to release under defined circumstances, proprietary information and privileged information under protective order. In particular, section 403 clarifies that documents which the Commission claims are privileged will be released only upon direction from the panel and only to persons specifically identified by the panel.

As a result of the clarification of what information is to be released and to whom, a new paragraph 207.93(a) has been added. In the new paragraph the Commission delegates to the Secretary of the Commission the authority to administer APOs covering proprietary information during binational panel review. Amendments to other paragraphs reflect the Secretary's increased responsibility for the primary supervision of such APOs. For instance, the Commission Secretary will adopt the APO forms and impose the conditions for access (§ 207.93(c)(2)(E)); the Commission Secretary will determine at which point, other than the completion of panel review, proprietary information must be returned or destroyed and the notification of such action will be served on the Commission Secretary (§ 207.93(c)(2)(ii)(C)); applications for APO will be served on the Commission Secretary (§ 207.93(c)(3)); all updates will be served on the Commission Secretary (§ 207.93(c)(6)); and the Commission Secretary will be responsible for granting or denying applications for APOs (§ 207.93(d) & 207.93(e)). The full Commission, however, retains the responsibility for modifying or revoking APOs due to changed circumstances (§ 207.93(h)).

Because of the addition of § 207.93(a), § 207.93 (a) and (b) are redesignated as § 207.93 (b) and (c).

Paragraph 207.93(b)

Paragraph (b) lists those persons authorized to receive proprietary information as prescribed by statute (hereinafter authorized persons). 19 U.S.C. 1677(f)(1). The order in which authorized persons are listed has been changed to parallel the Article 1904 Panel Rules. A citation to the *U.S. Steel Corp.* v. *United States*, 730 F.2d 1465 (Fed. Cir. 1984) is added to paragraph (b)(2) concerning counsel and professionals, to clarify which persons are excluded from gaining access to proprietary information because of their decision-making responsibilities. The amended interim rule parallels the Commission's title VII rules. Neither of these changes reflects any substantive changes to these amended interim rules.

In addition to these changes, the new paragraph (b)(6) reflects the addition to the list of authorized persons by the technical amendments. "Authorized persons" now include designated officials of the Canadian Government to whom release is necessary in order that Canada may evaluate whether to request an Extraordinary Challenge Committee (hereinafter "ECC"). Such persons must submit an application for an APO and will be subject to provisions under U.S. and Canadian law for violation of the APO.

Paragraph 207.93(c)

This paragraph sets forth the procedures for obtaining an APO.

Amendments to the Article 1904 Rules permit certain authorized persons to file their APO applications through the Binational Secretariat. To parallel the Article 1904 Rules, the requirement that the applicant file the original and six (6) copies of the APO application with the Commission Secretary is deleted from paragraph (c)(1) and replaced elsewhere by more specific instructions.

Paragraph (c)(2) lists the provisions included in protective order applications, including the conditions to which the applicant must agree. The first of the two substantive changes to paragraph (c)(2) concerns the return of proprietary information. Paragraph (c)(2)(ii)(C) requires the return or destruction of proprietary information at the completion of panel review. The amended interim rule clarifies the language and authorizes the U.S. Secretary to retain a single copy for the Secretariat's file. These rules authorize only the U.S. Secretary to retain a single copy of proprietary information because, in panel reviews involving proprietary information from the Commission, the U.S. Secretary will always be the responsible Secretary.

The second substantive change reflects the inclusion of the Canadian interagency group in the list of "authorized persons." Paragraph 207.93(c)(2)(ii)(E) requires the applicant to acknowledge that he or she will become subject to the applicable U.S. or Canadian law in the event of a violation of a protective order. In the rules as originally enacted, members of the U.S. "inter-agency group" did not have to acknowledge that they could be liable under Canadian law. The law has been amended to permit disclosure to designated Canadian officials. The regulation now properly indicates that Canadian and U.S. officials both become subject to the law of either country.

Paragraph (c)(3) sets out the timing requirements for the filing of protective order applications. To conform with the Article 1904 Rules, the amended interim rules establish separate timing requirements for the different categories of applicants. Panelists, assistants to panelists, ECC members, assistants to an ECC member, court reporters, translators, counsel, and professionals may submit applications for APO at any time after a request for panel review has been made. Both the U.S. Secretary and the Canadian Secretary and every member of their staffs must file an APO application as soon as they begin working at the Binational Secretariat. Applications of the U.S. or Canadian "inter-agency group" can be filed when the United States Trade Representative or Canadian Minister of Trade, as appropriate, informs the Commission that the group requires access to proprietary information.

Paragraph (c)(4) establishes the filing and service requirements for applications for APO. Because the amended Article 1904 Rules direct some persons to file their APO applications through the Binational Secretariat and others to file directly with the Commission, these amended Commission interim rules differentiate the filing and service requirements for each category of applicants.

Rule 49 of the amended Article 1904 Rules provide that panelists, assistants to panelists, court reporters, and translators, before taking up their duties, must file an APO application with the responsible Secretary. The rules governing ECC proceedings contain similar provisions. Reflecting these rules, the revised paragraph (c)(4)(i) directs panelists, assistants to panelists, ECC members, assistants to ECC members, translators, and court reporters to file their applications with the responsible Secretary, and provides the address of the U.S. section of the Binational Secretariat. Reelecting rule 49 of the Article 1904 Rules, these amended interim rules now require the U.S. Secretary to file the original and six copies of the applications provided by the panelists, assistants to panelists, court reporters and translators with the Commission Secretary. In addition, the amended interim rules eliminate the requirement that these persons serve their applications on the participants. Such a requirement exists neither in the Rule of Procedure for the U.S. Court of International Trade nor in the Article 1904 Rules.

Paragraph (c)(4)(ii) requires that counsel and professionals file the original and six copies of their application directly with the Commission Secretary. In addition, reflecting the filing requirements in the Article 1904 Rules, the revised paragraph directs counsel and professionals to file four copies of their application with the U.S. Secretary. The service requirements are not substantively changed from the earlier interim rules.

Paragraph (c)(4)(iii) governs the Binational Secretariats. The revised paragraph instructs both Secretaries and each member of their staffs to file their applications for protective order directly with the Commission Secretary.

Revised paragraph (c)(4)(iv) directs members of the United States inter-agency group to file the original and six (6) copies of their application for protective order with the Commission Secretary. Again, the Commission's amended interim rules reflect the Article 1904 Rules' filing requirement and also direct the inter-agency group to file four (4) copies of their applications with the U.S. Secretary.

Members of the Canadian inter-agency group, by contrast, are instructed by revised paragraph (c)(4)(v) to file a single copy of their application with the Canadian Secretary. The Canadian Secretary in turn is required to file the original and size (6) copies of the applications with the Commission Secretary. Grouping the applications in this manner will ensure that the Commission Secretary knows why these applicants are seeking access and hence ensure expeditious consideration.

The amended interim rules delete as unnecessary paragraph (c)(5) concerning release of proprietary information to clericals. The terms and conditions under which clericals may be granted access to proprietary information are described in paragraph (c)(3) governing persons authorized to receive proprietary information.

The provisions governing persons who retain access to proprietary information from the administrative proceeding during the panel review are substantively unchanged. The requirement to file and serve updates or amendments to the person's APO application has been eliminated from paragraph (c)(5) as unnecessary. A general obligation to file and serve such amendments appears in paragraph (f), as well as in the protective order and the Article 1904 Panel Rules.

Paragraph 207.93(d)

Revised paragraph (d) consolidates paragraphs (c) and (d) of the previously enacted interim rules and governs the issuance of a protective order to all applicants. Paragraph (d)(1) governs issuance of a protective order to panelists and their assistants, ECC members and their assistants, translators, court reporters, both Binational Secretaries and their staffs, and both the U.S. and Canadian inter-agency groups (*i.e.*, everyone but counsel and professionals). The previously enacted interim rules provided that the Secretary would rule on any application within thirty days without distinguishing among the different categories of applicants. Those rules governing APOs for counsel and professionals included a schedule allowing for objections to such persons receiving access. By contrast, the Article 1904 Rules do not provide for objections to any category of applicant receiving

access to proprietary information other than counsel under an APO. Consequently, although the Commission may take thirty days if needed, the presumption is now that the Commission Secretary will issue an APO once the Commission Secretary is satisfied that the terms for access are met and approves the application. In addition, the language requiring panelists to file a signed copy of the protective order with the Commission and requiring the other applicants to file a copy of the protective order with the U.S. Secretary is redrafted with no substantive changes.

Paragraph (d)(2) governs issuance of protective orders to counsel and professionals. The enacted rules provided an opportunity for a person to file an objection to another person's application. These amended interim rules have added a requirement that a reply to an objection must be served on the person who filed the objection and on all other persons on whom the objection was filed. Such reply will be considered only if it is filed and served prior to the time that the Commission Secretary renders a decision.

In addition, because paragraph 207.93(a) delegates to the Commission Secretary the authority to grant or deny access to proprietary information under an APO, paragraph 20.793(d)(2)(iii) permits an appeal from a denial of access by the Secretary to the Commission. Revised paragraph 207.93(d)(2)(iii) provides that if the Commission Secretary denies an application, a letter informing the applicants of the rejection must be sent within fourteen (14) days of the receipt of the application. Notification to the applicant of a denial will include notification that the applicant may appeal the denial to the Commission within five (5) days of the date of service of the denial. These time limits are imposed in order to insure that the Commission has adequate time to consider the appeal and issue its decision within the thirty days mandated by the Article 1904 Rules.

Paragraph 207.93(d)(2)(iv) sets forth the address to which an appeal should be sent and requires that the appeal be served on all the persons on the service list or on all participants, depending upon when the appeal is filed, in accordance with paragraph (c)(4)(ii)(B). The new provision also restates the requirement that the Commission must reach a decision within thirty (30) days.

Paragraph 207.93(f)

Paragraph (f) governs the filing of amendments to protective order applications. Mirroring the filing requirements contained in the Article 1904 Rules, revised paragraph (f) requires that amendments to APO applications of panelists, ECC members, assistants to panelists or ECC members, court reporters, and translators be filed with the U.S. Secretary, who must then file the original and six copies with the Commission Secretary. Counsel and professionals must file the original and six copies of any amendments with the Commission Secretary and four copies with the U.S. Secretary. All other persons are required only to file the original and six copies directly with the Commission Secretary.

Paragraph 207.93(g)

Paragraph (g) governs the modification and revocation of protective orders. The language in this paragraph has been reorganized for greater clarity. There are two substantive changes to this interim rule. One is the deletion of the language contained in paragraph (g)(2) concerning provisional action by the Commission. Because the Commission has the authority to revoke or modify a protective order at any time, this language is superfluous. The other ensures that the Binational Secretariat is aware of any changes to a protective order by amending the interim rules to add a requirement that the Commission Secretary notify the U.S. Secretary in writing if it revokes or modifies a protective order.

Section 207.94

The technical amendments amended the portion of section 403(c) of the FTA Implementing Act, codified at 19 U.S.C. 1677f(f)(1)(A), to provide that the Commission may restrict access to a document, or portion thereof, which it has claimed as privileged but for which the panel has determined that disclosure is required under U.S. law. The statute further provides that such access will be limited to only those authorized persons who the panel has determined require access. Because the statute clarifies that privileged information will be released by the Commission only pursuant to a decision from the panel and only to those persons identified by the panel and in light of the denial of the two requests for access to privileged information made in panel reviews, elaborate procedures for requesting the Commission for access are unnecessary. Therefore, the general delegation of authority in paragraph 207.93(a) replaces the specific procedures set out in section 207.94 of the enacted interim final rules. The revised section indicates that a protective order for information shall contain requirements similar to those contained in an APO for proprietary information.

Because the release of privileged information would be an exceptional event, the new § 207.94 further provides that the Commission Secretary will not automatically release privileged information but must inform the Commission twenty-four hours prior to any such release.

Section 207.100

Paragraph 207.100(a) sets forth sanctions the Commission can impose for committing a prohibited act under 19 U.S.C. 1677f(f)(3). The technical amendments expanded the list of prohibited acts to include the knowing receipt of proprietary information or privileged information, the receipt of which constitutes a violation of an APO issued under this subpart. As noted above, the new defined term "prohibited act" incorporates any action concerning APOs that is prohibited under the statute. This definition is therefore incorporated into this section.

In addition, the sanctions to which persons other than the individual who actually committed the prohibited act may be liable, imposed by paragraph (b) in the enacted rules, have now been limited to disbarment from practice before the Commission and integrated into paragraph (a)(1). This structure parallels the Commission's title VII regulations. In addition, so as not to deprive an individual of any due process rights, paragraph (b) ensures that any such person is entitled to all the administrative rights set forth in this subpart, such as an APA hearing and the right to an attorney.

Paragraph (c) explains that the statute's addition of knowing receipt of information, the receipt of which constitutes a violation of a protective order, intends to reach, *inter alia*, those persons who read or improperly disseminate a document containing proprietary information when they know, or should know, that they are not authorized to read or disseminate that document.

Section 207.101

The amended interim rule incorporates the new defined term "prohibited act." There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.102

The amended interim rule incorporates the new defined term "prohibited act." In addition, revised paragraph (c) now provides that if the

Commission determines that it is appropriate to initiate sanctions proceedings, the Commission shall appoint an administrative law judge (ALJ) and the Commission Secretary shall initiate such proceedings. The rules as enacted provided that the Office of Unfair Import Investigations could request that an ALJ be assigned to the preliminary investigation to assist in the determination whether there is a reasonable cause to believe that a prohibited act had been committed. There was no provision for appointing (or reappointing) on ALJ during the actual sanctions proceedings although the rules refer to decisions made by the ALJ. Under the revised paragraph, the Commission shall appoint an ALJ when the charging letter is sent to the charged party.

Section 207.103

The amended interim rule incorporates the new defined term "prohibited act." There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.105

The amended interim rule incorporates the new defined term "prohibited act." There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.106

Revised paragraph (a) permits anyone to make a motion to have the administrative law judge issue a recommended determination to take appropriate interim measures.

Revised paragraph (b) conforms this paragraph to paragraph (a) of this section, and permits a party opposing the imposition of appropriate interim measures to oppose them, whether they are the result of a motion or of the administrative law judge's own initiative.

Revised paragraph (d) indicates that the administrative law judge has the authority to recommend modification as well as revocation of interim measures.

In addition, in conformity with provisions in section 207.93 and in the Article 1904 rules concerning notification of changes to an APO, revised paragraph (e) requires the Commission Secretary to notify the U.S. Secretary if the Commission revokes or modifies a protective order following a sanctions proceeding. There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.107

This section, which governs the filing of motions, initially contained a provision that if an ALJ had not yet been assigned, all motions should be addressed to the Chief Administrative Law Judge. In light of the new provision in § 207.102(c) requiring the appointment of an ALJ when the charging letter is issued, this provision is deleted. There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.108

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.109

The language contained in paragraph (b) of this section listing sanctions for failing to comply with discovery was previously part of paragraph (a), but is now set off as a separate paragraph. Paragraph (b) of the original section is redesignated paragraph (c). In addition, the revised interim rule indicates that any person who wants to depose an official of the Commission, or any other U.S. or Canadian government official "shall" file a written motion. The original language stated that a person "may" file such a request.

Section 207.110

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.111

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.112

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.113

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.114

The amended interim rule incorporates the new defined term "prohibited act." In addition, paragraph (a) of this section initially provided that in complicated cases, the Commission could make its decision in 120 days, rather than the stipulated ninety days. Because the provision already provides that the Commission may change any time frames it chooses, the 120 day option is deleted. In paragraph (c) the separate burden of proof required by the ALJ for imposing sanctions is deleted. Sanctions are imposed by the Commission not by the ALJ. In addition, the burden of proof applies to the finding of a violation, and the imposition of sanctions is within the Commission's discretion.

There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.115

The amended interim rule incorporates the new defined term "prohibited act." The rule has also been revised to make explicit that the administrative law judge will make determinations as to whether access to proprietary information by counsel for a charged party is reasonably necessary to the defense, and that the Commission will deem to be abandoned any issue not raised in a petition for review in whatever procedure it considers such petition.

There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.116

There are no substantive differences between the revised interim rule and the enacted interim rule.

Section 207.117

There are no substantive differences between the revised interim rule and the enacted interim rule.

Section 207.118

The language in this section is reworded to clarify that, if the General Counsel or any other attorney in the General Counsel's office participated in the panel review during which a party committed the prohibited act under review, the General Counsel and those attorneys shall not advise the Commission on proceedings concerning sanctions under this subpart. In such cases, the Assistant General Counsel for 337 Investigations shall serve as the Acting General Counsel.

Section 207.119

To avoid confusion between review of an initial determination and reconsideration of the Commission's decision under this paragraph, the amended interim rule refers to a motion for reconsideration rather than to a petition for reconsideration.

Section 207.120

The revised interim rule incorporates the new term "prohibited act."

There are no other substantive differences between the amended interim rule and the enacted interim rule.

List of Subjects in 19 CFR Part 207

Administrative practice and procedure, Antidumping, Canada, Countervailing Duties, Imports, Trade agreements.

For the reasons set forth in the preamble, 19 CFR part 207, subpart G is amended as follows:

PART 207—[AMENDED]

1. The authority citation for part 207, subpart G, continues to read as follows:

Authority: Sec. 777 of the Tariff Act of 1930, as amended; secs. 403, 405(d) of the United States-Canada Free-Trade Implementation Act of 1988 (102 Stat. 1851, Pub. L. No. 100-449, Sept. 28, 1988; 19 U.S.C. 1335.

2. Section 207.90 is revised to read as follows:

§ 207.90 Scope.

This subpart sets forth the procedures and regulations for implementation of Article 1904 of the United States-Canada Free Trade Agreement under the Tariff Act of 1930, as amended by title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 1516a and 1677f). These regulations are authorized by section 405(d) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 1677f(f)(2)) and 19 U.S.C. 1335.

3. Section 207.91 is revised to read as follows:

§ 207.91 Definitions.

As used in this subpart—

Administrative Law Judge means the United States Government employee appointed under section 3105 of title 5 of the United States Code to conduct proceedings under this part in accordance with section 554 of the United States Code;

Agreement means the Free-Trade Agreement between Canada and the United States of America entered into between the Government of Canada and the Government of the United States of America, which took effect on January 1, 1989;

Article 1904 Rules means the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America and Canada pursuant to the Agreement, as amended;

Canadian Secretary means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on the Secretary's behalf;

Charged party means a person who is charged by the Commission with committing a prohibited act under 19 U.S.C. 1677f(f)(3);

Clerical person means a person such as a paralegal, secretary, or law clerk who is employed or retained by and under the direction and control of an authorized applicant;

Commission means the United States International Trade Commission;

Commission Secretary means the Secretary to the Commission;

Complaint means the complaint referred to in the Article 1904 Rules;

Counsel means persons described in the definition of "counsel of record" in Rule 3 of the Article 1904 Rules, and counsel for an interested person who plans to file a timely complaint or Notice of Appearance in the panel review.

Date of Service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, but if a deadline falls on a weekend or on a United States federal holiday it shall be extended to the next working day;

Extraordinary challenge committee means the committee established pursuant to Annex 1904.13 of the Agreement and section 407 of the FTA Act to review decisions of a panel or conduct of a panelist;

Final determination means "final determination" under Article 1911 of the agreement;

FTA Act means the United States-Canada Free-Trade Implementation Act of 1988, Public Law No. 100-449 (Sept. 28, 1988);

Investigative attorney means an attorney designated by the Office of Unfair Import Investigations to engage in inquiries and proceedings under 19 CFR 207.100 *et seq.*;

Notice of Appearance means the notice of appearance provided for by Rule 40 in the Article 1904 Rules;

Panel Review means review of a final determination pursuant to chapter 19 of the Agreement, including review by an extraordinary challenge committee;

Party means, for the purposes of § § 207.100–207.120, either the investigative attorney(ies) or the charged party(ies);

Persons means, for the purposes of § § 207.100–207.120, an individual, partnership, corporation, association, organization, or other entity;

Privileged information means all information covered by the provisions of the second sentence of 19 U.S.C. 1677f(f)(1)(A);

Professional means an accountant, economist, engineer, or other non-legal specialist employed by, or under the direction and control, of a counsel;

Prohibited act means the violation of a protective order, the inducement of a violation of a protective order, or the knowing receipt of information the receipt of which constitutes a violation of a protective order;

Proprietary information means confidential business information as defined in 19 CFR 201.6(a);

Protective Order means an administrative protective order issued by the Commission;

Secretariat means the Secretariat established pursuant to Article 1909 of the Agreement and includes the Secretariat sections located in both Canada and the United States;

Service address means the facsimile number, if any, and address set out by a person as the address of the person's attorney where the person may be served, or when the person is not represented by an attorney, the facsimile number, if any, and address of the person;

Service list means the list maintained by the Commission Secretary under 19 CFR 201.11(d) of persons in the administrative proceeding leading to the final determination under panel review;

United States Secretary means the Secretary of the United States section of the Secretariat and includes any person authorized to act on the Secretary's behalf.

Except as otherwise provided in this subpart, the definitions set forth in the Article 1904 Rules are applicable to this subpart and to any protective orders issued pursuant to this subpart.

4. Section 207.93 is revised to read as follows:

§ 207.93 Protection of proprietary information during panel and committee proceedings.

(a) *Requests for protective orders.* A request for access to proprietary information pursuant to 19 U.S.C. 1677f(f)(1) shall be made to the Secretary of the Commission.

(b) *Persons authorized to received proprietary information under protective order.* The following persons may be authorized by the Commission to receive access to proprietary information if they comply with these regulations and such other conditions imposed upon them by the Commission:

(1) The members of a binational panel or extraordinary challenge committee, any assistant to a member, court reporters and translators; (2) Counsel and professionals, provided that the counsel or professional does not participate in competitive decision-making, as defined in *US Steel Corp.* v. *United States*, 730 F.2d 1465 (Fed. Cir.

1984), for the person represented or for any person who would gain a competitive advantage through knowledge of the proprietary information sought; (3) Clerical persons who are employed or retained by and under the direction and control of a person described in paragraphs (b)(1), (2), (5) or (6) of this section who has been issued a protective order, if such clerical persons:

(i) Are not involve in the competitive decision-making, or the support functions for the competitive decision-making, of a participant to the proceeding or of any person who would gain a competitive advantage through knowledge of the proprietary information sought, and

(ii) Have agreed to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her;

(4) The Secretaries of the U.S. and Canadian sections the Secretariat and members of the their staffs;

(5) Any officer or employee of the United States Government who the United States Trade Representative informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committee; and

(6) Any officer or employee of the Government of Canada who the Canadian Minister of Trade informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees.

(c) *Procedures for obtaining access to proprietary information under protective order*—(1) *Persons who must file an application for release under Protective Order.* To be permitted access to proprietary information in the administrative record of a final determination under panel review, all persons described in paragraphs (b)(1), (2), (4), (5) or (6) of this section, unless described in paragraph (c)(5)(i) of this section, shall file an application for a protective order.

(2) *Contents of applications for release under protective order.*

(i) The Commission Secretary shall adopt from time to time forms for submitting requests for release pursuant to protective order that incorporate the terms of this rule. The Commission Secretary shall supply the United States Secretary with copies of the forms for persons described in paragraphs (b)(1), (4), (5), and (6) of this section. Other applicants may obtain the forms at the Commission Secretary's office at 500 E Street SW., Washington, DC 20436.

(ii) Such forms shall require the applicant to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to any person other than

(1) Personnel of the Commission involved in the particular panel review in which the proprietary information is part of the administrative record,

(2) The person from whom the information was obtained,

(3) A person who is authorized to have access to the same proprietary information pursuant to a Commission protective order, and

(4) A clerical person retained or employed by and under the direction and control of a person described in paragraph (b) (1), (2), (5), or (6) of this section who has been issued a protective order if such clerical person and has signed and dated an agreement to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her.

(B) Not use any of the proprietary information released under protective order and not otherwise available for purposes other than the particular proceedings under Article 1904 of the Agreement;

(C) Upon completion of panel review, or at such other date as may be determined by the Commission Secretary, return to the Commission, or certify to the Commission Secretary the destruction of, all documents released under the protective order and all other material (such as briefs, notes, or charts), containing the proprietary information released under the protective order, except that those described in paragraph (b)(1) of this section may return such documents and other materials to the United States Secretary. The U.S. Secretary may retain a single file copy of each document for the official file.

(D) Update information in the application for protective order as required by the protective order; and (E) Acknowledge that the person becomes subject to the provisions of 19 U.S.C. 1677f(f) and to this subpart, as well as section 77.26 of Canada's Special Import Measures Act, as amended.

(3) *Timing of applications.* An application for any person described in paragraph (b)(1) or (b)(2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. An application for a person described in paragraph (b)(4) of this section shall file an application immediately upon assuming official responsibilities in the U.S. or Canadian Secretariat. An application for any person described in paragraph (b)(5) or (b)(6) of this section may be filed at any time after the United States Trade Representative or the Canadian Minister of Trade has notified the Commission Secretary that such person requires access.

(4) *Filing and service of applications*—(i) *Applications of persons described in paragraph (b)(1) of this section.* A person described in paragraph (b)(1) of this section shall submit the completed original of the form to the United States Secretary, FTA Binational Secretariat, room 2061, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. The United States Secretary, in turn, shall file the original plus six (6) copies of the application with the Commission Secretary.

(ii) *Applications of persons described in paragraph (b)(2) of this section*—(A) *Filing.* A person described in paragraph (b)(2) of this section shall file the completed original of the form and six (6) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

(B) *Service.* If an applicant files before the deadline for filing notices of appearance for the panel review, the applicant shall concurrently serve each person on the service list with a copy of the application. If the applicant files after the deadline for filing notices of appearance for the panel review, the applicant shall serve each participant in the panel review in accord with Rules 48 and 24 of the Article 1904 Rules. Service on a person may be effected by delivering a copy to the person's service address; by sending a copy to the person's service address by facsimile transmission, expedited courier service, expedited mail service; or by personal service.

(iii) *Applications of persons described in paragraph (b)(4) of this section.* A person described in paragraph (b)(4) of this section shall file the original and six (6) copies of the protective order application with the Commission Secretary.

(iv) *Applications of persons described in paragraph (b)(5) of this section.* A person described in paragraph (b)(5) of this section shall file the original and six (6) copies with the Commission Secretary and four (4) copies of the application with the United States Secretary.

(v) *Applications of persons described in paragraph (b)(6) of this section.* A

person described in paragraph (b)(6) of this section shall submit the completed original of the protective order application to the Canadian Secretary. The Canadian Secretary in turn, shall file the original and six (6) copies with the Commission Secretary.

(5) *Persons who retain access to proprietary information under a protective order issued during the administrative proceeding.*—(i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, becomes immediately subject to the terms and conditions of protective orders issued pursuant to this subpart, including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File four (4) copies of the original application, of all existing updates to that application, and of the protective order with the United States Secretary; and

(B) File seven (7) copies of the protective order and of all existing updates with the Commission Secretary.

(d) *Issuance of protective orders*—(1) *Applicants described in paragraph (b)(1), (4), (5) and (6) of this section.* Upon approval of an application of persons described in paragraph (b)(1), (4), (5), or (6) of this section, the Commission Secretary shall issue a protective order permitting release of proprietary information. Any member of a binational panel to whom the Commission Secretary issues a protective order must countersign it and return one copy of the countersigned order to the United States Secretary. Any other applicant under paragraph (b)(1) of this section must file a copy of the order with the United States Secretary.

(2) *Applicants described in paragraph (b)(2) of this section.* (i) The Commission Secretary shall not rule on any application filed by a person described in paragraph (b)(2) of this section until ten (10) days after the request is filed unless there is a compelling need to rule more expeditiously. Any person may file an objection to the application within seven (7) days of the application's filing date, stating the specific reasons why the Commission should not grant the application. One (1) copy of the objection shall be served on the applicant and on all persons who were served with the application. Any reply to an objection will be considered if it is filed and served before the Commission Secretary renders a decision. Service of objections and replies shall be made in accordance with paragraph (c)(4)(ii)(B) of this section.

(ii) *Approval of the application.* If appropriate, the Commission shall, within thirty (30) days of the receipt of the application, issue a protective order permitting the release of proprietary information to the applicant.

(iii) *Denial of the application.* If the Secretary denies an application, he or she shall, within fourteen (14) days of the receipt of the application, serve a letter notifying the applicant of the decision and the reasons therefor. The letter shall advise the applicant of the right to appeal to the Commission. Any appeal must be made within five (5) days of the service of the Commission Secretary's letter.

(iv) *Appeal from denial of an application.* An appeal from a denial of a request must be addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Such appeal must be served in accordance with paragraph (c)(4)(ii)(B) of this section. The Commission shall make a final decision granting or denying the appeal within thirty (30) days from the day on which the application was filed with the Commission Secretary.

(v) *Filing of protective orders.* If a protective order is issued to a person described in paragraph (b)(2) of this section, the person shall immediately file one (1) copy of the protective order with the United States Secretary.

(e) *Retention of protective orders.* The Commission Secretary shall retain, in a public file, copies of applications granted, including any updates thereto, and protective orders issued under this section, including protective orders filed in accordance with paragraph (b)(6)(ii) of this section.

(f) *Filing of amendments to granted applications.* Any person who has been issued a protective order under this section shall:

(1) If a person described in paragraph (b)(1) of this section, submit any amendments to the application for a protective order to the United States Secretary, who shall file the original and six (6) copies with the Commission Secretary;

(2) If a person described in paragraph (b)(2) of this section, file the original and six (6) copies of any amendments to the application with the Commission Secretary and four (4) copies with the United States Secretary; or

(3) If any other person, file the original and six (6) copies of any amendments to the application with the Commission Secretary.

(g) *Modification or revocation of protective orders.* (1) Any person may file with the Commission Secretary a request that a protective order issued under this section be modified or revoked because of changed conditions of fact or law, or on grounds of the public interest. The request shall state the changes desired and include any supporting materials and arguments. The person filing the request shall serve a copy of the request upon the person to whom the protective order was issued.

(2) Any person may file a response to the request within twenty (20) days after it is filed, unless the Commission issues a notice indicating otherwise. After consideration of the request and any responses thereto, the Commission shall take such action as it deems appropriate.

(3) If a request filed under this paragraph alleges that a person is violating the terms of a protective order, the Commission may treat the request as a report of violation under § 207.101 of this subpart.

(4) The Commission may also modify or revoke a protective order on its own initiative.

(5) If the Commission revokes or modifies a person's protective order, it shall notify the person and the United States Secretary in writing.

5. Section 207.94 is revised to read as follows:

§ 207.94 Protection of privileged information during panel and committee proceedings.

If a panel decides that the Commission is to grant access to privileged information pursuant to protective order, the Commission shall issue a protective order, with terms and conditions equivalent to those described in § 207.93(c)(2), to those persons who the panel has designated as requiring access. Twenty-four hours prior to release of information for which the Commission has claimed a privilege, the Secretary shall certify to the Commission that a Panel has directed the Commission to release such information to specified persons pursuant to 19 U.S.C. 1677f(f)(1).

6. Section 207.100 is revised to read as follows:

§ 207.100 Sanctions.

(a) A person who is determined under this subpart to have committed a prohibited act may be subject to one or more of the following sanctions:

(1) A civil penalty not to exceed $100,000 for each violation, each day of a continuing violation constituting a separate violation;

(2) Disbarment from practice in any capacity before the Commission, which disbarment may, in appropriate circumstances, include such person's partners, associates, employer and employees, for a designated time period following publication of a determination that the protective order has been breached;

(3) Denial of further access to proprietary or privileged information covered by the relevant protective order or to proprietary information in future Commission proceedings;

(4) An official reprimand by the Commission;

(5) In the case of an attorney, accountant, or other professional, referral of the facts underlying the prohibited act to the ethics panel or other disciplinary body of the appropriate professional association or licensing authority;

(6) When appropriate, referral of the facts underlying the prohibited act to the United States Trade Representative, or his or her designees, or to another government agency; and

(7) Any other administrative sanctions as the Commission determines to be appropriate.

(b) Each partner, associate, employer, and employee described in paragraph (a)(2) of this section is entitled to all the administrative rights sets forth in this subpart.

(c) For the purposes of this subpart, the knowing receipt of information the receipt of which constitutes a violation of a protective order includes, but is not limited to, the reading or unauthorized dissemination of the information covered by a protective order by person who knows or should reasonably believe that he or she is not authorized to read or disseminate such information.

7. Section 207.101 is revised to read as follows:

§ 207.101 Reporting of prohibited act and commencement of investigation.

(a) Any person who has information indicating that a prohibited act has been committed shall immediately report all pertinent facts relating thereto to the Commission Secretary.

(b) Upon receipt, the Commission Secretary shall record the information, assign an investigation number, and forward all information he or she has received to the Office of Unfair Import Investigations.

(c) As expeditiously as possible, the Office of Unfair Import Investigations shall conduct an inquiry to determine whether there is reasonable cause to believe that a person or persons have committed a prohibited act. At any time, the Office of Unfair Import Investigations may request that the Commission assign an administrative law judge to oversee the inquiry.

(d) At the conclusion of the inquiry, the Office of Unfair Import Investigations shall assess whether the available information is sufficient to provide reasonable cause to believe that a person or persons have committed a prohibited act.

8. Section 207.102 is amended by revising paragraphs (a)(1) introductory text and (2) introductory text, (c), (d), (e) and (g) to read as follows:

§ 207.102 Initiation of proceedings.

(a) * * *

(1) If the Office of Unfair Import Investigations concludes that there is not reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall

* * * * *

(2) If the Office of Unfair Import Investigations concludes that there is reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall

* * * * *

(c) If the Commission determines that it is appropriate to issue a charging letter, the Commission shall appoint an administrative law judge to oversee the proceeding and the Commission Secretary shall initiate a proceeding under this subpart by issuing a charging letter as set forth in § 207.103.

(d) If the Commission determines that it is appropriate to initiate proceedings, but that the party to be charged is beyond the jurisdiction of the Commission and within the jurisdiction of Canada, or that for other reasons an authorized agency of Canada would be the more appropriate forum for initiation of a proceeding, the Commission shall take the necessary steps for issuance of a letter requesting the authorized agency of Canada to initiate proceedings under Canadian law on the basis of an alleged prohibited act.

(e) The Commission may make any determination regarding notification about the alleged prohibited act and the relevant underlying facts to the person who submitted the proprietary information that allegedly has been disclosed. A determination by the Commission on this subject does not foreclose the administrative law judge from redetermining at any time during the hearing whether notification to the compromised party is appropriate.

* * * * *

(g) Except as deemed reasonably necessary by the Office of Unfair Import Investigations to gather relevant information and to protect the interests of the person who submitted the proprietary information, all aspects of the inquiry shall remain confidential, unless otherwise ordered by the Commission. Except as the Commission may otherwise order, the Commission Secretary shall maintain all closed investigatory files in confidence to the extent permitted by law, and shall destroy any documentary evidence containing allegations of a prohibited act for which no proceeding is initiated one year after the file is closed.

9. Section 207.103 is amended by revising paragraphs (a) (1), (2), (4), (5), and (d) to read as follows:

§ 207.103 Charging letter.

(a) * * *

(1) Allegations concerning a prohibited act;

(2) A citation to § 207.100 of this subpart, for a listing of sanctions of a listing of sanctions that may be imposed for a prohibited act;

* * * * *

(4) A statement that the requested party or his attorney may request the issuance of an appropriate administrative protective order to obtain access to the information upon which the charge is based;

(5) A statement that the charged party has a right to retain an attorney at the charged party's own expense for purposes of representation; and

* * * * *

(d) *Amendment of charging letter.* (1) At any time after proceedings have been initiated, the investigative attorney may move for leave to amend or withdraw the charging letter.

(2) If the administrative law judge determines that the charging letter should be amended to include additional parties, the judge shall issue a recommended determination to that effect. The Commission shall review the recommended determination and issue a determination granting or denying the motion to amend the charging letter to include additional parties.

(3) Upon motion, the administrative law judge may grant leave to amend the charging letter for good cause shown upon such conditions as are necessary

to avoid prejudicing the public interest and the rights of the parties already charged.

(4) Any amended charging letter shall be served upon all charged parties as provided in paragraphs (a) and (b) of this section.

10. Section 207.105 is revised to read as follows:

§ 207.105 Confidentiality.

(a) *Protection of proprietary and privileged information.* As the administrative law judge deems reasonably necessary for the preparation of the defense of a charged party, the attorney for the charged party may be granted access in these proceedings to the proprietary information or to the privileged information, the disclosure of which is the subject of the proceedings. Any such access shall be under protective order consistent with the provisions of this subpart.

(b) *Confidentiality of proceedings.* Upon the request of any charged party pursuant to § 207.106 of this subpart, the administrative law judge will issue an appropriate confidentiality order. This order will provide for the confidentiality, to the extent practicable and permitted by law, of information relating to allegations concerning the commitment of a prohibited act, consistent with public policy considerations and the needs of the parties in conducting the sanctions proceedings. The order will provide what all proceedings under this provision shall be kept confidential within the terms of the order except to the extent incorporated into a published final decision of the Commission. Any confidential information not disclosed in such decision will remain protected.

11. Section 207.106 is amended in paragraph (a) by removing the words "by the investigative attorney" and by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 207.106 Interim measures.

* * * * *

(b) Before issuing a determination recommending interim sanctions, the administrative law judge shall afford a party against whom such measures are proposed the opportunity to oppose them. The administrative law judge shall ordinarily decide any motion under this section no more than twenty (20) days after it is filed.

(c) The Commission shall review any recommended determination regarding the imposition of interim measures within twenty (20) days from its issuance or such other time as it may order. The Commission may impose any appropriate interim sanctions.

(d) The administrative law judge may at any time recommend to the Commission that interim measures be modified or revoked. The Commission shall rule on such recommendation within ten (10) days after its issuance, of any such recommendation, or such other time as it may order.

(e) The Commission Secretary shall immediately notify the Secretariat of any interim measures that revoke or modify an outstanding protective order in an ongoing panel review. The Commission Secretary shall also immediately notify the Secretariat of any revocation or modification of an interim measure.

12. Section 207.107 is amended by revising paragraphs (a)(1) and (d) to read as follows:

§ 207.107 Motions.

(a) *Presentation and disposition.*

(1) After issuance of the charging letter and while part of the proceeding is pending before the administrative law judge, all motions relating to that part of the proceeding shall be addressed to the administrative law judge.

* * * * *

(d) *Service.* All motions, responses, replies, briefs, petitions, and other documents filed in sanctions proceedings under this subpart shall be served by the party filing the document upon each other party. Service shall be made upon the attorney for the party unless the administrative law judge or the Commission orders otherwise.

13. Section 207.108 is revised to read as follows:

§ 207.108 Preliminary conference.

As soon as practicable after the response to the charging letter is filed, unless the administrative law judge determines that such a conference is not necessary, the administrative law judge shall direct the attorney or other representative for a party to meet with him or her at a preliminary conference. At the conference, the administrative law judge shall consider the issuance of such orders as the administrative law judge deems necessary for the conduct of the proceedings. Such orders may include, as appropriate under these regulations, the establishment of a discovery schedule or the issuance of an order, if requested, to provide for maintaining the confidentiality of the proceedings pursuant to § 207.105(b) of this subpart.

14. Section 207.109 is revised to read as follows:

§ 207.109 Discovery.

(a) *Discovery methods.* All parties may obtain discovery under such terms and limitations as the administrative law judge may order. Discovery may be by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or things for inspection and other purposes; and

(4) Requests for admissions.

(b) *Sanctions.* If a party or its representative fails to comply with a discovery order, the administrative law judge may take such action as he or she deems reasonable and appropriate, including the issuance of evidentiary sanctions or deeming the respondent to be in default.

(c) *Depositions of nonparty officers or employees of the United States or Canadian governments*—(1) *Depositions of Commission officers or employees.* A party desiring to take the deposition of an officer or employee of the Commission (other than a member of the Office of Unfair Import Investigations or of the Office of the Administrative Law Judges), or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission direct that officer or employee to testify or produce the requested materials.

(2) *Depositions of officers or employees of other United States agencies, or of the Canadian government.* A party desiring to take the deposition of an officer or employee of another agency, or of the Canadian government, or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission seek the testimony or production of requested material from the officer or employee.

§ 207.110 [Amended]

15. Section 207.110 is amended in paragraph (a) by changing the reference from "§ 207.109(b)" to read "§ 207.109(c)".

16. Section 207.111 is amended by revising the introductory text to read as follows:

§ 207.111 Prehearing conference.

The administrative law judge may direct the attorney or other representatives for the parties to meet

with him or her to consider any or all of the following:

* * * * *

17. Section 207.112 is amended by revising paragraphs (a) and (b) to read as follows:

§ 207.112 Hearings.

(a) *Purpose of and scheduling of hearings.* An opportunity for a hearing before an administrative law judge shall be provided for each proceeding initiated under section 207.102 of this subpart. The purpose of such hearing shall be to receive evidence and hear argument in order to determine whether a charged party has committed a prohibited act and, if so, what sanctions are appropriate. Hearings shall proceed with all reasonable expedition and, insofar as practicable, shall be held at one place, continuing until completed, unless otherwise ordered by the administrative law judge.

(b) *Joinder or consolidation.* The administrative law judge may order joinder or consolidation of proceedings initiated under § 207.102 of this subpart at the administrative law judge's discretion.

* * * * *

18. Section 207.113 is amended by revising paragraph (a)(1) to read as follows:

§ 207.113 The record.

(a) *Definition of the record.* * * *

(1) The charging letter and response, motions and responses, and other documents and exhibits properly filed with the Commission Secretary;

* * * * *

19. Section 207.114 is amended by revising paragraphs (a) through (c) to read as follows:

§ 207.114 Initial determination.

(a) *Time for filing of initial determination.* (1) Except as may otherwise be ordered by the Commission, within ninety (90) days of the date of issuance of the charging letter, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether each charged party has committed a prohibited act, and as to appropriate sanctions.

(2) The administrative law judge may request the Commission to extend the time period for issuance of the initial determination for good cause shown.

(b) *Contents of the initial determination.* The initial determination shall include the following:

(1) An opinion making all necessary findings of fact and conclusions of law and the reasons therefor, and

(2) A statement that the initial determination shall become the determination of the Commission unless a party files a petition for review of the determination pursuant to § 207.115 or the Commission pursuant to § 207.116, orders on its own motion a review of the initial determination or certain issues therein.

(c) *Burden of proof.* A finding that a charged party committed a prohibited act shall be supported by clear and convincing evidence.

* * * * *

20. Section 207.115 is amended by revising paragraphs (a)(2), (a)(3)(ii), and (a)(4) to read as follows:

§ 207.115 Petition for review.

(a) * * *

(2) Any charged party who wishes to obtain judicial review pursuant to 19 U.S.C. 1677f(f)(5) must first seek review by the Commission in accordance with the procedures set forth in this regulation governing petitions for review.

(3) * * *

(ii) Specify the issues upon which review is sought, including a statement as to whether review is sought of the initial determination regarding the commitment of a prohibited act, or of the initial determination regarding sanctions;

(4) Any issue not raised in the petition for review filed under this section will be deemed to have been abandoned and may be disregarded by the Commission.

* * * * *

21. Section 207.116 is revised to read as follows:

§ 207.116 Commission review on its own motion.

Within forty-five (45) days of the date of service of the initial determination, the Commission on its own initiative shall order review of an initial determination or certain issues therein upon request of any Commissioner.

22. Section 207.117 is amended by revising the first 2 sentences into 1 sentence to read as follows:

§ 207.117 Review by Commission.

On review, the parties may not present argument on any issue that is not set forth in the notice of review; and the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge.

* * * * *

23. Section 207.118 is revised to read as follows:

§ 207.118 Role of the General Counsel in advising the Commission.

The Assistant General Counsel for Section 337 Investigations shall serve as Acting General Counsel for the purpose of advising the Commission on proceedings brought under this subpart if the prohibited act described in the charging letter involves a protective order issued in connection with a panel review that was pending when the letter was issued, and the General Counsel participated in the panel review. No other Commission attorney shall advise the Commission on proceedings under this subpart concerning a protective order issued during a panel review in which the attorney participated.

24. Section 207.119 is revised to read as follows:

§ 207.119 Reconsideration.

(a) *Motion for reconsideration.* Within fourteen (14) days after service of a Commission determination, any party may file with the Commission a motion for reconsideration, setting forth the relief desired and the grounds in support thereof. Any motion filed under this paragraph must be confined to new questions raised by the determination or to action ordered to be taken thereunder and upon which the moving party had no opportunity to submit arguments.

(b) *Disposition of motion for reconsideration.* The Commission shall grant or deny the motion for reconsideration. No response to a motion for reconsideration will be received unless requested by the Commission, but a motion for reconsideration will not be granted in the absence of such a request. If the motion to reconsider is granted, the Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

25. Section 207.120 is revised to read as follows:

§ 207.120 Public notice of sanctions.

If the final Commission decision is that there has been a prohibited act, and that public sanctions are to be imposed, notice of the decision will be published in the **Federal Register** and forwarded to the Secretariat. Such publication will occur no sooner than fourteen (14) days after the issuance of a final decision or after any motion for reconsideration has been denied. The Commission Secretary shall also serve notice of the Commission decision upon such departments and agencies of the United

States and Canadian governments as the Commission deems appropriate.

Issued: July 31, 1992.

By Order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-18628 Filed 8-5-92; 8:45 am]

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August 6, 1992

Part IV

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Parts 290 and 886

Management and Disposition of HUD-Owned Multifamily Projects and Certain Multifamily Projects Subject to HUD-Held Mortgages; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 290 and 886

[Docket No. R-92-1585; FR-2158-P-01]

RIN 2502-AD43

Management and Disposition of HUD-Owned Multifamily Projects and Certain Multifamily Projects Subject to HUD-Held Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would amend the Department's multifamily property disposition regulations to incorporate statutory amendments affecting the disposition of HUD-owned properties and also the management and disposition of properties with delinquent HUD-held mortgages. This rule would expand the scope of the regulations to include rental housing projects subject to HUD-held mortgages that either are delinquent, under workout agreements, or being foreclosed by HUD. The rule would also give local governments and State housing finance agencies the right of first refusal to purchase HUD-owned rental housing projects after HUD has established its disposition program for the projects.

DATES: Comment due date: October 5, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Audrey Hinton, Acting Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, room 6282, 451 7th Street, SW., Washington, DC 20410-8000. Telephone (202) 708-3555; TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Part 290 of title 24 CFR currently prescribes the requirements governing the management and disposition of HUD-owned multifamily housing projects. Part 290 implements HUD's statutory authority, contained in section 207(k) and (*l*) of the National Housing Act and in section 203 of the Housing and Community Development Amendments of 1978, to handle and dispose of such real property.

Section 203 was substantially revised by section 181 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (1987 Act). Section 203 was further amended by section 1010 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (1988 Act), and by section 579 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (NAHA). This proposed rule would implement these revisions.

These statutory amendments, which are discussed in more detail later in this preamble, specified the type of assistance to be provided when the Department determines to preserve units as affordable low- and moderate-income housing, and included certain projects with HUD-held mortgages within the scope of section 203. The Department has been carrying out its multifamily property disposition program and its servicing of delinquent HUD-held multifamily mortgages on a project-by-project basis in conformity with the requirements of section 203, as amended.

This rule would revise 24 CFR part 290 (currently HUD's multifamily property disposition regulations) to conform it to section 203, as amended, and, in addition, to cover rental housing projects that are subject to a HUD-held mortgage that is either delinquent, under workout agreement, or being foreclosed upon. The rule would also make conforming revisions to 24 CFR part 886, subpart C.

Under Section I of this preamble, the Department summarizes the changes made to section 203 by the 1987 Act, the 1988 Act, and by the NAHA. All provisions apply to both foreclosures and disposition of HUD-owned properties, unless specifically noted. Section II of the preamble outlines the procedures set forth in the proposed rule for the foreclosure of a HUD-held mortgage and the disposition of a HUD-owned property.

I. Statutory Amendments

Section 181(a) of the 1987 Act, section 1010(a) of the 1988 Act, and section 579(a) of the NAHA, revised section 203(a), which contains the goals for managing and disposing of HUD-owned multifamily housing projects. Section 203(a), as so amended, reads as follows (amendments made by section 181(a) of the 1987 Act, section 1010(a) of the 1988 Act, and section 579(a) of the NAHA [1] are shown in italics):

(a) The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') shall manage and dispose of multifamily housing projects that are owned by the Secretary, or that are subject to a mortgage held by the Secretary that is either delinquent, under workout agreement, or being foreclosed upon by the Secretary, in a manner that is consistent with the National Housing Act and this section and that will, in the least costly fashion among the reasonable alternatives available, further the goals of—

(1) preserving so that they are available to and affordable by low- and moderate-income persons—

(A) all units in multifamily housing projects that are subsidized projects or formerly subsidized projects;

(B) in other multifamily housing projects owned by the Secretary, at least the units that are occupied by low- and moderate-income persons; and

(C) in all other multifamily housing projects, at least the units that are occupied by low- and moderate-income persons on the date of assignment or foreclosure (whichever is greater);

(2) preserving and revitalizing residential neighborhood:

[1] The effect of section 579(a) of the NAHA was to remove the reference to vacant units previously added to section 203(a)(1)(B) by section 181(a) of the 1987 Act. As a result of this amendment, vacant units in unsubsidized or formerly unsubsidized projects acquired by HUD are not required to be preserved for occupancy by low- and moderate-income persons.

(3) maintaining the existing housing stock in decent safe and sanitary condition;

(4) minimizing the involuntary displacement of tenants;

(5) minimizing the need to demolish projects; and

(6) maintaining the project for the purpose of providing rental or cooperative housing.

The Secretary, in determining the manner by which a project shall be managed or disposed of, may balance competing goals relating to individual projects in a manner which will further the achievement of the overall purpose of this section.

The above provision expands the coverage of section 203 to include not only HUD-owned multifamily housing projects, but also certain categories of projects with HUD-held mortgages, namely, mortgages that are either delinquent, under workout agreement, or being foreclosed upon by the Secretary.

The amendments also provide greater specificity than was previously provided concerning the number of units in a given project which should be preserved as affordable for low- and moderate-income persons. The goal now is to preserve: all units in subsidized or formerly subsidized rental housing projects; at least the units in HUD-owned unsubsidized rental housing projects that are occupied by low- and moderate-income persons; and at least the units in all other projects covered by section 203 that are occupied by low- and moderate-income persons on the date of assignment or the date of foreclosure (whichever is greater).

Section 290.5, Management and disposition purpose and goals, conforms to these statutory amendments.

Sections 203(i) (2) and (3), as added by section 181(h)(2) of the 1987 Act and amended by section 1010(d) of the 1988 Act, contain the following definitions of "subsidized project" and "formerly subsidized project," respectively (amendments made by section 1010(d) of the 1988 Act are shown in italics):

(2) For the purpose of this section, the term subsidized project' means a multifamily housing project receiving any of the following assistance immediately prior to the assignment of the mortgage on such project to, or the acquisition of such mortgage by, the Secretary:

(A) below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act;

(B) interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act;

(C) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(D) direct loans at below market interest rates, made under section 202 of the Housing Act of 1959 or to a multifamily housing project under section 312 of the 1964; or

(E) housing assistance payments made under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975) or section 8 of the United States Housing Act of 1937 *(excluding payments made for certificates under subsection (b)(1) or vouchers under subsection (o)), if (except for purposes of paragraphs (1) and (2) of subsection (h) and section 183(c) of the Housing and Community Development Act of 1987) such housing assistance payments are made to more than 50 percent of the units in the project.*

Section 290.3 contains the definitions used in part 290. "Multifamily project" would be defined to mean a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act (other than under section 220(d)(3)(A)) or is or was subject to a loan under section 202 of the Housing Act of 1959 or section 312 of the Housing Act of 1964. (Although section 220(d)(3)(A) authorizes the insurance of mortgages covering one- to eleven-family dwellings, those mortgages are insured under the single family home mortgage programs, and are not covered by part 290.) The term also would include a manufactured home court or park, hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities. Hence, the term, "multifamily project" would cover every type of project that is subject to part 290, including those projects that are not subject to section 203.

"Rental housing project," on the other hand, would exclude multifamily projects that are hospitals, intermediate care facilities, nursing homes, group practice facilities, or board and care homes, but would include retirement service centers. Under the proposed rule, a manufactured home court or park would be considered a "rental housing project." Moreover, if HUD forecloses on or acquires five or more manufactured homes along with the manufactured home court or park itself, the Department proposes to carry out its foreclosure or disposition of the project in accordance with the unit preservation goal set forth in section 203(a)(1). The Department specifically invites comments on whether the application of section 203 to manufactured home courts or parks in this manner is appropriate. Vacant land would not be a "rental housing project," regardless of which mortgage insurance program or loan program it was financed under. In addition, eligible property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere programs ("HOPE") is not a "rental housing project," in accordance with the exemption of such property by section 427 of the NAHA. The term "rental housing project" would cover all projects that fall within the scope of section 203.

There are four types of rental housing projects: Subsidized, formerly subsidized, unsubsidized, and formerly unsubsidized. The definitions of "formerly subsidized" and "formerly unsubsidized" rental housing projects specify that if HUD has acquired the project more than once, its status is determined as of HUD's most recent acquisition. For example, if HUD acquires a subsidized project, which it subsequently sells without subsidy, but later reacquires the same project, HUD would designate the project a "formerly unsubsidized" project.

The rule would also define "low- and moderate-income person" to mean a person whose annual income does not exceed 80 percent of the median income for the area. Section 203 does not define "low- and moderate-income person," and the term has been used in various contexts in related statutes. The term has been used with respect to certain unsubsidized mortgage insurance programs that have no income eligibility limits (see section 221(d)(2) and (d)(4) of the National Housing Act). With respect to the below market interest rate program under section 221(d)(3) of the National Housing Act (another program that was intended for low- and moderate-income persons), HUD has established 95 percent of median income as the income eligibility limit. Section 133 of the Housing and Community Development Act of 1987 and section 229 of the NAHA also define 95 percent of median income as the upper limit for "moderate income" for purposes of the Emergency Low Income Housing Preservation Act of 1987, and for the Low Income Housing Preservation and Resident Homeownership Act of 1990 respectively.

Nonetheless, the Department believes that 80 percent of median income is the appropriate definition of the upper limit of "low- and moderate-income for purposes of section 203. Using this definition means that the Department will be making its preservation decisions with a standard that is the same as the statutory income eligibility limit generally applicable to the section 8 Housing Assistance Payments program, which is the Department's primary means of ensuring the preservation for low- and moderate-income persons of projects disposed of under part 290. Indeed, in section 203(f) Congress used "low- and moderate-

income" as an equivalent to "lower income" as that term is used in the section 8 program. Section 203(f)(2) provides that tenants who will be displaced as a result of the disposition or repair of a project shall have the right, "*except for tenants of above-moderate income*, to obtain housing assistance under the United States Housing Act of 1937" (emphasis added).

Section 181(b) of the 1987 Act revised section 203(b)(2), which concerns management services. This provision reads as follows (amendments made by section 181(b) of the 1987 Act are shown in italics):

(b) The Secretary is authorized, in carrying out this section—

(2)(A) to contract for management services for a multifamily housing project, *subject to subsection (a) that is owned by the Secretary (or for which the Secretary is mortgagee in possession)* on a negotiated, competitive bid, or other basis at a price determined by the Secretary to be reasonable, with a manager the Secretary has determined is capable of (i) implementing a sound financial and physical management program, (ii) responding to the needs of the tenants and working cooperatively with resident organizations, (iii) providing adequate organizational, staff, and other resources to implement a management program determined by the Secretary, and (iv) meeting such other requirements as the Secretary may determine; and

(B) to require the owner of a multifamily housing project subject to subsection (a) that is not owned by the Secretary (and for which the Secretary is not mortgagee in possession), to contract for management services for the project in the manner described in subparagraph (A).

The effect of this amendment is to apply the same management services provisions, which previously applied only to the Secretary with respect to a Secretary-owned project, to the Secretary when the Secretary is mortgagee-in-possession of a covered project. It also applied these management services provisions to an owner of a covered project if the mortgage is either delinquent, under workout agreement, or being foreclosed on by the Secretary, but the Secretary is not mortgagee-in-possession. Section 290.51(b)(1) and (b)(2) would implement these provisions. HUD, under § 290.51(b)(2), can direct the owner to contract for management services with a manager determined by HUD to be capable of implementing a sound financial and physical management program; responding to the needs of tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and other resources to implement a management program determined by HUD; and meeting such other requirements as HUD may determine to be necessary or appropriate.

Section 181(c) of the 1987 Act amended section 203(c), which concerns maintaining projects, to read as follows:

(c)(1) In the case of multifamily housing projects subject to subsection (a) that are owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall—

(A) to the greatest extent possible, maintain all such occupied projects in decent, safe, and sanitary condition;

(B) to the greatest extent possible, maintain full occupancy in all such projects; and

(C) maintain all such projects for purposes of providing rental or cooperative housing for the longest feasible period.

(2) In the case of any multifamily housing project subject to subsection (a) that is not owned by the Secretary (and for which the Secretary is not mortgagee in possession), the Secretary shall require the owner of the project to carry out the requirements of paragraph (1).

The principal effect of section 181(c), like section 181(b), is to expand the scope of the pertinent section 203 requirements to the Secretary when the Secretary is mortgagee-in-possession of a covered project and to the owner of a covered project if the mortgage is either delinquent, under workout agreement, or being foreclosed on by the Secretary, but the Secretary is not mortgagee-in-possession. These provisions are set out in § 290.51(a)(3).

Section 181(d) of the 1987 Act added a new subsection (d) to section 203, which concerns the provision of financial assistance when a rental housing project is acquired at foreclosure by a purchaser other than the Secretary or after sale by the Secretary. Section 203(d), which was further amended by section 1010(b) of the 1988 Act and section 579(b) of the NAHA, currently reads as follows (amendments made by section 1010(b) of the 1988 Act and by section 579(b) of the NAHA are shown in italics):

(d) In carrying out the goals specified in subsection (a)(1) the Secretary shall take not less than one of the following actions:

(1) Enter into contracts under section 8 of the United States Housing Act of 1937, to the extent budget authority is available for such section 8, with owners of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary. Such contracts shall provide assistance to the project involved for a period of not less than 15 years. *Such contracts shall be sufficient to assist (A) all units in multifamily housing projects that are subsidized or formerly subsidized projects; (B) in other multifamily housing projects owned by the Secretary, the units that, on the date title to the projects is acquired by the Secretary, are occupied by lower income families eligible for assistance under such section 8; and (C) in all other multifamily housing projects, the units that are occupied by lower income families eligible for assistance under such section 8 on the date of assignment or foreclosure (whichever is greater).* In order to make available to families any units in subsidized or formerly subsidized projects that are occupied by persons not eligible for assistance under such section 8, but subsequently become vacant, the contract shall also provide that when any such vacancy occurs the owner shall lease the available unit to a family eligible for assistance under such section 8. The Secretary shall provide such contracts at contract rents that, consistent with subsection (a), provide for the rehabilitation of such project and do not exceed the most recently adjusted fair market rents for substantially rehabilitated units published by the Secretary in the Federal Register.

(2) *In the case of multifamily projects (other than subsidized or formerly subsidized projects) that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, enter into annual contribution contracts with public housing agencies to provide vouchers or certificates under section 8 of the United States Housing Act of 1937 to all low-income families who are eligible for such assistance on the date that the project is acquired by the purchaser. The Secretary shall take action under this paragraph only after making a determination that the requirements under subsection (e) have been complied with and there is available in the area an adequate supply of habitable affordable housing for low-income families.*

(3) In accordance with the authority provided under the National Housing Act, provide purchase-money mortgages, reduce the selling price, or provide other financial assistance to the owners of multifamily housing projects that are acquired by a purchaser other than the Secretary, on terms that will ensure that, for a period of not less than 15 years (A) the project will remain available to and affordable by low- and moderate-income persons; and (B) such persons shall pay not more than the amount payable as rent under section 3(a) of the United States Housing Act of 1937.

Section 290.105 is the primary regulatory provision that would implement these provisions. Paragraph (d) of that section identifies the limited circumstances in which HUD may appropriately determine to dispose of a HUD-owned rental housing project, or to foreclose a HUD-held mortgage on rental housing project, without ensuring its continued availability as affordable rental or cooperative housing for low- or moderate-income families.[2]

[2] Section 290.105(d) is consistent with the legislative history of section 203 of the Housing and Community Development Act of 1987, which recognized that there are circumstances in which units should not be preserved as affordable housing (see Conference Report, H. Rept. No. 100-426, 100th Cong., 1st Sess. 188 (1987) and H. Rept. No. 100-122, 100th Cong., 1st Sess. 39 (1987)).

Section 579(b) of the NAHA amended the requirements for the provision of financial assistance under section 203(d) in two ways: (1) It removed the language previously added by section 181(d) of the 1987 Act concerning HUD's provision of section 8 assistance on behalf of vacant units in unsubsidized or formerly unsubsidized projects; and (2) it authorized the use of section 8 vouchers or certificates to all low-income families who are eligible for such assistance on the date that an unsubsidized or formerly unsubsidized project is acquired by a purchaser other than HUD at foreclosure, or after sale by HUD. These tenant-based subsidies may be provided only after HUD determines that the requirements under § 290.109 (concerning a right of first refusal to State and local government agencies) have been complied with, and that there is available in the area an adequate supply of habitable affordable housing for low-income families.

Local housing markets having an adequate supply of standard quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (*e.g.*, the housing market is balanced), as well as those in which there is an excess supply of rental housing (*e.g.*, the housing market is soft). Rental markets that do not have an adequate supply (*e.g.*, tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation.

In making a determination with regard to the supply of rental housing, HUD would consider information that demonstrates that:

(1) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market. Typically, a rental housing vacancy rate below four percent would be considered low unless the housing market area is not growing and, as a result, is experiencing low levels of demand. The analysis of vacancy data should also consider the direction the market is moving. For example, a significant increase in rental housing production or a decline in population growth could cause a tight market to become soft in a short period of time.

(2) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households. Or, in the tight markets where there has been no growth, or little growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth.

(3) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing.

(4) A significant number, or proportion, of the houeholds holding certificates or vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time is required to find units.

The Department proposes to rely on the HUD field office with jurisdiction over the project to define the market area for the project based on the field office's knowledge of the local real estate market and HUD's project underwriting experience. In large, complex metropolitan areas, delineation of submarkets may be required. HUD would make this determination in accordance with established market analysis techniques.

In unusual circumstances, the Department would consider using vouchers and certificates in an area with a vacancy rate lower than four percent, if it can be demonstrated that there is an adequate supply of affordable housing for low-income families. Examples of low vacancy situations where use of tenant-based assistance might be appropriate are areas where there is limited demand because of limited population growth or a declining population. PHA data showing that holders of vouchers and certificates are successful with little difficulty in finding acceptable units may be indicative that there is an adequate supply of rental housing despite the existence of low vacancy rate.

The public is invited to comment on this approach, contained in § 290.105(d)(7) of the proposed rule, to implementing section 579(b) of the NAHA, as it amended section 203 by adding a new subsection (d)(2). HUD will consider all comments and alternate approaches in drafting the final rule.

HUD notes that it continues to have the authority under section 203(d)(3), in accordance with the authority provided by section 297(*1*) of the National Housing Act, to provide purchase-money mortgages, reduce the selling price, or provide other financial assistance to the owner of a rental housing project acquired by a purchaser other than the Secretary. However, section 203(d)(3) requires that such assistance be provided on terms that ensure that, for a period of at least 15 years, the project remains available to and affordable by low- and moderate-income persons, and the rent to be paid by such persons does not exceed the amount payable under section 3(a) of the U.S. Housing Act of 1937 (as implemented by HUD regulations in 24 CFR part 813).

The Department is aware that, when it determines to sell a project with the financial assistance contemplated by section 203(d)(3) but without the benefit of section 8 assistance (see § 290.105(f) of the proposed rule), it may be difficult for an owner to comply with the affordability restrictions and still maintain an economically viable project. However, HUD also recognizes that there may be times when a disposition under section 203(d)(3) is unavoidable. For example, each year HUD requests sufficient section 8 funds to provide rental assistance for projects acquired by purchasers of HUD-owned projects or by purchasers other than the Secretary at foreclosure sales. If sufficient funds are not appropriated, HUD has the authority under section 203(d)(3) to provide financial assistance instead of section 8 rental assistance, with certain restrictions.

HUD is not prepared nor is it charged with a duty to continue to manage properties for extended periods awaiting sufficient appropriations for section 8 funds. Rather, HUD believes it has a duty to continue to foreclose and sell projects, even when section 8 funds are not available. In addition, there may be situations where, even though sufficient section 8 funds are available, HUD determines that a project should be sold under the provisions of section 203(d)(3) without section 8 assistance. Such situations, which would be determined on a case-by-case basis, would most likely occur in projects where there are only a small number of units occupied by eligible families, and the rents from the remainder of the project will support the assisted units.

In a project sold under the standard of section 203(d)(3), HUD would first determine the annual cash needs of the project at a level sufficient solely to cover monthly debt service needed to amortize the cost of rehabilitation to be performed by the purchaser; operating expenses determined by HUD as sufficient to assure that the project will be maintained as decent, safe, and sanitary housing; funds for reasonable reserves; and, if the purchaser is profit-motivated, a reasonable return. HUD would then establish monthly unit rents by size and amenities, based on those annual cash needs plus the amount of income expected to be generated by

rents. The expected rental income would take into consideration the number of units that may be occupied by low- and moderate-income persons paying income-based rents under 24 CFR part 813. Depending on the number of units to be preserved for low- and moderate-income persons and the annual cash needs of the project, HUD may, where determined essential for the economic viability of the project, permit the owner to restrict occupancy in the units to be preserved to persons who meet a minimum income level (*e.g.*, 50 percent of median income) but do not exceed the maximum income level for low- and moderate-income persons.

The Department is cognizant of its responsibility under section 203(a)(1) to preserve projects so that they are available to and affordable by low- and moderate-income persons. Section 203(a) also lists other goals to be considered in the management and disposition of projects, and the last paragraph of that section authorizes the Secretary to balance competing goals relating to individual projects. In meeting the Department's total responsibility to the goals in section 203(a), it may be necessary, on rare situations, to limit occupancy based on income. The Department invites the public to comment on this proposal and to offer feasible alternatives to implementing the strict standards contained in section 203(d)(3).

Section 203(e), which concerns the right of first refusal to be given to States and units of local government, was added by section 181(e) of the 1987 Act and was amended by section 1010(c) of the 1988 Act. It currently reads as follows:

(e)(1) Prior to the sale of a multifamily housing project that is owned by the Secretary, the Secretary shall develop a disposition plan for the project that specifies the minimum terms and conditions of the Secretary for disposition of the project, including the initial sales price that is acceptable to the Secretary and the assistance that the Secretary plans to make available to a prospective purchaser in accordance with Subsections (a) and (d). The initial sales price shall reflect the value of the project as housing affordable to low- and moderate-income persons for the period required in subsection (d).

(2) Upon approval of a disposition plan for a project, the Secretary shall notify the local government and the State housing finance agency (or other agency or agencies designated by the Governor) of the terms and conditions of the disposition plan. The local government and the designated State agency shall have 90 days to make an offer to purchase the project.

(3) The Secretary shall accept an offer that complies with the terms and conditions of the disposition plan. The Secretary may accept an offer that does not comply with the terms and conditions of the disposition plan if the Secretary determines that the offer will further the preservation objectives of subsection (a) by action that include extension of the duration of low- and moderate-income affordability restrictions or otherwise restructuring the transaction in a manner that enhances the long-term affordability for low- and moderate-income persons. The Secretary shall, in particular, have discretion to reduce the initial sales price in exchange for the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to subsection (d)(1). If the Secretary and the local government or designated State agency cannot reach agreement within 90 days, the Secretary may offer the project for sale to the general public.

(4) The Secretary shall prohibit any local government or designated State agency from transferring projects acquired under a right of first refusal under this subsection to a private entity, unless the local government or designated State agency solicits proposals from such entities through a public process. The solicitation of proposals shall be based on prescribed criteria, which shall include the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to subsection (d)(1).

(5) Notwithstanding any other provision of law to the contrary, a local government (including a public housing agency) or designated State agency may purchase a subsidized or formerly subsidized project in accordance with this subsection.

Section 290.109 of this rule implements these provisions by providing units of local government and State housing finance agencies the right of first refusal to purchase a HUD-owned project on the terms and conditions specified in the disposition program, or on other terms that will further the preservation objectives of § 290.5.

This proposed rule would retain (in § 290.102(c)) provision for early notification to State and local government agencies that may have an interest in acquiring a HUD-owned rental housing project. This notification can facilitate negotiated sales of these projects to State and local governments. The legislative history makes clear that the enactment of the right of first refusal requirement was not intended to preclude HUD from negotiating a sale with State and local governments (see Conference Report, H. Rept. No. 100-426, 100th Cong., 1st Sess. 188 (1987)).

HUD will also request in the notice to State and local government agencies under § 290.102(c) that these entities contact any nonprofit organizations in their jurisdiction that may have an interest in acquiring a project. In this manner, HUD hopes to encourage the early involvement of nonprofit organizations.

Section 290.7, Displacement, relocation, and acquisition, would revise the provisions of the current § 290.45, Notice of displacement, and § 290.47, Displacement benefits. Effective April 2, 1989, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) was amended to expand significantly coverage under HUD-assisted programs. All persons (families, individuals, businesses, and nonprofit organizations) moving on or after April 2, 1989 as a direct result of rehabilitation, demolition or acquisition (publicly or privately undertaken) for a HUD-assisted project are entitled to relocation payments and other relocation assistance at URA levels as described at 49 CFR part 24 and in HUD Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition.*

Therefore, whenever assistance under 24 CFR part 886, subpart C (or other Federal financial assistance) is provided in connection with the disposition of a multifamily project, the transaction is part of a federally assisted project and any displacement that results directly from acquisition, demolition, or rehabilitation for the federally assisted project is subject to the URA implementing regulations at 49 CFR part 24, HUD Handbook 1378, and 24 CFR 290.7. Users are urged to consult HUD Handbook 1378 for a more detailed description of, and guidance for, their relocation responsibilities.

Section 290.7(c) would continue HUD's current policies for providing relocation assistance to displaced persons when URA requirements are not triggered, and § 290.7(e) would continue HUD's current policies concerning assistance for residential tenants who are temporarily relocated.

On July 19, 1988, the Department published a final rule providing that for projects acquired by HUD on or after September 19, 1988 (the effective date of that rule), HUD will set rents as if the rent-setting requirements that governed rents before the project was acquired still applied. Projects that were acquired before that date continue to have their rents established essentially as they had been set under part 290 immediately before September 19, 1988. Section 203.55, Rental rates during ownership by HUD, retains the current policies contained in the July 19, 1988 rule.

II. Procedures for the Foreclosure of a HUD-Held Mortgage and the Disposition of a HUD-Owned Property

Foreclosure of a HUD-Held Mortgage

After HUD has decided to foreclose on a HUD-held mortgage on a multifamily housing project under § 290.103 of the proposed rule, HUD would develop a Foreclosure Package. The Package would set forth the terms and conditions that it will impose on a purchaser at a foreclosure sale for the future use and operation of the project to further the purpose and goals set forth in § 290.5. It should be noted that this Package does not concern HUD's decision to foreclose, but rather concerns the future operation of the project should HUD be out-bid at the foreclosure sale.

In developing this Package, HUD would undertake a financial and physical analysis in accordance with procedures established by the Department. In addition, HUD would assess: The number of occupants in the project who might be temporarily relocated or displaced as a result of the manner of disposition; whether the project is a subsidized project; the occupancy rate and income levels of the tenants in the project; and other data relevant to establishing the terms and conditions HUD will impose on a purchaser at a foreclosure sale.

Under section 202 of the Housing and Community Development Amendments of 1978 (section 202), the Department has a statutory obligation to provide tenants residing in HUD-owned rental housing projects with notice and an opportunity to comment on HUD's disposition recommendation under § 290.103.

While section 202 does not require HUD to provide tenants residing in rental projects with HUD-held mortgages with notice or an opportunity to comment, the Department recognizes that these tenants have many of the same concerns as tenants residing in HUD-owned rental housing projects. In this proposed rule, HUD has attempted to strike a balance between its need to foreclose expeditiously upon properties that are subject to a HUD-held mortgage and its strong commitment to encouraging tenant participation in all HUD rental housing projects.

Toward this end, the Department has included a provision at § 290.100 of the proposed rule which requires that each tenant in a project with a HUD-held mortgage be notified of a pending foreclosure. The notice would provide tenants with general information concerning the terms and conditions that HUD proposes to impose on a purchaser at a foreclosure sale for the future use and operation of the project. This notice, which solicits tenant comments, is intended to facilitate the early involvement of tenants who might be interested in acquiring the property at the foreclosure sale.

However, HUD has decided for a number of reasons not to provide a second opportunity for tenant notice and comment on the Foreclosure Package under § 290.103. The principal reason underlying this decision is that the Department must foreclose quickly upon projects with HUD-held mortgages in order to preserve the physical integrity of the structures so that decent, safe and sanitary living conditions can be maintained on behalf of tenants living in these projects. Furthermore, expeditious action by HUD is required to minimize costs to the Federal government. HUD views its actions at foreclosure as part of an overall foreclosure and disposition program. HUD's general goal is to sell projects at foreclosure sales to third parties; however, HUD may decide to attempt to acquire a project at a foreclosure sale for purposes of meeting a Departmental goal or other public purpose . Therefore, HUD believes it is essential to notify tenants of a pending foreclosure to provide tenants an opportunity to indicate their interest in the potential conversion of the property to resident-controlled ownership.

Disposition of HUD-Owned Property

When HUD acquires a multifamily housing project, either through a foreclosure sale or otherwise, the types of notices it would issue would depend upon whether HUD has completed its disposition analysis and recommendation under § 290.107 within 30 days after acquiring the project.

If HUD has developed its disposition analysis and recommendation within 30 days of its acquisition of a project, the Department would not issue the preliminary notices described below, but would proceed directly to issue a notice of the disposition recommendation under § 290.102(d) to each of the project tenants.

If HUD has not developed its disposition analysis and recommendation within 30 days of its acquisition of a project, the Department would issue an initial notice to the tenants in accordance with § 290.102(b). This notice would indicate, among other things, that HUD owns the project and is in the process of developing a disposition plan. The notice would also invite tenant comments, which would be considered by HUD in developing its disposition recommendation. Tenants would be especially encouraged to submit to HUD any proposals for converting the project to a cooperative or other form of resident-controlled ownership.

At the same time that HUD would provide this notice to project tenants, it would also send an advance notice under § 290.102(c) to State and local government agencies that may have an interest in acquiring the rental housing project. HUD would also include in this notice a request that the State and local government agencies contact any nonprofit organizations in their jurisdictions that might have an interest in acquiring the project. The notice would also solicit comments from such agencies.

Depending upon the types of notices that HUD issued under § 290.102, the Department would then review the comments submitted by project tenants, State and local government agencies, and nonprofit organizations on the disposition analysis and recommendation, and would use these comments in developing its disposition plan for the project under § 290.107.

The disposition plan determines the manner of disposition of the HUD-owned project, including whether the multifamily project will be disposed of on a sealed bid, auction, request for proposals, negotiated, or other basis. The plan also establishes the number of units in a project that must be maintained as low- and moderate-income housing, the required level of repairs for the project, and other factors pertaining to the disposition.

Upon approval of the disposition plan for the HUD-owned rental housing project, except in the case of a negotiated sale to a State or local government, HUD would notify the unit of general local government in which the project is located, as well as the State housing finance agency, of their right under section 203(e) to purchase the project on the terms and conditions specified in the disposition program (see § 290.109).

Except under the circumstances specified at § 290.104(b), HUD generally will seek to maximize competition in its disposition of multifamily projects through the use of public offerings. The exceptions include:

(1) When a unit of local government or a State housing finance agency (or other agency or agencies designated by the Governor of the State) exercises its statutory right of first refusal under § 290.109;

(2) When a resident organization wishing to convert the project to a nonprofit or limited equity cooperative meets criteria set by HUD;

(3) When a cooperative (*e.g.*, nonprofit, limited equity, consumer, mutual housing association) with demonstrated experience in the operation of nonprofit (and preferably low- to moderate-income) housing and which can, at the time the final disposition plan is authorized, meets criteria set by HUD;

(4) When a nonprofit entity that will continue to operate the project as low- to moderate-income rental housing, and whose governing board is composed of project residents, meets criteria set by HUD;

(5) When a State or local governmental entity with demonstrated capacity to acquire, manage, and maintain the project as rental or cooperative housing available to and affordable by low- to moderate-income residents meets criteria set by HUD;

(6) When a State or local governmental or nonprofit entity with demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families, meets criteria set by HUD.

It is HUD's intent to enter into negotiated sales only with nonprofit entities that can competently discharge the responsibilities of owning and operating multifamily projects.

HUD may also authorize a sale soliciting purchase proposals rather than bids. This process would be used where there are several entities interested in purchasing a formerly subsidized project and the purchaser's organization, plan of operation, resident involvement, and other priorities of HUD would be more important considerations than price in the selection of a purchaser. Although requests for proposals will generally involve formerly subsidized projects, they may also be used for formerly unsubsidized projects as well.

III. Other Information

Any assistance made available to a purchaser under this rule, whether rental or other financial assistance, will be subject to scrutiny under section 102(d) of the HUD Reform Act, insofar as that statutory provision has been implemented by guidelines issued by the Office of Housing under 24 CFR part 12, subpart D (see, *e.g.*, a Federal Register Notice published April 9, 1991 (56 FR 14436) entitled "Administrative Guidelines; Limitations on Combining Other Government Assistance with HUD Housing Assistance").

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the above address.

This rule would constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it may have an annual effect on the economy of $100 million or more. The Department will prepare a regulatory impact analysis, and will publish if for 30 days public comment, before the publication of the final rule.

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it would not have a significant economic impact on a substantial number of small entities. These revisions to the policies governing the management and disposition of HUD-owned multifamily housing projects should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

HUD has determined, in accordance with Executive Order 12612, Federalism, that this rule would not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. While the rule would impose terms and conditions on States that acquire projects under this rule, that is clearly the intent of section 203(e) of the Housing and Community Development Amendments of 1978, and therefore no further review is necessary or appropriate.

HUD has determined that this rule would not be likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, The Family, because it does not affect the eligibility of families for admission into multifamily housing projects that are subject to this rulemaking.

The information collection requirements contained §§ 290.55(b)(2) and 886.318(a)(6) of this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. The following table discloses the Department's estimated burden for each of the collections of information on this rule:

Description	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Income certification (§ 290.55(b)(2)	15,000	1	15,000	1	15,000
Profit and loss statements (§ 886.318(d)	553	1	553	1	553
Total annual burden hours					15,553

This rule was listed as Sequence Number 1151 in the Department's Semiannual Agenda of Regulations published on April 27, 1992, (57 FR 16804, 16825) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 290

Low and moderate-income housing, Mortgage insurance.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the preamble, part 290 of chapter II and part 886 of chapter VIII of title 24 of the Code of Federal Regulations would be amended as follows:

1. Part 290 would be revised, to read as follows:

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS AND CERTAIN MULTIFAMILY PROJECTS SUBJECT TO HUD-HELD MORTGAGES

Subpart A—General Provisions

Sec.
290.1 Applicability.
290.3 Definitions.
290.5 Management and disposition purpose and goals.
290.7 Displacement, relocation, and acquisition.
290.11 Waivers.

Subpart B—Management Provisions

290.51 Management.
290.53 Occupancy.
290.55 Rental rates during ownership by HUD.

Subpart C—Disposition Provisions

290.100 Foreclosure notice.
290.102 Notices for HUD-owned rental housing projects.
290.103 Factors considered in determining the terms and conditions in foreclosures and dispositions.
290.104 Methods of disposition.
290.105 Manner of disposition and terms and conditions of sale.
290.107 Analysis, recommendation, and determination for foreclosure sales and sales of HUD-owned projects.
290.109 Right of first refusal to local government and State housing finance agency.
290.111 Occupancy in projects acquired from HUD.

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 290.1 Applicability.

This part applies to HUD-owned multifamily housing projects and to rental housing projects that are subject to mortgages held by HUD that are either delinquent, under workout agreements, or being foreclosed by HUD. Specific provisions, as noted in the rule text, apply only to "rental housing projects" as defined in § 290.3, including a HUD-owned rental housing project.

§ 290.3 Definitions.

Cooperative means a nonprofit, limited equity, consumer, mutual housing association.

Displacement means the permanent and involuntary move from the real property, or the permanent and involuntary move of personal property from the real property, of any person (family, individual, business, or nonprofit organization) as a direct result of acquisition, rehabilitation, or demolition for a federally assisted project.

Eligible tenant means a tenant (1) who is a low- or moderate-income family, or (2) who is or (immediately prior to HUD's acquisition of the project) was receiving HUD rental assistance under section 23 (as in effect prior to January 1, 1975), section 8, Rent Supplement, or Rental Assistance Payments.

Formerly subsidized rental housing project means a HUD-owned rental housing project that was a subsidized rental housing project immediately before HUD acquired the project. If HUD has acquired the project more than once, its status as a subsidized rental housing project is determined as of HUD's most recent acquisition.

Formerly unsubsidized rental housing project means a HUD-owned rental housing project that was not a subsidized rental housing project immediately before HUD acquired the project. If HUD has acquired the project more than once, its status as an unsubsidized rental housing project is determined as of HUD's most recent acquisition.

HUD-owned project means a multifamily project that has been acquired by HUD.

Low- and moderate-income person means a person or family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustment for smaller and larger families, except that HUD may establish income limits higher or lower than 80 percent of the median for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs, unusually high or low family incomes, or other factors.

Multifamily project means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act (other than under section 220(d)(3)(A)) or is or was subject to a loan under section 202 of the Housing Act of 1959 or section 312 of the Housing Act of 1964. The term also includes a manufactured home court or park, hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities.

Nonprofit organization means a corporation or association organized for purposes other than making a profit or gain for itself.

Rental housing project means a multifamily project other than a multifamily project that is a hospital, intermediate care facility, nursing home, group practice facility, or board and care home. A retirement service center is a "rental housing project." A manufactured home court or park is a "rental housing project." Furthermore, the unit preservation goal set forth in § 290.5(a) of this part shall be applicable if HUD forecloses on or acquires five or more manufactured homes as part of its foreclosure of the mortgage on the project. Vacant land is not a "rental housing project," regardless of which mortgage insurance program or loan program it was financed under. In addition, eligible property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere ("HOPE") program is not a rental housing project.

Subsidized rental housing project means a rental housing project in which tenants are receiving the benefits of any of the following programs:

(1) Below market interest mortgage under section 221(d)(3) of the National Housing Act;

(2) Interest reduction payments made in connection with a mortgage insured under section 236 of the National Housing Act;

(3) Rent supplement assistance payments under section 101 of the Housing and Urban Development Act of 1965;

(4) Direct loans at below market interest rates made under section 202 of the Housing Act of 1959, sections 401 and 404(b)(3) of the Housing Act of 1950, section 312 of the Housing Act of 1964;

(5) Housing assistance payments under section 23 of the United States Housing Act of 1937 in effect before January 1, 1975, or section 8 of the United States Housing Act of 1937, if more than 50 percent of the units in the project are receiving such assistance. Housing assistance payments under the Section 8 Certificate program, 24 CFR part 882, subparts A, B, C, and F, and the Section 8 Housing Voucher program, 24 CFR part 887, are excluded in determining whether a project is a subsidized rental housing project.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655).

§ 290.5 Management and disposition purpose and goals.

(a) *Purpose and goals.* The purpose of this part is to manage and dispose of HUD-owned multifamily projects, and rental housing projects subject to HUD-held mortgages that are either delinquent, under workout agreements, or being foreclosed by HUD, in a manner that is consistent with the National Housing Act, section 203 of the

Housing and Community Development amendments of 1978, and other relevant statutes, and that will, in the least costly fashion among other reasonable alternatives available, further the goals of:

(1) Preserving so that they are available to and affordable by low- and moderate-income persons:

(i) In subsidized and formerly subsidized rental housing projects, all units;

(ii) In HUD-owned formerly unsubsidized rental housing projects, at least the units that are occupied by low- and moderate-income persons;

(iii) In unsubsidized rental housing projects subject to HUD-held mortgages that are either delinquent, under workout agreements, or being foreclosed by HUD, at least the greater of the number of units occupied by low- and moderate-income persons on the date of assignment or foreclosure;

(2) Preserving and revitalizing residential neighborhoods;

(3) Maintaining the existing housing stock in a decent, safe, and sanitary condition;

(4) Minimizing the involuntary displacement of tenants;

(5) Minimizing the need to demolish multifamily projects; and

(6) Maintaining the rental housing project for the purpose of providing rental or cooperative housing.

(b) *Competing goals.* In determining the manner by which a project shall be managed and disposed of, HUD may balance competing goals relating to individual projects in a manner that will further the achievement of the overall purpose of this part.

§ 290.7 Displacement, relocation, and acquisition.

(a) *Scope of section.* This section applies to all HUD-owned multifamily projects and all rental housing projects subject to HUD-held mortgages that are either delinquent, under workout agreements, or in foreclosure by HUD. When HUD is not the mortgagee-in-possession or owner, HUD will require the owner of the project to comply with this section.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of this part, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) for a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily project, but is not subject to paragraph (d) of this section (*e.g.*, occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily project or as a direct result of the foreclosure of a HUD-held mortgage on a rental housing project or sale of a HUD-owned project without Federal financial assistance), the displaced tenant shall be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling, referrals to suitable, decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD;

(4) For displaced eligible families and individuals—

(i) The opportunity to relocate to a suitable, decent, safe, and sanitary dwelling unit in a HUD-owned multifamily project, in a public housing project, or in another HUD subsidized rental housing project, or

(ii) Assistance under the Section 8 Certificate program (see § 882.209(a)(4)(ii)(B) of this title) or the Housing Voucher program (see § 887.155(c) of this title), if the assistance is available; and

(5) Such other Federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels—(1) General.* Whenever assistance under 24 CFR part 886, subpart C (or other Federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase by a third party of a multifamily property, any resulting displacement is paragraph (d) of this section. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(2) *Definition of "initiation of negotiations".* For purposes of determining the method for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the transfer of title to the purchaser.

(3) *Definition of displaced person.* (i) The term "displaced person" means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. This includes any permanent, involuntary move from the real property, including any permanent move that is made:

(A) After notice by the purchaser to move permanently from the property, if the move occurs on or after the date of the transfer of title to the purchaser; or

(B) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after the transfer of title to the purchaser and the move occurs before the tenant is provided notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions. Such terms and conditions shall include a monthly rent, including estimated average monthly utility costs, that does not exceed the greater of the tenant's monthly rent before transfer of title to the purchaser and estimated average monthly utility costs, or thirty percent of gross household income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either: The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex, and either the tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) A person does not qualify as a "displaced person," however, if:

(A) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of

applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person is ineligible under 49 CFR 24.2(g)(2); or

(C) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who must relocate temporarily (*e.g.*, to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance written notice of, the date and approximate duration of the temporary relocation; the suitable decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistant provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with a purchaser's determination concerning the person's eligibility for, or the amount of relocation assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

§ 290.11 Waivers.

Upon completion of a determination and finding of good cause, the Assistant Secretary for Housing may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons which formed the basis for the waiver. HUD will publish a Federal Register notice informing the public of all waivers granted under this section and containing all relevant information concerning the waiver.

Subpart B—Management Provisions

§ 290.51 Management.

(a) (1) With respect to any HUD-owned rental housing project and any rental housing project where HUD is mortgagee-in-possession, HUD shall manage the project in accordance with the requirements of paragraph (a)(3) of this section.

(2) With respect to any rental housing project subject to a HUD-held mortgage that is either delinquent, under a workout agreement, or being foreclosed by HUD, but HUD is not mortgagee-in-possession, the owner shall manage the project in accordance with the requirements of paragraph (a)(3) of this section.

(3) HUD or the owner, as appropriate, shall in the least costly fashion among reasonable alternatives available:

(i) To the greatest extent possible, provide the level of services necessary to maintain occupied housing in decent, safe, and sanitary condition;

(ii) Minimize the involuntary displacement of tenants to the greatest extent possible, consistent with sound management practices;

(iii) Maintain all vacant buildings and land in a way that eliminates health and safety hazards to the public and ensures the proper security of the property;

(iv) To the greatest extent possible, maintain full occupancy;

(v) Maintain all such projects for purposes of providing rental or cooperative housing for the longest feasible period (for projects being sold at foreclosure sales or HUD-owned property sales, this period generally shall be 20 years); and

(vi) Respond to the needs of the tenants and work cooperatively with resident organizations.

(b) (1) HUD, in accordance with the Federal Acquisition Regulations, 48 CFR chapter 1 and the HUD Acquisition Regulations, 48 CFR chapter 24, may contract for management services for a HUD-owned multifamily project or a rental housing project where HUD is mortgagee-in-possession with a manager determined by HUD to be capable of implementing a sound financial and physical management program; responding to the needs of tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and other resources to implement a management program determined by HUD; and meeting such other requirements as HUD may determine to be necessary or appropriate.

(2) With respect to a rental housing project subject to a mortgage that is either delinquent, under a workout agreement, or being foreclosed by HUD, but for which HUD is not mortgagee-in-possession, HUD may require the owner to contract for management services with a manager determined by HUD to be capable of implementing a sound financial and physical management program; responding to the needs of tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and other resources to implement a management program acceptable to HUD; and meeting such other requirements as HUD may determine to be necessary or appropriate.

(c) Projects shall be managed in accordance with the management objectives contained in paragraph (a)(3) this section, the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100, which prohibit discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, which prohibit discrimination against handicapped individuals; and Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

(d) HUD shall conduct outreach efforts to minority-owned and female-owned businesses to become managers of the projects covered by this section, in accordance with Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 59 (Minority Business Enterprises), Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development), and Executive Order 12138 (3 CFR, 1979 Comp., p. 393) (National Women's Business Enterprise Policy).

§ 290.53 Occupancy.

(a) *HUD-owned multifamily project or project where HUD is mortgagee-in-possession.* Except as provided in paragraph (b) of this section, occupancy in a HUD-owned multifamily project or in a rental housing project where HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that

applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily projects who are eligible for assistance in accordance with § 290.7 of this part.

(b) *Formerly unsubsidized project.* In a formerly unsubsidized project, at least the number of units that received rental assistance before acquisition by HUD shall be rented to eligible tenants.

(c) *Evictions.* Eviction from a HUD-owned multifamily project is governed by 24 CFR part 247, subpart B.

(d) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in § 290.7 of this part to tenants required to vacate the premises.

§ 290.55 Rental rates during ownership by HUD.

(a) *Determining a schedule of maximum rental rates.* As soon as practicable, but no later than 30 days after HUD assumes management responsibility, HUD shall establish a schedule of maximum rental rates for each unit in a HUD-owned multifamily project that is comparable to the rates charged in similar multifamily projects, based on unit size, location, condition, services, and amenities provided, and is conducive to attracting high occupancy without impacting adversely on the viability of other multifamily projects and other housing projects in the area. HUD shall review and update the maximum rental rate schedule periodically to maintain current comparability.

(b) *Rents in projects acquired on or after September 19, 1988.* Except as modified by this section, HUD shall set rents in a multifamily project acquired by HUD on or after September 19, 1988, as if the rent setting requirements that governed rents before the project was acquired still applied.

(1) For families residing in a subsidized project when HUD becomes mortgagee in possession or when HUD acquires the project, as appropriate, HUD shall request an income certification from each family. This certification shall be conducted as soon as practicable after HUD becomes the owner or mortgagee-in-possession, unless the family's income has been examined by the owner or by HUD not more than four months before such action. If a tenant does not certify income as required by this paragraph (b)(1), the tenant must pay the unit rent as determined under paragraph (a) of this section.

(2) (i) For families applying for admission to subsidized or formerly subsidized project, HUD shall request an income certification from each family (and, thereafter, at each annual recertification) to determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent, in accordance with part 813 of this title. This information is also used in HUD's foreclosure or disposition analysis.

(ii) For families applying for admission to an unsubsidized or formerly unsubsidized project, HUD shall request sufficient information for income verification to determine the family's ability to pay the unit rent. If necessary for use in HUD's foreclosure or disposition analysis, HUD may request an income certification from families who are not paying a subsidized rent.

(3) HUD shall determine rent, for a unit in a multifamily project that, at the time of acquisition by HUD, had a market-based rent, from the schedule of maximum established under paragraph (a) of this section. HUD, however, may set a lower rent if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(c) *Rents in projects acquired before September 19, 1988.* Each tenant (other than an eligible tenant in a formerly subsidized project) in a HUD-owned multifamily project acquired by HUD before September 19, 1988, shall be charged a rent based on the schedule of maximum rents established under paragraph (a) of this section. HUD, however, may set a lower rent, if it determines that a lower rent is necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy. Each eligible tenant in a formerly subsidized project acquired by HUD before September 18, 1988 shall be charged the lesser of an amount equal to the tenant rent that would be payable by the eligible tenant under part 813 of this title, or the rent established for the unit under paragraph (a) of this section.

(d) *Utility allowance.* For a tenant in a HUD-owned rental housing project, or project where HUD is mortgagee-in-possession, whose rent is based on a percentage of adjusted income, if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD shall deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(e) *Notice of rent changes.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or project where HUD is mortgagee-in-possession, HUD shall provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices to all tenants must be posted in the project office and in appropriate conspicuous locations around the project.

(f) *Disclosure and verification of Social Security Numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this title.

(g) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting or consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 200, subpart V, of this title.

Subpart C—Disposition Provisions

§ 290.100 Foreclosure notice.

(a) *Content of notice.* HUD shall issue a notice to each tenant of the general terms and conditions that HUD proposes to impose on a purchaser other than HUD concerning the sale and future use and operation of a rental housing project through the foreclosure of a HUD-held mortgage on the project. The notice shall contain an invitation to tenants to submit written comments thereon during a period of not less than 30 days following the date of the notice. The notice shall state:

(1) HUD's interest in learning of tenant plans and capacity for the acquisition of the project for use as rental or cooperative housing;

(2) In brief, the proposed manner of disposition of the project, including general conditions upon the sale, length of restrictions, or future use and operation of the project as may be required, and the general extent of any repairs that may be required to be performed by a purchaser other than HUD after disposition;

(3) The extent to which, and the eligibility requirements for, rental assistance that may be provided;

(4) The extent to which, and the eligibility requirements, for temporary relocation or displacement if it is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, the nature of temporary relocation or displacement assistance to be provided under § 290.7 of this part;

(5) That HUD's final determination of the terms and conditions to be imposed on the foreclosure of HUD-held mortgage will not be made until after HUD considers the comments received from tenants within the specified comment period.

(b) *Delivering or mailing notices to tenants.* The notice required to be issued to tenants under paragraph (a) of this section must be delivered to each unit in the project, or sent to each unit by first class mail. Where HUD is mortgagee-in-possession of a project, the notice also must be posted in the project office.

§ 290.102 Notices for HUD-owned rental housing projects.

(a) *Required notices.* (1) If HUD develops a disposition recommendation within 30 days after acquiring a rental housing project, it shall issue to tenants only the notice of disposition recommendation set forth in paragraph (d) of this section;

(2) If HUD develops a disposition recommendation after 30 days of acquiring a rental housing project, it shall issue to tenants both the predisposition recommendation notice specified by paragraph (b) of this section, and the notice of disposition recommendation specified by paragraph (d) of this section. In addition, HUD shall issue to State and local government agencies the notice set forth in paragraph (c) of this section.

(b) *Pre-disposition recommendation notice.* Where required by paragraph (a)(2) of this section, HUD shall issue to tenants a pre-disposition recommendation notice stating that:

(1) HUD owns the project;

(2) HUD is developing its disposition plan; that HUD normally seeks to sell HUD-owned projects as rapidly as possible and will require the purchaser to undertake any needed repairs not completed by HUD; and that during HUD's ownership or during its status as mortgagee-in-possession, HUD will, to the extent feasible, assure that the project is maintained in a decent, safe, and sanitary condition pursuant to standards established by HUD;

(3) If HUD sells the project with a project-based subsidy, tenants who do not qualify for the subsidy will not be required to move due to the imposition of subsidy;

(4) If it appears that tenants may be temporarily relocated or permanently displaced by the management or disposition of the project, an explanation of the temporary relocation and displacement benefits that will be available; and

(5) Tenants are invited to submit proposals to HUD (*e.g.*, expressions of interest to convert the project to a cooperative or other form of resident-controlled ownership, or other resident initiative), comments, and facts, which will be considered by HUD in making its property disposition determination; the length of time within which tenants may submit such proposals, which shall be at least 30 days following the date of HUD's notice; and that tenants may submit proposals to HUD at any time during the specified time period.

(c) *Notice to State and local government agencies.* The notice to State and local government agencies required by paragraph (a)(2) of this section shall be sent to such agencies that may have an interest in acquiring the rental housing project. The notice shall include information on the availability of the project for purchase; request the State and local government agencies to notify nonprofit organizations in their jurisdiction that may have an interest in acquiring the rental housing project to submit to HUD any comments or expressions of interest concerning the proposed disposition; and request a written reply within 30 days.

(d) *Notice of disposition recommendation.* The disposition recommendation notice required by paragraphs (a) (1) and (2) of this section shall contain an invitation to tenants to submit written comments thereon during a period of not less than 30 days following the date of such notice, and shall state:

(1) In brief, the proposed manner of disposition of the project, including such conditions upon the sale and future use and operation of the project as may be contemplated and the extent of any repairs that may be required to be performed by the purchaser after disposition;

(2) The extent to which rental assistance may be provided and the eligibility requirements therefor;

(3) The extent to which temporary relocation or displacement is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, the nature of temporary relocation or permanent displacement assistance to be provided under § 290.7 of this part, and the eligibility requirements therefor;

(4) That the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office and for inspection at the project office; and

(5) That HUD's final determination of the manner by which the project is to be disposed of will not be made until after HUD considers the comments received from tenants, and from State and local government agencies and nonprofit entities within the specified comment period.

(e) *Delivering or mailing notices to tenants.* Any notice required to be issued to tenants under this section must be delivered to each unit in the project or sent to each unit by first class mail. The notice also must be posted in the project office.

(f) *Section 8 notice.* If the project will be sold with Section 8 assistance under 24 CFR part 886, subpart C, a notice must be sent to the local government in which the project is located in accordance with 24 CFR 886.306.

§ 290.103 Factors considered in determining the terms and conditions in foreclosures and dispositions.

In determining the terms and conditions to impose on the foreclosure of a mortgage or the disposition of a multifamily project, in accordance with § 290.5:

(a) *Multifamily project.* HUD shall consider with respect to any multifamily project:

(1) The results of a financial analysis of the project in accordance with procedures established by the Department;

(2) The results of a physical analysis of the project in accordance with procedures established by the Department;

(3) The number of occupants in the multifamily project that might be temporarily relocated or permanently displaced as a result of the manner of disposition;

(4) Environmental reviews in accordance with HUD requirements implementing the National Environmental Policy Act of 1969 in 24 CFR part 50 and the other statutes, executive orders, and HUD standards cited in § 50.4 of this title that apply to the disposition of the project; and

(5) For buildings located within a Special Flood Hazard Area (SFHA), the estimated cost of annual flood insurance coverage required by section 102(a) of the Flood Disaster Protection Act (FDPA), which is a condition of HUD approval of insured financing or other financial assistance. HUD also may not approve insured financing for a building located within an SFHA if the property is located in a community that is suspended for, or otherwise not participating in, the National Flood insurance program.

(b) *Rental housing projects.* If the multifamily project is a rental housing project, HUD also shall consider (among other factors):

(1) Whether the project is a subsidized or formerly subsidized rental housing project;

(2) The occupancy rate and income levels of the occupants of the rental housing project at a time reasonably proximate to the time of the disposition analysis and—

(i) For a rental housing project subject to a HUD-held mortgage that HUD is foreclosing, HUD shall consider the number of low- and moderate-income persons occupying units in the project at the date of assignment or the date of the foreclosure sale, whichever is greater. In the event there is no information available on the number of low- and moderate-income persons occupying units on the date of assignment, then the number of such persons on the date of the foreclosure sale will be considered; or

(ii) For a HUD-owned rental housing project, the number of low- and moderate-income persons occupying units in the project at the time of its acquisition by HUD or the date of the sale, whichever is greater;

(3) Characteristics, including rental levels, of comparable housing;

(4) Feasibility of converting the rental housing project to cooperative ownership, including the degree of interest and support from present residents;

(5) The comments, proposals, and facts submitted by the residents; and

(6) The availability of Section 8 assistance, purchase money mortgage, or other financial assistance that could be used in the disposition.

§ 290.104 Methods of disposition.

(a) *Multifamily Mortgage Foreclosure Act.* Foreclosure sales will be conducted, at HUD's discretion, in accordance with the Multifamily Mortgage Foreclosure Act, or other Federal or State foreclosure laws.

(b) *Methods of disposition.* HUD may dispose of a HUD-owned multifamily project on a sealed bid, auction, request for proposals, negotiated, or other basis, on such terms as HUD considers appropriate to furthering the purpose stated in § 290.5. The specific methods of disposition include:

(1) *Negotiated sales.* A negotiated sale involves the disposition of a project to a person or entity without a public offering. When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD and a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale to:

(i) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(ii) A cooperative (*e.g.*, nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low- to moderate-income) housing;

(iii) A nonprofit entity that will continue to operate the project as low- to moderate-income rental housing and whose governing board is composed of project residents;

(iv) A State or local governmental entity with the demonstrated capacity to acquire, manage, and maintain the project as rental or cooperative housing available to and affordable by low- to moderate-income residents;

(v) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(vi) Other nonprofit organizations.

(2) *Request for Proposals (RFPs).* If HUD determines that a competitive disposition process is appropriate, but price is not the determining criterion for a sale, HUD may authorize a sale through a Request for Proposals when HUD determines that:

(i) A cooperative conversion is the best future use for the project, and two or more nonprofit entities with demonstrated successful experience in providing affordable rental or cooperative housing are or may be interested in acquiring the project and converting it to a low- and moderate-income cooperative within a time frame acceptable to HUD;

(ii) Two or more nonprofit entities with demonstrated successful experience are or may be interested in acquiring the project and maintaining it as rental housing affordable by low- and moderate-income families for a period of time longer than 20 years; or

(iii) Such other circumstances approved by the Assistant Secretary for Housing or designee.

(3) *Competitive sealed bids.* A disposition by competitive sealed bid involves a public offering of the project, whereby the project is sold to the highest bidder who also meets the qualifications stated in the bid kit. This process may be used where the terms and conditions of sale are established by HUD, and the determining factors in the selection of a purchaser are price and evidence that the purchaser can meet HUD standards.

(4) *Auctions.* Projects for which price is the determinative factor may also be sold at auction. In an auction, oral bids are solicited and bidders must meet qualifications set forth by HUD. This process may be used where the terms and conditions of sale are established by HUD, and the determining factors in the selection of a purchaser are price and evidence that the purchaser can meet HUD standards.

(C) *Equity restrictions.* In the sale of any project where there is no competition on the sales price, HUD will impose limitations on return on equity and the resale or refinancing of the project. Such limitations shall provide that, during the period of any affordability restrictions imposed as a condition of the sale, HUD shall be entitled to receive all or any portion of the sales or refinancing proceeds, as determined by HUD and provided for in HUD's sales documents.

§ 290.105 Manner of disposition and terms and conditions of sale.

(a) *Disposition objectives.* HUD shall seek to dispose of all projects in a manner that is the least costly among the reasonable alternatives available to further the goals of § 290.5.

(b) *Preservation of units.* Except as provided in paragraph (d) of this section, HUD shall maintain the following units as affordable to low- and moderate-income persons for at least 15 years:

(1) In a subsidized or formerly subsidized rental housing project, all units;

(2) In an unsubsidized or formerly unsubsidized rental housing project:

(i) For projects owned by the Secretary, those units occupied by low- or moderate-income persons at the time of acquisition or sale, whichever number is greater; or

(ii) For all other projects, those units occupied by low- or moderate-income persons at the time of assignment or foreclosure, whichever number is greater.

(c) *Maintenance of projects.* Except as provided in paragraph (d) of this section, HUD shall maintain a rental housing project for the purpose of providing rental or cooperative housing for the longest feasible period.

(d) *Determination not to preserve units.* HUD may determine to dispose of, or demolish, a HUD-owned rental housing project or to foreclose a HUD-held mortgage on a rental housing project, or any portion thereof, without ensuring its continued availability as affordable rental or cooperative housing for low- and moderate-income families only if one or more of the following factors exist:

(1) The costs of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within the most recently published Section 8 Fair Market Rents for new construction and substantial rehabilitation (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market;

(2) Construction is substantially incomplete and completing the project will cost more than constructing new housing;

(3) The project is uninhabitable because of environmental factors that cannot be mitigated by HUD or the purchaser, *e.g.*, the project is located on a site that cannot be made to comply with Section 8 Site and Neighborhood standards in 24 CFR 886.307(k). Factors that adversely affect the health, safety, and general welfare of residents, and cannot be mitigated by HUD, may include air pollution, smoke, mud slides, fire or explosion hazards, chemical contamination, significantly deteriorated surrounding neighborhood conditions with inadequate police or fire protection, high crime rates, drug infestation, and lack of public community services needed to support a safe and healthy living environment for residents;

(4) The project does not meet state and local codes, and the costs to bring the project into compliance with the codes will cost more than constructing new housing, or the monthly rental income needed to amortize the cost of bringing the project into compliance with the codes, meet operating expenses, and provide a reasonable return to the purchaser cannot be obtained from rents that are, for subsidized and formerly subsidized projects, within the most recently published Section 8 Fair Market Rents for new construction and substantial rehabilitation (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market;

(5) A reduction in the number of units in the project will enhance long-term project viability, such as for demolition for a building to provide space for a playground, open space, conversion of rental units to common space for community activities for residents, combining one-bedroom units to create larger units for families, or other uses of the units that benefit the residents;

(6) Continued preservation of the project as rental or cooperative housing is not compatible with State or local land use plans for the area in which the project is located;

(7) In the case of unsubsidized or formerly unsubsidized projects, HUD determines that there is available in the area an adequate supply of habitable affordable housing for low-income families. In making this determination, HUD will rely on the field office with jurisdiction over the project to define the market area for the project based on the field office's knowledge of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (*e.g.*, the housing market is balanced), as well as those in which there is an excess supply of rental housing (*e.g.*, the housing market is soft). Rental markets that do not have an adequate supply (*e.g.*, tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the determination using established market analysis techniques, and will consider information that demonstrates:

(i) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(ii) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(iii) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(iv) A significant number, or proportion, of the households holding Section 8 certificates or housing vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

(e) *Relocation assistance.* If HUD decides not to preserve an occupied rental housing project at a foreclosure sale or sale of a HUD-owned project, HUD will provide relocation assistance to all tenants and tenant-based rental assistance to all eligible tenants (see § 290.7 of this part).

(f) *Provision of financial assistance to ensure affordability.* Whenever HUD determines to dispose of a HUD-owned rental housing project, or to impose terms and conditions on the foreclosure of a HUD-held mortgage on a rental housing project, in a manner that ensures continued affordable housing for low- and moderate-income families for at least those units specified in § 290.5(a) of this part, HUD shall, in the least costly fashion, do one or more of the following that achieves this objective:

(1) Impose income eligibility and rent limitations on some or all of the units in the project;

(2) To the extent budget authority is available, enter into contracts under section 8 and 24 CFR part 886, subpart C, with purchasers of rental housing projects, which contracts shall include any units in a subsidized or formerly subsidized project that are occupied by persons not eligible for assistance under section 8, but that subsequently become vacant and are required to be leased by the owner to eligible tenants; and which provide for the operation, rehabilitation, and distributions of surplus cash (when applicable) for such projects, and are not in excess of the most recently adjusted fair market rents for substantially rehabilitated units published by HUD in the **Federal Register**;

(3) Provide other Federal project-based rent subsidy for some or all of the units;

(4) In the case of an unsubsidized or formerly unsubsidized rental housing project that is acquired by a purchaser other than HUD at foreclosure, or after sale by HUD, enter into annual contribution contracts with public housing agencies to provide vouchers or certificates under section 8 to all low-income families who are eligible for such assistance on the date that the project is acquired by the purchaser;

(5) (i) Provide purchase-money mortgages, reduce the selling price, or provide other financial assistance to the owners of rental housing projects that are acquired by a purchaser other than HUD at foreclosure, or after sale by the Secretary, on terms that will ensure that, for a period of not less than 15 years:

(A) The project will remain available to and affordable by low- and moderate-income persons (in the case of unsubsidized or formerly unsubsidized projects, this affordability restriction shall apply only to those units required to be preserved under § 290.105(b)(2)); and

(B) Such low- and moderate-income persons shall pay no more for rent than the amount established under part 813 of this title.

(ii) *Combined assistance.* Whenever HUD provides both section 8 assistance under paragraph (f)(2) of this section and financial assistance under paragraph (f)(5) of this section, the section 8 contract may cover fewer than the total number of units identified under § 290.5(a), so long as all of the requirements of paragraph (f)(5)(i) (A) and (B) of this section are met;

(6) Condition the disposition on the provision of State or local project-based rent subsidy for some or all of the units; or

(7) Provide such other forms of assistance as may be available to HUD.

(g) *Conditioning the sale and future use of projects.* HUD may impose such conditions upon the sale and the future use and operation of a HUD-owned rental housing project and upon the foreclosure and future use of a rental housing project subject to a HUD-held mortgage, that HUD considers necessary or appropriate to furthering the purpose stated in § 290.5. Such conditions may include, but are not limited to, the following:

(1) HUD shall, unless clearly inappropriate, require that repairs be performed to a rental housing project by the purchaser after disposition in order to return the project to decent, safe, and sanitary condition, and may provide such conditions or arrangements as HUD considers appropriate in order to ensure full and timely performance of the repair requirements it imposes. A disposition program which provides for repairs to be performed by the purchaser or other conditions of sale may not be approved by HUD unless it provides for rescission of the sale or reconveyance of the project to HUD if the repairs, which are a requirement of the sale, are not carried out in a timely manner. The right of rescission or reconveyance shall expire six months after the repairs have been inspected and accepted by HUD as being completed. In the event the purchaser fails to complete required repairs within the time established by HUD, if there is a lender involved, the lender will be provided a reasonable time to complete the repairs;

(2) HUD may require the inclusion of appropriate covenants running with the land in the instrument effecting or recording the transfer of a multifamily project if HUD considers it necessary or appropriate in order to ensure compliance with the obligations imposed under the disposition.

(h) *Minimum purchaser qualifications.* (1) Each purchaser of a project that HUD requires to be continued in use as a rental housing project must be determined by HUD to be capable of satisfying the conditions of the disposition; implementing a sound financial and physical management program; responding to the needs of the tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and financial resources to the project; and meeting any other requirements as HUD may determine; and

(2) In the disposition of all HUD-owned projects and as long as any HUD assistance under the terms of the property disposition remains in effect, any purchaser, except a Federal, State, or local government agency, must be approved by HUD under the Previous Participation Review and Clearance procedures in 24 CFR part 200, subpart H.

§ 290.107 Analysis, recommendation, and determination for foreclosure sales and sales of HUD-owned projects.

(a) *Analysis and recommendation.* HUD shall analyze each project being foreclosed or sold (if HUD-owned) as required by § 290.103 of this part, and subsequently prepare a recommendation, which includes, but is not necessarily limited to:

(1) The use and any restrictions, including occupancy or rent restrictions, needed to maintain that use;

(2) The type, amount, term, and source of any subsidy or financial assistance;

(3) The method to be used to obtain a purchaser;

(4) The extent and estimated cost of repairs to be completed by the purchaser, HUD, or both;

(5) If applicable, the number of tenants that would be temporarily relocated or displaced as a result of the recommended disposition, and if applicable, a description of the temporary relocation or displacement assistance to be provided and its estimated cost;

(6) The minimum sales price; and

(7) The type, amount, and terms of any financing to be provided or insured.

(b) *Final foreclosure package and disposition program.* After completing the analysis and preparing a recommendation under § 290.107(a), including considering any comments received in response to the notice provided tenants, HUD shall make a final determination of the terms and conditions HUD will impose on the foreclosure and future use of a rental housing project subject to a HUD-held mortgage or of the disposition program for a HUD-owned rental housing project.

(c) *Applicability of the Fair Housing Act.* HUD shall administer all aspects of the foreclosure or disposition of multifamily projects under this part in accordance with Executive Order 11063 and the Fair Housing Act (42 U.S.C. 3601–20), which Act prohibits discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status, and all regulations issued pursuant to these authorities.

§ 290.109 Right of first refusal to local government and State housing finance agency.

(a) *Notice of right to purchase.* Except in the case of a negotiated sale to a State or local government, upon approval of the disposition program for a HUD-owned rental housing project, HUD shall notify the unit of general local government in which the project is located and the State housing finance agency (or other agency or agencies designated by the Governor) of their respective right to purchase the project on the terms and conditions specified in the disposition program. The notice shall contain those terms and conditions, including the sales price, the amount of subsidy, if any, HUD proposes to provide, any use restrictions, and other applicable information.

(b) *Submission of offers.* The local government and the State housing finance agency shall have 90 days from the date of HUD's notice in which to make an offer to purchase the project. If HUD and the local government or designated State agency cannot reach agreement within 90 days after the date of HUD's notification, HUD may offer the project for sale to the general public.

(c) *HUD acceptance of offer.* HUD shall accept an offer that complies with the terms and conditions of the disposition plan. HUD may accept an offer that does not comply with the terms and conditions of the disposition plan if HUD determines that the offer will further the preservation objectives of § 290.5 by actions that include extension of the duration of low- and moderate-income affordability restrictions or otherwise restructuring the transaction in a manner that enhances the long-term affordability for low- and moderate-income persons.

(d) *Restrictions on transfer of property.* A local government or State housing finance agency that has acquired a project under a right of first refusal under this section may not transfer such project to a private entity, unless the local government or State housing finance agency solicits proposals from such entities through a public process. The solicitation of proposals shall be based upon prescribed criteria, which shall include the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to § 290.105(f).

§ 290.111 Occupancy in projects acquired from HUD.

The purchaser of any rental housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the section 8 Fair Market Rent for a comparable unit in the area, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

2. The authority citation for 24 CFR part 886 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d).

3. Section 886.301 would be revised to read as follows:

§ 886.301 Purpose.

The purpose of this subpart is to provide for the use of section 8 housing assistance in connection with the sale of HUD-owned multifamily rental housing projects and the foreclosure of HUD-held mortgages on rental housing projects (as defined in 24 CFR 290.5).

4. Section 886.302 would be amended by removing the definitions of the terms *Moderate Rehabilitation* and *Substantial Rehabilitation*, and by revising the definitions of the terms *Eligible project or project, Fair market rent*, and *Owner*, to read as follows:

§ 886.302 Definitions.

* * * * *

Eligible project or project. A HUD-owned multifamily rental housing project or a rental housing project subject to a HUD-held mortgage that was purchased through a foreclosure sale (see 24 CFR part 290) or HUD-owned home properties together having five or more dwelling units: (1) For which the final disposition program developed in accordance with the provisions of 24 CFR part 290 involves sale with Section 8 housing assistance to enable the project to be used, in whole or in part, to provide housing for lower income families, and (2) the units of which are decent, safe, and sanitary.

* * * * *

Fair market rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services required to be paid to lease a unit in the appropriate Section 8 program, not to exceed the most recently adjusted fair market rents for substantially rehabilitated units published by the Secretary in the **Federal Register** in accordance with part 888 of this chapter.

* * * * *

Owner. The purchaser, under this subpart, of a HUD-owned project, including a cooperative entity, or the purchaser through a foreclosure sale of a project that was subject to a HUD-held mortgage.

* * * * *

5. Section 886.310 would be revised to read as follows:

§ 886.310 Initial contract rents.

Initial contract rents for units in projects covered by this subpart shall be determined in accordance with 24 CFR 290.105(f)(2).

6. Section 886.318 would be amended by adding a new paragraph (d), to read as follows:

§ 886.318 Responsibilities of the owner.

* * * * *

(d) *Submission of financial and operating statements.* After execution of the Contract, the owner must submit to HUD:

(1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

Dated: July 10, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

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